



Byron Shire Council



Agenda Ordinary (Planning) Meeting

Thursday, 10 June 2021
held at Council Chambers, Station Street, Mullumbimby
commencing at 9:00am

Public Access relating to items on this Agenda can be made between 9.00am and 9.30am on the day of the Meeting. Requests for public access should be made to the General Manager or Mayor no later than 12.00 midday on the day prior to the Meeting.

A handwritten signature in black ink that reads "Mark Arnold".

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
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. TABELING 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 13 May 2021
- 7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS**
- 8. MAYORAL MINUTE**
- 9. NOTICES OF MOTION**

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

Sustainable Environment and Economy

- 13.1 PLANNING - Housekeeping planning proposal exhibition outcomes
26.2020.6.1 6
- 13.2 Water extractive industries 20
- 13.3 PLANNING - DA 10.2020.142.1 for Removal of existing commercial premises (approved real estate office) at 6 Strand Avenue, New Brighton and construction of commercial premises and new recreation facility 25
- 13.4 PLANNING - 26.2021.1.1 Planning Proposal to permit Community Title & R5 Large Lot Residential Development - 53 McAuleys Lane, Myocum..... 56
- 13.5 PLANNING - 10.2020.242.1 - Rural Land Sharing Community (Multiple Occupancy) consisting of Twelve (12) Dwelling Sites, Associated Infrastructure, Land Management and Environmental Enhancement at 84 Blindmouth Road Main Arm 72
- 13.6 PLANNING - Deferred 10.2014.417.2 - 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. Stage 2: Demolition of Existing Building and Construction of Residential Flat Building at 43 Lawson Street, Byron Bay 89
- 13.7 Byron LEP 2014 Rural Subdivision Provisions 101

BYRON SHIRE COUNCIL

13.8	PLANNING - S4.56 to Modify Condition 1 to reference the amended Site Plan and Condition 3 to require instead Row Houses 1, 2, 4 and Studio 4 to be Affordable Housing at 23 Lismore Road Bangalow	108
13.9	PLANNING - Development Application 10.2020.257.1 Multi Dwelling Housing Comprising Seven (7) Dwellings, including Demolition of Existing Dwelling House at 113A Paterson Street, Byron Bay	118
13.10	PLANNING - Development Application 10.2020.251.1 Alterations and Additions to the Commercial development (Book Room) comprising coffee cart and ancillary works (pergola) at 27-31 Fletcher Street Byron Bay	131
13.11	PLANNING - Development Application 10.2021.178.1 Studio at 1 Beach Avenue South Golden Beach	144
13.12	Place Planning Collective - Additional Community Members	158

14. QUESTIONS WITH NOTICE

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

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

Report No. 13.1 PLANNING - Housekeeping planning proposal exhibition outcomes 26.2020.6.1

5 **Directorate:** Sustainable Environment and Economy

Report Author: Sam Tarrant, Planner

File No: I2021/471

Summary:

10 This report presents the exhibition outcomes of the recent housekeeping planning proposal (26.2020.6.1).

The planning proposal includes 7 policy amendments and 5 mapping changes. The planning proposal was exhibited from 17 March until 16 April 2021.

15 245 submissions were received. Majority of submissions were concerned with item 1 relating to secondary dwellings and dual occupancies in multiple occupancy and rural community title development.

The report recommends that the planning proposal be sent to PCO for finalisation with the following changes:

Item 1 - Remove from the planning proposal

Item 2 - Remove from the planning proposal

20 Item 4 - Add the words 'and certain environmental' into 4.2A 1(b).

Item 5 – include the following additional requirements for a roadside stall to be considered as exempt development:

- Must be set back at least 5 meters from the adjoining property boundary.
- Must provide safe access and parking that is set back at least 3 meters from any carriageway.
- Vehicles must be able to access and leave the property in a forward direction

NOTE TO COUNCILLORS:






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

RECOMMENDATION:

That Council:

- 5 1. forwards the planning proposal to amend Byron LEP 2014, as revised in Attachment 1 (E2021/65655) to include the changes recommended in this report to NSW Parliamentary Counsel's Office (PCO) requesting that a draft LEP instrument be prepared;
- 10 2. pending receipt of PCO opinion that the plan can be made, forward the plan to the NSW Department of Planning, Industry and Environment for notification on the NSW Government legislation website.

Attachments:

- 1 26.2020.6.1 Policy and Mapping Housekeeping Planning Proposal amended post exhibition - Version to Council for adoption, E2021/65655 
- 15 2 26.2020.6.1 submissions public version for attachment to Council report - Housekeeping Planning Proposal, E2021/60082 
- 3 26.2020.6.1 TfNSW and DPI submission, E2021/66129 
- 4 26.2020.6.1 BCD Response - Byron Shire LEP Housekeeping Amendments, E2021/66130 
- 20 5 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

Report

At the 19 November Planning Meeting, Council resolved **20-603** to proceed to public exhibition with this housekeeping planning proposal.

5 The planning proposal contains 7 policy amendments and 5 mapping amendments. The policy amendments are summarised as follows:

- 10 • Item 1 - Include controls for secondary dwellings and dual occupancies on multiple occupancy and rural community title. The purpose of this change is to ensure that these developments are considered in the approval process for the entire multiple occupancy or community title site, rather than on individual lots, to ensure such sites are suitable for the additional dwellings.
- Item 2 - Remove an unused clause (4.1F).
- Item 3 - Insert a minimum lot size for Attached Dwellings and Dual Occupancies in certain zones.
- Item 4 - Insert E2 and E3 zones in the application of clause 4.2A and 4.1D.
- 15 • Item 5 - Enable small scale roadside stalls as exempt development in RU1 and RU2 zones.
- Item 6 - Permit Artisan Food and Drink Industry with development consent in the RU2 zone.
- 20 • Item 7 - Include Environmental and Special purpose zones in the application of minimum lot size for strata and community title schemes.

The planning proposal was placed on exhibition from 17 March until 17 April 2021. Notification was sent to community groups, directly affected landowners and public agencies as required per the Gateway determination.

25 During the exhibition period 245 public submissions and 3 agency submissions were received. Majority of submissions were concerned with item 1.

Key issues raised in the submissions are summarised and addressed below. A copy of all submissions received is contained in Attachments 2 – 4.

Item 1: Controlling secondary dwellings and dual occupancies on multiple occupancy and rural community title developments

30 Purpose: to ensure that *secondary dwellings* and *dual occupancy* developments are considered in the context of the original development approval for the entire multiple occupancy or community title (MO or CT) site.

Objections: 232 Support: 10

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.1

Context

MO or CT communities have had various approval pathways in the past. Currently in Byron LEP 2014 clause 4.2B controls housing density on these sites and 4.1B restricts sites to 1 dwelling.

- 5 Although *secondary dwellings* and *dual occupancies* are permitted in the RU1 and RU2 zones, the above mentioned clauses restrict dwelling numbers on MO or CT communities. The aim of the amendment was to make it clear that the approved number of dwellings was the maximum that was permissible on these sites. It additionally aimed to prevent the possibility of one lot constructing additional dwellings at the expense of another lot within
10 an approved CT development.

Issue(1): The objections to this amendment mostly consisted of housing affordability concerns. A number of submissions argued that MO or CT communities are well situated and could accommodate additional dwellings and that more resources are needed to tackle short term holiday letting.

- 15 Council is currently developing a SEPP 70 Affordable Housing Contribution Scheme (AHCS) for our Shire in line with the State guidelines that will be guided by our affordable housing contributions policy and procedure. Once in place the AHCS will apply to urban residential area where the majority of future housing will be delivered.

- 20 Multiple occupancies and community title developments have been granted additional dwelling density compared to freehold rural lots. In this regard the parent parcel had one dwelling entitlement before being developed for a multiple occupancy or rural community title development, comprising of between three dwelling and fifteen dwellings. The exact number of additional dwelling sites would be determined from the assessment of the development application for the Multiple Occupancy or Community Title development in
25 terms of a site capability assessment. It is noted that Clause 4.2B limits the number of dwellings for Multiple Occupancies to 1 dwelling per 3 hectares up to a maximum of 15 dwellings on the lot. Subsequent conversion of Multiple Occupancies to Community Title Development restricts the number of residential lots created based on the number of dwelling sites approved under the multiple occupancy. A further doubling of densities
30 within these intentional rural communities is unplanned for under Byron LEP 2014 in terms of environmental impacts, management of waste water and sewage onsite, bushfire hazards.

- Council has developed the Rural Land Use Strategy and Residential Strategy to guide future housing within the shire. Additional housing in rural MOs and CTs is not supported
35 within these strategies, mainly due to locational and road infrastructure constraints. Furthermore, Council has no mechanism to ensure that additional dwellings in these areas will be used for affordable housing in perpetuity.

Issue(2): The lack of information and the absence of a draft clause to comment on.

- 40 The Gateway determination required the removal of the draft clause due to the uncertainty in the final drafting and which clause would be amended to achieve the desired outcome.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.1

There were 10 submissions supporting the amendment who noted that those who bought into communities would be aware of the restrictions on additional dwellings as this is often a condition of their consent and written into community management statement.

Conclusion

- 5 As mentioned above the proposal aimed to clarify existing LEP controls rather than introduce any new restrictions. That is, existing controls already restrict secondary dwellings and dual occupancies on rural multiple occupancy and community titles in Clause 4.1B and 4.2B. This is also articulated within the Byron Development Control Plan 2014 under Chapter D2 Residential Accommodation and Ancillary Development in Rural
- 10 Zones. Discussions with DA Planning Staff indicate that such restrictions are now being included as conditions of consent in terms of Restrictions on Title, and within the framework of Rural Land Sharing Management Plans and Community title Management Statements. As the existing controls already limit the number of dwellings it is recommended that item 1 be removed from the proposal
- 15 **Recommendation:** remove item 1 from the planning proposal.

Item 2: Delete clause 4.1F from the Byron LEP 2014

Objections: 1 Support: 0

20 The planning proposal proposed to remove clause 4.1F from Byron LEP as it was found that the clause had not been used and applicants had interpreted this clause to enable subdivision of tourist cabins from the parent lot containing the dwelling house.

25 The Department of Primary Industries has recently indicated that a NSW Agricultural Land Use Planning Strategy is in development, which will likely cause changes to local rural and agriculture planning regulations. In addition, the Department of Planning, Industry & Environment has recently released proposed amendments to support Agritourism and small-scale agricultural development.

30 Based on the unknown impacts of these planning reforms (which ultimately may override cl 4.1F), it is recommended that clause 4.1F remain in LEP 2014 for now, noting that the current drafting is problematic in achieving its intended outcome. Clause 4.1F and the other applicable rural subdivision clauses can be investigated in a future housekeeping LEP once the final outcomes of the State wide rural planning reforms are known.

Further information on this issue can be found in a separate report to this meeting titled Byron LEP 2014 Rural Subdivision Provisions .

Submission	Response
The Clause was not part of the Byron LEP 2014 when it was first created and was only included in the LEP on the 22nd of	Correct. Clause 4.1F was introduced in 2017. The clause was introduced to enable special purpose subdivisions similar to a

BYRON SHIRE COUNCIL

Submission	Response
<p>September 2017. This means that Clause 4.1F has only been in the Byron LEP for three years but Council is now proposing it be removed. It also seems that Council has forgotten the reason for the Clause being included in the 2015 Housekeeping amendment in the first place</p>	<p>part in BLEP 1988.</p>
<p>Because Byron Council simply adapted the Clause from the Clarence Valley LEP it failed to properly scrutinize its applicability. The way Clause 4.1F is currently drafted it has been impossible to be implemented to meet its desired outcome.</p> <p>A better solution can be found by simply expanding the words in the Clause from "dwelling houses, dual occupancies or secondary dwellings." to "residential accommodation, ecotourist facilities and tourist and visitor accommodation".</p>	<p>Noted. Adding additional land uses to this clause was considered. However due to the uncertainty around the current rural planning reforms it is proposed to leave this clause as it is and investigate further once the final outcomes of these are known.</p>
<p>The problem is that Clause 4.1F as currently drafted does not allow a rural subdivision if there is an existing dwelling on the lot. This problem was also encountered by Shoalhaven Shire Council but they drafted their Clause with an additional point 6.</p> <p>Byron Shire needs to amend Clause 4.1F to include additional points 5 and 6 as in the Shoalhaven LEP.</p> <p>For young people to invest in these rural industries they need to be able to secure long term leases or rural sub-divisions. An amended Clause 4.1F is a necessity for Byron's rural zones to be used for more than just dwellings and tourism.</p> <p>CABS recommends that Council DO NOT remove Clause 4.1F and instead amend the clause to make it fit for purpose.</p>	<p>Noted. The drafting of clause 4.1F and similar rural subdivision clauses in LEP 2014 will be investigated collectively as part of the future review into the rural subdivision clauses.</p> <p>This includes:</p> <ul style="list-style-type: none"> - Clause 4.2: which enables subdivision of lots for the purpose of primary production. - Clause 4.1C: which deals with rural boundary adjustments. <p>Further investigation into Council's rural subdivision clauses will need to be informed by state government legislative reforms and case law.</p>

BYRON SHIRE COUNCIL

Recommendation: remove item 2 from this planning proposal.

Item 3: Insert a minimum lot size for Attached Dwellings in R2 and R3 zones and Dual Occupancies (detached) in the R5 zone - Clause 4.1E

One public submission and two agency submissions received.

Submission	Response
<p>CABS supports the proposed changes but makes the additional comment:</p> <p style="padding-left: 40px;">CABS recommends that Byron Council consider prohibiting attached dwellings, boarding houses, semi-detached dwellings and seniors housing in the RU5 zone. In particular it seems likely that Boarding Houses and Seniors Housing would be inappropriate at Federal, Main Arm or Billinudgel.</p>	<p>The proposed amendment relates to R5 Large Lot Residential, not RU5 Village.</p> <p>Permissible uses in the RU5 zone can be explored in a future housekeeping planning proposal.</p>
<p>Department of Primary Industries: Supports the proposed 4000m² minimum lot size for R5 land</p>	<p>Noted.</p>
<p>Biodiversity Conservation Division: Consider reducing minimum lot size for dual occupancy on R5 large lot residential to 1000-2000m²</p>	<p>Noted. The R5 large lot residential areas are not connected to Council sewer services and require additional space for these provisions. Majority of these sites are greater than 4000m².</p> <p>Further consideration to a smaller lot size will be considered as part of the investigation into re-subdivision of the R5 large lot residential areas, which is an action within the Rural Land Use Strategy.</p>

5 **Recommendation:** No change

Item 4: Include Zone E3 Environmental Management in the application of Clause 4.2A AND include E2 Environmental Conservation and E3 Environmental Management in 4.1D

BYRON SHIRE COUNCIL

One public submission and one agency submission received.

Submission	Response
This clause references the repealed 2008 Rural Lands SEPP and should reference the new Primary Production and Rural Development SEPP 2019	The clause does include a note relating to lots created under the 2008 Rural Lands SEPP. The reference to this SEPP is still relevant as lots created under the 2008 SEPP would still exist and be unable to construct a dwelling.
<p>Biodiversity Conservation Division: include words 'and certain environmental' into 1(b)</p> <p>And</p> <p>In 4.1D consider prohibiting the construction of a dwelling within the E2 or E3 portion of a lot created by a subdivision only containing E2 or E3 where no dwelling already existed on that lot.</p>	<p>Agreed. It is recommended to add 'and certain environmental' into 1(b).</p> <p>Noted. E2 and E3 have a minimum lot size of 40ha so it is unlikely that a residential, business or industrial zoned property could be subdivided off an E2 or E3 area large enough to meet the minimum lot size requirements to construct a dwelling</p> <p>Dwellings are not permitted within the E2 zone. It is considered the drafting in the planning proposal is acceptable.</p>

Recommendation: Add the words '*and certain environmental*' in 4.2A 1(b) so that the clause objectives read as follows:

- (1) The objectives of this clause are as follows:
- 5 (a) to minimise unplanned rural residential development,
- (b) to enable the replacement of lawfully erected dwelling houses and dual occupancies in rural **and certain environmental** zones.

Item 5: Include roadside stalls as exempt development.

One public submission and one agency submission received.

Submission	Response
CABS supports the proposal with additional conditions including car parking requirements, setbacks, clearing, fill, height, bushfire prone land and signage	<p>It is recommended to include a provision that the roadside stall must:</p> <p>- Be set back at least 5 meters from the</p>

BYRON SHIRE COUNCIL

Submission	Response
restrictions.	<p>adjoining property boundary and</p> <ul style="list-style-type: none"> - Provide safe access and parking that is at least 3 meters from any carriageway. - Vehicles must be able to access and leave the property in a forward direction.
<p>Department of Primary Industries: No objection to the proposed clause and suggests Council consider if a setback for car parking or adjoining land use is appropriate. DPI note this matter is also being considered in the Agribusiness exhibition by the Department.</p>	<p>Noted. Additional provisions for setbacks, parking and access are recommended (see below).</p>

Recommendation: include the following additional requirements for a roadside stall to be considered as exempt development;

- Must be set back at least 5 meters from the adjoining property boundary.
- Must provide safe access and parking that is set back at least 3 meters from any carriageway.
- Vehicles must be able to access and leave the property in a forward direction

5

Item 6: Introduce Artisan food and drink as a permissible use with consent in RU2 Rural Landscape zone

One public submission and one agency submission received

Submission	Response
<p>If including artisan food and drink as permissible in the rural zones, clause 6.8 Rural and nature-based tourism development should be updated to include artisan food and drink.</p>	<p>Clause 6.8 requires the development to be small scale which may not be possible for certain Artisan Food and Drink industries.</p> <p>Clause 5.4 restricts the development bulk.</p> <p>Additional controls will be investigated as part of the rural tourism DCP review to address access and potential land use</p>

BYRON SHIRE COUNCIL

	conflicts.
Clause 6.8 should also include function centres, tourist and visitor accommodation, recreation facilities and environmental facilities	<p>Clause 6.11 governs function centres in the rural areas.</p> <p>Clause 6.8 states that “tourism development includes, but is not necessarily limited to, development for any of the following purposes.” The suggested additional land use in this submission can already be considered in clause 6.8 without needing to be specifically listed.</p>
Department of Primary Industries: No objection and welcomes the opportunity to work with Council to develop heads of consideration to ensure potential land use conflict is minimised	Noted. Additional controls will be considered as part of the rural tourism DCP review.

Recommendation: No change

Item 7: Amend clause 4.1A and 4.1AA to ensure a minimum lot size applies to Community Title and Strata subdivision in special purpose and environmental zones.

- 5 One submission was received objecting to item 7.

Submission	Response
Our property is the only site in Byron Shire which is zoned SP1 Special Activities. The relevant proposed housekeeping amendments are therefore pointedly site specific. Accordingly, the removal of these paragraphs will have no impact on any other properties in the Shire.	<p>Correct. The amendment is specific to the SP1 zone, which currently applies to one site in the Shire.</p> <p>It is understood by all parties that the lack of LEP regulation regarding community title subdivision of SP1 zoned land in Byron Shire constitutes a policy error/oversight in the LEP. This has been noted in previous Council reports relating to the Linnaeus site.</p> <p>The original intention was to correct this error as part of the suite of provisions in the amended Linnaeus Estate CT planning proposal. It was expected that by now the</p>

BYRON SHIRE COUNCIL

	<p>Linnaeus planning proposal would be progressed in short order; however delays have occurred in relation to updated coastal hazard information for the site.</p> <p>Council routinely corrects policy errors by way of a housekeeping amendment. This amendment is being included in the current housekeeping amendment to resolve the issue in a timely manner. By doing so, the regulatory issue will no longer need to be addressed in the amended Linnaeus CT planning proposal.</p>
<p>BHCF has been engaged with Byron Council for over 6 years in relation to the applicability of community title for our site.</p> <p>Clause 3.3.5 page 31 of the adopted BRLUS specifically recommends BHCF's site (Linnaeus Estate) for conversion to 33 community title neighbourhood lots. Additionally, Table 10 in that strategy lists the property as one of four priority sites for community title in Byron Shire.</p> <p>Accordingly, we consider it an abuse of process, and inequitable that Council now attempts to undo all the work including costs, expenses and time incurred by us leading to the adoption of the BRLUS.</p>	<p>The amendment does not constitute a change in Council's position regarding future CT subdivision of the site. Council is simply correcting an LEP oversight relating to the SP1 zone, which in turn will simplify the amended CT planning proposal (when prepared) for the Linnaeus Estate.</p>
<p>At the final Council meeting to approve the planning proposal on 16 April 2020, the planning proposal was suddenly, and without any warning or notice to us, recommended to be rejected by Council staff as being redundant (as per the excerpt below which has been directly quoted from the Council staff report on page 26 of the relevant meeting):</p> <p>"The existing Byron LEP 2014 community title subdivision controls negate the need for a planning proposal to permit community title subdivision on that part of the land zoned SP1 Special Activities – Mixed use</p>	<p>It is correct that the housekeeping amendment will rectify a redundancy in the Linnaeus Estate planning proposal. However, the issues related to the future zoning still need to be resolved once a coastal hazard study has been completed for this part of the Shire. Therefore, preparation of an amended Linnaeus CT planning proposal is still necessary.</p>

BYRON SHIRE COUNCIL

<p>development under Byron LEP 2014. That is, community title subdivision is already permitted in the SP1 Zone on the subject land and the number of lots is not restricted. For this reason, Byron LEP 2014 Schedule 1 – Additional Permitted Uses cannot be used to restrict future community title subdivision of the land to 33 neighbourhood lots with 1 lot for association property (as intended by the current planning proposal).”</p> <p>If Council happens to continue with the current proposed housekeeping amendments which affect our site, then the planning proposal which Council had previously considered redundant will now no longer be redundant, and therefore will be valid.</p> <p>In such case, BHCF will immediately seek to continue with that planning proposal in its current form and, if necessary, appeal it through the appropriate channels.</p>	
<p>To suddenly include these paragraphs, without warning and consultation, with the effect they have in inhibiting community title on our site, destroys all goodwill accumulated over the years between Council and BHCF. BHCF reserves its legal rights to bring proceedings in the Land and Environment Court to strike down this LEP amendment</p>	<p>The need to correct the SP1 community title provision was articulated in the May 2020 Council report and discussed with BHCF in detail. The housekeeping amendment resolves the issue in a timely manner. Proceeding with the housekeeping amendment will simplify the amended Linnaeus CT planning proposal.</p> <p>Note: under NSW planning legislation, the legal grounds for challenging a LEP amendment only apply to circumstances where a Council has not correctly followed the statutory ‘planning proposal’ process (ie. as per the Gateway determination).</p>

Recommendation: No change

Items 8-12: No objections were received to the minor mapping changes proposed.

Transport for NSW supported the mapping changes applying to their land in 'item 10'. Biodiversity Conservation Division supported the proposed mapping changes.

- 5 No changes to items 8 – 12 are recommended.

Next steps

It is recommended that Council adopt the planning proposal with the changes recommended in this report. Should Council proceed, the planning proposal will be sent to Parliamentary Counsel for legal drafting.

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	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.11	Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

Recent Resolutions

Res 20-603: Council resolved to proceed with the housekeeping planning proposal to public exhibition.

15 Legal/Statutory/Policy Considerations

This planning proposal will amend the Byron Local Environmental Plan 2014 in accordance with the relevant planning legislation.

Financial Considerations

Finalisation of this planning proposal will be funded from the existing budget.

Consultation and Engagement

The planning proposal was placed on exhibition from 17 March until 16 April 2021 and advertised on Council's website. Notification was sent to community groups and landowners of site specific amendments. The following agencies also were notified:

- 5
- Department of Primary Industries
 - Rural Fire Services
 - Transport for NSW
 - Biodiversity Conservation Division
 - Tweed Byron Local Aboriginal Land Council

10

Report No. 13.2 Water extractive industries

Directorate: Sustainable Environment and Economy

Report Author: Sam Tarrant, Planner

File No: I2021/551

5 **Summary:**

At 26 November 2020 Ordinary Meeting, Council adopted (*Res 20-643*) the recommendations from the Water, Waste and Sewer Advisory Committee Meeting held on 29 October 2020.

10 The Committee recommended that Council receive a report on a possible LEP amendment to introduce a clause to limit water extraction for commercial purposes.

This report further investigates whether or not controls to limit commercial water extraction in the Shire are required.

15 Based on the information presented in this report, it is considered that water extraction for commercial bottling is already prohibited in the LEP 2014 rural and environmental zones. That is, the applicable land use being 'light industry' is prohibited in the RU1, RU2, E2 and E3 zones.

In addition, similar zoned land in the LEP 1988 will be transitioned to the 2014 LEP through the current environmental zone review process later this year.

20 As such, no amendment to the LEP 2014 or LEP 1988 is required.

RECOMMENDATION:

25 **That Council notes the information provided in this report about the permissibility of water extraction industries in Byron Shire.**

Report

5 Council at its 26 November 2020 Ordinary Meeting, adopted (*Res 20-643*) the recommendations from the Water, Waste and Sewer Advisory Committee Meeting held on 29 October 2020 as follows;

Report No. 4.5 Commercial and domestic water resourcing

File No: I2020/1584

Committee Recommendation 4.5.1

10 That Council receive a report on a possible LEP amendment to introduce a clause to limit water extraction for commercial purposes.

Advice from the Department of Planning is that commercial water extraction which includes its bottling is an industrial activity within the 'Light Industry' land use in LEP 2014:

15 ***light industry*** means a building or place used to carry out an industrial activity that does not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, or otherwise, and includes any of the following—

(a) *high technology industry,*

(b) *home industry,*

(c) *artisan food and drink industry.*

20 ***industrial activity*** means the manufacturing, production, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, cleaning, washing, dismantling, transforming, processing, recycling, adapting or servicing of, or the research and development of, any goods, substances, food, products or articles for commercial purposes, and includes any storage or transportation associated with any
25 such activity.

Under Byron LEP 2014, Light Industry is a prohibited land use in the RU1, RU2, E2 and E3 zones. Therefore water extraction cannot occur in these zones.

30 Further, any of the other LEP 2014 definitions of Rural Industry, Extractive Industry or Mining would not apply to water extraction due to the manner in which those definitions are drafted:

Rural industry means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following—

(a) *agricultural produce industries,*

(b) *livestock processing industries,*

(c) *composting facilities and works (including the production of mushroom substrate),*

(d) *sawmill or log processing works,*

(e) *stock and sale yards,*

5 (f) *the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.*

extractive industry means the winning or removal of extractive materials (otherwise than from a mine) by methods such as excavating, dredging, tunnelling or quarrying, including the storing, stockpiling or processing of extractive materials by methods such as recycling, washing, crushing, sawing or separating, but does not include turf farming.

extractive material means sand, soil, gravel, rock or similar substances that are not minerals within the meaning of the [Mining Act 1992](#).

15 **mine** means any place (including any excavation) where an operation is carried on for mining of any mineral by any method and any place on which any mining related work is carried out, but does not include a place used only for extractive industry.

mining means mining carried out under the [Mining Act 1992](#) or the recovery of minerals under the [Offshore Minerals Act 1999](#), and includes—

a) *the construction, operation and decommissioning of associated works, and*

b) *the rehabilitation of land affected by mining.*

20 Note. 'water' is not listed for the purposes of the Mining Act 1992 as a "Mineral".

Previous Council approvals under Byron LEP 1988

Council previously approved a water bottling plant at Clunes in 2012 (DA 10.2011.530). At the time this was considered a permissible use under Byron LEP 1988.

25 Council has also approved a DA at Huonbrook for a Rural Industry comprising fruit juice production, winery and water bottling facility (DA 10.2015.102.1). This proposal was considered to fit within the definition of a rural industry:

rural industry means handling, treating, processing or packing of primary products and includes the servicing in a workshop of plant or equipment used for rural purposes in the locality.

30 The majority of private rural land, still zoned under 1988 LEP, will be transitioned to the 2014 LEP through the environmental zone review process current this year. On completion of the environmental zone review there will no longer be any private land retaining rural or agricultural LEP 1988 zones. As such no amendment to LEP 1988 is warranted, and if an

BYRON SHIRE COUNCIL

amendment was commenced it would not be completed sooner than the E Zone review process.

The remaining LEP 1988 zoned land , namely the *7f2 Urban Coastal Land* and *7d Scenic Escarpment* zones, already prohibit *Industry*, including *rural industries*.

- 5 On this basis, no amendment to Byron 1988 LEP is required.

Conclusion

- 10 Based on the information presented in this report, it is considered that water extraction for commercial purposes is already prohibited on rural and environmental zoned land under LEP 2014 (hence no amendment required). Also, as the majority of similar zoned land under 1988 LEP is being transitioned to the 2014 LEP through the current environmental zone review process, no amendment to Byron 1988 LEP is required.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.11	Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

Recent Resolutions

- 15 Resolution 20-644 to adopt the recommendation of the Water, waste and Sewer Advisory Committee Meeting held on 29 October 2020.

Legal/Statutory/Policy Considerations

Nil

Financial Considerations

- 20 Nil

Consultation and Engagement

5 Staff consulted with the Department of Planning, Industry and Environment, North Coast branch. Their position is that light industry is the relevant land use definition and there are currently no SEPPs or other legislation that can be used to permit water bottling that apply to Byron Shire.

BYRON SHIRE COUNCIL

Report No. 13.3 PLANNING - DA 10.2020.142.1 for Removal of existing commercial premises (approved real estate office) at 6 Strand Avenue, New Brighton and construction of commercial premises and new recreation facility

5

Directorate: Sustainable Environment and Economy

Report Author: Patricia Docherty, Planner

File No: I2021/264

Proposal:

Proposal description: Removal of existing commercial premises (approved real estate office) at 6 Strand Avenue, New Brighton and construction of commercial premises and new recreation facility in accordance with Byron LEP 1988 land use definitions.

Property description: LOT: 3 SEC: 5 DP: 6834
6 Strand Avenue NEW BRIGHTON

Parcel No/s: 86440

Applicant: Planners North Pty Ltd

Owner: Moe Properties Pty Limited

Zoning: 7(f2) (Urban Coastal Land Zone)

Date received: 23 March 2020

Integrated / Designated Development: Integrated Designated Not applicable

BYRON SHIRE COUNCIL

Concurrence required No

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 9/4/20 to 29/4/20; and Readvertised 19/11/20 to 2/12/20
- Submissions received: twenty eight (28); and a further two (2) after re-advertisement.
- Submissions acknowledged: Yes No

Planning Review Committee:

Date of PRC 14/05/2020. Report to Council. Reasons: The number of public submissions. The perceived public significance of the application.

Variation request

Not applicable

Delegation to determine

Council

Issues:

- Existing use rights –commercial use is prohibited in the 7(f2) (Urban Coastal Land Zone)
- Public submissions
- Form, bulk, intensity and nature of the development
- Potential amenity impacts
- Acid sulfate soils – class 2/3
- Coastal erosion – precinct 3
- Flood liable land
- Deferred commencement recommended by Council engineer

Summary:

The application proposes removal of the existing approved real estate office building and construction of commercial premises and new recreation facility in accordance with Byron LEP 1988 land use definitions.

- 5 The site presently contains a high-set single storey building with historical approval as a real estate office and a floor area of 89m². Council has previously issued development consent for additions to the existing building comprising a total floor area of 190m² for commercial premises under DA 10.2018.113.1.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.3

The subject land is zoned 7f (2) Urban Coastal Lands under Byron LEP 1988. Clause 32 of the LEP prohibits commercial premises on the land.

- 5 Construction of new commercial premises relies on the existing use rights provisions under the Environmental Planning and Assessment Act 1979. Although the building is currently being used for Pilates activities (defined as a recreational facility under the LEP), the applicant has provided sufficient information to demonstrate that the existing use rights have not been abandoned by the owner. In this regard, development consent 10.2018.113.1 has not lapsed and allows for that existing use right to be expanded and intensified.
- 10 The application originally proposed to replace the existing building with a new two storey commercial premises with an enlarged commercial floor area of 349 m² and car parking for 18 vehicles. It was considered that the proposal was a significant intensification of building size, floor space and car parking compared to the existing building and that approved under DA10.2018.113.1. The scale and nature of the proposed commercial uses was also not certain. This raised significant issues in terms of environmental and social impacts and failed to ensure that there would be no external impacts of the operation of the commercial premises. It was considered the development did not meet the criteria in clause 41(2) of the Environmental Planning & Assessment Regulation 2000 in relation to existing use rights.
- 15
- 20 Following discussions with the applicant, amended plans were provided, which separated the building partly into a recreation facility with a floor area of 111m² and a remaining commercial floor area of 169m². The commercial floor area relies upon existing use rights and intensification in that use is permissible with consent under Clause 41 of the EPA Regulations 2000. It is noted that amended plans propose a reduction in commercial premises floor space compared to that approved under DA10.2018.113.1.
- 25
- The potential commercial tenancy is to be limited to activities that would have no additional increase in staff numbers or operational hours compared to that already approved, subject to recommended conditions of consent that restrict commercial operations to be in accordance with Byron LEP 1988 definitions.
- 30 The recreation facility is permissible with consent under Byron LEP 1988 in the 7(f2) Zone and is not constrained by the existing use provisions.
- The amended plans provide for 14 car spaces at ground level. The building height has also been reduced to a maximum of 8.3 metres from the originally submitted 8.6 metres. Whilst there are a minor building height plane encroachment of eaves and awnings in the side elevations, such encroachments are considered reasonable having regards to the need to raise the building to satisfy flood planning requirements. The style of the building is not out of character with the area, which is predominantly two storey, high set dwellings. The proposed amended building is satisfactory in terms of setbacks to street, side and rear boundaries.
- 35
- 40 Council's development engineer has assessed the flooding, coastal processes and stormwater management and has recommended a condition of deferred commencement to ensure that the that the construction of the Q100 overland flow path inside Lot 2

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.3

DP1004049 to connect onto Marshall Creek has been designed and constructed in accordance with Northern Rivers Local Government Guidelines and Council's Comprehensive Stormwater Guidelines.

5 The proposed development is consistent with the objectives of the 7(f2) (Urban Coastal Land Zone) and satisfies the requirements of clause 41 of the Environmental Planning & Assessment Regulation 2000 in relation to existing use rights. The application is recommended for approval subject to recommended conditions of deferred commencement consent attached to this report.

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.




15

RECOMMENDATION:

20 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.142.1 for removal of the existing approved real estate office building and construction of new commercial premises and new recreation facility be approved subject to the conditions of deferred commencement consent (deferral period 12 months) recommended in Attachment 3 (E2021/68868).**

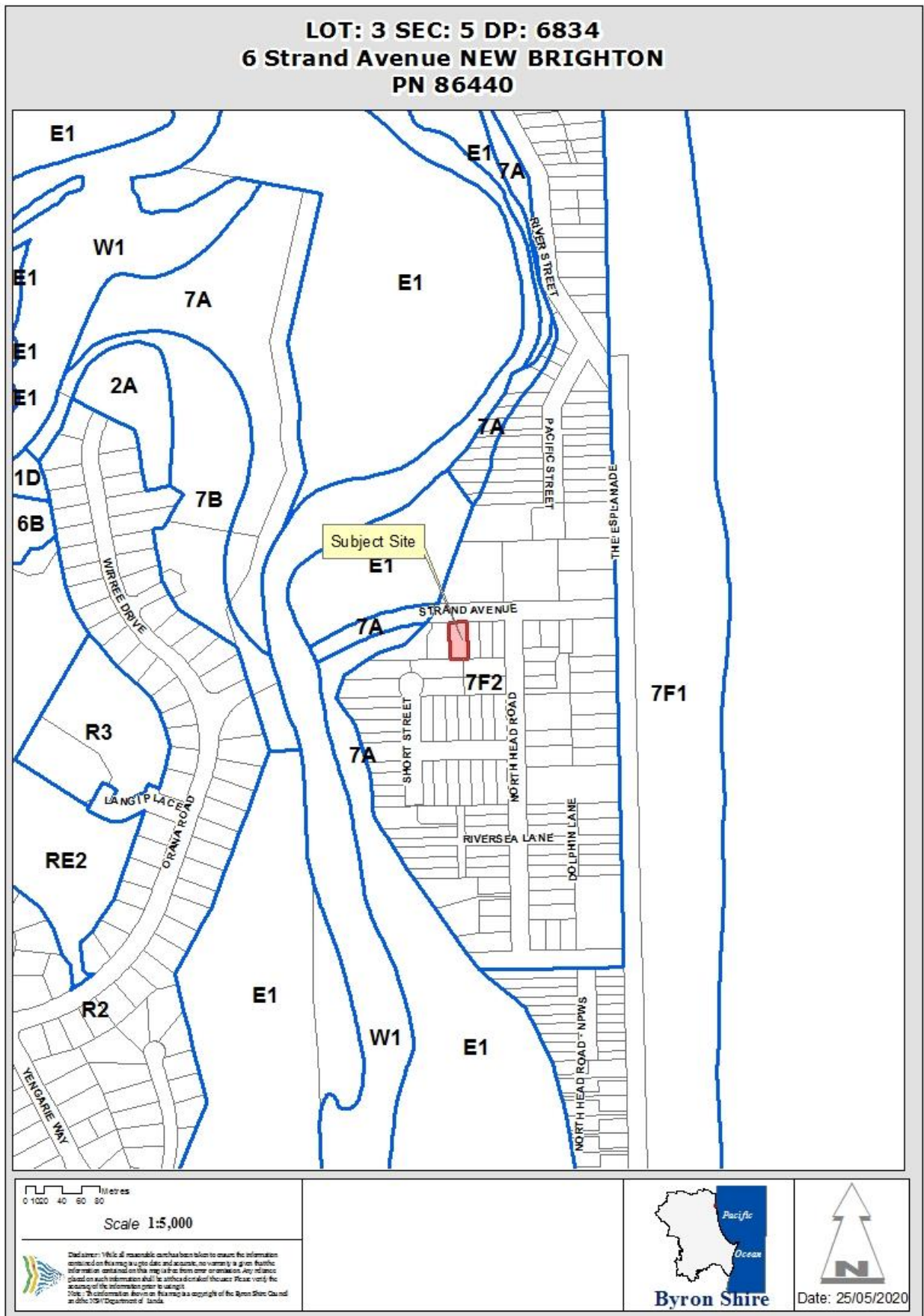
Attachments:

25

- 1 10.2020.142.1 - Redacted submissions received, E2021/57311 
- 2 10.2020.142.1 - Amended plan set combined, E2021/68869 
- 3 10.2020.142.1 Recommended Conditions of Consent, E2021/68868 

30

BYRON SHIRE COUNCIL



Assessment:

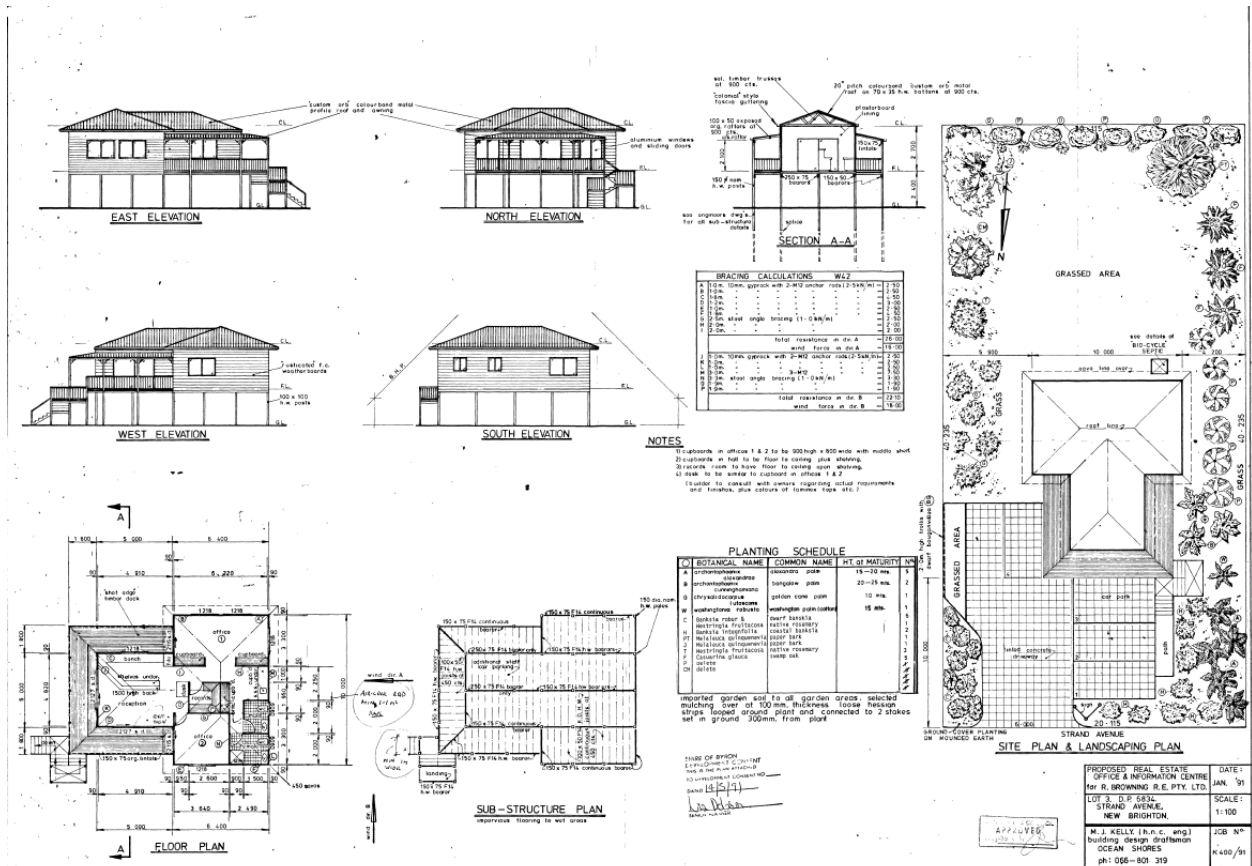
1. INTRODUCTION

1.1. History/Background

5 DA 5.1990.315.1 for a real estate office was determined on 20/12/1990.

BA 6.1991.2164.1 for an office was determined on 22/05/1991.

According to Council's Records (Doc # E2016/38115), the originally approved real estate office located on the site has a gross floor area of 89 m² and was designed to accommodate 5 staff with provision of 3 on site car parking spaces.



10

Originally approved real estate office (existing as built)

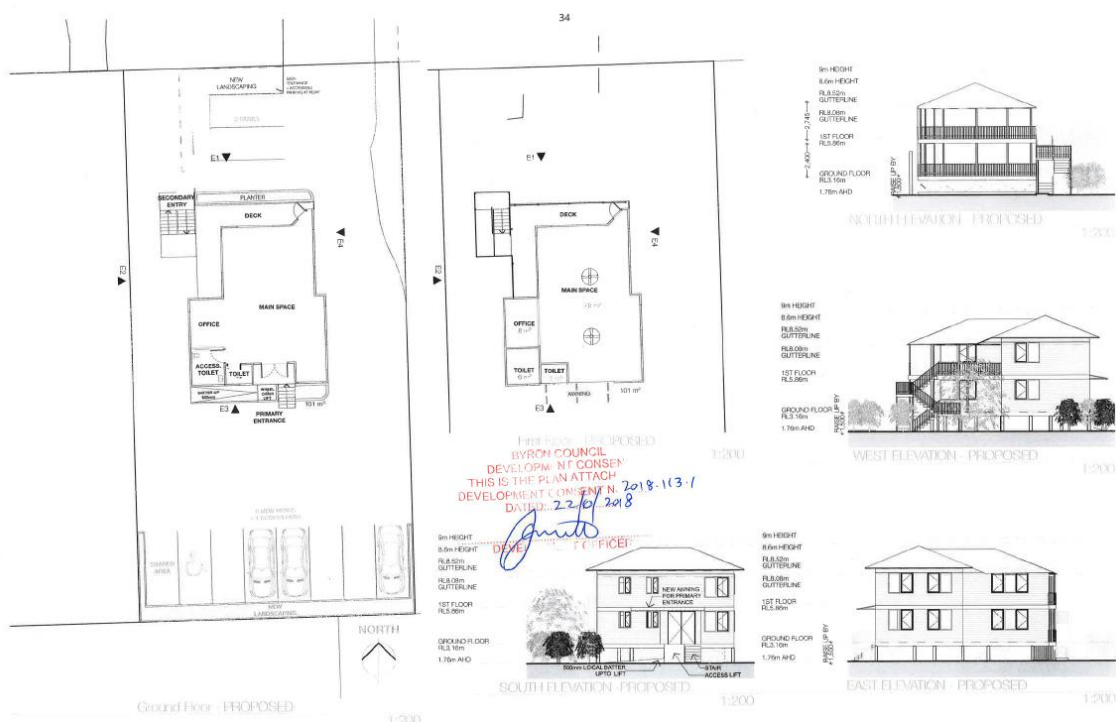
Amendment No. 66 Byron LEP 1988 - Consent for the use of the premises as a real estate office was issued prior to Clause 32 came into effect prohibiting the use, when LEP 1988 (Amendment 66) was published on 11/12/1998.

15 **Operation as Real Estate Agent / Change in ownership** - Real estate agents Rhonda Browning Pty Ltd then Elders continuously operated at the premises from 1991. The current owner purchased the real estate office from Elders on 30/11/2017.

DA 10.2018.113.1 for alterations and additions to an existing real estate office was approved on 22/06/2018. The alterations and additions to the building approved in 2018 permitted expansion of the use of the building for the lawful purpose as a real estate office, which is a type of commercial premises in accordance the LEP 1988 land use definition.

- 5 The proposed works comprised raising the existing building and the construction of a ground floor addition, with a total combined gross floor area of 190m² and a total of 9 car parking spaces.

- 10 Approval of 10.2018.113.1 relied on the argument that there was no change of use to the lawfully approved purpose, and therefore could be expanded without being limited to a 10% increase in floor area as required by Clause 41 Subclause 2(b) of the Environmental Planning and Assessment Regulation 2000 (EP&A Reg).



10.2018.113.1 Approved plans

Existing use rights

- 15 Commercial Premises are prohibited within the 7(f2) Urban Coastal Land Zone. The property enjoys existing use rights pursuant to Division 4.11 of the Environmental Planning and Assessment Act 1979 (EP&A Act 79).

- 20 Parts of the building have been used for the unauthorised purpose of a recreation facility; however Council can be satisfied that, based on independent legal advice, the applicant has continued to satisfactorily demonstrate that their existing use rights have not been abandoned.

The commercial tenancy is to be limited to activities that would have no additional increase in staff numbers or operational hours compared to that already approved, subject to

recommended conditions of consent that restrict commercial operations to be in accordance with Byron LEP 1988 definitions.

5 **Note** DA 10.2021.36.1, lodged on 13 January 2021 for the relocated building to be installed on the adjoining property to the west at 4 Strand Avenue for the purposes of a single dwelling house is subject to separate consideration and development consent.

Description of the proposed development

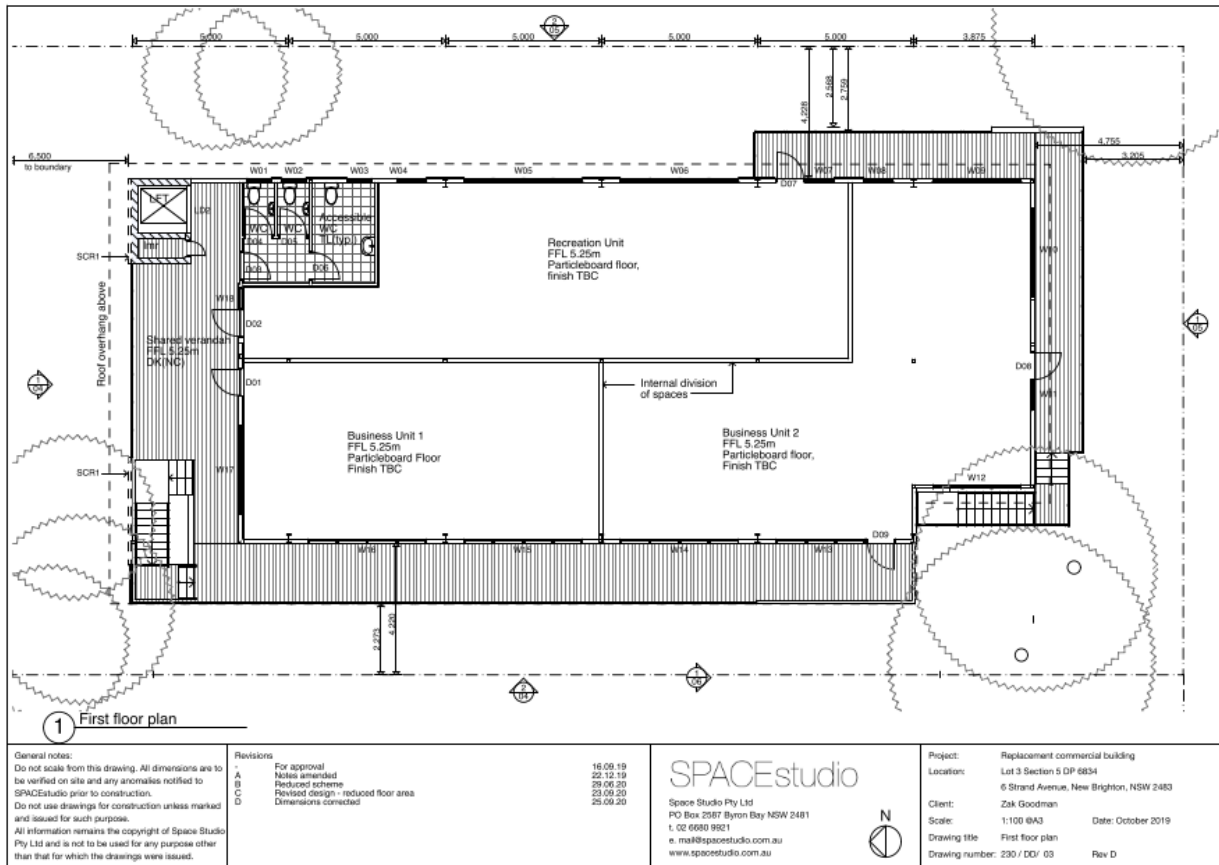
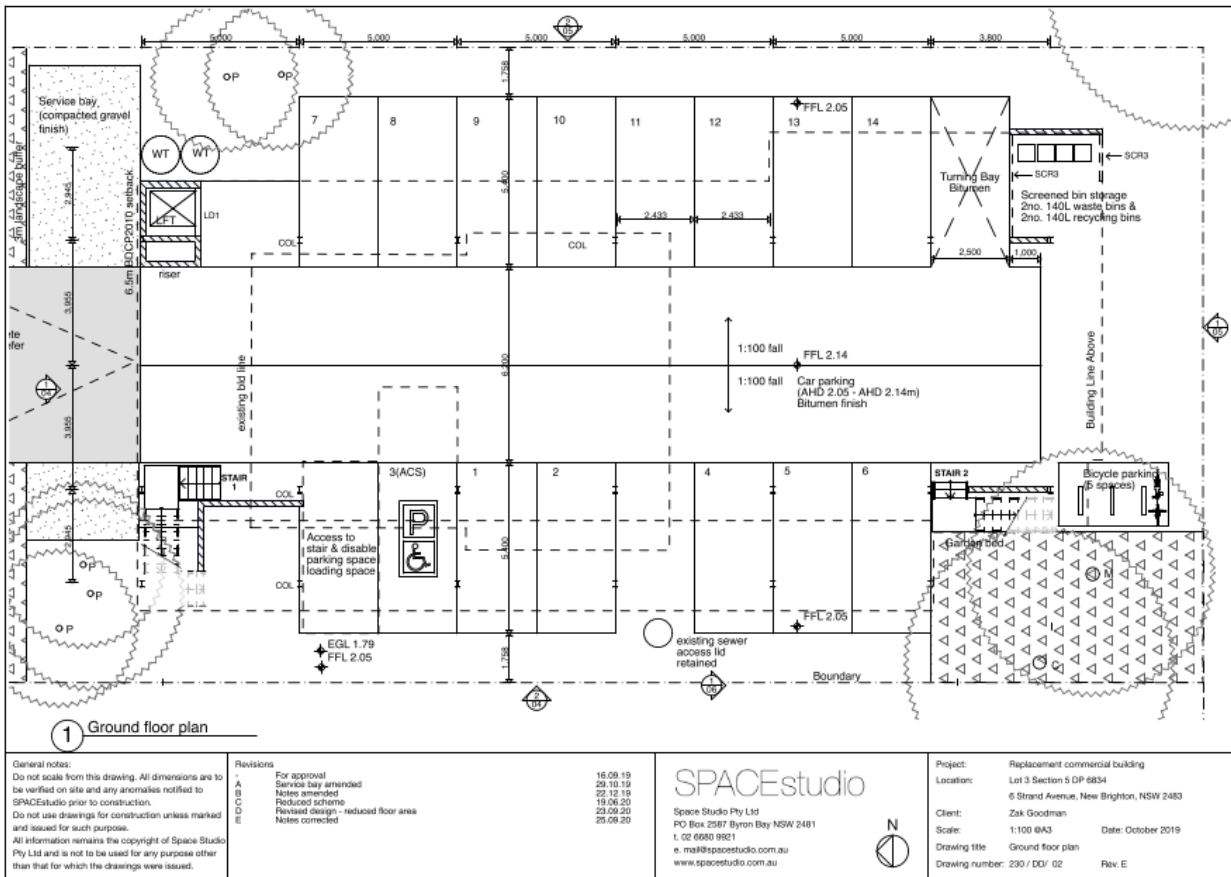
10 This amended application seeks approval for the removal of the existing building and construction of new raised building with a total proposed floor area is 280m² containing a recreation facility with a floor area of 111m² and the remaining commercial floor area of 169m² in two separate units comprising 65m²; and 104m². 14 Car spaces are to be provided with lift access to the raised floor and shared male, female and accessible toilet facilities. The commercial floor area relies upon existing use rights and intensification of that use is permissible with consent under Clause 41 of the EPA Regulations 2000.

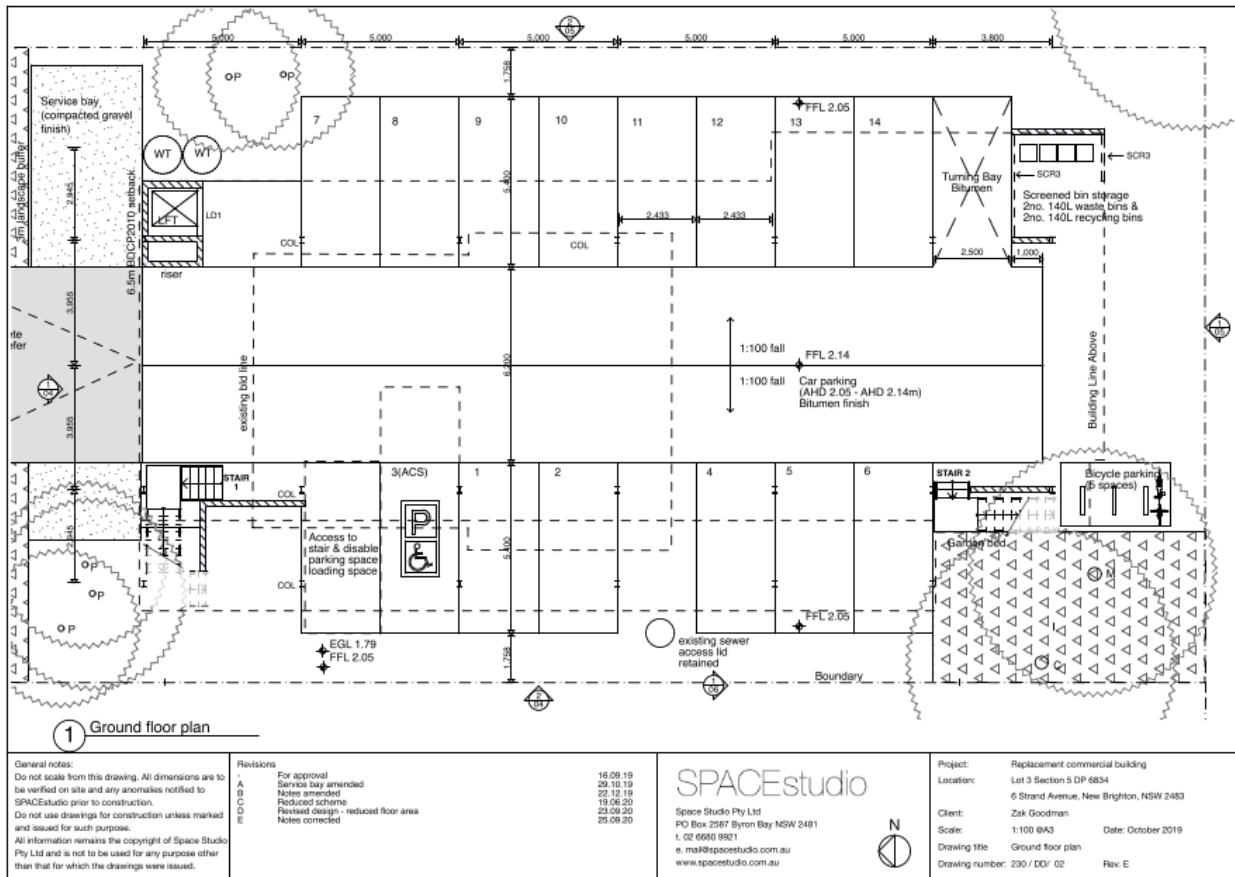
15 The recreational facility is permissible with consent under Byron LEP 1988 in the 7(f2) Zone.

The term 'business premise/s' is not defined in the Byron LEP 1988 dictionary, nor is a real estate office. For the purposes of accurately defining the land uses the subject of this application, Council considers that the following Byron LEP 1988 definitions apply to this proposed development:

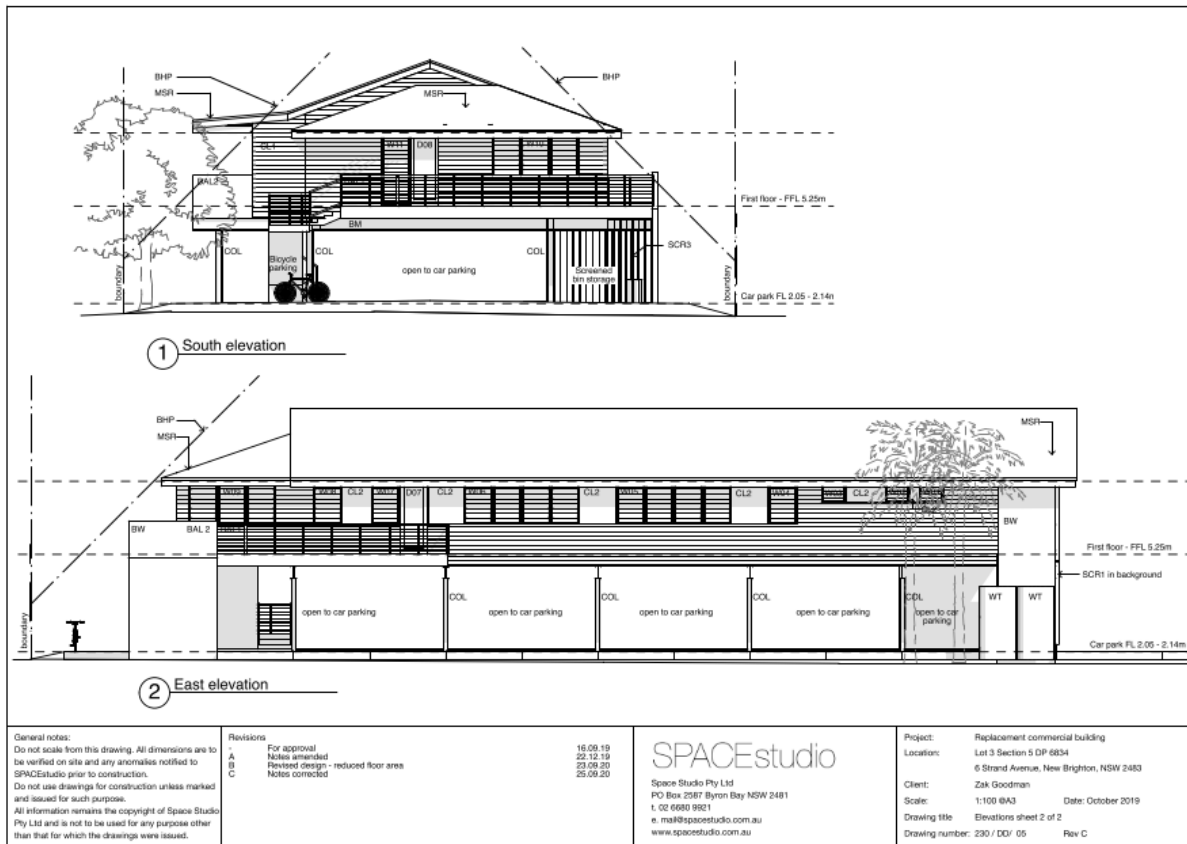
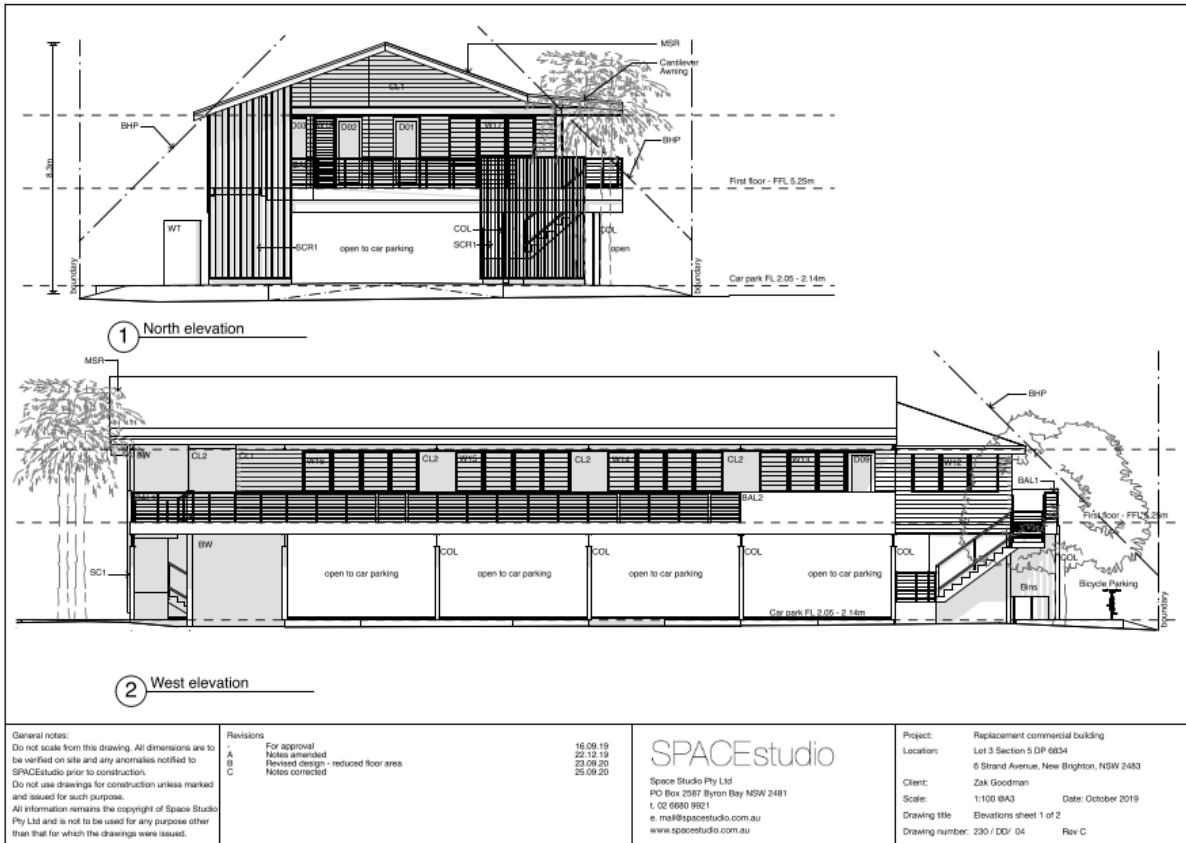
20 **commercial premises** means a building or place used as an office or for other business or commercial purposes, but (in the table to clause 9) does not include a building or place used for a purpose elsewhere specifically defined in this Dictionary.

25 **recreation facility** means a building or place used for indoor recreation, a billiard saloon, table tennis centre, squash court, swimming pool, gymnasium, health studio, bowling alley, fun parlour or any other building of a like character used for recreation and whether used for the purpose of gain or not, but (in the table to clause 9) does not include a place of assembly.





Proposed development plans



Proposed Elevations

BYRON SHIRE COUNCIL

1.2. Description of the site

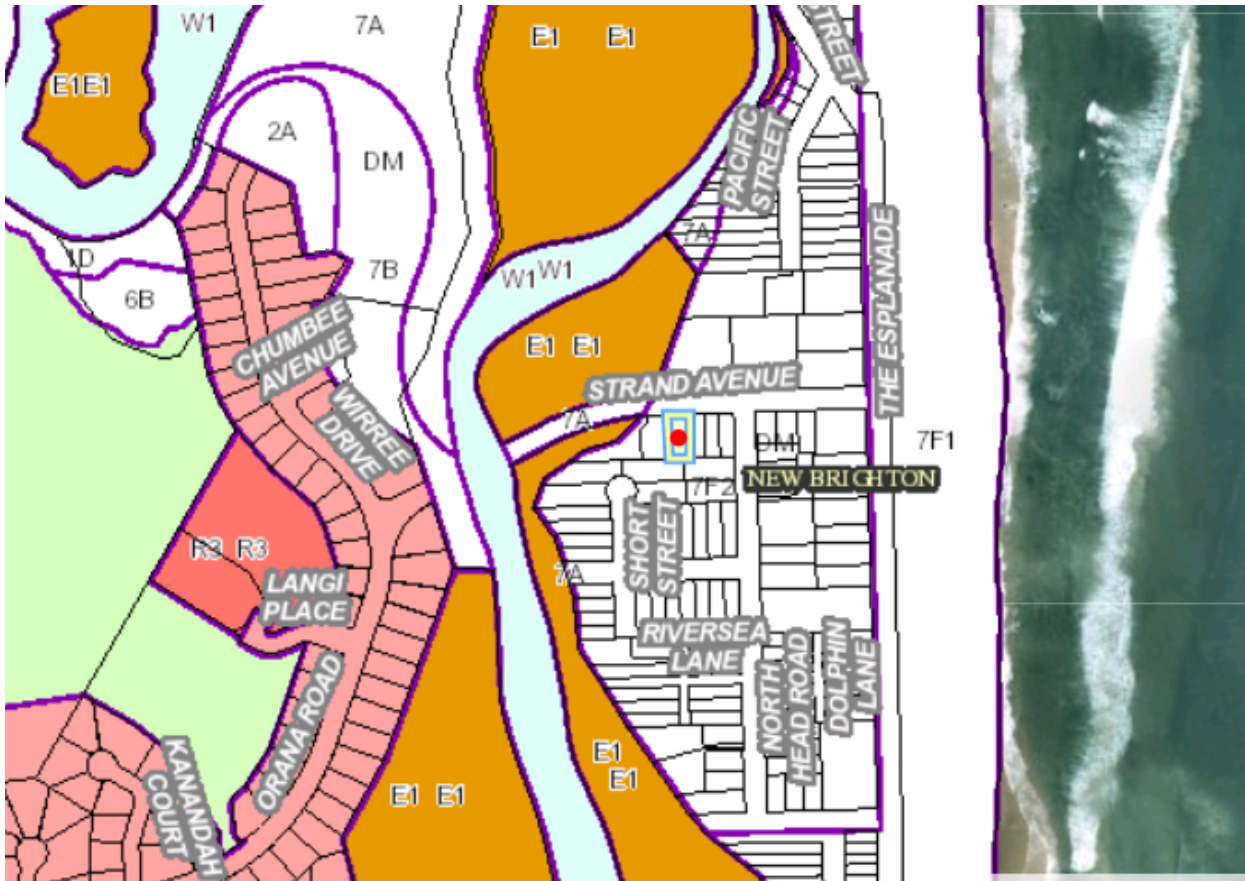
A site inspection was carried out on 12 May 2020.

Land is legally described	LOT: 3 SEC: 5 DP: 6834	
Property address	6 Strand Avenue NEW BRIGHTON	
Land is zoned:	7(f2) (Urban Coastal Land Zone)	
Land area is:	809.4 m ²	
Property is constrained by:	Flood Liable Land, Acid Sulfate Soils Class 2, Coastal Erosion Precinct 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

BYRON SHIRE COUNCIL



BYRON SHIRE COUNCIL



Lot boundary, zoning map



- 5 Existing building on site – currently operating partly as an unapproved recreation facility



Adjoining approved natural therapy clinic (DA No.10.2005.439.1) to the east, residential beyond



5 *Adjoining vacant lot to the west, residential to south and east*



Street context, low density predominantly residential area in coastal wetland and beach setting.

5 **2. SUMMARY OF REFERRALS**

Referral	Issue
Environmental Health Officer	No objections subject to conditions.

BYRON SHIRE COUNCIL

Referral	Issue
Development Engineer	No objections subject to deferred commencement/ conditions.

The Recommendation of this Report below is based on Independent Legal Counsel received by Byron Shire Council between January 2020 and May 2020 and recommended conditions provided in the above referrals.

3. SECTION 4.14 – BUSH FIRE PRONE LAND


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

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55— Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: the proposed development is not considered to be satisfactory having regard to the provisions of SEPP 55, noting that the site is not identified on Council’s Contaminated Land Register, nor is it located within a Dip Site Buffer.		
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The lot is approximately 20 metres to coastal wetlands adjoining Marshalls Creek to the west and is mapped as being within a coastal wetland buffer. The development will have no direct impacts on the wetland. However there remains potential for impacts during the construction period of the development. Appropriate conditions of consent are proposed in relation to installation of sedimentation and erosion control measures and management of builders waste to mitigate such impacts.		

	Satisfactory	Unsatisfactory
 <p><i>Coastal Wetland Buffer</i></p>		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

Note. The Standard Instrument Byron LEP 2014 is not an applicable matter for consideration in the assessment of the subject development application.

4.2B Byron Local Environmental Plan 1988 (LEP 1988)

- 5 In accordance with LEP 1988 clauses 5, 8 and 9:
 - (a) The proposed development is defined in the LEP 1988 Dictionary as a type of Commercial premises (Refer to definition below);
 - (b) The land is within the LEP1988 Zone No 7 (f2) (Urban Coastal Land Zone) according to the map under LEP 1988;
- 10 (c) The proposed development is prohibited in the zone, under Clause 32 of the LEP 1988 and relies on Existing Use Rights provisions under the EP&A Act and EP&A Reg; and
- (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

BYRON SHIRE COUNCIL

Zone Objective	Consideration
<p>(a) to identify urban land likely to be influenced by coastal processes,</p> <p>(b) to permit urban development within the zone subject to the council having due consideration to the intensity of that development and the likelihood of such development being adversely affected by, or adversely affecting, coastal processes,</p> <p>(c) to permit urban development within the zone subject to the council having due consideration to—</p> <ul style="list-style-type: none"> (i) the need to relocate buildings in the long term, (ii) the need for development consent to be limited to a particular period, (iii) the form, bulk, intensity and nature of the development, and (iv) continued safe public access to the site, and <p>(d) to allow detailed provisions to be made, by means of a development control plan, to set aside specific areas within the zone for different land uses and intensities of development.</p>	<p>Recreation Facilities are permissible with consent in the zone.</p> <p>The proposal is not contrary to the objectives of the zone subject to recommended conditions of development consent that limit the intensification of commercial operations in accordance with existing use rights on the site and provide for the long-term planning of coastal management.</p> <p>Conditions of consent recommended for the building to be removed and the consent to cease should the erosion escarpment come to within 50 metres of the development in the event the property is threatened by coastal processes.</p>

Note. The term ‘business premise/s’ is not defined elsewhere in the LEP 1988 dictionary, nor is a real estate office. For the purposes of accurately defining the land uses the subject of this application including the characterisation of exiting use, Council considers that the following Byron LEP 1988 definitions apply to the proposed development:

5 **commercial premises** means a building or place used as an office or for other business or commercial purposes, but (in the table to clause 9) does not include a building or place used for a purpose elsewhere specifically defined in this Dictionary.

10 **recreation facility** means a building or place used for indoor recreation, a billiard saloon, table tennis centre, squash court, swimming pool, gymnasium, health studio, bowling alley, fun parlour or any other building of a like character used for recreation and whether used

for the purpose of gain or not, but (in the table to clause 9) does not include a place of assembly.

Clause 32 Development within Zone No 7 (f2) (Urban Coastal Land Zone)

- (1) *This clause applies to all land within Zone No 7 (f2).*
- 5 (2) *A person shall not carry out development (other than exempt development) on land to which this clause applies except with the consent of the Council.*
- (3) *The Council, in deciding whether to grant consent to development referred to in subclause (2), shall take into consideration—*
- 10 (a) *the likelihood of the proposed development adversely affecting, or being adversely affected by, coastal processes,*
- (b) *the need to relocate buildings in the long term,*
- (c) *the need for the development consent to be limited to a particular period,*
- (d) *the form, bulk, intensity and nature of the development, and*
- (e) *continued safe public access to the site.*
- 15 (4) *The council shall not consent to the carrying out of development on land shown edged heavy black and stippled on the map marked “Byron Local Environmental Plan 1988 (Amendment No 66)” for the purpose of clubs, **commercial premises**, hostels, hotels, motels, residential flat buildings, shops or tourist facilities or for a purpose that would otherwise be permissible with consent under clause 17 (Dual occupancy).*
- 20 (5) *The Council must not consent to the subdivision of land within Zone No 7 (f2) other than—*
- (a) *a subdivision under a strata plan that does not create a development lot, or*
- (b) *a subdivision to excise an allotment that is, or that the Council is satisfied is intended to be, used for a public purpose, or*
- 25 (c) *a subdivision that, in the opinion of the Council, is only a boundary adjustment where no additional lots are created.*

Clause 32 of the Byron LEP 1988 was amended (Amendment 66) on 11 December 1998. Subclause 4 was added to the clause which in effect prohibited commercial premises amongst other uses on certain lands in the 7(f2) Zone

30 The lawful approved use of the commercial premises, operating as a real estate office was thereby prohibited under the provisions of Clause 32 of LEP 1988 and since December 1998, the property has relied on Existing Use Rights provisions under the EP&A Act and EP&A Reg.

As such the development needs to be considered under the provisions of Clause 41 of the EP&A Regulation 2000 which state:

Clause 41 Certain development allowed (EPA Regulations 2000)

(1) An existing use may, subject to this Division—

(a) be enlarged, expanded or intensified, or

(b) be altered or extended, or

5 (c) be rebuilt, or

(d) be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or

(e) if it is a commercial use—be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act), or

10 (f) if it is a light industrial use—be changed to another light industrial use or a commercial use (including a light industrial use or commercial use that would otherwise be prohibited under the Act).

(2) However, an existing use must not be changed under subclause (1)(e) or (f) unless that change—

15 (a) involves only alterations or additions that are minor in nature, and

(b) does not involve an increase of more than 10% in the floor space of the premises associated with the existing use, and

(c) does not involve the rebuilding of the premises associated with the existing use, and

20 (d) does not involve a significant intensification of that existing use.

(e) (Repealed)

(3) In this clause—

25 **commercial use** means the use of a building, work or land for the purpose of office premises, business premises or retail premises (as those terms are defined in the Standard Instrument).

light industrial use means the use of a building, work or land for the purpose of light industry (within the meaning of the standard instrument set out in the [Standard Instrument \(Local Environmental Plans\) Order 2006](#)).

30 Under Clause 41(1) an existing use may be enlarged, expanded or intensified or rebuilt as proposed by this development. However, the existing use can only be changed to another use which is prohibited if the alterations and additions to the floor area are minor in nature or the resulting increase in floor area is no more than 10%, does not involve the rebuilding of the development and does not involve a significant intensification of that use.

35 The existing use of a real estate office falls under the definition of *Commercial premises* as per Byron LEP 1988. The proposal falls within the scope of rebuilding for the purposes of

Clause 41, but has a floor area exceeding 10%. Therefore, the use must be limited to *commercial premises* only. The use can't be changed to a café or retail shop for example as they are not commercial premises.

5 Further the proposal for two tenancies is not supported as this would result in a doubling of the commercial premises on the site. Conditions are recommended to make the commercial component only one tenancy and limitations are also recommended in relation to the use of that tenancy being limited to *commercial premises* as per Byron LEP 1988.

Other relevant LEP clauses are as follows:

Clause 24 Development of Flood Liable Land

10 The subject property is prone to flooding. The development contains car parking at ground level with the development raised on piers bearers and joist to satisfy councils minimum floor levels. The proposal is satisfactory in terms of the flood controls

Clause 40 Height

15 The proposed two storey building with a maximum height of 8.3 metres to the roof pitch and 3.5 metres to the first floor level complies with the height requirements under the LEP

Clause 45 Provision of Services

Adequate provision can be made to provide water, sewer and stormwater infrastructure to this property. Conditions of consent to apply.

20 **4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

Not applicable.

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

DCP 2014 is not an applicable matter for consideration in the assessment of the subject development application.

25 **4.4A Byron Shire Development Control Plan 2010 (DCP 2010)**

DCP 2010 is an applicable matter for consideration in accordance with subsection 4.15(1) of the EP& A Act. The DCP 2010 Chapters/Parts that are checked below are of relevance to the proposed development:

30 North Byron Floodplain Management Study (October 2020). The proposal is satisfactory in terms of the DCP controls, with the "habitable floor" level raised above the flood height for the 1:100 year flood event. The proposal raises no other issues under the DCP.

BYRON SHIRE COUNCIL

4.5 Environmental Planning & Assessment Regulation 2000 Considerations

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

5

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

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

4.7 The suitability of the site for the development

5 The site is a serviced, constrained property in the coastal erosion precinct 3. The proposed scale of the development is considered to acceptable subject to recommended conditions of consent.

4.8 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited twice.

First round of exhibition: 9/4/20 to 29/4/20;

There were **28** submissions made on the development application:

- 10
- 6 For
 - 22 Against
 - and

Second round of exhibition: Readvertised 19/11/20 to 2/12/20

There were **2** submissions made on the development application:

- 15
- 2 Against

Summary of consideration of issues raised in support of the proposed development

Issue	Consideration
<p>Local businesses and jobs</p> <ul style="list-style-type: none"> • The lot has always been a commercial site and look forward to it becoming a place for local small businesses to have premises near home. • This space is a step in the right direction to create a strong community for the people who are seeking an office space and wanting to connect with each other without driving the 20 mins to the Byron Bay industrial estate. • I am a director of one of the building companies looking at doing the job. The owners are committed to using local tradespeople and are supporting 	<p>The site already contains an existing building that relies on existing use rights and the EP&A Regulation provisions strictly limit its expansion.</p> <p>The Byron Shire Business and Industrial Lands Strategy(PDF, 8MB) guides Council’s decision-making and key actions to manage future growth of retail, commercial and industrial land in our Shire.</p> <p>New Brighton is not identified in the Strategy as a suitable location for intensive growth in economic activity. The strategy provides guidance on knowledge and creative-industry precincts, co-operative business and innovation hubs, and development close to</p>

BYRON SHIRE COUNCIL

<p>the local economy.</p> <ul style="list-style-type: none"> • The focus from the start has been to provide small scale services to the local community as well as a source of revenue for small business owners. • It will be an asset for many of the professionals who wish to call the North Byron shire home. 	<p>Byron Central Hospital.</p> <p>The Northern Trade Area comprising Ocean Shores, Billinudgel, Brunswick Heads and Bayside centres are within close proximity to each other and have overlapping trade areas. The Ocean Shores Future role and aspirations are to be <i>encouraged to evolve into a town centre with a wider range of community services, meeting places and office space whilst continuing to operate as a retail and specialty use commercial centre catering for the local catchment.</i></p> <p>The Strategy is based on recent research and was adopted by Council at 12 December 2019 meeting.</p>
<p>Design</p> <ul style="list-style-type: none"> • The design is in keeping with our neighbourhood. • They have engaged an excellent local architectural company, Space Studios, who have done a great job on design. • The proposed DA is for a structure containing small scale business spaces adjoined by a parking area. I myself have seen the plans and as a member of this community strongly approve. • the building has been designed to suit the area and if anything is improving the current aesthetic. 	<p>Noted.</p>
<p>No impacts</p> <ul style="list-style-type: none"> • no difference whatsoever in the social impact from the current design as opposed to its use as a real estate for many years before it was a yoga studio. • incorporating a holistic approach to the needs of the community and the local surroundings. • The current hours of operation are requested from 7am to 7pm. 	<p>It is evident from the content of public submissions that there will be many perceived and actual impacts from intensification of activity on the land.</p> <p>Revised hours of operation provided and will be subject to recommended conditions of consent.</p>

<ul style="list-style-type: none"> • there is very little traffic impact as they are not “shops”. 	
--	--

Summary of consideration of issues raised against the proposed development

Issue	Consideration
<p>Existing Use Rights</p> <ul style="list-style-type: none"> • The DA represents a significant expansion of commercial use, compared to existing use rights (about 3.5 times bigger on our estimate). • Should be limited to 10% • The land should be zoned commercial to enable development • Regulations prohibit changes to other uses • pilates studio operating without approval. • Much larger commercial building that can be subdivided into up to 5 tenancies. • No specific uses are specified, • Proposal will redevelop and massively expand the premise for a non-compliant use. • Existing use rights should be rescinded 	<p>Council’s assessment of the proposed development concludes that the proposal may satisfactorily address clause 41 of the EP&A Reg subject to conditions of consent limiting the operation of the proposed commercial activity.</p> <p>Consent is now sought for recreational facility which is permissible with consent and could accommodate pilates or yoga etc</p> <p>There will only be two tenancies, the other the recreational facility.</p> <p>Council cant rescind existing use rights</p>
<p>Coastal Zone, Erosion, Sea Level Rise</p> <ul style="list-style-type: none"> • Site is unsuitable for such development. • Fragile coastal zone, building does not meet the objectives of the zone. • Will set a precedent • Landfill will impact surrounding properties during natural disasters and flooding events 	<p>The proposed development is not inconsistent with the objectives of the applicable land use zone, subject to conditions of consent recommended.</p>
<p>Commercial Land Supply</p> <ul style="list-style-type: none"> • There is significant, large and varied retail and commercial space (some empty) in neighbouring Ocean 	<p>The Business and Industrial Lands Strategy(PDF, 8MB) guides Council’s decision-making and key actions to manage future</p>

BYRON SHIRE COUNCIL

<p>Shores and Brunswick Heads which are better suited to this development</p> <ul style="list-style-type: none"> • Our Village Association (NBVA) have never identified a need or desire for further commercial development in our village. • The New Brighton village is small and doesn't need another commercial centre of this type. 	<p>growth of retail, commercial and industrial land in our Shire.</p> <p>Although it is considered that there may be other locations that can accommodate this development the proposal will result in a limited commercial footprint of 169 m² which can be used only for commercial premises.</p> <p>The recreational facility is permissible with consent in the zone.</p> <p>The use cant be changed to a café or refreshment room</p>
<p>Scale, Intensification, Bulk</p> <ul style="list-style-type: none"> • Opposed building taking up the entire lot with parking beneath for a significant number of vehicles. • Current commercial buildings retain a residential feel in appearance. • Scale with undercover parking for 18 cars and an elevator. • The bulk and scale of the proposal is incompatible with the zone objectives and surrounding residential homes. • Shadowing caused by the size and height. • Will devalue our property and be extremely disruptive. • Looking at plans it appears that the building will be very close to our fence and after fill is put in the building will tower above our house. • The site is in a small oceanside residential village on a riverside block with vehicular access from a narrow road and therefore not appropriate. 	<p>The applicant amended plans to reduce the scale and intensity of the proposal. Amended plans with a reduced floor area for a raised level building with parking on site is likely to have minimal impacts on surrounding properties</p> <p>Land Values are not a matter for consideration</p> <p>Access from the local road network and traffic generation considered acceptable.</p>
<p>Retaining Small Seaside Village Character and Community</p> <ul style="list-style-type: none"> • New Brighton comprises a small residential village, with a local general store and community café. 	<p>Proposed development in terms of built form not out of character for the area and unlikely to impact on the charm of the New Brighton</p>

BYRON SHIRE COUNCIL

<ul style="list-style-type: none"> • Small seaside village, small and quiet surrounded by nature. • Proposal is inconsistent with the Village Character 	<p>Village. .</p>
<p>Hours of operation, Amenity, Nature and Wildlife</p> <ul style="list-style-type: none"> • There should be severe restrictions on these activities to appropriately reflect the residential area, with regards to noise, traffic, or any unsuitable activities. • The construction and size of the proposal will impact tenants at the Health Cove, specialising in acupuncture, massage and health treatments. • Car headlights in the morning. • Impact on the environment 	<p>Conditions of consent recommended in relation to limited hours of operation to ensure residential and neighbourhood amenity is not adversely impact upon Conditions to apply limiting hours to</p> <p>Recreation facility 7.00am -7.00pm, Monday – Friday 8.00am to 5.00pm Saturday, Sunday and Public Holidays</p> <p>Commercial premises 8.00am to 6.00pm Monday-Friday</p>
<p>Access, roads, traffic and parking</p> <ul style="list-style-type: none"> • Lack of bike parking • Additional traffic on local roads, • Location of skip bin and landscaping will affect driveway site distances – safety issue when exiting neighbouring property. • Currently cars parked on Lot 2 enter and exit via Lot 3 - is this still to be the case? If so, this further compounds the traffic flow from Lot 3. • The 40k speed limit is constantly abused. 	<p>Car and bike parking satisfactory in terms of Councils planning controls.</p> <p>Location of Bin storage and driveways suitable for the development with no access proposed from the adjacent parcel</p> <p>Conditions to apply in terms of complying with relevant Australian standards</p> <p>Speed limits area a matter for NSW Police to enforce</p>
<p>Flooding, Stormwater and Drainage</p> <ul style="list-style-type: none"> • As resident since 2001 we have experienced extreme flooding in 2005 and more recently in 2017 with Cyclone Debbie also February this year. This is more than likely to increase with Global warming. • This DA is sited near the river and 	<p>The proposed building is to be raised above the flood level with car parking at ground level. Minimal filling is proposed to support the car park area which will have a negligible impact on flooding in the area.</p> <p>Stormwater can be appropriately managed</p>

BYRON SHIRE COUNCIL

<p>this lower area floods regularly.</p> <ul style="list-style-type: none"> • Councils Drainage inadequate for New Brighton • We are on a flood plain with more flooding likely due to building developments that have occurred with no planning for the water run off. • more development will lead to more flooding effects • No new commercial developments should be allowed on flood prone areas. 	<p>from the development.</p> <p>Conditions to apply including provision for an overland flow path for stormwater</p>
<p>Relocation or demolition</p> <ul style="list-style-type: none"> • The proposed development seeks to relocate the existing building from the site and construct a new building. Description on council notices says demolition – which is it? • Lack of transparency re the ‘<i>off-site</i>’ relocation: 	<p>Relocation of the building would involve removal of the building. This is defined as demolition in accordance with the Byron LEP 1988.</p> <p>Demolition, in relation to a building or work, means the damaging, defacing, destruction, pulling down or removal of that building or work in whole or in part.</p> <p>Lot 2 is not part of the subject site. Council is not required to assess the new location of a building being moved from a site. Such activity would be subject to separate approval and consideration.</p> <p>A separate DA was lodged for a relocated building on the adjoining lot in January 2021 and is subject to separate consideration and determination.</p> <p>Note. In some cases, relocated buildings are moved outside Byron Shire and would be assessed by another consent authority.</p>
<p>Consultation</p> <ul style="list-style-type: none"> • There has been no community consultation and a total lack of transparency regarding the Developer intentions in this DA. 	<p>The development application was notified/advertised twice in accordance with Development Control Plan 2010. Issues raised in the submissions have been addressed during assessment of the application.</p>
<p>Acid Sulphate Soils</p> <p>note that the Acid Sulphate test site submitted for this Lot (3) commercial</p>	<p>The originally submitted Acid Sulfate Soils report, dated 25 November 2017 (Refer Doc # E2020/22009) shows that test sampling has</p>

BYRON SHIRE COUNCIL

<p>development is located on Lot (2), not on Lot (3) (ref Acid Sulphate Report). The relocation by the developer of the existing building to Lot (2), and consequent implications thereof, needs to be jointly considered with this DA Lot (3) proposal – the submitted documentation is already indistinct.</p>	<p>been undertaken on the adjoining vacant lot to the west of the existing building.</p> <p>A new Acid Sulfate Soils report was submitted (Refer Doc # E2021/68500) relative to the proposed building footprint and conditions of consent are recommended.</p>
--	--

Two further submissions were received in response to the second period of exhibition

5 *I object to the application 10.2020.142.1 to remove the existing commercial use on the site and to replace it with a much larger commercial building which according to the plans can be subdivided into up to 5 tenancies even though they are stating part to be used as public recreation.*

10 *The existing land use is prohibited in the Coastal Zone but can continue under existing use rights". The existing use right is a Real Estate Agency although recently the building has been used as a Pilates studio without approval. The construction and size of the proposal will impact. Clause 41 (1) (e) of the Regulations provides in relation to these prohibited uses that a commercial use can be changed to another commercial use . It does not provide that the one use can be converted to up to 5 prohibited uses. As well the following clause 41 (2) (b) applies and that one existing use can only be added to by 10 % as stated in the application but using the guise of public recreation to allow a substantial increase in the size of the foot print.*

15 *This fragile coastal zone, such a large building as now proposed does not meet the objectives of the Coastal Hazard Zone. Council will set an unfortunate and expensive precedent if it approves such a large building in an area that will be subject to coastal erosion within 100 years or sooner if sea levels rise faster due to global warming. It is negligent for Council to increase the values of sites in the Coastal Hazard Zone when at*
20 *some time in the future these buildings will need to be removed as the coast recedes.*

25 *I also have concern with the site being filled and falling to adjoining properties and not to the table drain (piped) in front of property This large building proposed should be refused, and increase in the size of the footprint should be limited to an increase of 10% including the recreation area as per the plans this area is included in alternative layout for other uses .*

There is only one existing use right, not some unknown increase of uses as proposed in this application. Council should ensure that in any approval , the site lines f not reduced

30 *Concerned with the rise in foot traffic in a zone that does not accommodate footpaths on the side of the proposal and increased traffic in an area that simply could not handle such a rise in cars.*

I am also concerned about noise and disrespect to closer neighbours.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.3

5 *This person is clearly set out to make money with no actual understanding of the close knit community that is New Brighton and with a 1.1 million dollar proposal clearly wishes to simply make profit and not even inject it back into our community. 1.1 million dollar extension shows that this is going to be a large scale project which may also effect the business next door which has been running for almost 20 years!*

It is clear this community is not interested in having an extension of this business which is not even community minded in the first place....A good example of this could be something such as a community garden that would truly serve the community and give back as a common meeting place for our precious little suburb.

10 **Staff Comment:** Matters raised above have been considered. As to pedestrian traffic there is a constructed footpath on the other side of the road serving this area of New Brighton and connecting with Ocean Shores. A developers intention to make a profit and what he or she intends to do with that is not a reason for refusal.

4.9 Public interest

15 The proposed development is unlikely to prejudice and compromise the public interest and would not create an undesirable precedent, subject to conditions of consent.

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

20 Section 64 levies will be payable.

5.2 S7.12 Contributions

Section 7.12 Levy Contributions will be payable.

6. CONCLUSION

25 The proposed removal of the existing building and construction of commercial premises and new recreation facility is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site.

The application is recommended for approval subject to conditions of deferred commencement consent listed in the Recommendation of this Report below.

7. DISCLOSURE OF POLITICAL DONATIONS

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

30 Provide Disclosure Statement register details here: Not applicable

Report No. 13.4 PLANNING - 26.2021.1.1 Planning Proposal to permit Community Title & R5 Large Lot Residential Development - 53 McAuleys Lane, Myocum

5 **Directorate:** Sustainable Environment and Economy
Report Author: Steve Daniels, Project Officer - Planning Reforms
Alex Caras, Land Use Planning Coordinator
File No: I2021/474

Summary:

- 10 Council received a planning proposal in December 2020 to amend Byron LEP 2014. This planning proposal relates to a single lot located at 53 McAuleys Lane, Myocum, described as Lot 8 DP 589795. The objective of the Planning Proposal is to enable the future subdivision of the subject land to create a combination of large lot residential and community title lots (and the construction of future dwellings).
- 15 It is anticipated that the planning proposal would enable approximately 35 large lot residential lots in the proposed R5 Zone land, and 7 neighbourhood community title lots and 1 association property lot on the RU2 zoned land.
- An assessment of road safety and intersection capacity found that the proposed development outcome will necessitate improvements to a section of McAuleys Lane, as well as an upgrade of the McAuleys Lane / Mullumbimby Road intersection. To ensure the necessary upgrades required to accommodate future development can be provided at no cost to the wider community, the landowner has submitted to Council a 'letter of offer' to enter into a Voluntary Planning Agreement (VPA) to fund the required works.
- 20
- 25 Although the majority of the site comprises cleared grazing pasture, the site also contains patches of subtropical rainforest in varying condition, freshwater wetlands and planted native and non-native vegetation including three (3) threatened flora species. Given its highly modified and disturbed condition as a whole, the site only represents marginal habitat for threatened fauna. However, the site is well positioned to improve ecological connectivity within the broader landscape through restoration of native plant communities.
- 30 The planning proposal is consistent with the Byron Rural land Use Strategy 2017 and the North Coast Regional Plan.
- It is recommended that the submitted planning proposal be amended to include changes recommended in this report and forwarded to the Department of Planning and Environment for a Gateway Determination.

35 **NOTE TO COUNCILLORS:**

In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.4

planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.






5

RECOMMENDATION:

That Council:

- 10 1. **Accept the applicant's letter of offer to enter into a Voluntary Planning Agreement (VPA) (Attachment 6 E2021/69988) with Council as part of this planning proposal and require that a draft VPA be prepared in accordance with the letter of offer.**
2. **Require that the draft VPA be placed on public exhibition concurrently with the planning proposal.**
- 15 3. **Amend the Planning Proposal (Attachment 1 E2021/72620) to reflect the recommendations contained in this report as follows:**
 - a) **Reposition the northern boundary of the proposed R5 zone to ensure no encroachment within the required ecological setback areas for the riparian zone and freshwater wetland in the north of the site (i.e. 20m from the top of the stream bank or wetland edge); and**
 - 20 b) **Make consequential amendments to the minimum lot size map and subdivision concept plan.**
4. **Forward the amended planning proposal to the NSW Department of Planning, Industry and Environment for a Gateway determination.**
- 25 5. **Undertake public exhibition of the planning proposal in accordance with the Gateway determination requirements.**
6. **Consider a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.**






Attachments:

- 30 1 26.2021.1.1 Planning Proposal - 53 McAuleys Lane Myocum_PP-2020-4089, E2021/72620 
- 2 26.2021.1.1 Planning Proposal - Appendix I - 53 McAuleys Lane - Preliminary Site Investigation (SEPP 55)_PP-2020-4089(2), E2021/72619 
- 3 26.2021.1.1 Planning Proposal - Appendix G - 53 McAuleys Lane - Onsite sewer assessment_PP-2020-4089(2), E2021/72612 
- 35 4 26.2021.1.1 Planning Proposal - Appendix E - 53 McAuleys Lane Myocum - Traffic Impact Assessment_PP-2020-4089(2), E2021/72617 
- 5 26.2021.1.1 Planning Proposal - Appendix D - 53 McAuleys Lane Myocum - Road Safety Audit_PP-2020-4089(2), E2021/72616 

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.4

- 6 26.2021.1.1 VPA Letter of Offer_McAuleys Lane Planning Proposal_18 May 2021, E2021/69988 
- 7 26.2021.1.1 Planning Proposal - Appendix H - 53 McAuleys Lane - Ecological Assessment_PP-2020-4089(2), E2021/72613 
- 5 8 26.2021.1.1 Planning Proposal - Appendix J - 53 McAuleys Lane - Stormwater Management Strategy Report_PP-2020-4089(2), E2021/72615 
- 9 26.2021.1.1 TIA Peer Review report - 53 McAuleys Lane_Final April 2021, E2021/72140 
- 10 Template - Form of Special Disclosure of Pecuniary Interest -, E2012/2815 

10

Report

The Planning Proposal

5 This planning proposal (Attachment 1) relates to a single lot located at 53 McAuleys Lane, Myocum, described as Lot 8 DP 589795. The subject land:

- is generally rectangular in shape with overall dimensions of approx. 460m x 750m and area of 34.82ha
- has a frontage of 104.045m to McAuleys Lane with vehicular access being via an existing driveway
- 10 • contains a dwelling house and associated improvements/structures
- is largely cleared and contains areas of remnant vegetation

The objective of the Planning Proposal is to enable the future subdivision of the subject land to create a combination of large lot residential and community title lots (and the construction of future dwellings).

15 Subject to further assessment at the development application stage, it is anticipated that the planning proposal would enable approximately:

- 35 lots in the proposed [R5 Large Lot Residential](#) zone land
- 7 neighbourhood community title lots and 1 association property lot on the existing [RU2 Rural Landscape](#) zoned land



Figure 1 – Subject Land

Current Zones and Controls

The subject land is mapped under the BLEP 2014 as follows:

- 5
 - (Part) [RU2 – Rural Landscape Zone](#) and (Part) [E2 – Environmental Conservation Zone](#)
 - 9m maximum building height
 - 40ha minimum lot size

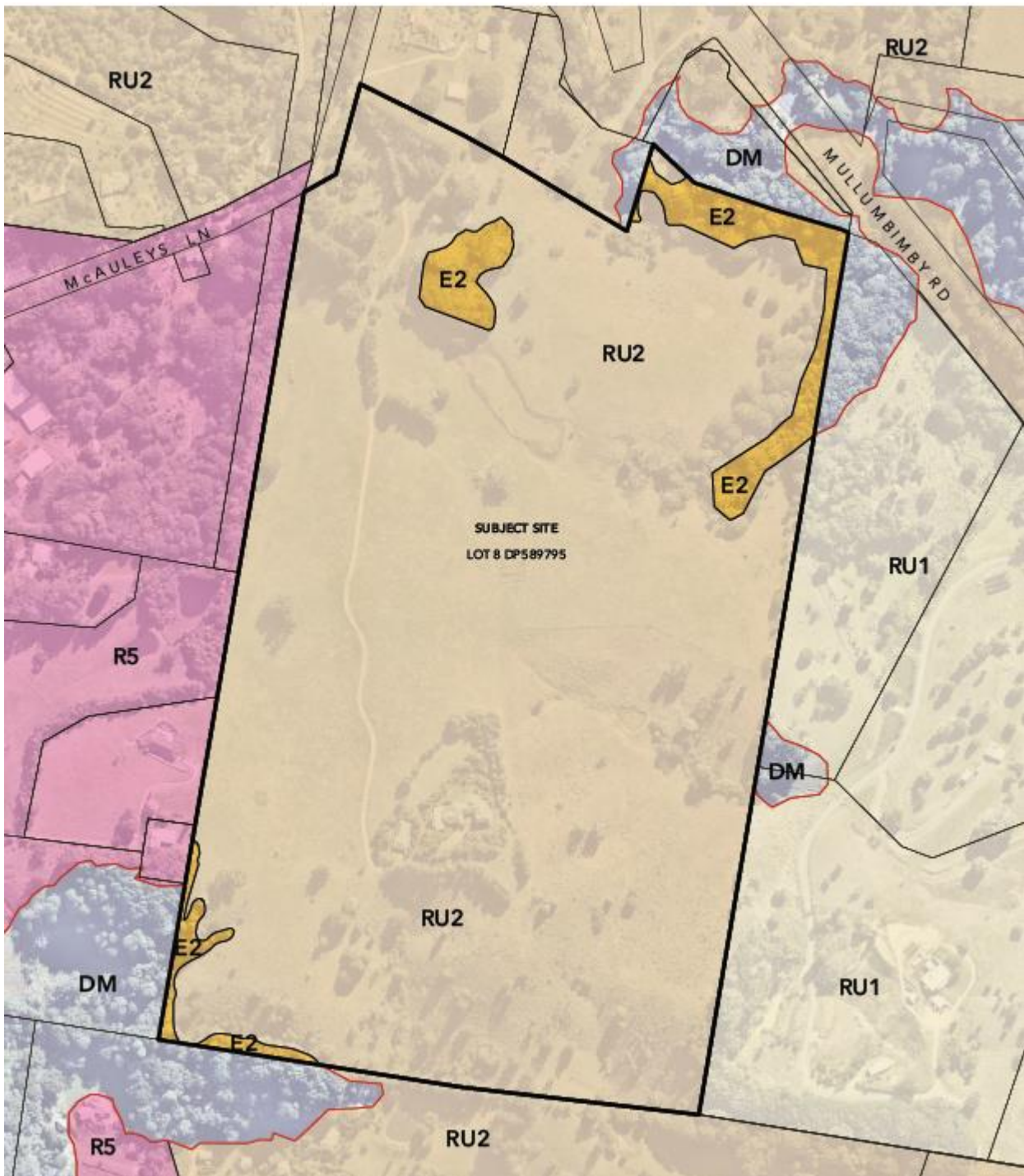


Figure 2 – Current BLEP 2014 Zone Map

Proposed Zones and Controls

The planning proposal will:

- 5
 - Rezone part of the RU2 –Rural Landscape zoned land to R5 – Large Lot Residential Zone

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.4

- Change the existing 40ha minimum lot size for the proposed R5 zoned land to part 4000m² and part 2.5ha minimum lot size.
- Change the existing 40ha minimum lot size for the proposed RU2 zoned land (Community Title Area) to 8000m².
- 5 • Amend the Multiple Occupancy and Community Title Map (Sheet MOC_002) so that part of the subject land is outlined by a thick purple line and is thus able to be subdivided to create 7 x neighbourhood lots and 1 x association property lot.

10 The proposed zone and development controls listed above are commensurate with other R5 Large Lot Residential zoned land and community title subdivisions within the rural areas of the Shire.

The planning proposal does not propose to alter the existing E2 Environmental Conservation zone boundaries or maximum building height provisions.

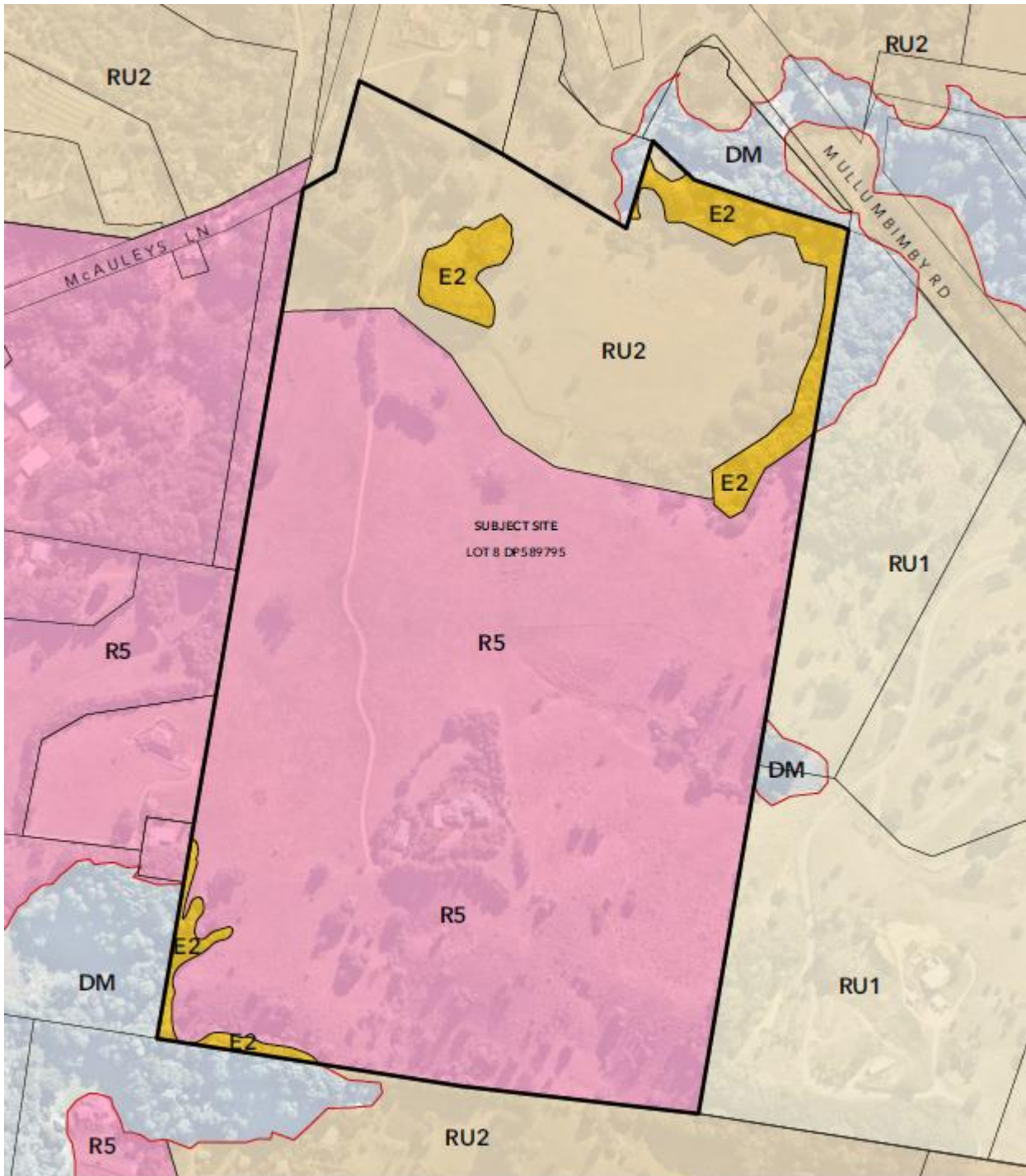


Figure 3 – Proposed BLEP 2014 Zone Map

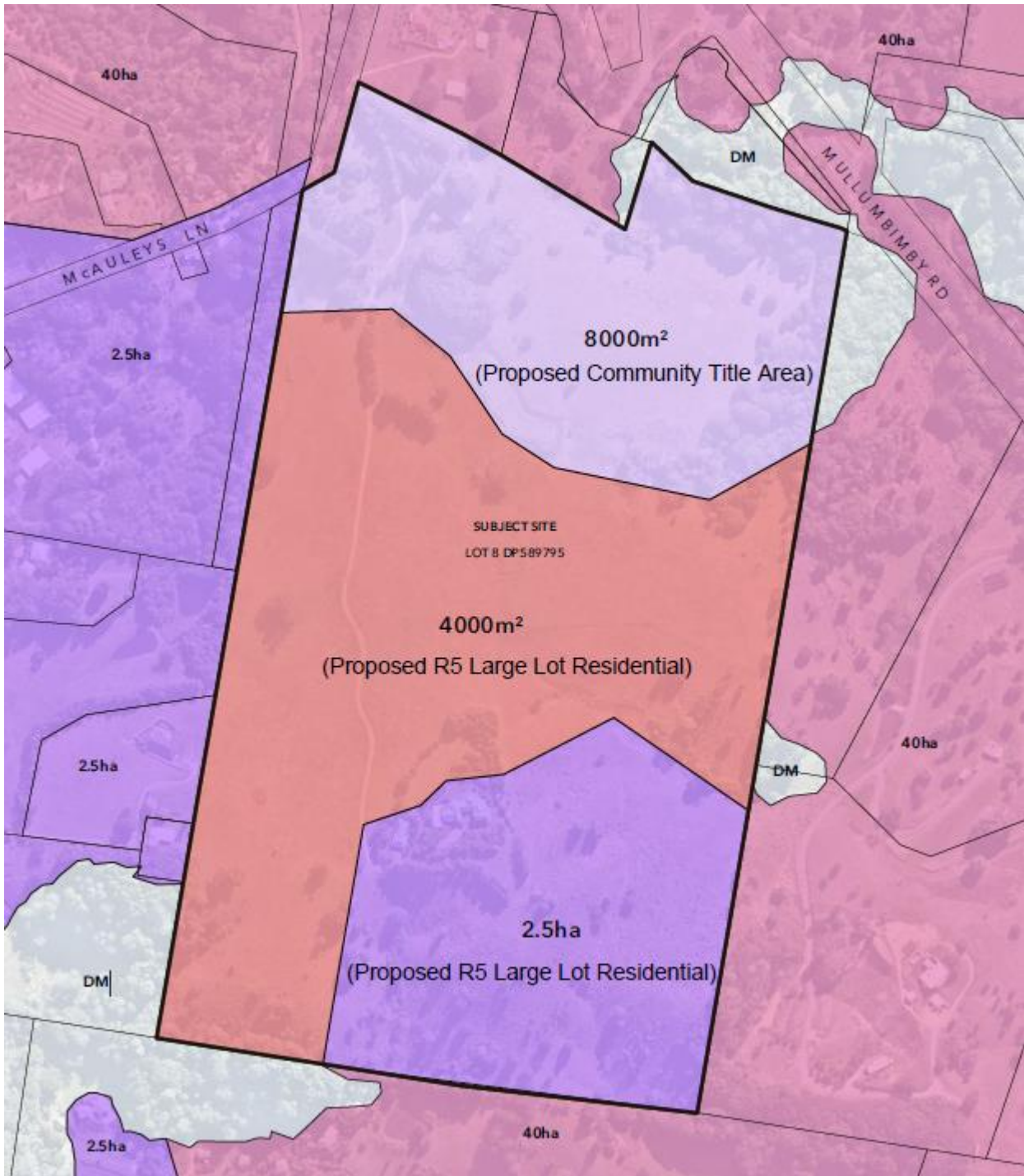


Figure 4 – Proposed Minimum Lot Size Map

KEY ISSUES

- Byron Rural Land Use Strategy 2017
- 5 ▪ North Coast Regional Plan 2036
- State policy and planning controls

- Contaminated land assessment
 - Infrastructure
 - Traffic Impact Assessment
 - Developer Contributions & Voluntary Planning Agreement
- 5
- Ecological Assessment
 - Stormwater Management & Flooding

Byron Rural Land Use Strategy 2017 (RLUS)

The [RLUS](#) was approved by the Department of Planning and Environment in June 2018 and replaced the 1998 Byron Rural Settlement Strategy.

- 10 The subject land is identified as a priority site for rural lifestyle living opportunities (Site 1) in both Table 10 and Map 3a of the RLUS.

North Coast Regional Plan 2036

Direction 24 of the North Coast Regional Plan 2036 (NCRP) relates to the delivery of well-planned rural residential housing areas and provides that:

- 15 *“New rural residential housing will not be permitted in the coastal strip, unless the land is already zoned for this purpose, or is identified in a Department endorsed current or future local growth management strategy (or rural residential land release strategy)”.*

The proposal is consistent with Action 24.1 which is to:

Facilitate the delivery of well-planned rural residential housing areas by:

- 20
- *identifying new rural residential areas in a local growth management strategy or rural residential land release strategy endorsed by the Department of Planning and Environment; and*
 - *ensure that such proposals are consistent with the Settlement Planning Guidelines: Mid and Far North Coast Regional Strategies (2007) or land release criteria (once finalised)*

- 25 The Planning Proposal is consistent with the provisions of the NCRP largely as a consequence of the NSW Department of Planning, Industry & Environment’s endorsement of the RLUS.

State policy and planning controls

- 30 The planning proposal is generally consistent with applicable State Environmental Planning Policies (SEPPs) along with relevant Section 9.1 Directions.

An assessment against the relevant SEPPs and 9.1 Directions is provided in the attached planning proposal (Attachment 1).

Contaminated land assessment

A Preliminary Contamination Report (Contaminated Site Investigation Australia Pty Ltd) has been prepared for the subject site (Attachment 2).

5 The Preliminary Contamination Report confirms that the subject site has a low likelihood of contamination. The investigations did not identify any evidence of previous development or activities on the site that would suggest potentially contaminated activities had taken place. Analytical results from the surface soils indicated all of the compounds tested returned concentrations that were below the adopted criteria for residential use.

10 Council engaged Tim Fitzroy Associates to undertake an independent review of the submitted assessment. The review concluded that there does not appear to be any impediments to approval of the planning proposal.

Onsite Sewage Feasibility Assessment

15 The proponent submitted an Onsite Sewage Feasibility Assessment (see Attachment 3) which concluded that future possible on-site sewage management is feasible within a minimum 30m setback to all drainage lines. Existing cleared areas can be utilised for future possible residential development, thereby minimizing the need for removal of native vegetation. There are no absolute soil limitations which cannot be overcome by on-site sewage management design.

20 Council engaged Tim Fitzroy Associates to undertake an independent review of the submitted assessment. The review concluded that on-site sewage management is feasible within the proposed minimum lot sizes on the subject site.

Infrastructure

25 The existing locality is connected to and serviced by a constructed public road system and reticulated electricity and telephone services. There is sufficient capacity for any proposed large residential type lots to be efficiently and economically connected to and serviced by such services. Further discussion is provided below in relation to the road network and traffic impacts of future development.

30 The subject land and immediate locality is not serviced by reticulated water or sewerage systems and thus any future dwelling houses would have to be serviced by on-site potable water supply (likely roof-water storage tanks) and on-site wastewater management and disposal.

Traffic Impact Assessment

35 The potential site yield of 42 lots will generate an increase in traffic volumes on local roads and place additional pressure on both the Mullumbimby Road / McAuleys lane intersection and the Myocum Road / McAuleys Lane intersection. Access to the site will be from McAuleys Lane with a new internal road constructed approximately 600 metres from the Mullumbimby Road intersection.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.4

The proponent has submitted a Traffic Impact Assessment (TIA) and Road Safety Audit (RSA) to accompany the planning proposal (see Attachments 4 & 5). To inform Council's assessment, Barker Ryan Stewart was engaged by Council to undertake an independent peer review (Attachment 9). The key issues considered were:

- 5
- Road Safety
 - Road Capacity and 'Level of Service' for McAuleys Lane and Mullumbimby Rd
 - Intersection Capacity

Road Safety

10 Ardill Payne and Barker Ryan Stewart undertook separate road safety audits in accordance with Austroads guidelines. The identified safety issues are generally consistent between both reports, albeit with some variation regarding the associated level of risk assigned to the safety issues. The safety issues noted for McAuleys Lane could be considered typical of similar rural roads in Byron Shire (i.e. areas of narrow width, limited sight distances, concealed driveways, insufficient safety barriers and the like). Safety issues identified for Mullumbimby Rd are largely associated with the McAuleys Lane intersection.

Road Capacity

20 Road capacities and level of service impacts were assessed against RMS guidelines, with traffic volume calculations on local roads taking into account a projected traffic growth rate of 2.5% per annum to 2030. Road capacity 'levels of service' are defined by the RMS and indicate the freedom of traffic flow during peak hour periods (this is separate to the intersection capacity analysis). Traffic volume calculations found no adverse impact on the existing or future levels of service for McAuleys Lane or Mullumbimby Road.

Intersection Capacity

25 The intersection capacity analysis found that the introduction of additional development traffic under existing conditions (i.e. volumes based on 2020 traffic data) would result in only a minor increase in delays at the intersection, with no change to the overall level of service rating for Mullumbimby Road or McAuleys Lane.

30 However, when factoring the traffic increase to 2030, the intersection capacity analysis found that commuters on McAuleys Lane would experience a significant increase in delays when turning right onto Mullumbimby Rd, and a significant reduction in level of service for McAuleys Lane. By contrast, the projected impacts for commuters on Mullumbimby Road (both directions) were considered to be minor and within acceptable limits.

These matters are described in detail in Attachments 4 & 5.

35 Recommended road infrastructure improvements

The Traffic Impact Assessment (Attachment 4) recommends a range of road infrastructure improvements, as detailed in Section 8 – Page 24. They include works to rectify safety concerns identified in the Road Safety Audit, as well as an upgrade to the Mullumbimby Road / McAuleys Lane intersection to address safety and capacity issues. The proposed

intersection upgrade includes providing a channelised right turn lane and acceleration lane (eastbound) on Mullumbimby Road. Vehicles using this lane will then merge with traffic flowing eastbound on Mullumbimby Road.

5 The peer review of the Traffic Impact Assessment undertaken by Barker Ryan Stewart (BRS) concluded that the recommendations listed in the Ardill Payne report are adequate and appropriate to cater for the increased traffic volumes (see Attachment 9). BRS provided an additional recommendation to upgrade the intersection warning signage on Mullumbimby Road to include "Advance Road Name" signs on each approach to
10 McAuleys Lane and to include "Rural Road Name" signs on the northern side of Mullumbimby Road opposite the McAuleys Lane intersection. These signs will provide enhanced advance warning and intersection identification for drivers and assist in mitigating the impacts of the limited sight distance (westbound) and acceleration length (eastbound).

15 Council also notes the impact this development if it proceeds on the Saddle Road intersection on the level of safety to traffic turning left into this road. This will need to be considered at the Development Application Stage for the subdivision and if works are required at the intersection these upgrades could be offset against contributions or entirely funded by the Developer. An updated road safety audit and traffic impact assessment will need to be submitted with the Development Application addressing this matter.

20 **Developer Contributions & Voluntary Planning Agreement**

As previously discussed, the site is identified in the Rural Land Use Strategy as a priority site for 'Rural Lifestyle Living Opportunities'. The Strategy states that the landowner:

25 *...must undertake an intersection 'capacity and functionality' assessment prior to commencing the rezoning process. This is necessary to determine the nature and cost of any required road intersection upgrades to accommodate future development of these sites, which must be fully funded by the respective landowners.*

30 The outcomes of the intersection 'capacity and functionality' assessment and the recommended infrastructure upgrades have been discussed above. In order to ensure the road infrastructure upgrades required to accommodate future development on the subject land can be provided at no cost to the wider community (in accordance with RLUS Action 19 and corresponding policy directions), the applicant has submitted a 'letter of offer' to enter into a Voluntary Planning Agreement to fund the required works (see Attachment 6).

35 The letter of offer precedes the drafting of a voluntary planning agreement between the landowner and Council.

Recommendations:

It is recommended that council accept the letter of offer and require the drafting of a voluntary planning agreement prior to public exhibition of the planning proposal. If the planning proposal progresses to public exhibition, it is recommended that the voluntary planning agreement be exhibited concurrently with the planning proposal.

Ecological Assessment

An ecological assessment was submitted by the proponent (Attachment 7) and this was internally reviewed by Council's ecologist. The findings are summarised below.

Flora

- 5 The majority of the site comprises cleared grazing pasture. The site also contains patches of subtropical rainforest in varying condition states, freshwater wetlands and planted native and non-native vegetation.

The disturbed subtropical rainforest on the site may represent the EEC *Lowland rainforest in the NSW North Coast and Sydney Basin Bioregions*.

10 Fauna

- 15 Three (3) threatened flora species occur on the site. Freshwater wetlands on the site, although likely not representative of an EEC, likely provide some habitat value for threatened bird species. Notwithstanding, given its highly modified and disturbed condition as a whole, the site only represents marginal habitat for threatened fauna. However, the site is well positioned to improve ecological connectivity within the broader landscape through restoration of native plant communities.

Threatened species test of significance:

- 20 As per section 7.3 of the *Biodiversity Conservation Act 2016*, any future development proposal will be required to undertake a threatened species test of significance to determine whether the proposal is likely to result in a significant impact on threatened species or ecological communities. If a significant impact is likely, the development will be required to enter into the Biodiversity Offset Scheme.

Riparian and corridor values

- 25 There is a freshwater wetland area in the north of the site. According to the ecological assessment report, this has resulted from the artificial damming of a non-perennial drainage line.

Rezoning Implications

- 30 The surrounding landscape area contains vegetated patches with broad ecological connectivity value between the coastal areas in the east and the hinterland ranges to the west, and the site's location is well positioned to improve this landscape connectivity through the carrying out of ecological restoration work. There is opportunity at the subdivision stage to restore habitat and build upon the ecological connectivity values of the broader area.

- 35 Any future development proposal would need to address the requirements of relevant biodiversity legislation including the *Biodiversity Conservation Act 2016* and the *Environment Protection and Biodiversity Conservation Act 1999*. Importantly, any future DA would also need to be in accordance with Chapter B1 of the Byron Shire DCP 2014.

For a subdivision DA, this includes the requirement that all biodiversity impacts must be avoided and minimised as well as the requirement for an in-perpetuity Biodiversity Conservation Management Plan to protect and restore the biodiversity values on the site.

5 With regard to the proposed rezoning, it is recommended that the northern boundary of the proposed R5 zone be repositioned to ensure that it does not encroach within the required ecological setback areas for the riparian zone and freshwater wetland in the north of the site (20m from the top of the stream bank or wetland edge). The subdivision concept plan will need to be amended to reflect the zone boundary modification. With this change
10 incorporated into the proposal, it is likely that future development resulting from the proposed rezoning could avoid impacting the biodiversity values within the site.

Recommendation:

Reposition the northern boundary of the proposed R5 zone to ensure no encroachment within the required ecological setback areas for the riparian zone and freshwater wetland in the north of the site (i.e. 20m from the top of the stream bank or wetland edge). Make consequential changes to Minimum Lot Size Map and align the subdivision concept plan with the amended R5 zone boundary.

Stormwater Management & Flooding

15 The proponent has submitted a Stormwater Management Strategy Report (Attachment 8) and Council has undertaken a peer review. The strategy seeks to ensure that post-development stormwater flows will not cause detrimental impact onto the surrounds and downstream catchment, while at the same time improve post-development stormwater quality.

20 The site drains via streams within the site towards a 450mm diameter reinforced concrete pipe (RCP) under Mullumbimby Road. A key objective of the stormwater strategy is to ensure that the development of the site does not result in overtopping of stormwater on Mullumbimby Road.

25 Although the site is not mapped as part of the flood prone area in the latest flood study by Council, a Flood Study is still a requirement and must be undertaken for the major event of the local catchment. Establishment of flooding impacts and flood planning levels are prerequisite to stormwater management on site due to the presence of major streams traversing through the site. This can be undertaken at the DA stage in conjunction with the detailed site design.

Overall Council's internal assessment found that the objectives, outcomes and the processes discussed in the strategy will enable an effective Stormwater Management Plan for future uses of the site. No further recommendations are warranted.

30 **Options to Move Forward**

Options open to Council on this matter are:

1. Amend the planning proposal (Attachment 1) to reflect the recommendations contained in this report and proceed to a Gateway determination.
2. Not proceed with the planning proposal.

5 Strategic Considerations

Community Strategic Plan and Operational Plan

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

Legal/Statutory/Policy Considerations

The relevant policy considerations are addressed above and in the planning proposal attached to this report.

10 Financial Considerations

If Council chooses to proceed with the planning proposal, it will be at the proponent’s expense as a landowner initiated planning proposal. Full cost recovery of the remaining stages will be required by Council. If the applicant chooses not to pay then the planning proposal will not proceed.

- 15 If Council chooses not to proceed then the matter does not incur any additional costs.

Consultation and Engagement.

Any future consultation and engagement will take place in accordance with a Gateway determination issued by the NSW Department of Planning Industry & Environment.

BYRON SHIRE COUNCIL

Report No. 13.5 PLANNING - 10.2020.242.1 - Rural Land Sharing Community (Multiple Occupancy) consisting of Twelve (12) Dwelling Sites, Associated Infrastructure, Land Management and Environmental Enhancement at 84 Blindmouth Road Main Arm

5

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Manager Sustainable Development

10 **File No:** I2021/550

Proposal:

DA No:	10.2020.242.1		
Proposal description:	Rural Land Sharing Community (Multiple Occupancy) consisting of Twelve (12) Dwelling Sites, Associated Infrastructure, Land Management and Environmental Enhancement		
Property description:	LOT: 52 DP: 1035034		
	84 Blindmouth Road MAIN ARM		
Parcel No/s:	238215		
Applicant:	Balanced Systems Planning Consultants		
Owner:	Mr Y & Ms H B Lev		
Zoning:	PART Primary Production (RU1), Rural Landscape (RU2) and Environmental Conservation (E2) Zones Byron LEP 2014		
Date received:	1 June 2020		
Integrated / Designated Development:	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable
Concurrence required	No		
Public notification or exhibition:	<ul style="list-style-type: none"> - Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications - Exhibition period: 18/6/20 to 8/7/20 - Submissions received: 20 - Submissions acknowledged: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A 		
Planning Review Committee:	13 August 2020 – Council		
Delegation to determine	Council		

BYRON SHIRE COUNCIL

Issues:	<ul style="list-style-type: none">• Multiple Occupancy• Bushfire
----------------	---

Summary:

This application seeks approval for Rural Land Sharing Community (Multiple Occupancy) consisting of Twelve (12) Dwelling Sites, Associated Infrastructure, Land Management and Environmental Enhancement.

5 The subject site is located within the Rural Landscape (RU2) Zone under Byron LEP 2014, with small pockets of the land identified as Primary Production (RU1) and Environmental Conservation (E2) Zone which are not affected by the location of dwellings sites in the proposal. The property is identified under Byron LEP 2014 as a Multiple Occupancy Site.
10 This has been carried over from Byron LEP 1988 where the property was mapped for multiple occupancy purposes under LEP Amendment No.67.

15 The subject property is partly identified as containing Bushfire Prone Land and areas of High Environmental Value vegetation. The property currently contains no buildings or formalised access from Blindmouth Road and is currently used for limited livestock grazing.

20 The proposed development includes twelve (12) dwelling sites within four (4) clusters, as well as vehicular driveway access. The dwelling clusters have been located on the site within existing open cleared areas and incorporate suitable areas for the management of on-site wastewater, bushfire and access.

25 As to the total number of dwellings, this has been considered against Clause 4.2B of the LEP, which in part permits Multiple Occupancy's having more than 3 dwellings but no more than 15 based on a yield of 1 dwelling for every three hectares. With a land area of 38ha, the maximum number of dwellings is being sought as per that clause. Conditions of consent are recommended to limit each house site to one dwelling only.

The application is recommended for approval subject to conditions.

30 NOTE TO COUNCILLORS:

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





RECOMMENDATION:

40 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.242.1 for Rural Land Sharing Community (Multiple Occupancy) consisting of Twelve (12) Dwelling Sites, Associated Infrastructure, Land Management and Environmental Enhancement, be**

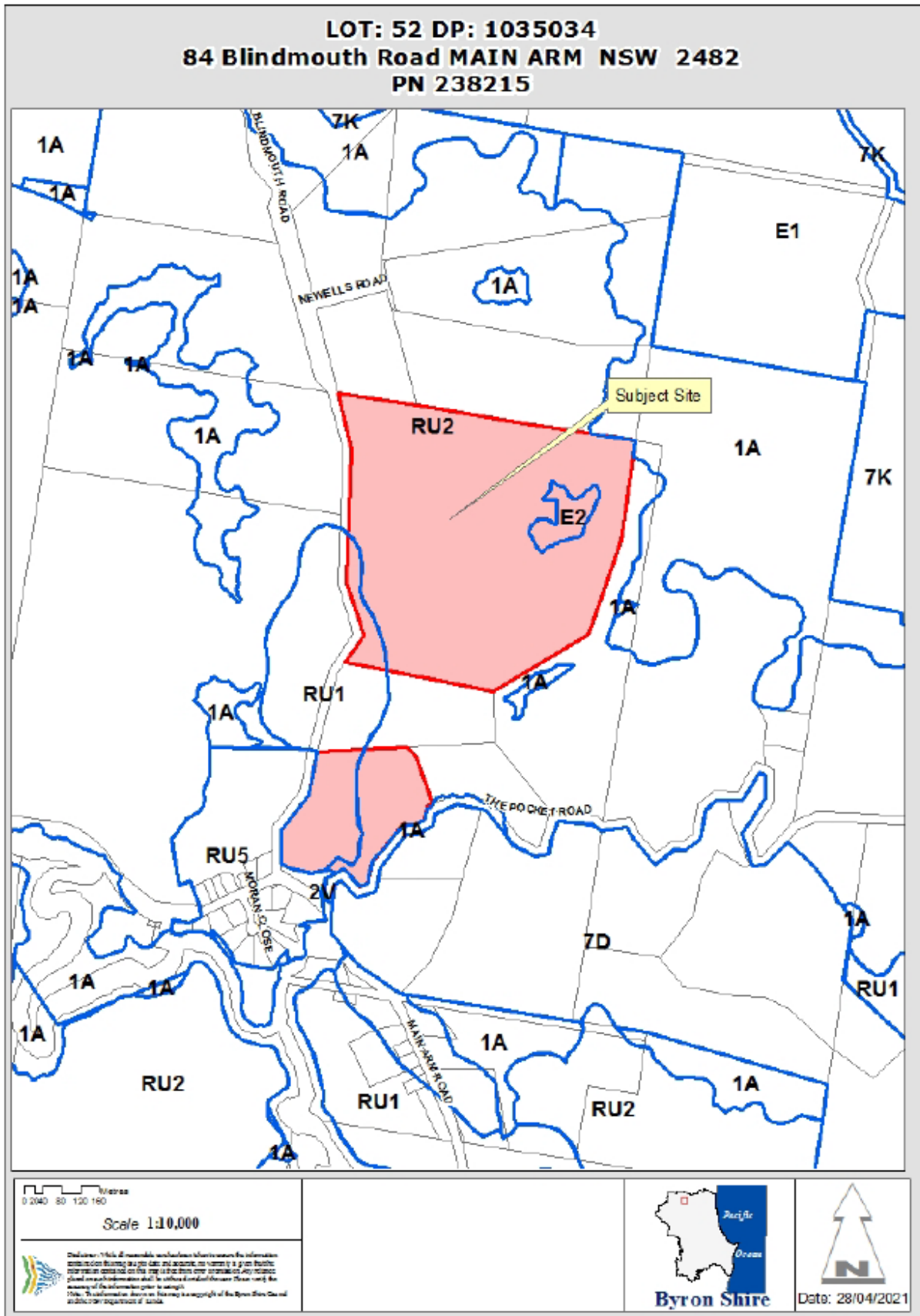
BYRON SHIRE COUNCIL

granted consent subject to the conditions of approval listed in Attachment 2 (E2021/60582).

Attachments:

- 5 1 10.2020.242.1 Redacted submission received, E2021/57447 
- 2 10.2020.242.1 Recommended conditions of consent, E2021/60582 
- 3 10.2020.242.1 DA Plans, E2021/50590 
- 4 10.2020.242.1 Rural Landsharing Management Plan, E2021/71171 

BYRON SHIRE COUNCIL



Assessment:

1. INTRODUCTION

1.1. History/Background

5 There are no associated applications against this property.

1.2. Description of the proposed development

10 This application seeks approval for Rural Land Sharing Community (Multiple Occupancy) consisting of Twelve (12) Dwelling Sites, Associated Infrastructure, Land Management and Environmental Enhancement.

15 The proposed development includes twelve (12) dwelling sites within four (4) clusters, as well as vehicular driveway access. The dwelling clusters have been located on the site within existing open cleared areas and incorporate suitable areas for the management of on-site wastewater, bushfire and access whilst having minimal environmental impacts.

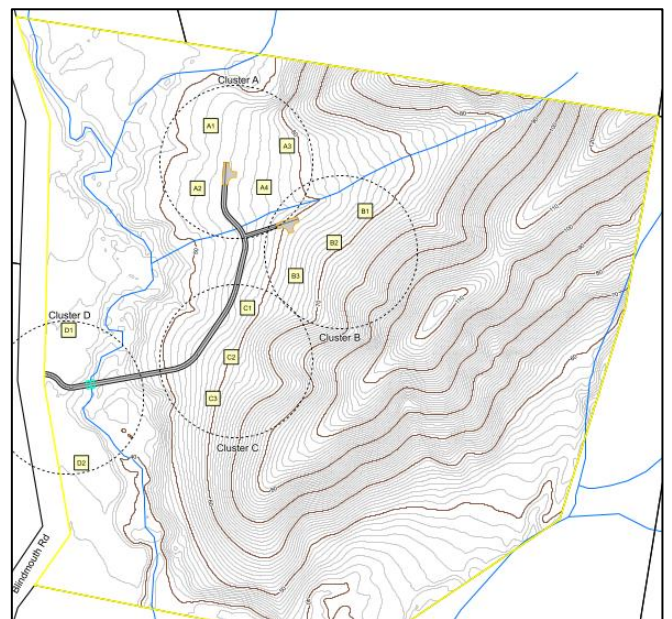
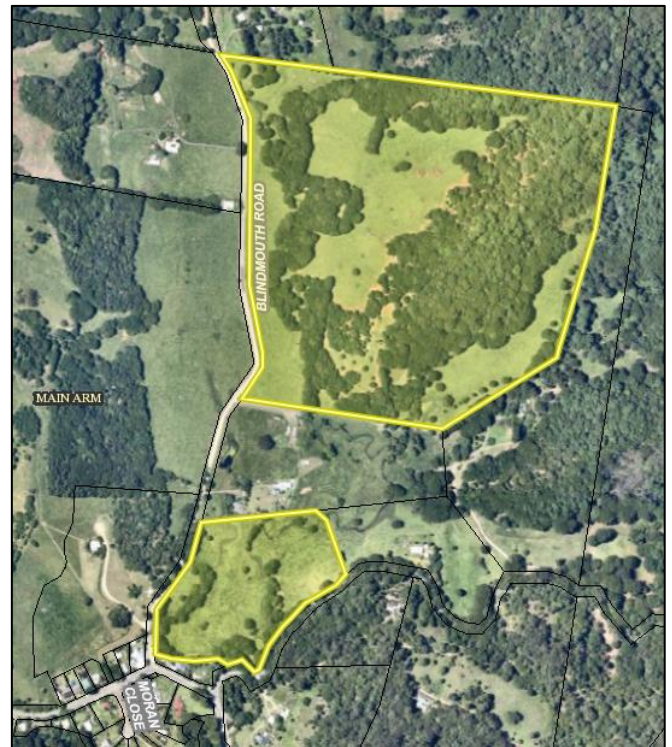
20 The property currently contains no buildings or formalised access from Blindmouth Road and is currently used for grazing livestock.

25 The property contains a small creek that is required to be crossed to access most of the dwelling sites. The following dwelling clusters make-up the proposed rural living component:

- Cluster A: four dwelling sites A1-A4
- Cluster B: three dwelling sites B1-B3
- Cluster C: three dwelling sites C1-C3
- Cluster D: two dwelling sites D1-D2

1.3. Description of the site

40 The subject site known as 84 Blindmouth Road, Main Arm and legally described as Lot 52 on DP1035034 has a total area of 38.15ha and is predominantly located within



BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.5

5 the Rural Landscape (RU2) Zone under Byron LEP 2014, with small pockets of the land identified as Primary Production (RU1) and Environmental Conservation (E2) Zone which are not affected by the location of dwellings sites in the proposal. The lot currently contains no buildings or formalised access and is currently used for beef cattle grazing. A small waterway traverses the lot from west to east which originates in the Inner Pocket Nature Reserve. The site contains High Environmental Value vegetation and is identified as Bushfire prone land.

The property is split in two, with the residential uses proposed on the northern section of the property.

10 The site has been identified as suitable for a Multiple Occupancy in the Byron Rural Settlement Strategy 1998, Byron LEP 1988, and more recently in Byron LEP 2014.



View from Blindmouth Road

15 2. SUMMARY OF REFERRALS

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

BYRON SHIRE COUNCIL

Referral	Issue
Officer	
Ecologist	No objections subject to conditions.
Essential Energy	No objections subject to conditions.

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

3. SECTION 4.14 – BUSH FIRE PRONE LAND

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

10 The site is bush fire prone land. The development application is accompanied by a Report 'Bushfire Assessment Report' by Sustainable Home Solutions and dated 31 March 2020 which concludes. Condition 3 is included in the Recommendation of this Report requiring that the development must always comply with the requirements of Report 'Bushfire Assessment Report' by Sustainable Home Solutions dated 31 March 2020

15 The Bushfire Assessment Report demonstrates that no proposed site for the construction of a dwelling house in the future will be greater than BAL29. Further all future applications for dwelling houses over the 12 sites will have to be assessed against the relevant bushfire protection legislation at the time of lodgement.

20 The application was referred to the RFS for review under s100B of the RFS Act, however as the proposal does not propose subdivision of the land, the RFS advised that the S100B Approval was not required. With the house sites located within cleared areas of the property. The submitted Bushfire Assessment Report indicates that future dwellings can be constructed with appropriate Asset Protection Zones and Construction standards without needing to resort to performance solutions to get an approval. It is considered the bushfire constraint can be appropriately managed.

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

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

4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 44—Koala Habitat Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Councils Ecologist has assessed the proposal and provided the following comments: "The site has an area of more than 1 hectare, and therefore the proposal must be considered under the Koala SEPP.		

BYRON SHIRE COUNCIL

	Satisfactory	Unsatisfactory
<p>Consideration: Clause 8(1) of the Koala SEPP provides that <i>“before a Council may grant consent to a development application for consent to carry out development on land to which this part applies, the council must be satisfied as to whether or not the land is a potential koala habitat”</i>.</p> <p>It is considered that the subject land is not potential koala habitat as defined by the Koala SEPP because it does not contain an area of native vegetation where Schedule 2 Feed Tree Species constitute at least 15% of the total number of trees in the upper or lower strata of the tree component. It is therefore considered that the proposal is subject to Clause 8(3)(a) which states <i>“if the Council is satisfied that the land is not a potential koala habitat, it is not prevented, because of this Policy, from granting consent to the development application”</i>.</p>		
State Environmental Planning Policy No 55— Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: Councils Environmental Health officer has assessed the proposed development and provided the following comments:</p> <p style="padding-left: 40px;"><i>“Appendix C provides a SEPP 55 – Preliminary Site Investigation for contaminated land assessment.</i></p> <p style="padding-left: 40px;">In summary, the following conclusions were derived following a preliminary investigation of the subject site:</p> <p style="padding-left: 40px;"><i>The preliminary site investigation concludes that there is insignificant risk of contamination at the site of the proposal, and no further detailed investigation or soil testing is warranted.</i></p> <p style="padding-left: 40px;"><i>In accordance with the Byron Shire Council Contaminated Sites Guidelines, NSW EPA Guidelines and SEPP55 provisions, the site is suitable for the proposed Rural Landsharing Community.”</i></p>		
State Environmental Planning Policy (Primary Production and Rural Development) 2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: The proposed development raises no issues in terms of the SEPP and the subject land is not identified as containing state significant farm land. As Council has its own provisions relating to Multiple Occupancy development Schedule 5 of the SEPP doesn't apply to Byron Shire.</p>		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

- 5 (a) The proposed development is defined in the LEP 2014 Dictionary as Multiple Occupancy;
- (b) The land is within the RU1 Primary Production / PART RU2 Rural Landscape, E2 Environmental Conservation Zone – However the bulk of the land is within the RU2 zone and the development in terms of proposed house sites occurs in this zone, other than the two house sites facing Blindmouth Road.
- 10 (c) The proposed development is Permitted with Consent; and
- (d) The proposed development does not offend or compromise the objectives of the E2 Zone and this area of the property will be managed for environmental purposes. Regard is had for the objectives of the two rural zones as follows:

BYRON SHIRE COUNCIL

RU1 Zone Objective	Consideration
<ul style="list-style-type: none"> • To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. • To encourage diversity in primary industry enterprises and systems appropriate for the area. • To minimise the fragmentation and alienation of resource lands. • To minimise conflict between land uses within this zone and land uses within adjoining zones. • To encourage consolidation of lots for the purposes of primary industry production. • To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality. • To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality. 	<p>The site post consent will still enable the land to be used for agricultural purposes once developed, including the southern portion of the property near the Main Arm Village. It is unlikely the proposal will create a land use conflict with neighbours and the house/s, considering the site opposite the property is also likely to be developed for a community title development.</p> <p>Visually the development will not adversely affect the scenic amenity of the locality.</p>
RU2 Zone Objective	Consideration
<ul style="list-style-type: none"> • To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. • To maintain the rural landscape character of the land. • To provide for a range of compatible land uses, including extensive agriculture. • To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality. • To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality. 	<p>Similar to the above comment for the RU1 Zone, the site will still be able to be used for agricultural purposes and the development is unlikely to generate land use conflicts with surrounding properties.</p> <p>Visually the future dwellings will be hidden from Blindmouth Road by riparian vegetation which will screen these houses.</p> <p>It is considered the proposal raises no issues with the scenic amenity of the locality.</p>

4.2B Maximum number of dwelling houses or dual occupancies on Multiple Occupancy or rural landsharing community developments

1) *The objectives of this clause are as follows:*

- 5 a) *to permit:*
- i. *people to collectively own a single lot of land and use it as their principal place of residence, and*
 - ii. *the erection of multiple dwellings on the lot and the sharing of facilities and resources, and*
 - 10 iii. *the collective environmental repair and management of the lot, and*
 - iv. *the pooling of resources to economically develop a wide range of communal rural living opportunities,*
- b) *to facilitate closer rural settlement in a clustered style in a manner that:*
- i. *protects the environment, and*
 - 15 ii. *does not create any unreasonable demand for the provision of services or any unreasonable demand for the uneconomic provision of services.*
- 2) *This clause applies to land outlined by a thick green line on the Multiple Occupancy and Community Title Map.*
- 20 3) *Development may be carried out with consent for the erection of more than one dwelling house or dual occupancy (attached) on such a lot provided that:*
- a) *if there is a number shown for that lot on the Multiple Occupancy and Community Title Map—the total number of dwellings on the lot will not exceed the number marked for that lot on that Map, or*
 - 25 b) *if there is no number shown for that lot on that Map—there will not be less than 3 dwellings, and not more than 1 dwelling for every 3 hectares, up to a maximum of 15 dwellings, on the lot.*
- 4) *Development consent must not be granted under subclause (3) unless the consent authority is satisfied that:*
- 30 a) *there will be appropriate management measures in place that will ensure the protection of the landscape, biodiversity and rural setting of the land, and*
 - b) *the development is complementary to the rural and environmental attributes of the land and its surrounds.*
- 35

The 38.15 ha property can accommodate a maximum of 12 dwelling sites in accordance with subclause (3).

Calculation: 38.15 / 3 = 12.7



Extract of [Multiple Occupancy and Community Title Map](#) Site highlighted

5 Conditions of consent are recommended in relation to limiting each house site to one dwelling only, including restrictions on title and relevant provisions in the management plan. This is to ensure landowners when purchasing a house site within this MO are aware that they will not be able to obtain a consent for a dual occupancy or a secondary dwelling.

10 The proposal raises no other issues under the LEP

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

15 No draft LEPs apply to the site.

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

Chapter B4 Traffic Planning, Vehicle Parking Circulation and access

20 Access to the site is provided from Blindmouth Road with an internal road proposed to the 12 house sites. Conditions of consent are proposed in relation to Roads Act approval and a construction certificate.

Chapter D2- Residential Accommodation and ancillary development in Rural Zones

25 Chapter D2 includes provisions relating to Multiple Occupancy Development under D2.6. the following comments are provided against each of the provisions as follows

1. Siting and clustering of dwellings

30 The proposal accords with the requirement to cluster the individual dwelling sites, with A1-A4, B1-B3 and C1-C3 all clustered and set behind the creek tree line to screen the overall development from view of Blindmouth Road. D1-D2 are within the setbacks/distances required of clustered dwellings however are located in an existing cleared area with excellent access onto Blindmouth Road. In this instance the development takes the form of clusters and is not dispersed throughout the site.

35

2. **Environmental Impact report**

A Biodiversity Assessment report and Vegetation Management Plan have been provided with the development application. These reports have suitably identified the constraints of the site, provided recommendations for ongoing land management and ecological restoration, and informed of suitable unconstrained developable land on the allotment where clusters are proposed and supported to be located.

3. **Rural Landsharing Management Plan**

The application is accompanied by a Draft Rural Landsharing Plan of Management. The management plan states the overall objectives of the rural landsharing community are:

- *to enable the intentional incoming residents to occupy the site to generate an interactive, socially stable and viable community;*
- *promote sustainable land use activities on the property such as small-scale food generation, renewing natural resources and scientifically based land improvement actions.*
- *enhance the site's air, water, soil and ecological values;*
- *foster indigenous values and cultural knowledge; and*
- *enact climate change resilience measures in a changing world.*

Details have been included in the plan which generally address the requirements under the DCP for the Management Plan, including measures for collective decision making and ownership, purchasing and disposing of shares, keeping of pets, environmental repair and land managements, effluent disposal, water management and the like.

The final Plan of Management will be required to be submitted for Council approval before a Construction Certificate is issued.

4. **Access roads**

The proposal is capable of compliance with relevant vehicle access standards identified in the DCP. A condition of consent is included in the recommendation of this report requiring plans and specifications that demonstrate compliance with the requirements of RMS Drawing 19.07.2016 (driveway access), NSW Planning for Bushfire Protection 2006 (internal access, turnaround area & passing bays) and SDS Civil drawing C1 (upgrade to Blindmouth Road).

5. **Bushfire Management**

The Bushfire Assessment Report prepared by Sustainable Home Solutions identifies that each of the dwelling sites has adequate area to provide APZ's for dwellings with a maximum BAL rating of BAL 29 (average across the lots of LOW - 12.5). Ecological restoration zones required in accordance with the Vegetation Management Plan do not interfere with APZs.

6. **Vegetation Management**

The submitted Vegetation Management Plan (VMP) includes a broad but well documented assessment of the vegetation communities on the site. The application included a draft VMP detailing ecological restoration and protection works across two Environmental Management Zones. The VMP approach and methodology is

supported and it is considered that the ecological work units conversion has been carried out in accordance with Chapter D2. Conditions of consent will be recommended to ensure that the VMP is carried out and monitored.

5 7. Water Management Plan

The Water Management Plan submitted with the application addresses the Prescribed Measures of the DCP, in that: Dwellings will be supplied by roof water harvesting in 40,000L tanks; 10,000L water tanks will be required for each dwelling in accordance with the approved Bushfire Assessment Report for firefighting purposes; all dwellings are located away from drainage lines and water courses; no dam is proposed; each dwelling will be required to comply with a BASIX Certificate to demonstrate water conservation measures; and no component of the proposal seeks to extract groundwater.

15 8. Effluent Disposal

The specialist assessment within Appendix B demonstrates that the site is capable of accommodating environmentally sensitive wastewater treatment systems for each of the dwelling sites. At the development application stage for each dwelling, a detailed wastewater assessment will be undertaken when the configuration and number of bedrooms of each dwelling is known.

9. Dwelling houses

The applicant has proposed only 12 house sites as per the yield provisions within the LEP. It is noted that the DA is not for 12 dwelling sites plus a further 12 secondary dwelling sites or for twelve dual occupancies. Such a proposal would equate to 24 dwellings which is not permissible under the LEP. Conditions of consent are recommended in relation to limiting the number of houses to one per dwelling site.

30 4.5 Environmental Planning & Assessment Regulation 2000 Considerations

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

* Non-compliances and any other significant issues discussed below

35 4.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

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

BYRON SHIRE COUNCIL

Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.

4.7 The suitability of the site for the development

Issue	Comment
Services - Water/ Sewer/ Stormwater - Ph/ power - Access - Onsite Effluent Disposal	An application for water and OSMS connection will be required at DA stage for each of the 12 dwellings. No dwellings are proposed at this stage.
Hazards - Flooding, Bushfire, Landslip	The site is not flood affected, or subject to landslip. The submitted Bushfire Report identifies the future dwelling sites will not result in a BAL29 rating to any future dwelling.
Land Use conflicts Future Character of the area	The proposed development will not give rise to any land use conflicts between the site and existing rural activities. The property is within walking cycling distance to the Main Arm Village store. It is noted there are a number of other approvals for Multiple Occupancies and Community title development and village lot subdivisions that are at various stages of development. This includes DA 10.2009.220.1 for 12 village lots, a commercial lot and 13 rural community title lots, and DA10.2008.159.1 8 village lots and 13 community title lots. Both consents have commenced. Other recent MO approvals in the Main Arm area include: <ul style="list-style-type: none"> • DA10.2019.619.1 - twelve dwelling sites; • DA10.2014.376.1 – fifteen dwelling sites; and • DA10.2009.460.1 – eleven dwelling sites.

5 4.8 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited

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

- Against

10 The submissions are addressed below:

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.5

Submission	Comment
Traffic: increase in number of vehicles using Blindmouth Road.	Council's Development Engineer has assessed the proposal and has included conditions requiring that Blindmouth Road be upgraded including the creek crossing.
The DA does not meet the location criteria of the most recent Byron Rural Land Use Strategy (BRLUS) adopted in 2017.	The subject land was included in the Byron Rural Settlement Strategy 1998 (see below) and incorporated into the Byron LEP 2014 - Multiple Occupancy and Community Title Map. The site did not need to be included within the BRLUS as it was already in the LEP as a potential MO site.
Potential for the property to be isolated in the event of flood and bushfire	<p>Noted – like most of the rural hinterland of Byron Shire there is potential for rural properties to be cut off from Mullumbimby and the Pacific Highway in the event of flooding. House sites are located above flood heights for the locality.</p> <p>In regard to bushfire risk, the site has suitable access (which will be upgraded as part of this development) to evacuate the site along Blindmouth Road.</p>
<p>The proposal wrongly justifies that the MO can fit 12 dwelling sites. Development is proposed on only the northern 32 hectares 'split' part of Lot 52 DP 1035035.</p> <p>The development should be considered against this part of the property only therefore only 10 dwellings should be approved.</p>	The assessment is against the area of the entire allotment being 38ha. The yield proposed complies with Clause 4.1B of the LEP. To ensure lots are compliant with the clustering arrangement it is appropriate that no lots are sited on the smaller constrained parcel near the intersection of Main Arm Road and Blindmouth Road which will be utilised for agricultural pursuits and environmental rehabilitation.
<p>Clustering doesn't comply with the DCP provisions. Chapter D2 on the siting and clustering of house sites for Multiple Occupancy developments on page 17, point a) states: "Dwelling houses must be clustered in three (3) or more houses or future house sites... The distances apart must average 80 metres in a cluster but not exceeding 160 metres between any two dwelling houses in a cluster." Cluster D has only 2 houses that are about 150m apart.</p>	<p>The development largely accords with the requirement to cluster the individual dwelling sites with A1-A4, B1-B3 and C1-C3 all clustered and set behind the creek tree line to screen the overall development from view of Blindmouth Road. D1-D2 are within the setbacks/distances required of clustered dwellings and are located in an existing cleared area with excellent access onto Blindmouth Road.</p> <p>In general, the clustering is appropriate for the development, but it is recommended that a Dwellings D1 and D2 be sited at their closest point 80 metres apart. Conditions to apply.</p>
The two houses of Cluster D are too close to Blindmouth Road being a	Blindmouth Road is not identified as a Classified Road and is not identified as a secondary road

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.5

<p>secondary road in terms of Classified roads under the Roads Act. Therefore a 55m setback required under DCP 2014</p>	<p>under the Roads Act by the Minister. Therefore, the development setback of 25m to Blindmouth Road complies with the standard minimum of 15 metres under D2.2.2 of DCP 2014.</p>
<p>Bushfire Hazard</p>	<p>The Bushfire Assessment Report prepared by Sustainable Home Solutions identifies that each of the dwelling sites has an adequate area to provide APZ's for dwelling with a maximum BAL rating of BAL 29. The bushfire as a constraint can be appropriately managed</p>
<p>Constraints will affect the ability for future residents to design and construct onsite sewage management systems having regard to slopes and location of waterways.</p>	<p>It is considered that effluent can be adequately managed and disposed of on-site. Specific details or onsite systems will be subject to assessment when applications are lodged for dwelling houses on-site.</p>
<p>The DA does not provide a detailed Rural Land sharing Management Plan, which is a requirement for a Multiple Occupancy application.</p>	<p>A Draft Plan of Management has been submitted in draft form has been submitted with the application. The final plan of management will be required to be submitted for Council approval before construction certificate is issued.</p>
<p>Too many dwellings and impacts on rural character of the area</p> <p>Combined with other CT/ MO approvals in Main Arm this will ruin the rural character and scenic quality of Main Arm</p>	<p>The site has been identified as suitable for a MO in the Byron Rural Settlement Strategy 1998 and in Byron LEP 1988 and more recently in Byron LEP 2014.</p> <p>It is submitted that the character of Main Arm, Upper Main Arm and Durrumbul is characterised by Multiple Occupancies, Community Title Developments and Small Lot acreage and other forms of "multi dwelling" housing some of which may or may not be approved. The proposed development of this parcel as proposed is not inconsistent with that character and will provide for an approved development site for 12 dwellings to proceed in the future.</p> <p>In terms of future appearance only two dwellings will be generally visible from Blindmouth Road in the front paddock. The other dwelling sites are located to the east behind the riparian vegetation and has no detrimental impact on the scenic amenity or rural character of the area.</p>
<p>The proposal's Biodiversity Assessment Report outlines a plan to plant 10,800 trees or rainforest plantings along the 7.5ha Western Creek riparian corridor. This is the 900 trees or plantings for</p>	<p>The ecological restoration on the property consists of two elements comprising the planting of some 5000 rainforest trees over a 3ha area and weed management action over some 4.5 ha along the creek aimed at removing camphor</p>

BYRON SHIRE COUNCIL

each of the 12 dwellings in the DA.	laurels and enabling natural regeneration. Council's ecologist has reviewed the subject plan and is satisfied in its scope in terms of vegetation management.
-------------------------------------	---

4.9 Public interest

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

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

10 No Section 64 levies will be required.

5.2 Section 7.11 Contributions

15 Section 7.11 Contributions will be payable.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

Provide Disclosure Statement register details here: Not applicable

20 7. CONCLUSION

25 The DA proposes Rural Land Sharing Community (Multiple Occupancy) consisting of Twelve (12) Dwelling Sites, Associated Infrastructure, Land Management and Environmental Enhancement. The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed, and the site is considered suitable for the development. The application appropriately addresses the relevant constraints applying to the site and is recommended for approval subject to the conditions listed in the Recommendation.

30

Report No. 13.6 PLANNING - Deferred 10.2014.417.2 - 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. Stage 2: Demolition of Existing Building and Construction of Residential Flat Building at 43 Lawson Street, Byron Bay

5

Directorate: Sustainable Environment and Economy

10 **Report Author:** Patricia Docherty, Planner

File No: I2021/618

Proposal:

Proposed modification: 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. Stage 2: Demolition of Existing Building and Construction of Residential Flat Building

Original Development: Demolition of existing residential flat building & construction of a new residential flat building and associated works

Type of modification sought:

Property description: LOT: 1 SP: 16094

43 Lawson Street BYRON BAY

Parcel No/s: 41930

Applicant: Northpoint Advisory

Owner: The Owners of Strata Plan 16094

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.6

Zoning:	R3 Medium Density Residential
S96 Date received:	17 September 2020
Original DA determination date:	10/12/15
Public notification or exhibition:	<ul style="list-style-type: none">– Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications– Exhibition period: 30/9/20 to 13/10/20– Submissions received: one (1)
Planning Review Committee:	13/11/2020
Delegation to determination:	Council
Issues:	<ul style="list-style-type: none">• Deferred report in response to Resolution Number: 21-069 Council (Planning) Meeting of 11 March 2021. Owner's consent is now provided in accordance with <i>Environmental Planning & Assessment Regulation 2000</i> clause 49.• Recent acquisition by new owner of Lot 4 – additional owner's consent attached.• The proposed stage 1 conversion of a garage to an on-site sales office will result in a shortfall of parking. Condition of consent is recommended to require that one residential unit is permanently vacated prior to Stage 1 commencing.

Summary:

This report responds to Council Resolution **Res 21-069** Council (Planning) Meeting of 11 March 2021, which required action as outlined below.

- 5 **Resolved** that Development Application No. 10.2014.417.2, for S4.55 to Modify Staging - Stage 101: 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, be deferred and subject to a further report to Council at a subsequent meeting.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.6

The Section 4.55 Application 10.2014.417.2 was previously recommended for refusal on the grounds that owner's consent was not provided by all owners and that the works would result in a shortfall of on-site parking.

- 5 A late submission of documents from the applicant resolved the matter of owner's consent due to the sale of the sole objector's property to one of the existing unit owners.

10 The S4.55 modification proposed is substantially the same as that approved under DA 10.2014.417.1 with no changes to the design of the residential flat building to be constructed. One additional plan is proposed to allow for the use of an existing single garage for a temporary sales and display office for on-site marketing of the approved residential flat building.

15 The Stage 1 works will result in a reduction of 1 parking space which does not meet the requirements of the Byron Development Control Plan 2014 Chapter B4 if all residential units are occupied. For this reason, the applicant has advised they are willing to accept a limitation on the occupation and use of one residential unit whilst the sales office is in operation. This would enable the use of one of the garage spaces as the temporary sales and display office while ensuring the car parking provisions of Byron DCP 2014 are met, for the duration of Stage 1. Appropriate conditions of consent are recommended to reflect this.

25 The proposed ancillary nature of the temporary sales and display office for on-site marketing of the approved residential flat building is permissible with consent in the R3 medium density zone under Byron Local Environmental Plan 2014. A limitation on the duration and operation of Stage 1 to one year is also recommended to ensure it only relates to marketing of the approved residential flat building on this site.

The S4.55 application raises no other issues and is recommended for approval.

30 NOTE TO COUNCILLORS:

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

RECOMMENDATION:

40 **That pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, Application No. 10.2014.417.2, for 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. Stage 2: Demolition of Existing Building and Construction of Residential Flat Building, be approved by modifying Development consent number 10.2014.417.1 as detailed in Attachment 2**





45 **(E2021/56626).**

BYRON SHIRE COUNCIL

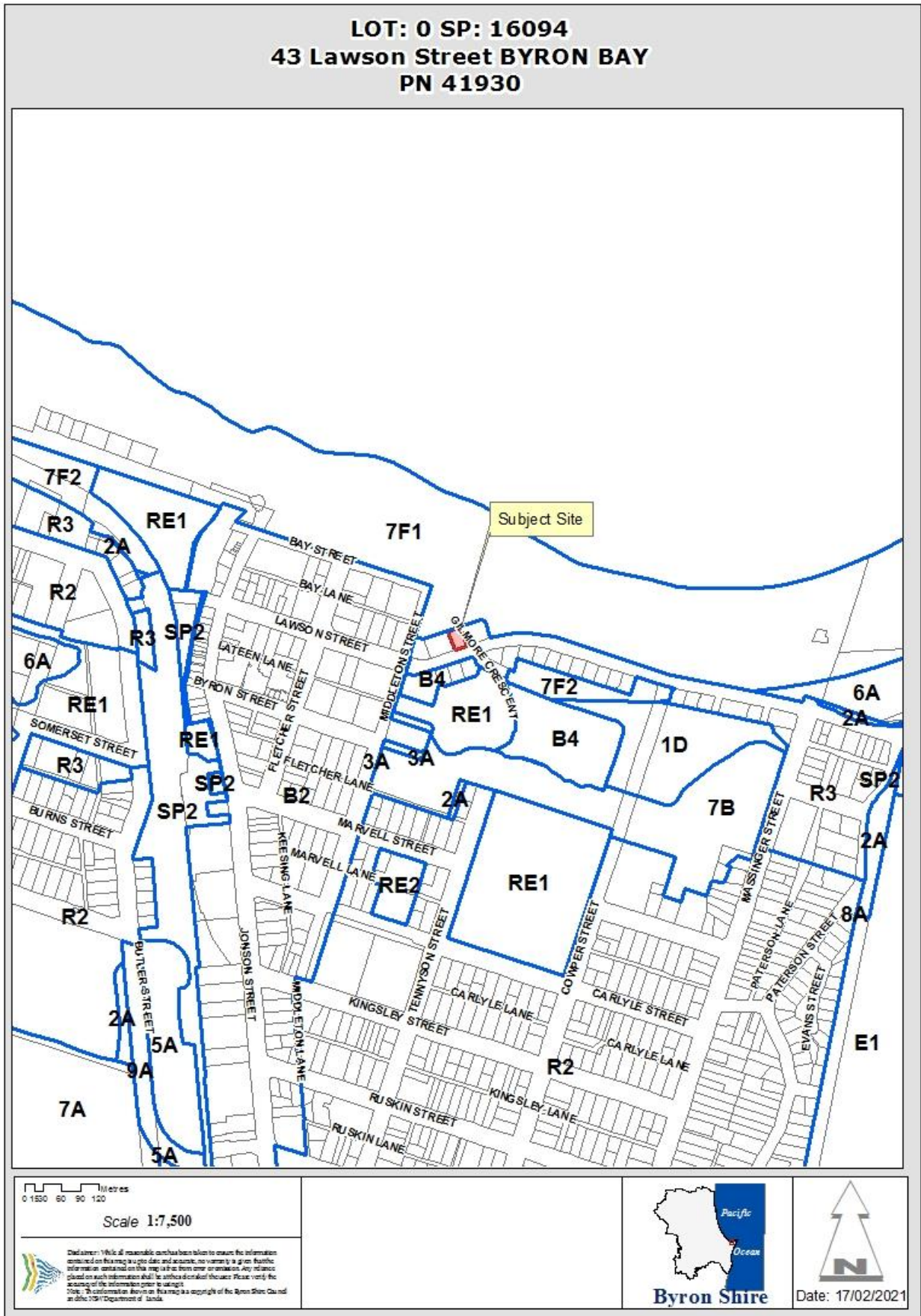
STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.6

Attachments:

- 1 10.2014.417.2 43 Lawson Street Marked Plans, E2021/56572 
- 2 10.2014.417.2 Recommended Modified Conditions of Consent and Reasons, E2021/56626
- 5 
- 3 10.2014.417.2 210430_Letter_43 Lawson Consent (lot 4)_PAN-31279 received by Council
07 May 2021, E2021/65194 
- 4 10.2014.417.2 210430_Ltr_43 Lawson Consent (lot 4) Att company ASIC details_PAN-
31279, E2021/65193 
- 10

BYRON SHIRE COUNCIL



Assessment:

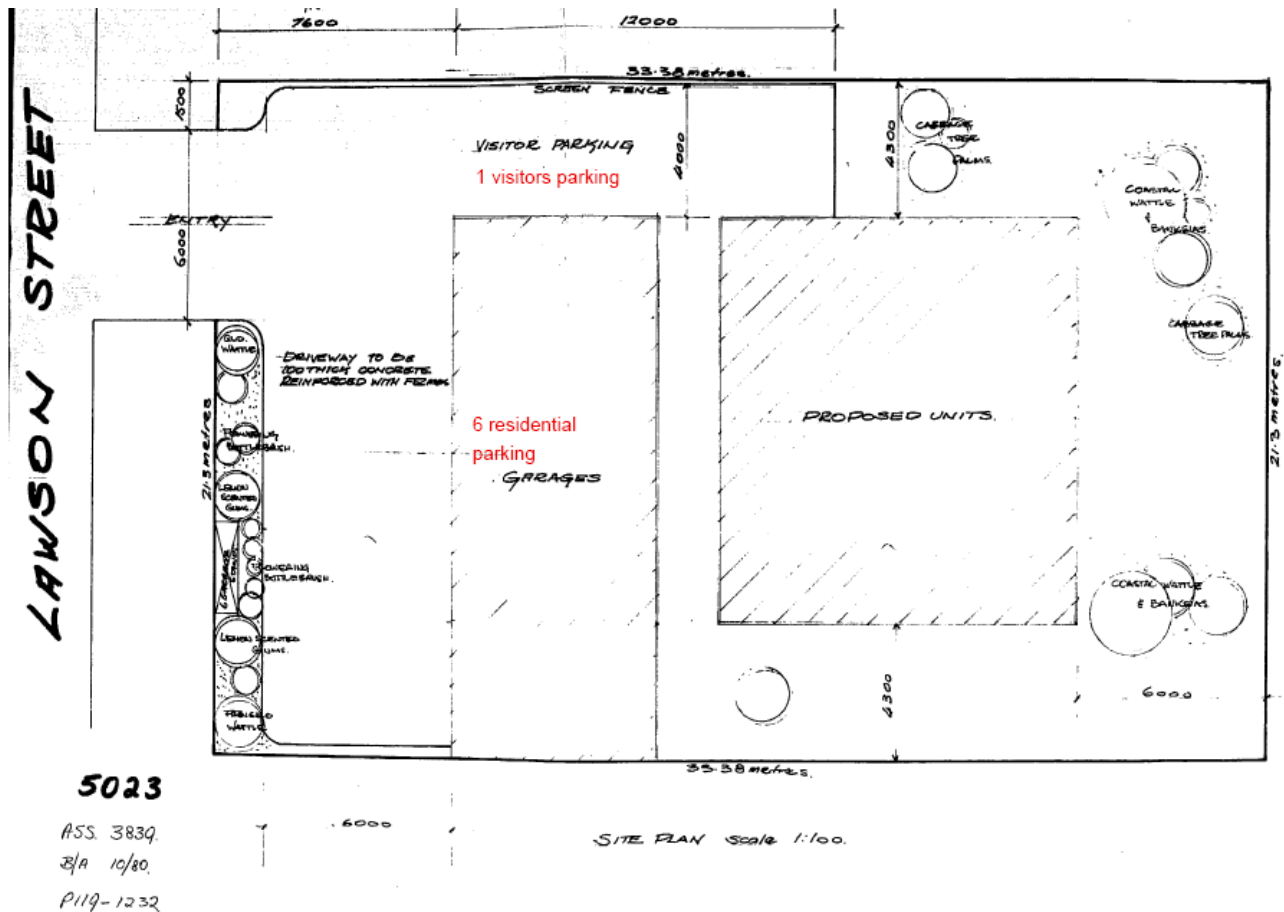
1. INTRODUCTION

1.1. History/Background

5 10.2014.417.1 - Development Application: Demolition of existing residential flat building & construction of a new residential flat building and associated works was approved by Council on 10/12/2015.

Building Application No. 10/80 - Three storey building containing 6 x 2 bedroom units, with 6 residential parking spaces plus 1 visitors parking.

10



BA 10/80 - Approved Plan – extract of scanned document

1.2. Description of the proposed development

15 This application seeks approval for a 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. Stage 2: Demolition of Existing Building and Construction of Residential Flat Building

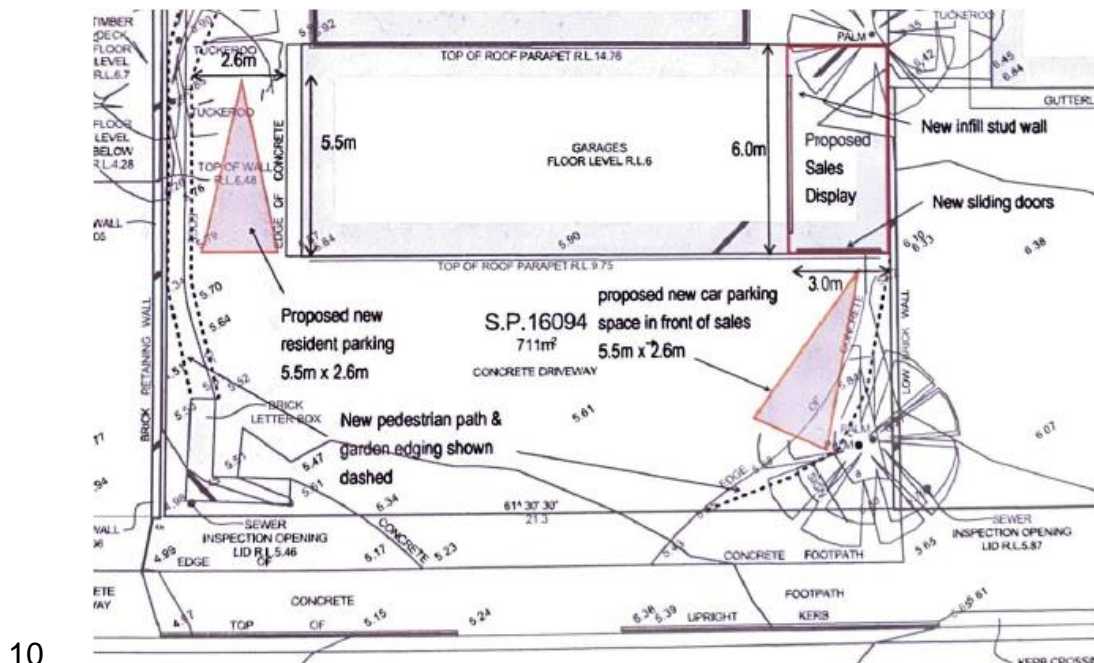
Proposed Modification

Addition of staging as follows:

5 Stage 1 Proposed Uses:

- Temporary Sales and Display Office
- Utilisation of 1 parking space for the duration of Stage 1
- Operating Monday to Saturday 8AM to 6PM

The applicant also sought compensatory parking depicted in plans below.



10

Stage 2

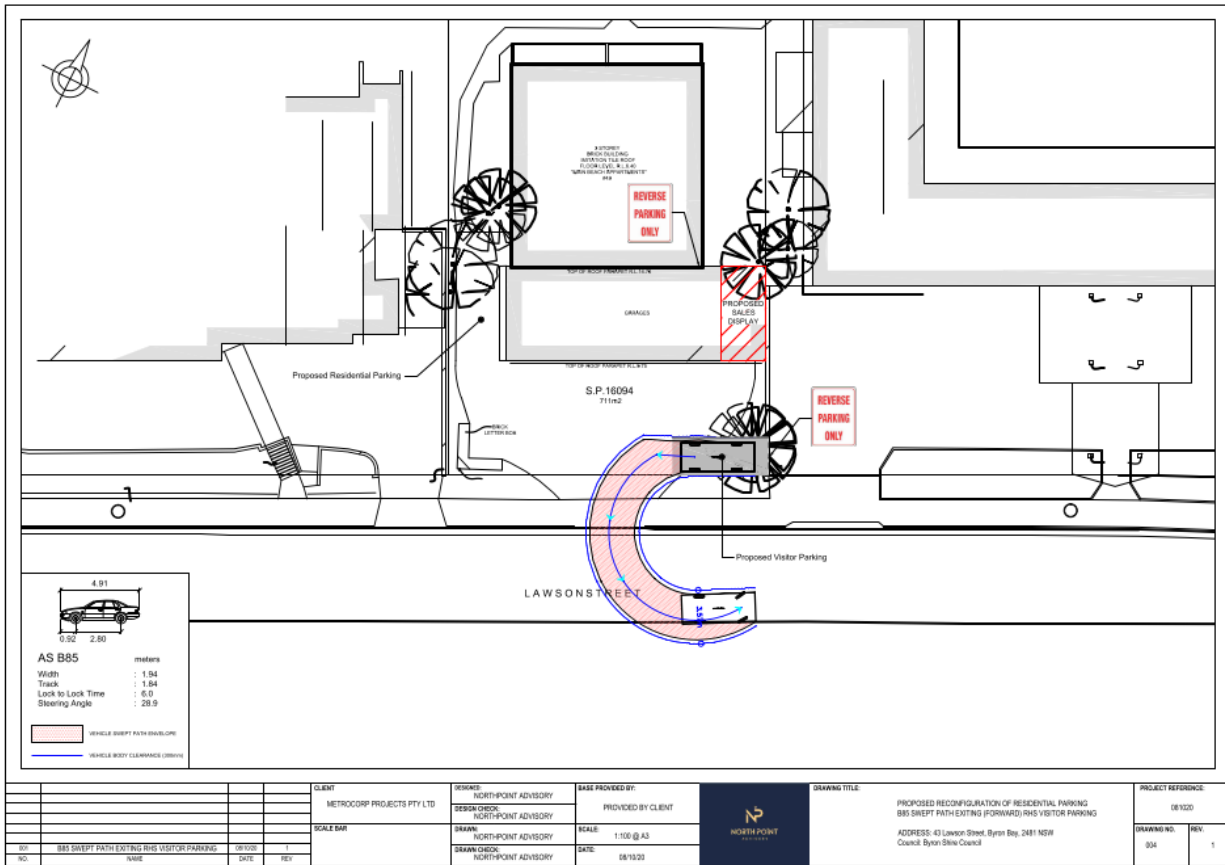
The remainder of the works approved under original consent 10.2014.417.1 being:

- Demolition of existing building
- 15
- Construction of residential flat building

Proposed Plans and revised plans submitted to Council did not provide suitable vehicular access and egress in accordance with relevant standards.

1. The new proposal requires 1 additional parking space; and

- The location of the new parking for the new use is partially obstructing access to residential parking.

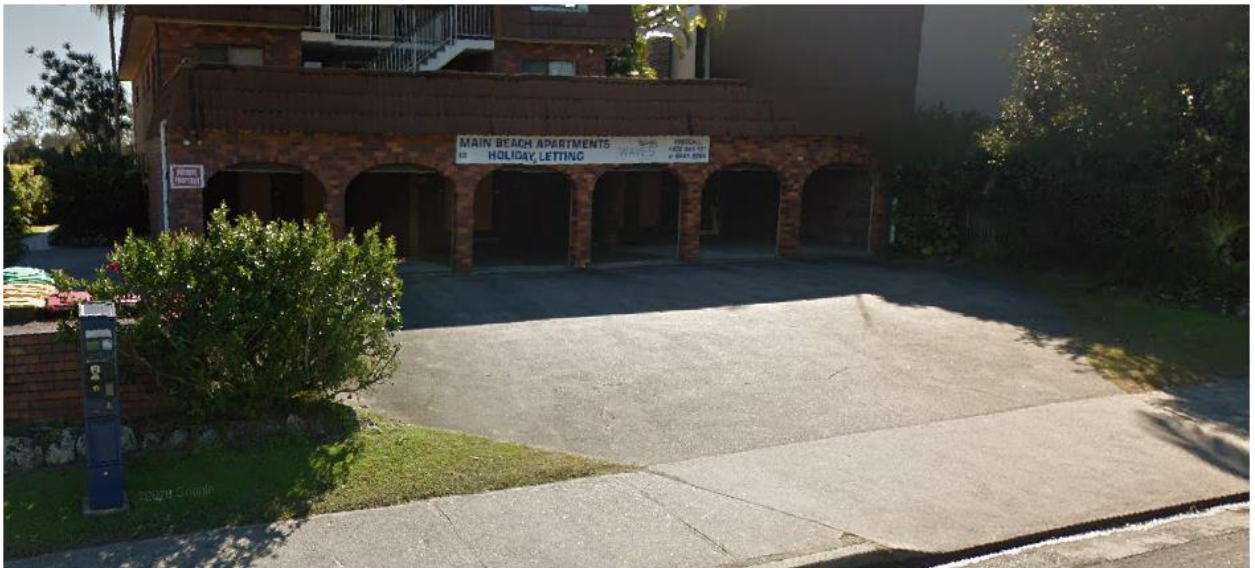


- For this reason, the applicant would be willing to accept a limitation on the occupation and use of one residential unit in lieu of providing compensatory parking to enable the use of one garage for a temporary sales and display office (Stage 1).

1.3. Description of the site

The site at 43 Lawson Street, Byron Bay is zoned R3 Medium Density Residential under Byron LEP 2014, and contains an existing brick residential flat building. The property backs onto the foreshore reserve and park adjacent to the beach at Byron Bay.

The proposed Sales office is to occupy the Car Park of Unit 1 also legally described as Lot 1 SP 16094



Site from Lawson Street



5 Aerial view of 43 Lawson Street, Byron Bay

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.

- 5 The s4.55 modification proposed is substantially the same as that approved under DA 10.2014.417.1 with no changes to the plans approved by Council in 2015. One additional plan is proposed to allow for the use of an existing single garage for a temporary sales and display office for on-site marketing of the approved residential flat building.

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

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

2.2. Byron Local Environmental Plan 2014

- 15 The proposed ancillary nature of the temporary sales and display office for on-site marketing of the approved residential flat building is permissible with consent in the R3 medium density zone under Byron Local Environmental Plan 2014.

- A limitation on the operation of Stage 1 including a time limit to one year is recommended having regard to the size of the development as approved (6 Units). It is also recommended that a condition be imposed to ensure that sales office only promotes, markets and sells units as approved on this development site, to ensure it does not become a defacto real estate sales office for other properties.
- 20

The proposed amendments raise no other issues under the LEP.

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

No draft EPIs affect the proposal.

2.4. Development Control Plans

- 25 The Stage 1 works will result in a reduction of 1 parking space that does not meet the requirements of the Byron Development Control Plan 2014 Chapter B4. For this reason, the applicant would be willing to accept a limitation on the occupation and use of one residential unit in lieu of providing compensatory parking. This would enable the use of one garage for a temporary sales and display office while ensuring the car parking provisions of Byron DCP 2014 are met, for the duration of Stage 1.
- 30

It is considered that the shortfall in parking arising from the temporary use of one garage for on-site sales and display can be addressed by plans marked by Council's assessing officer and conditions of consent recommended in the attachments to this report.

- 35 The proposed amendments do not generate any other additional issues that have not been previously considered.

BYRON SHIRE COUNCIL

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

5 Proposed amendments do not generate any impacts that have not been previously considered.

2.6. The suitability of the site for the development

Proposed amendments do not affect the sites suitability for the approved development.

2.6 Submissions made in accordance with this Act or the regulations

10 An objection was received by one owner within the body corporate but due to an agreement between the parties and sale of property, the matter of owner's consent has fallen away. Evidence of additional owner's consent from new owner of Lot 4 is provided. See attachments 3 and 4.

2.7 Public interest

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

15 3. DEVELOPER CONTRIBUTIONS/ WATER AND SEWER CHARGES

There is no nexus to levy additional contributions.

4.DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

5. CONCLUSION

20 The Section 4.55 Application 10.2014.417.2 was previously reported to Council on 11 March 2021 and recommended for refusal on the grounds that owner's consent was not provided by all owners and that the works would result in a shortfall of on-site parking.

25 A late submission of documents from the applicant resolved the matter of owner's consent due to the sale of the sole objector's property to one of the existing unit owners, and the matter was deferred by Council resolution.

30 It is further considered that the shortfall in parking arising from the temporary use of one garage for on-site sales and display can be addressed by plans marked by Council's assessing officer and conditions of consent recommended in the attachments to this report. Further conditions are also recommended in relation to limiting the sales office to a 12 months and that it only undertakes marketing and sale of units as approved under this DA consent.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.6

The S4.55 Application is recommended for approval subject to amended conditions of consents.

Report No. 13.7 Byron LEP 2014 Rural Subdivision Provisions

Directorate: Sustainable Environment and Economy

Report Author: Sam Tarrant, Planner

5 **File No:** I2021/783

Summary:

10 The Department of Primary Industries is in the process of developing the NSW Agricultural Land Use Planning Strategy to address key planning issues facing agriculture. Although the draft Strategy is yet to be released for public comment, it is likely to effect rural clauses within the Byron Local Environmental Plan (LEP) 2014.

LEP 2014 contains several clauses relating to subdivision of rural land within Byron shire. Those of relevance to this report include clauses [4.1C](#) and [4.1F](#) .

15 A number of issues have been identified relating to the application of clause 4.1C - *Minimum subdivision lot size for boundary adjustments in certain rural and residential zones* and 4.1F - *Exceptions to minimum lot sizes for certain rural subdivisions*. These issues primarily relate to their drafting, interpretation and/or decisions in the NSW Land & Environmental Court.

20 The most recent planning proposal (26.2020.6.1) sought to remove clause 4.1F from the LEP, noting interpretation and application issues. However the submissions report, also being presented to the 10 June 2021 Planning Meeting (titled Housekeeping Planning Proposal Exhibition outcomes 26.2020.6.1), recommends that clause 4.1F remain in the LEP in its current form and further consideration be given once the implications of the NSW Agricultural Land Use Planning Strategy are known. Clause 4.1C was not part of this planning proposal but also needs further investigation into its drafting wording and application.

25 This report provides a high level summary of the above rural subdivision provisions, their associated issues and potential avenues to amend the provisions to make them fit for purpose once the implications of the proposed NSW rural planning reforms are known. It recommends that any proposed amendments to clauses 4.1C and 4.1F be presented to Council as part of a future planning proposal, once the implications of the proposed NSW rural planning reforms are known.

RECOMMENDATION:

35 **That Council receive a report on any proposed amendments to clause 4.1C, 4.1F and similar rural subdivision clauses in LEP 2014, as part of a future Council initiated house keeping planning proposal once the implications of the proposed State wide rural planning reforms are known.**

REPORT

Byron Local Environmental Plan (LEP) 2014 contains various provisions relating to subdivision of rural land. These provisions are discussed below.

Clause 4.2 Rural subdivision

- 5 This clause enables subdivision of rural land to be below the minimum lot size for primary production purposes, but only if the resulting subdivision will not enable a dwelling opportunity. It is mandated by the standard instrument LEP and hence no change can be made to this clause.

4.2 Rural subdivision

- 10 (1) The objective of this clause is to provide flexibility in the application of standards for subdivision in rural zones to allow land owners a greater chance to achieve the objectives for development in the relevant zone.
- (2) This clause applies to the following rural zones—
- (a) Zone RU1 Primary Production,
- 15 (b) Zone RU2 Rural Landscape,
- (baa) Zone RU3 Forestry,
- (c) Zone RU4 Primary Production Small Lots,
- (d) Zone RU6 Transition.

Note— When this Plan was made it did not include all of these zones.

- 20 (3) Land in a zone to which this clause applies may, with development consent, be subdivided for the purpose of primary production to create a lot of a size that is less than the minimum size shown on the [Lot Size Map](#) in relation to that land.
- (4) However, such a lot cannot be created if an existing dwelling would, as the result of the subdivision, be situated on the lot.
- 25 (5) A dwelling cannot be erected on such a lot.

Note— A dwelling includes a rural worker's dwelling (see definition of that term in the Dictionary).

Clause 4.1C Minimum subdivision lot size for boundary adjustments in certain rural and residential zones

- 30 Clause 4.1C is a local provision that enables minor boundary adjustments between two or more adjoining properties, which does not create additional lots or additional opportunities for dwelling houses.

Whilst this is a locally drafted clause (ie. not mandated) it is contained in many other LEPs within NSW. However the wording of this clause varies between council LEPs depending on when the clause was introduced into the relevant LEP.

4.1C Minimum subdivision lot size for boundary adjustments in certain rural and residential zones

5

(1) The objectives of this clause are as follows—

- (a) to permit boundary adjustment subdivision between existing lots in rural areas where one or more of the resulting lots would be less than the minimum subdivision lot size,
- 10 (b) to ensure that the subdivision does not create additional lots or additional opportunities for dwelling houses,
- (c) to ensure that the boundary adjustment subdivision will result in—
 - (i) a minimisation of further fragmentation and alienation of resource lands or lands with natural or ecological values,
 - (ii) the minimisation of land use conflict,
 - 15 (iii) the maintenance of the rural character, environmental heritage and/or scenic quality of the land.

(2) This clause applies to land in the following zones—

- (a) Zone RU1 Primary Production,
- (b) Zone RU2 Rural Landscape,
- 20 (c) Zone R5 Large Lot Residential.

(3) Despite clause 4.1, development consent may be granted for a subdivision that consists of an adjustment of boundaries between existing lots where the size of one or more of the resulting lots will be less than the minimum subdivision lot size shown on the [Lot Size Map](#) in relation to those lots, if—

- 25 (a) the subdivision will not result in the creation of any additional lots or the opportunity for additional dwellings (or both), and
- (b) the subdivision will minimise the further fragmentation and alienation of resource lands or lands with natural and ecological values, and
- (c) the subdivision is likely to minimise actual or potential land use conflict, and
- 30 (d) the subdivision is not likely to affect the rural character, environmental heritage and scenic quality of the land.

Issue

Clause 4.1C has been subject to a Land and Environment court case [Jonson v Coffs Harbour City Council](#) (2018) which provided weighting to the term 'boundary adjustment'.

The ruling has set a precedent in regard to the scale of what constitutes a boundary adjustment and the scope of what can be approved through this clause.

5 This has meant that staff must carefully consider the scale of any subdivision under clause 4.1C, which has now become the limiting factor in applying this clause. The result is that for some DAs, Council's application of the court decision parameters has prevented what otherwise may have been an acceptable development outcome.

10 To ensure this clause can be used to provide more flexible and practical land use outcomes, the wording could be amended to change the term 'boundary adjustment' to boundary *alteration* or *realignment* or *change*. Doing this could provide greater scope (and hence flexibility) in its application while still ensuring the objectives of the clause are satisfied.

Tweed Shire Council is currently looking at amending their boundary adjustment clause (4.1C) in a similar manner, based on the reasons mentioned above.

15 Clause 4.1C in Nambucca LEP uses the term *boundary alteration* and could be used to model the current clause wording in Byron LEP.

20 Staff have received preliminary legal advice on the use of the term *boundary alteration* in place of *boundary adjustment*, suggesting that the former would likely allow for more flexibility in the scale of the subdivision. Discussions with Staff from Nambucca Shire indicate that is the case. However, further investigation and development of an amended clause 4.1C above, as well as Council's other rural subdivision clauses, will need to be informed by the State government legislative reforms currently underway and case law.

25 As the legislative reform outcomes are not known at this time, the redrafting of clause 4.1C and similar rural subdivision clauses in LEP 2014 should be investigated collectively as part of the future review into the rural subdivision clauses. The outcome of these investigations will be presented in a future report to Council.

Clause 4.1F Exceptions to minimum lot sizes for certain rural subdivisions

30 Clause 4.1F is a local provision clause that enables subdivisions for certain purposes on rural land (other than for the purpose of dwelling houses, dual occupancies or secondary dwellings). This clause is similar to clause 4.2 Rural Subdivision but allows for a subdivision of an undersized lot for purposes other than primary production.

This clause was placed into the LEP in 2017 and was modelled from Clarence Valley LEP.

4.1F Exceptions to minimum lot sizes for certain rural subdivisions

35 (1) The objective of this clause is to enable the subdivision of land in rural areas to create lots of an appropriate size to meet the needs of current permissible uses other than for the purpose of dwelling houses, dual occupancies or secondary dwellings.

(2) This clause applies to land in the following zones—

(a) Zone RU1 Primary Production,

(b) Zone RU2 Rural Landscape.

(3) Despite clause 4.1, development consent may be granted to the subdivision of land to which this clause applies to create a lot with a size less than the minimum subdivision lot size shown on the [Lot Size Map](#) in relation to those lots, if the consent authority is satisfied that—

- 5 (a) there is no dwelling house or dual occupancy located on the land, and
- (b) the use of the land after the subdivision will be the same use permitted under the existing development consent for the land.
- (4) Development consent must not be granted for the subdivision of land to which this clause applies unless the consent authority is satisfied that—
- 10 (a) the subdivision will not adversely affect the use of the surrounding land for agriculture, and
- (b) the subdivision is necessary for the ongoing operation of the permissible use, and
- (c) the subdivision will not increase rural land use conflict in the locality, and
- (d) the subdivision is appropriate having regard to the natural and physical constraints affecting the land.

15 **Issue**

As addressed in the planning proposal, this clause had been interpreted to enable subdivision of approved tourist cabins from the larger rural lot. This has the effect of incentivising rural landowners to seek approval for tourist facilities, knowing that they can be subdivided off and sold, causing fragmentation to the rural areas. From a planning standpoint, such an outcome is neither intended nor desired.

20

Adding additional land uses to the objective of this clause (eg. tourist and visitor accommodation; ecotourist facilities) could prevent subdivision of rural lots purely for tourism purposes.

Even if additional land uses were added to the objectives (i.e.. to prevent subdivision for tourism purposes), the current drafting of this clause is problematic in achieving its intended outcome. This is because subclause 3(a) currently prevents the subdivision if a dwelling house is located on any of the lots. Ideally this should be changed to clarify that a dwelling can be situated on the original lot, whilst a dwelling on the new lot would still be prohibited.

25

30 ***NSW Agricultural Land Use Planning Strategy***

NSW Department of Primary Industries is developing a NSW Agricultural Land Use Strategy. An options paper to help guide development of the strategy has recently finished consultation with Council providing feedback via a submissions reported to the [Agenda of Ordinary Meeting - Thursday, 22 April 2021 \(infocouncil.biz\)](#)

35 The options paper identified a potential change to the rural development SEPP as well as the standard instrument LEP to address ambiguity between LGAs. Among the options

BYRON SHIRE COUNCIL

being considered is to amend the Standard Instrument LEP to prohibit any further subdivision of rural land to create new lots with dwelling eligibilities.

5 Given the strategic work at the State government level around rural land use planning will potentially impact on the Byron LEP rural subdivision clauses, it would be pre-emptive to amend these LEP clauses before this work is completed.

10 Although the latest housekeeping planning proposal (26.2020.6.1) sought to remove clause 4.1F outright from the LEP, the submissions report, also being presented to the 10 June 2021 Planning Meeting (titled Housekeeping Planning Proposal Exhibition outcomes 26.2020.6.1), recommends that clause 4.1F remain in the LEP in its current form. It also recommends that clause 4.1F be further considered once the implications of the proposed NSW rural planning reforms are known. This is in recognition that the outcome of these planning reforms may ultimately override clause 4.1F and other rural land clauses in LEP 2014.

Next steps

15 Amendments to clause 4.1C and 4.1F are required to make them fit for purpose, but only after the implications of the proposed NSW rural planning reforms are known.

A report to council with potential drafting of these amended provisions will be presented as part of a future housekeeping planning proposal.

Strategic Considerations

20 Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.11	Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

Recent Resolutions

21-137

Legal/Statutory/Policy Considerations

Council has received preliminary legal advice on alternative drafting to clause 4.1C.

Further advice on clause 4.1F and 4.1C may be required before presenting future drafting to Council.

5 Financial Considerations

Any budget impacts will be considered in a future planning proposal report to Council.

Consultation and Engagement

Clause 4.1F was exhibited as part of the housekeeping planning proposal amendment (26.2020.6.1).

- 10 Any future draft provisions will be placed on public exhibition as part of the resulting planning proposal.

Report No. 13.8 PLANNING - S4.56 to Modify Condition 1 to reference the amended Site Plan and Condition 3 to require instead Row Houses 1, 2, 4 and Studio 4 to be Affordable Housing at 23 Lismore Road Bangalow

5

Directorate: Sustainable Environment and Economy

Report Author: Greg Smith, Team Leader Planning Services

File No: I2021/743

Proposal:

Proposed modification: S4.56 to Modify Condition 1 to reference the amended Site Plan and Condition 3 to require instead Row Houses 1, 2, 4 and Studio 4 to be Affordable Housing

Original Development: Multi Dwelling Housing Comprising Fifteen (15) Dwellings

Type of modification sought:

Property description: LOT: A DP: 376877, LOT: 1 DP: 1266443

23 Lismore Road BANGALOW

Parcel No/s: 45640, 270338

Applicant: Lismore Venture Pty Ltd

Owner: Windmill Property Investments 3 Pty Ltd & P & M Lismore Pty Ltd & others

Zoning: R2 Low Density Residential

S4.56 Date received: 11 December 2020

Original DA determination date: 27/03/2020

Integrated Development: No

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 10/1/21 to 24/1/21
- Submissions received: 1 in support of the proposal

Planning Review Committee: 11/2/2021

Delegation to determination: Council

Issues:

- There are no significant issues

Summary:

5 An application has been received under section 4.56 of the Environmental Planning and Assessment Act 1979, to modify a Land and Environment Court issued development consent for Multi Dwelling Housing Comprising Fifteen (15) Dwellings at the site. In summary the main changes are to relocate the four approved motorcycle spaces and a renaming of the four units to be used for affordable housing purposes from Row Houses 1, 2 and 3 and Studio 5 to Row Houses 1, 2, 4 and Studio 4.

10 The motorcycle parking is proposed to be relocated towards the front of the site where they are more likely to be used and will have less of an impact on adjacent proposed dwellings compared to the original location.

15 The other proposed modifications are satisfactory having regard to relevant matters for consideration and it is considered that the development is substantially the same development as the originally approved development. One submission was received which raised no specific objection to the proposed modification. The Section 4.56 application is recommended for approval subject to modified conditions of consent.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.8

NOTE TO COUNCILLORS:






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

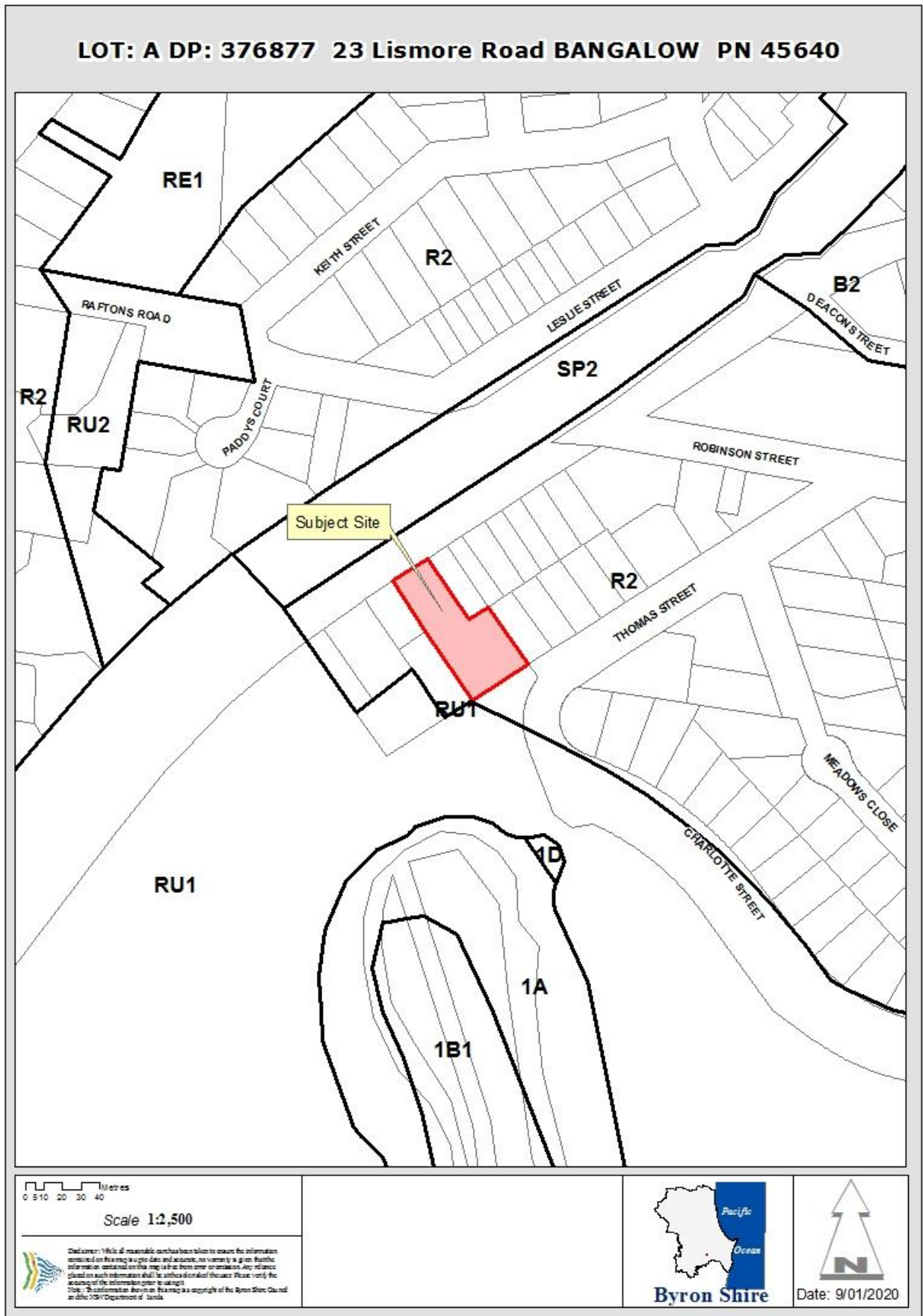
RECOMMENDATION:

10 That:

- 15 1. Pursuant to Section 4.56 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2019.161.2, for S4.56 to Modify Condition 1 to reference the amended Site Plan and Condition 3 to require instead Row Houses 1, 2, 4 and Studio 4 to be Affordable Housing, be approved by modifying Development consent number 10.2019.161.1 as indicated in Attachment 3 to this Report; and
2. A copy of the notice of determination be sent to each person who made a submission in respect of the application.

20 Attachments:

- 1 10.2019.161.1 - Court Issued Consent, E2020/28081 
- 2 10.2019.161.1 - Site Plan Approved by Land & Environment Court, E2021/65047 
- 25 3 10.2019.161.2 - Modifications to Conditions of Consent, E2021/63550 
- 4 10.2019.161.2 - Modified Site Plan, E2021/65937 
- 5 10.2019.161.2 - Public Submission, E2021/63725 



Assessment:

Introduction

History/Background

5 The NSW Land and Environment Court approved Development Application No. 10.2018.161.1 for Multi Dwelling Housing Comprising Fifteen (15) Dwellings on 31/3/2020. The Court-issued development consent is Attachment 1 to this Report.

Condition 1 of the development consent lists the approved plans. Condition 3 of the consent essentially requires that Studio 5 and Row Houses 1, 2 & 3 of the approved development are to be used only for the purpose of affordable housing for 10 years.

10 Description of the proposal

This application seeks approval for S4.56 to Modify Condition 1 to reference the amended Site Plan and Condition 3 to require instead Row Houses 1, 2, 4 and Studio 4 to be Affordable Housing. The application describes the proposal, with reference to condition 3, as follows:

15 "Delete reference to... .. Studio 5 and Row Houses 1, 2 & 3....

And replace with... ..Row Houses 1, 2, 4 and Studio 4.....

Clause 13.1 of the SEPP remains satisfied.

R1 = 52sqm

R2 = 52sqm

20 R3 = 52sqm

S4 = 35sqn

Total R1, 2, 4, s4 = 191sqm

Total GFA of the development = 949sqm

Percentage of affordable housing = 20%

25 The Applicant later advised that the modified Site Plan submitted in support of the s4.56 application is also to be substituted in condition 1.

On this basis the application proposes the following amendments to the development consent:

30 1. Condition 1 – change the reference to the approved Site Plan to the modified plan submitted with the s4.56 application. The main changes are in the frontage area of the site, including in relation to the location of the bin storage, deletion of bicycle

storage (individual dwellings and curtilage areas can accommodate bicycle storage), provision of designated pedestrian access, provision of landscape bays and relocation of the 4 motorcycle parking spaces from the furthest end of the driveway to within the front half of the property.

- 5
2. Condition 3 – change the approved dwellings which are required to be used only for the purpose of affordable housing from “Studio 5 and Row Houses 1, 2 & 3” to “Row Houses 1, 2, 4 and Studio 4” (same number of row houses and studio) – there is no change in the composition and type of the dwellings required to be affordable housing being 1 studio and 3 row houses, and there is no change in the compliance with the minimum 20% floor area requirement; and
- 10

Description of the site

Land is legally described as: LOT: A DP: 376877

Property address is: 23 Lismore Road BANGALOW

Land is zoned: R2 Low Density Residential

Land area is: 2,341.6m²

Property is constrained by: Drinking Water Catchment

Heritage Conservation Area

Potential impact zone – Flying Fox Camp

Section 4.56 of the Environmental Planning and Assessment Act 1979

15 The applicant is a person who is entitled to act on the consent which was issued by the Court. The development to which the consent as modified relates is substantially the same as the originally approved development. Public notification of the application, including consideration of the public submission, is discussed in this Report below. A copy of the notice of determination is required to be sent to each person who made a submission in respect of the application.

20 **Clauses 115 to 120 of the Environmental Planning and Assessment Regulation 2000**

The application has been appropriately made via the Planning Portal. The proposed modification is of minimal environmental impact. The application was publicly notified and

5 this is discussed in more detail below. The original development application was not for designated development, State significant development or for any other advertised development made to a consent authority other than Council. The site is not located within strategic agricultural land. The original development application did not involve any concurrence authority or integrated development approval body.

Summary of Referrals

Referral	Issue
Development Engineer	No objections subject to modification of condition 1 to include the substitute amended Site Plan. Refer to Doc #A2021/12417.

Section 4.15 of the Environmental Planning and Assessment 1979 – Matters for Consideration

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

State Environmental Planning Instruments

State Environmental Planning Policy (Affordable Rental Housing) 2009

15 In relation to clause 13 of the Affordable Rental Housing SEPP, the Council report on the original development application makes the following statement:

20 *“The application nominates 4 one-bedroom units as the affordable housing component. The combined floor space of these units is 191m². The total proposed floor space is quoted as 949m². Based on these areas, the application proposes to use 20.1% of the total floor space for affordable housing. The clause, therefore, applies.”*

Translating this to the proposed development as modified and as addressed by the Applicant’s advice above, the combined floor space of the nominated units is 191m², total GFA is 949m² and percentage of affordable housing is still the same under the modified proposal at 20%.

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

The development as modified involves no significant change in relation to the provisions of the Infrastructure SEPP.

Byron Local Environmental Plan 2014 (LEP 2014)

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

the subject land and the proposal. The proposed modifications do not result in non-compliance with the clauses of LEP 2014.

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

- 5 There are no proposed instruments of significant applicability to the proposal.

Byron Shire Development Control Plan 2014 (DCP 2014)

- 10 DCP 2014 is an applicable matter for consideration in the assessment of the subject application in accordance with subsection 4.15(1) of the EP& A Act because it applies to the land to which LEP 2014 applies. The proposed development is demonstrated to meet the relevant Objectives of all relevant Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

Any Planning Agreement or Draft Planning Agreement?

There is no planning agreement applicable to this development.

Environmental Planning & Assessment Regulation 2000 Considerations

- 15 There are no additional considerations under clauses 92 to 94A of the Environmental Planning and Assessment Regulation 2000.

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

Natural environment

- 20 The proposal will not have a significantly adverse impact on the natural environment of the locality.

Built environment

The proposal will not have a significantly adverse impact on the built environment of the locality.

- 25 **Social Environment**

The proposal will not have a significant social impact on the locality.

Economic impact

The proposal will not have a significant economic impact on the locality.

Are there any Council Policies that are applicable to the proposal?

- 30 The proposal would not be contrary to any of Council's development-related policies.

The suitability of the site for the development

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

Submissions made in accordance with this Act or the regulations

- 5 The application was publicly exhibited.

There was 1 submission made in favour of the application. Comments are provided in response to the contents of the submission as follows:

10 *The Bangalow Progress Association agrees that proposed modifications satisfy Byron Shire Council's conditional approval of the previous DA based on the provision of additional onsite parking spaces and the alleviation of privacy issues affecting adjoining neighbours. Proposed modifications achieve an important incremental benefit for residents, neighbours and the Bangalow community and are acceptable to the BPA. We thank Council and BSC staff for their diligence on this matter and look forward to facilitating future affordable housing with improved*
15 *outcomes for all stakeholders.*

Comment: The support for the proposal is noted.

20 *The two additional onsite parking spaces are designed for cars, but such spaces could also be allocated to electric bikes as a future option to encourage residents to reduce car dependency. This alternative should become increasingly viable over time as the Byron Bike Path project is progressively implemented.*

Comment: The support for electric bikes is noted. Electric bikes can be stored on the site without the need to occupy car parking spaces. Should a resident purchase a bike (electric or traditional – push) it is anticipated the bike would be kept by the resident securely in their unit.

25 *The development site marks a main entry point to the Bangalow heritage village where aesthetics become an important consideration. Proposed reworking of the property driveway entry includes a landscaped pedestrian walkway with additional screening of the Telstra fence. This provides a welcome aesthetic benefit in addition to improving pedestrian safety and neighbour amenity.*

30 Comment: The support for the proposed entry point treatment is noted.

35 *Limited onsite car parking remains a major issue for regional areas. Cars unable to park onsite at 23 Lismore Rd will randomly park elsewhere on Lismore Rd verges, a distinctly unwelcome scenario. Yet there appears to be no specific provision for parking offsets in the allocation of Section 94 contributions, but a formal parking offset scheme could be used to help fund much needed peripheral parking areas in Bangalow for cars from affordable housing estates as well as cars from rapidly increasing visitors.*

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.8

Comment: No change is proposed to the number of car parking spaces on the site approved by the Court.

5 *The expected congestion caused by cars parked on Lismore Rd may also justify the installation of a speed awareness monitor with a red/green emoji LED sign near the 50km limit boundary.*

Comment: Road signage is beyond the assessment of the current application.

Public interest

The proposal is unlikely to prejudice or compromise the public interest or create a undesirable precedent.

10 Developer Contributions

Water & Sewer Levies

No change to existing Section 64 levies conditions will be required.

Section 7.11 Contributions

No Section to existing 94 Contributions conditions will be required.

15 Conclusion

20 The application under section 4.56 of the Environmental Planning and Assessment Act 1979, proposes to modify a Land and Environment Court issued development consent for Multi Dwelling Housing Comprising Fifteen (15) Dwellings at the site. The proposed modifications are to modify condition 1 to reference the amended Site Plan and condition 3 the approved dwellings which are required to be used only for the purpose of affordable housing from “Studio 5 and Row Houses 1, 2 & 3” to “Row Houses 1, 2, 4 and Studio 4” (same number of row houses and studio).

25 The proposal is satisfactory having regard to relevant matters for consideration and is substantially the same development as approved. The Section 4.56 application is recommended for approval subject to modifying conditions 1 and 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
Provide Disclosure Statement register details here:	Not applicable

5

**Report No. 13.9 PLANNING - Development Application
10.2020.257.1 Multi Dwelling Housing
Comprising Seven (7) Dwellings, including
Demolition of Existing Dwelling House at
113A Paterson Street, Byron Bay**

Directorate: Sustainable Environment and Economy

Report Author: Greg Smith, Team Leader Planning Services

File No: I2021/747

Proposal:

DA No: 10.2020.257.1

Proposal description: Multi Dwelling Housing Comprising Seven (7) Dwellings, including Demolition of Existing Dwelling House

Property description: LOT: 1 DP: 717719
113A Paterson Street BYRON BAY

Parcel No/s: 70660

Applicant: Logan Architecture

Owner: Mrs B K & Mr L T Mooney

Zoning: R2 Low Density Residential

Date received: 29 May 2020

Integrated / Designated Development: Integrated Designated Not applicable

Concurrence required: Not required

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 18/6/20 to 8/7/20
- Submissions received: Nineteen (19)

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.9

– Submissions acknowledged: Yes No N/A

Other approvals N/R W & S (68) OSMS (68) ST (68) RA (138)

Other:

Planning Review Committee: 15 October 2020 – To be determined by Council

Variation request Not applicable

Issues: Issues raised in public submissions (19)

Summary:

5 The application seeks consent for a multi dwelling housing development comprising seven (7) dwellings, including demolition of the existing dwelling house on the site. The dwellings are 2 storeys throughout. There is a single dwelling at the front of the site, and the remaining dwellings are in attached pairs back towards the rear of the eastern boundary of the site. There are a mix of 2 two-bedroom dwellings and 5 three-bedroom dwellings. There is a mix of single garages, double garages and open parking spaces. Dwelling 1 is proposed to be the adaptable dwelling.

10 The driveway runs along the southern side boundary of the site with the dwellings on the northern side of the driveway. There are 2 visitor parking spaces.

A total of nineteen (19) public submissions have been received. The issues raised are commented on in this Report below. It is noted neighbouring properties are characterised by similar scale town house developments.

15 The application has addressed the relevant constraints applying to the site and satisfactorily addressed the matters raised in the public submissions. The development application is recommended for approval subject to the conditions listed in the recommendation.

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.

25






RECOMMENDATION:

That pursuant to Section 4.16 of the Environmental Planning & Assessment Act

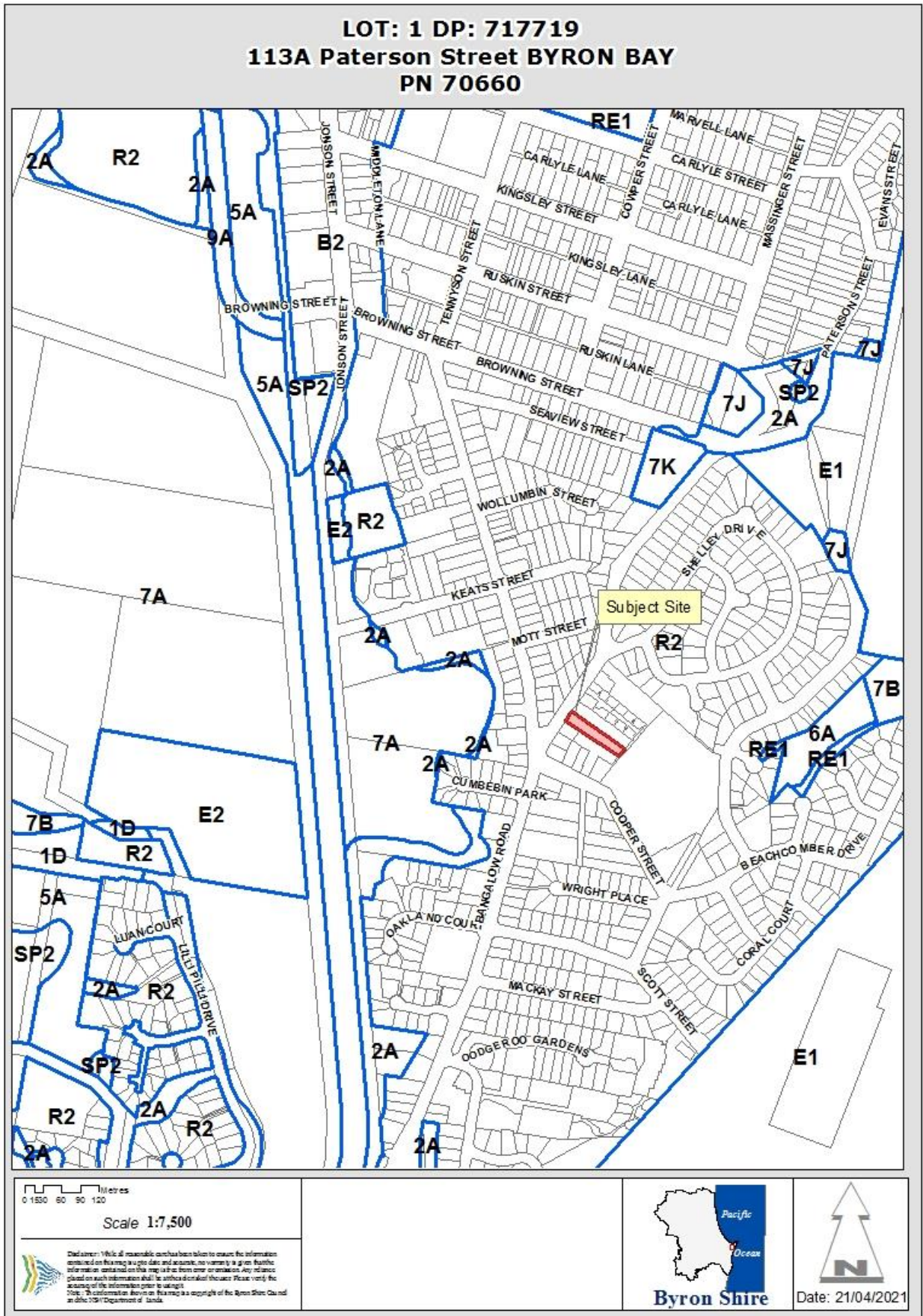
BYRON SHIRE COUNCIL

1979, Development Application No. 10.2020.257.1 for Multi Dwelling Housing Comprising Seven (7) Dwellings, including Demolition of Existing Dwelling House, be granted consent subject to the conditions of approval in Attachment 1 (E2021/63714).

5 Attachments:

- 1 10.2020.257.1 Recommended conditions of approval, E2021/63714 
- 2 10.2020.257.1 Proposed Plans, E2021/63721 
- 3 10.2020.257.1 BASIX and NatHERS Certificates, E2021/63718 
- 10 4 10.2020.257.1 Shadow Diagrams, E2021/63717 
- 5 10.2020.257.1 Redacted submissions, E2021/63973 

BYRON SHIRE COUNCIL



Assessment:

INTRODUCTION

History/Background

BA 6.1978.2134.1 for a dwelling was approved on 20/6/1978.

5 DA 10.2006.416.1 for tree removal (11 trees) was approved on 8/11/2006.

DA 10.2007.497.1 for a Subdivision (Boundary Adjustment) with no additional lots was approved on 11/10/2007.

Description of the proposed development

10 This application seeks approval for multi dwelling housing comprising 7 dwellings as depicted in the plans included in Attachment 2 to this Report, including demolition of the existing 2 storey dwelling house located at the front western end of the site adjacent to Paterson Street.

15 Dwelling 1 is closest to Paterson Street through to Dwelling 7 which is closest to the rear eastern boundary. The 7 dwellings are contained in 4 separate buildings. The first building closest to Paterson Street is a single dwelling (Dwelling 1) whereas the other 3 building buildings each contain 2 dwellings.

Dwelling 1 contains 3 bedrooms, a study and double garage and is the adaptable dwelling. Dwellings 2 and 4 contain 2 bedrooms and a single garage. Dwellings 3, 5, 6 and 7 contain 3 bedrooms and a double garage.

20 The driveway runs along the southern side boundary of the site with the dwellings on the northern side of the driveway. There are 2 visitor parking spaces.



Subject site highlighted yellow

BYRON SHIRE COUNCIL

Description of the site

Land is legally described	LOT: 1 DP: 717719	
Property address	113A Paterson Street BYRON BAY	
Land is zoned:	R2 Low Density Residential	
Land area is:	1802m ²	
Property is constrained by:	Acid Sulfate Soils Class 5	
	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

SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
Natural Resource Planner	No objections subject to conditions.
Resource Recovery & Quarry	No objections, no conditions.

SECTION 4.14 – BUSH FIRE PRONE LAND

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

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

10 SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

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

4.1 State Environmental Planning Instruments (SEPP)

SEPP No 55—Remediation of Land

5 There is no evidence contained on Council's records to indicate that the site has been used for any other purpose except residential use in the last 32 years (BA78/21340) approved 12/05/1978. The surrounding land use is urban residential development. The development does not result in an increased sensitivity of land use. Notwithstanding, previous development approvals precede SEPP 55 which came into force in 1998. Whilst the likelihood that contamination exists on the subject site is low, it is recommended that an unexpected finding protocol be provided prior to issue of a Construction Certificate. This will ensure that any source of contamination uncovered during site works can be managed.

SEPP (Infrastructure) 2007

The proposal is satisfactory having regard to the provisions of the Infrastructure SEPP.

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

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

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

- (a) The proposed development is defined in the LEP 2014 Dictionary as multi dwelling housing;
- (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
- 20 (c) The proposed development is permitted with consent in the R2 Zone; and
- (d) The proposed development is satisfactory having regard to the Zone Objectives.

The rear southern corner of the site is class 5 acid sulfate soils. However, Council's Environmental Health Officer raised no objection to the proposal in this regard.

25 The 7.9m maximum height of the proposed development complies with the 9m maximum height development standard applying to this site.

The 0.43:1 floor space ratio of the proposed development complies with the 0.5:1 maximum floor space ratio development standard applying to this site.

The proposed development otherwise satisfies all other clauses of LEP 2014 (in some cases subject to conditions).

30 **4.3 Any proposed instrument that has been the subject of public consultation and has been notified to the consent authority**

There are no proposed instruments that are of significant applicability to this proposed residential development within the surrounding residential area.

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

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

B4.2.5 Car Parking Requirements

The development provides parking on site as follows:

40	Garage Type	Parking
- Unit 1 – 3 beds + study	Double Garage 6m x 6m	2
- Unit 2 – 2 beds	Single Garage 3m x 6m	1

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.9

	- Unit 3 – 3 beds	Double Garage 6m x 6m	2
	- Unit 4 – 2 beds	Single Garage 3m x 6m	1
	- Unit 5 – 3 beds	Double Garage 6m x 6m	2
	- Unit 6 – 3 beds	Double Garage 6m x 6m	2
5	- Unit 7 – 3 beds	Double Garage 6m x 6m	2
	- Visitor Parking between Unit 3/4	2.4m wide x 5.4m long	1
	- Visitor Parking between Unit 3/4	2.4m wide x 5.4m long	1

10 The total number of parking spaces provided for the development is 14. The number required to be provided is 14. The development complies in relation to provision for car parking. Bicycles are able to be parked within the garage or curtilage areas of the dwellings.

B7.2.2 Strategies and guidelines for proposed developments within mosquito risk zones

The site is within a mapped mosquito risk zone, and a condition is recommended requiring insect screens.

15 Chapter B8 Waste minimisation and management

20 The required allocated bin presentation space as specified by Council's waste collection service provider for the development is 14m, being 1m for each bin with 14 bins being presented each week. The application states that only 10.760m of kerb frontage is available for bins presentation. Council's Resource Recovery & Quarry Team has gone back to the waste collection service provider requesting clarification on existing allowable kerb frontage of 10.760m. Although the presentation area is not the ideal length, the waste collection service provider has stated they will be able to service required bins.

B9.4.1 Landscape Principles

25 The development is required to be provided with 90m² of landscaped area per large dwelling (over 85m² in floor plan area). Each of the proposed dwellings is a large dwelling, requiring 7 x 90m² = 350m². The landscaped area of the site is up to 550m², which exceeds the prescriptive measure. Council's Natural Resource Planner recommends conditions in relation to landscaping of the site.

Chapter B13 Access and Mobility

30 The submitted plans nominate Dwelling 1 as the adaptable dwelling. A condition is recommended requiring that the application for a Construction Certificate is to include plans and specifications that indicate access and facilities for persons with access disabilities to and within Dwelling 1 in accordance with AS 1428.1 – Design for Access and Mobility and Part D3 of the Building Code of Australia. Such plans and specifications must be approved as part of the Construction Certificate.

B14.2 Excavation and fill in all zones

35 The plans show that the extent of cut and fill is minimal, being a maximum depth of 1.2m excavation at the front of the site and less than 1m fill depth.

Chapter D1 Residential Accommodation

40 The development complies with all required setbacks to boundaries. There are only slight encroachments into the building height plane as demonstrated by the elevations submitted in support of the application, however the encroaching elements will not have significant overshadowing, privacy or view impacts. The proposed residential development is not out of character in, and will not have a significant visual impact on, the mixed residential context of the site and surrounds. The private open spaces of each dwelling comply with the minimum 30m² and 4m dimension requirements.

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

4.5 Environmental Planning & Assessment Regulation 2000 Considerations

- 5 There are no significant issues in relation to the additional matters for consideration under clauses 92 to 94A of the Environmental Planning and Assessment Regulation 2000.

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

Natural environment

- 10 The proposal will not have a significantly adverse impact on the natural environment of the locality.

Built environment

The proposal will not have a significantly adverse impact on the built environment of the locality.

Surrounding development is of a similar scale and density to what is proposed and is characterised by townhouse villa units.

- 15 **Social Environment**

The proposal will not have a significant social impact on the locality.

Economic impact

The proposal will not have a significant economic impact on the locality.

Construction Impacts

- 20 The development will not generate significant impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

Are there any Council Policies that are applicable to the proposed development?

Building in the Vicinity of Underground Infrastructure Policy 2020

- 25 Council's ET Engineer and Development Engineer raised no objection to the proposal on the basis of impacts on underground infrastructure, including for example water, sewer and stormwater.

Management of Contaminated Land Policy

- 30 There is no evidence contained on Council's records to indicate that the site has been used for any other purpose except residential use in the last 32 years and the development does not result in an increased sensitivity of land use. An unexpected findings protocol condition is recommended as indicated above.

Water and Sewer Equivalent Tenement Policy

Council's ET Engineer recommended a condition and note for inclusion in the consent in relation to water and sewer ET charges.

- 35 **4.7 The suitability of the site for the development**

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

4.8 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited.

- 40 There were 19 submissions made on the development application. The matters raised in the submissions are commented on as follows:

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.9

The proposed density does not take into consideration the character of the area, landscape setting and surrounding built form. The buildings have enormous footprint and very high ceilings. There are too many dwellings on 113 and 113A Paterson Street. There should be no more than 3 but at the very most, 4 new dwellings.

5 Comment: The area is characterised by a mix of single dwellings through to multiple dwelling developments. There are multiple dwelling developments to the north, south and east of the site. A residential development such as this proposal in the prevailing residential context is not out of character in the area or surrounding built form. The proposal includes appropriate landscaping areas. The building footprints are not considered to be excessive, including the 0.43:1 floor space ratio of the development being less than the 0.5:1 development standard, and the ceiling heights are not considered to be excessive. The proposed number of dwellings is not beyond the capacity of the site area.

10
15
15 *Enormous congestion with traffic all day. A traffic plan should be submitted with the DA. Do not make the street a No Standing zone. A roundabout is required at Bangalow Road and Paterson Street now. Paterson Street is a rat run and there are already significant traffic delays.*

20 Comment: Council's Development Engineer confirmed that the proposal is satisfactory having regard to traffic impact and both internal and external access arrangements. The Development Engineer has recommended a condition requiring a traffic control plan, but does not recommend any conditions requiring either No Standing signs or a roundabout.

There will be a big influx of new residents or holiday makers. Increased tenancies with Airbnb, with high noise pollution, late night parties and lack of open space causing tensions between holiday makers and residents.

25 Comment: A residential development is appropriately occupied by residents. Normal low density residential usage is not expected to have significant noise impacts. Appropriate open space areas are provided on the site. A condition is recommended stating that the dwellings are not approved as short-term rental accommodation, tourist and visitor accommodation or to be "holiday let".

30 *The development has not contributed to Affordable Housing Monetary Contribution – for nurses, firemen and police. The development should make a monetary contribution for providing adorable housing. Community contribution fees should be mandatory to improve parks, playgrounds and open space.*

35 Comment: The development is standard multi dwelling housing and is not required to contribute towards affordable rental housing. A condition is recommended requiring payment of contributions.

There should be better quality design to improve liveability through enhanced internal and external apartment amenity including better layout. There is no outlook for tenants and no new parklands or breakout space.

40 Comment: The internal and external design and layout is of appropriate quality. The development provides private open space areas and is conditionally required to contribute monetarily towards public open space and recreation.

45 *There needs to be better adaptability and robustness, improved energy efficiency and water sensitive urban design, solar access, natural ventilation and visual privacy. The development is backed up against and will overlook the sleeping bedrooms, lounges and private garden space, there is absolutely no privacy to the townhouses to the south. The development will cause significant loss of privacy. Privacy screens should be provided along the edge of the townhouses of units 1 to 6. Single storey buildings would make better planning sense.*

Comment: The last plan in Attachment 2 shows that Dwelling 1 is to be the adaptable dwelling, including an adaptable car space. The development application is accompanied by a BASIX

Certificate (included in Attachment 3 to this Report) demonstrating State-legislated energy efficiency requirements are met.

5 The dwellings are set back a minimum of 4.5m to the southern boundary of the site, and no part of the development which might cause privacy impacts to the southern neighbouring properties encroaches into the building height plane as projected from the southern boundary of the site. The main living rooms of the proposal are either at ground floor level or face north. The upstairs levels of the proposed dwellings are set back a minimum of 4m to the northern side boundary, and the driveway to the northern neighbouring multi dwelling housing development adjoins the northern side boundary of the site. No part of the development which might cause privacy impacts to the northern neighbouring property encroaches into the building height plane as projected from the northern boundary of the site and for this reason, privacy screens are not recommended by this Report.

10 The development complies with the maximum 9m height development standard, allowing for 2 storey dwellings. The area is comprised of a mix of one and two storey dwellings, and the proposed two storey dwellings are not out of character in the area.

15 *Side and rear setback controls should be tested for overshadowing of the site, adjoining properties and open spaces. Development should achieve minimum 50% direct sunlight to the principal useable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June. The development will cause significant overshadowing and loss of solar access. There will be significant overshadowing of yards and clotheslines. Instruments should be installed on site to indicate building height.*

20 Comment: The shadow diagrams submitted in support of the development application (included in Attachment 4 to this Report) demonstrate that from 12 noon onwards, the proposed development will not cause excessive shadow impacts to the southern neighbouring properties. The plans demonstrate that the extent of the encroachment of the development into the building height plane as projected from the southern side boundary and requiring compliance with the building height plane would not cause any perceivable reduction to the extent of overshadowing of neighbouring properties. The proposed buildings are not of such a height as to warrant the installation of building height poles on the site to gauge height.

25 *There should be a 12 metre setback for all new driveways to all new homes on the boundary line so that acoustics are improved for the resident of the townhouses to the south. Synthetic driveway paving would control noise from cars.*

30 Comment: It would not be reasonable to require a 12m setback for driveways and/or new dwellings. Normal residential development in a residential setting is not expected to generate any excessive noise impacts. Council's Environmental Health Officer raised no objection to the proposal on the basis of noise impacts, and recommended a condition requiring that the use of the development must not interfere with the amenity of the neighbourhood by reason of, for example, noise.

35 *Low lighting LED lights on timers and sensors should be installed to light up entrances.*

40 Comment: If the occupants of the development are concerned about safety and security, they are able to install non-intrusive lighting.

Planting softens the edges of any raised terraces to the street and neighbours. Tree planting up to a height of not greater than 4 metres should be provided along the boundary to the southern neighbouring townhouses.

45 Comment: The plans show the driveway to be set back 500mm from the southern side boundary, allowing for landscaping to be provided. Council's Natural Resource Planner recommended a condition requiring a landscape plan, which must indicate the proposed location for planted shrubs and trees. The condition has been extended to include reference to required planting along the

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.9

southern side of the full length of the driveway (to a maximum height of 4m at this location). Conditions also recommended requiring the side boundary to be fenced with a 1.8 m lap and cap paling fence.

5 *Apartment entrances are facing the neighbours bedrooms and privacy screening needs to be incorporated.*

Comment: The entrances to the dwellings are all at ground level, face towards the front or rear boundary of the site (not the southern neighbouring properties) and are not considered to require any special privacy treatment.

10 *Full height screening to communal access areas on levels 1 and 2 should be provided for a minimum 50% of the length of the southern side.*

Comment: There are no proposed communal access areas to more than 1 dwelling. All dwellings have their own individual ground level entrance doorway and porch separate to the other dwellings.

15 *The site of the proposed development is designated Class 5 acid sulfate soil. Vegetable gardens and backyards are likely to be severely impacted. This area is prone to intense rainfall and this matter needs investigation.*

Comment: A small portion of the rear of the site is class 5 acid sulfate soils. Class 5 is the least impacting level. Council's Environmental Health Officer raised no objection to the proposal in this regard.

20 *No soil tests found in DA, specifically with reference to sand tailing / radioactivity on this block. The original landowners transported sand for the sand-mining company and their family property used sand for fill / around foundations on their property many years ago. It is important during foundation digging no dust or sand comes onto the street and specifically near or on adjoining properties.*

25 *Comment: Council's Environmental Health Officer confirmed that there is no evidence contained on Council records to indicate that the site has been used for any other purpose except residential use in the last 32 years. The surrounding land use is urban residential development. The development does not result in an increased sensitivity of land use. Whilst the likelihood that contamination exists on the subject site is low, a condition is recommended requiring that an unexpected finding protocol be provided prior to issue of a Construction Certificate. This will ensure that any source of contamination uncovered during site works can be managed.*

30 *There are no assurances about tradespeople adhering to council noise constraints. The current proposal with the driveway along a line of bedrooms will have a severe effect on sleeping.*

35 *Comment: The construction of the development must adhere to standard work hours and noise limits in accordance with a recommended condition of development consent.*

The development does not provide adequate car parking including guest parking. Already insufficient on-street car parking (only 2 on the street in front of the property). Construction vehicles park in the driveways of neighbouring properties.

40 *Comment: Council's Development Control Plan requires the provision of 14 spaces. The proposal provides 14 car spaces and complies with the number of required car parking spaces.*

45 *The owners of the complex at 113 Paterson Street requested that the existing boundary fence was to be kept as it was, which was complied with and the developer upgraded that side of the fence with a masonry retaining wall and new palings on our side. It is hoped that the applicants for this new development leave the fence as is and not require the owners of 113 Paterson Street to have to expend additional money. It is hoped that the new development did not propose the existing fence be replaced to suit their development and not the completed complex at 113 Paterson Street.*

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.9

Comment: The submitted plans show a timber fence on the northern side boundary of the site. The application does not indicate any change to existing northern side fencing is proposed. Dividing fences are a matter between adjoining property owners under the Dividing Fences Act. No condition is recommended requiring the fence on the northern side boundary to be replaced.

5 *The lower 30 metres of 113 Paterson Street was required to conform with flood issues. This meant requirements relating to floor levels, mesh at the bottom of fencing to allow for water movement and a restriction on title that no filling of the land was allowed. The flood requirements are important because other properties may bear the burden of flood waters in the future rather than sharing the spread of the flood waters. The trees at the bottom of the property are to remain, what are the required flood mitigation works.*

10

The proposal doesn't address the run off issue that will be created by such a long driveway when we have significant weather events. The low side properties are in the firing line should the systems proposed for development fail.

15 Comment: The site is not flood affected land. Council's Development Engineer confirmed that the proposed development is satisfactory having regard to stormwater management impacts, subject to conditions. The conditions require compliance with the Stormwater Details and Additional Stormwater Investigation submitted in support of the development application (refer to Attachment 2), on-site stormwater detention and a flood planning level for the development of 5.79m AHD.

20 4.9 Public interest

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

DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

25 Section 64 levies will be payable.

5.2 Developer Contributions

Section 7.11 Contributions will be payable.

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

CONCLUSION

30 The development application proposes multi dwelling housing comprising 7 dwellings, including demolition of the existing dwelling house. The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application appropriately

35 addresses the relevant constraints applying to the site and the reasons for objection in public submissions, and is recommended for approval subject to conditions of consent.

BYRON SHIRE COUNCIL

**Report No. 13.10 PLANNING - Development Application
10.2020.251.1 Alterations and Additions to
the Commercial development (Book Room)
comprising coffee cart and ancillary works
(pergola) at 27-31 Fletcher Street Byron Bay**

5

Directorate: Sustainable Environment and Economy
Report Author: Chris Larkin, Manager Sustainable Development
File No: I2021/759

Proposal:

DA No:	10.2020.251.1		
Proposal description:	Alterations and Additions to the Commercial development (Book Room) comprising coffee cart and ancillary works (pergola)		
Property description:	LOT: 1 SEC: 26 DP: 758207		
	27-31 Fletcher Street BYRON BAY		
Parcel No/s:	24720		
Applicant:	Mr C Lonergan		
Owner:	Eas1 Pty Ltd		
Zoning:	B2 Local Centre		
Date received:	21 May 2020		
Integrated / Designated Development:	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable
Concurrence required	No		
Public notification or exhibition:	<ul style="list-style-type: none"> - Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications - Exhibition period: 4/6/20 to 24/6/20 - One Submissions received: 		
Delegation to determine	Council		
Issues:	<ul style="list-style-type: none"> • Use of Pergola • Ensuring Coffee Cart is mobile and not connected to Water and Sewer infrastructure • Heritage 		

10

BYRON SHIRE COUNCIL

Summary:

5 The proposed development comprises three main components being the “retrospective approval” for the construction and use of the pergola at the front of the Bookroom, consideration of the coffee cart and signage. The coffee cart can continue in its current location, provided it is not connected to Water and Sewer infrastructure and serves only takeaway food and drink with no table service.

10 The pergola has been considered as not specifically sympathetic with the heritage values of the existing building, but it is noted that the structure is lightweight, can be removed in the future and has vines covering it already providing an attractive shaded area at the front of the building. Provided that the landscaping is maintained and the pergola remains unroofed it is considered the proposal is acceptable in its location.

15 The application also seeks approval for business signage which is considered satisfactory subject to conditions of consent. The proposal raises no environmental issues in terms of impacts and the site being within the central business district of Byron Bay is considered suitable for the proposed development. The application is recommended for approval subject to conditions of consent.

NOTE TO COUNCILLORS:




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

25

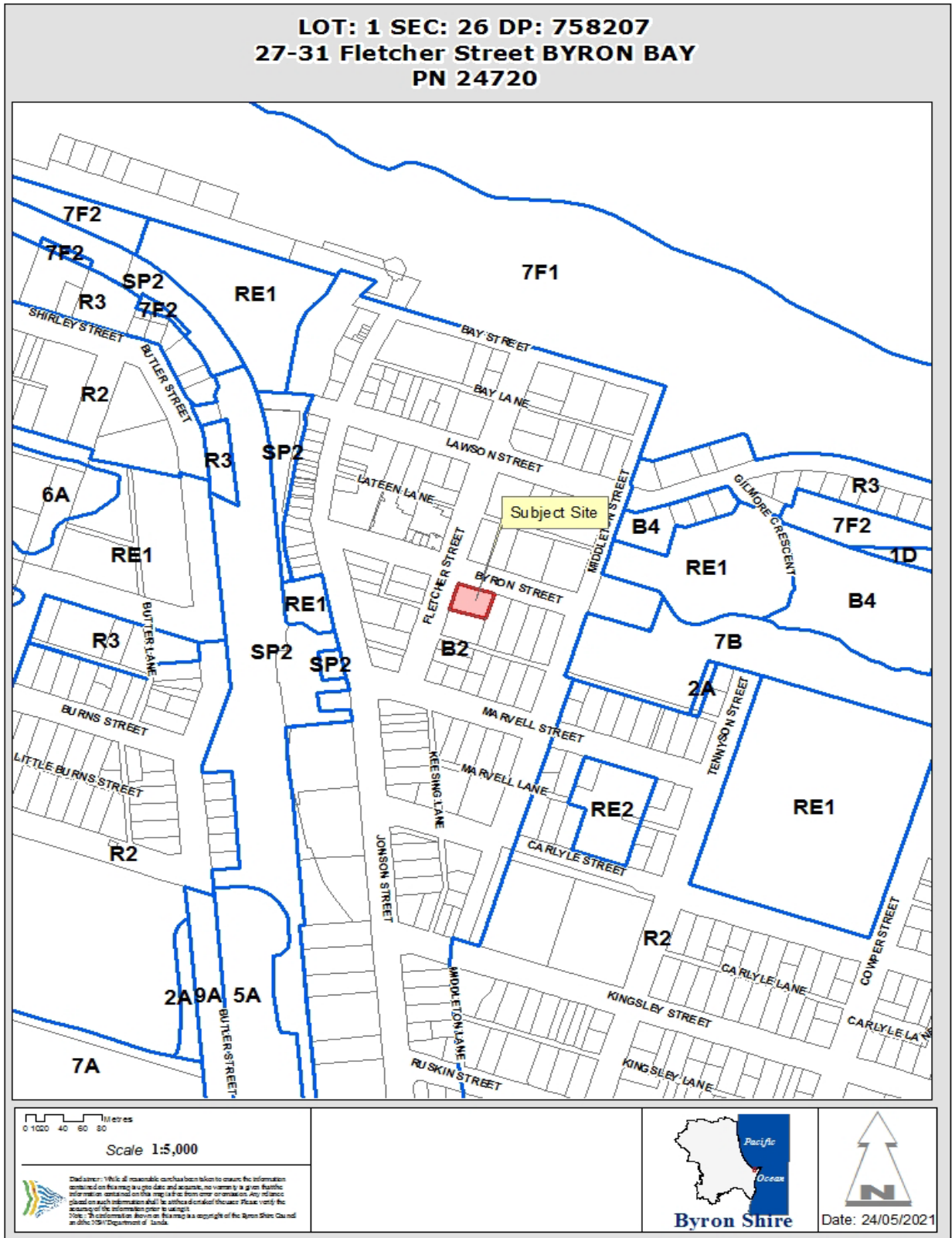
RECOMMENDATION:

30 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.251.1 for Alterations and Additions to the Commercial development (Book Room) comprising coffee cart and ancillary works (pergola) be approved subject to conditions of consent in Attachment 2 (E2021/72034).**

Attachments:

- 35
- 1 Plans 10.2020.251.1, E2021/72124 
 - 2 consent conditions 10.2020.251.1, E2021/72034 
 - 3 submission 10.2020.251.1, E2021/72203 

BYRON SHIRE COUNCIL



Report

1.1. History/Background

5 History

Account	Description	Date	Notes
10.2003.152.1	Erection of a pole sign 5.6 metres high and two fascia signs	24/05/2003	Approved
10.2001.603.1	Use of Bookshop as refreshment room, signage and assembly area	29/10/2002	Refused
10.2001.148.1	Change of Use - Change of Use - From Doctors Surgery to Florist	16/06/2001	Approved
10.2000.336.1	Change of Use - Accountants to Book Store	27/08/2001	Refused
5.1998.206.1	Commercial Development - Office extensions/modifications	16/11/1998	Approved
6.1997.2431.1	Addition/Alteration to Shop	10/12/1997	Approved
5.1997.270.1	Sign - Sign	29/08/1997	Approved
6.1996.2322.1	Shop	11/10/1996	Approved
5.1993.379.1	Commercial Development	13/07/1994	Approved

1.2. Description of the proposed development

10 This application seeks approval for Alterations and Additions to the Commercial development (Book Room) comprising coffee cart and ancillary works. The development comprises use of pergola and seating area facing Fletcher Street and minor superficial modification to the front of the building and the ongoing use of the coffee cart.



15 *Image 1: Shows a photomontage of the proposal*



Streetview of existing pergola and Landscape Bay facing Fletcher Street



5

Seating under the Pergola

BYRON SHIRE COUNCIL

The pergola and seating has already been constructed and it is likely to extend partly into the road reserve. The Coffee Cart to remain mobile won't be connected to water and sewer infrastructure and will serve takeaway food and drink (mainly coffee and other hot beverages)

Consent is also sought for the two (2) standalone signs and "The Cart" awning print as follows:

- "The Book Room" business identification signage on the corner of Fletcher and Bay Street is 1800mm x 100mm in dimension. It is composed of reclaimed Timber, with an aluminum composite panel behind fixed to a pre-existing galvanised roof frame, with outdoor led lights.
- The vertical banner is 600mm x 2400mm composed of vinyl PVC, that was fixed to an existing framework.
- "The Cart" is printed onto fabric awning and is part of this element.



Bookroom Business Identification Sign (Above awning)

1.3. Description of the site

Land is legally described	LOT: 1 SEC: 26 DP: 758207
Property address	27-31 Fletcher Street BYRON BAY
Land is zoned:	B2 Local Centre
Land area is:	1213.7 m ²
Property is constrained by:	Flood Liable Land Acid Sulfate Soils Class 3 Heritage Item/Precinct

The property is a heritage item I069 described as 'Terrace Houses' in Schedule 5 of Byron LEP 2014. The heritage listing applies to the Lot curtilage as mapped on the Heritage Map

of Byron LEP 2014. The site also lies adjacent to the other heritage listed terraced building in Byron.

2. SUMMARY OF REFERRALS

5

Heritage – see comments below under the Byron LEP 2014 discussion

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

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

3.1. State Environmental Planning Instruments

15

SEPP 2008 (Exempt and Complying Development Codes)

Mobile Food and Drink Outlets are listed as exempt development under the SEPP The provisions state:

2.54A Specified development

20

The carrying out of the retail sale of food, drinks and related products on land from a mobile outlet such as a food truck, van, cart or other similar vehicle is development specified for this code.

2.54B Development standards

25

The standards specified for that development are that the development must—

30

(a) have the consent of the owner of the land on which the development is carried out or, if a council or public authority has the control and management of the land, the consent, in writing, of the council or public authority, and

35

(b) not restrict any vehicular or pedestrian access to or from the land or entry to any building on the land, and

(c) not obstruct the operation of, or access to, any utility services on the land or on adjacent land, and

40

(d) not be located within the canopy of, or result in damage to, any tree growing on the land or on adjacent land, and

45

(e) not result in any damage to public property on the land or on adjacent land, and

(f) if carried out on land within or immediately adjacent to a residential zone—only be carried out between 7.00 am and 7.00 pm on any day, and

(g) if located on a public place—have any approval required under section 68 of the [Local Government Act 1993](#), and

50

(h) if located on private land—be limited to 1 development on that land and not contravene any conditions of a development consent for any other use carried out on the land.

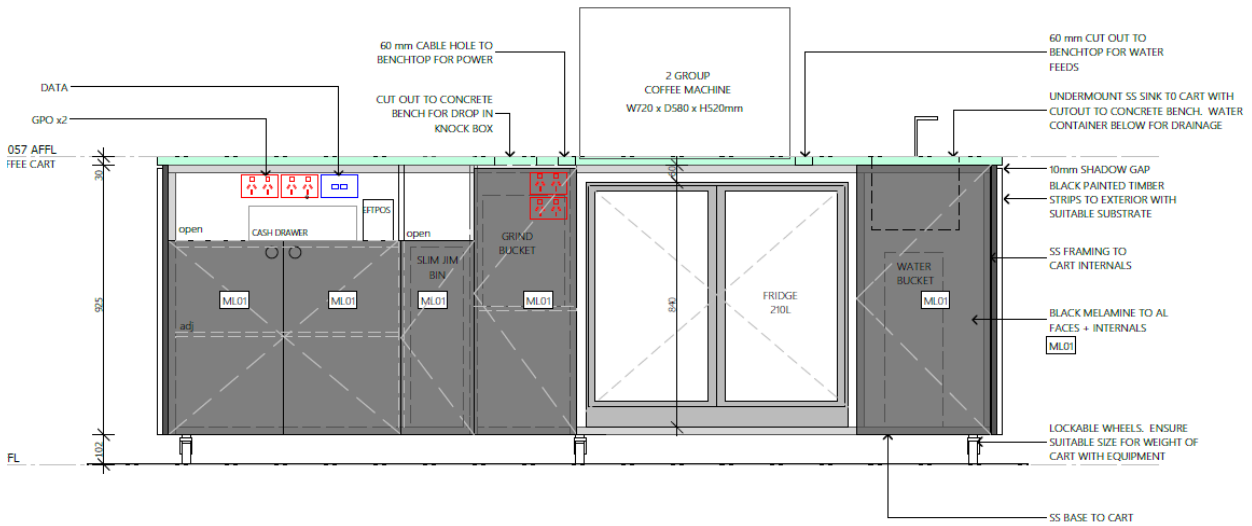
Note—

55

A registrable vehicle within the meaning of the [Road Transport \(Vehicle Registration\) Regulation 2007](#), or a cart, bicycle cart or the like must operate in accordance with the Guidelines for mobile food vending vehicles (NSW/FA/F1055/1302) published by the NSW Food Authority in February 2013, and any requirements of the [Food Act 2003](#).

Its important that the coffee cart to be mobile and to satisfy the requirements under the exempt provisions to not be connected to Councils Water and sewer infrastructure, and that it serve only takeaway food and drink to its customers. Plans and details submitted with the DA indicate the cart is on caster wheels and it can be moved in and out of the building.

5



A J01a - ELEVATION
BOOK ROOM COFFEE 1:20

Should the coffee cart expand its operations and provide table service and or be connected to Council's infrastructure, it begins to transition into a permanent kitchen and the cart would then be considered more akin to a cafe. This not only raises a nexus to levy water and sewer headworks charges, but would also generate the potential for further car parking. Appropriate conditions of consent to apply.

10

15 **4.2A Byron Local Environmental Plan 2014 (LEP 2014)**

Part 2 –Permissibility and Land Use table

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

- 20 (a) The proposed development is defined in the LEP 2014 Dictionary as a retail shop in terms of the additions to the Book Room Book shop;
- (b) The land is within the B2 Local Centre according to the Land Zoning Map;
- (c) The proposed development is permissible with consent; and
- 25 (d) The proposal is not inconsistent with the objectives of the zone

Clause 5.10 Heritage

The subject property is listed as a heritage item under Byron LEP 2014 and is described as follows on the heritage register.

30

Item details

Name of item: Terrace Houses

Type of item: Built

Group/Collection: Residential buildings (private)

Category: Terrace

Primary address: 27 - 31 Fletcher Street, Byron Bay, NSW 2481

Local govt. area: Byron

Boundary: Lot 1 Section 26 DP 758207

Statement of significance:

An example of early 20th Century urban housing, unusual in a North Coast coastal town setting. The design of the building is indicative of a move to a more settled workforce in the town and the brick construction suggests a well-to-do commercial class. The building is related in scale and shape to its earlier neighbour to the south, but shows evidence of 1920s design in the verandah pillars and simple bungalow style roofline.

The change in use of the building illustrates the change in pattern of urban settlement of the town.

Assessment of significance

SHR Criteria c) *Unusual example of urban terrace housing in a rural coastal setting. Industrialisation throughout the 19th Century, and less rapid modes of transport brought more dense urban housing to Australian cities (reflected in the move to terrace housing), and examples of this style remained popular and were built into the 1920s and 1930s.*
 [Aesthetic significance]

SHR Criteria f) *Rare example of early domestic, medium density brick architecture within the commercial precinct of the town.*
 [Rarity]

SHR Criteria g) *Representative of terrace style buildings of the early Twentieth Century.*
 [Representativeness]

Integrity/Intactness: *Interiors of the buildings have been modified for commercial use over the years.*

- 5 The proposed pergola and other minor alterations to the front of the Bookroom have an impact on the original facade of the building. The application was referred to Councils Heritage advisor who concluded that:

- 10 *Outdoor seating and a coffee cart enhance the adaptive re-use of the building book shop and customer facilities. However the impact of the various additions and structures on the frontage and forecourt of the building detract from, and obscure the façade of the terrace building and add clutter to its setting. These impacts could be ameliorated by removal of the fixed pergola, or redesign to a lower roof which not attached and does not project above the verandah of the building, the removal of all signage attached to the verandah posts, and use of a colour scheme consistent with to the era of the building in accordance with Council's adopted policy.*
- 15

5 *The black and white business identity signage is acceptable (and recognised in terms of its appropriateness to the bookshop) but it is not appropriate or necessary for the colour scheme to be extended over the entire building. The SEE anticipates this requirement stating 'there is likelihood that the colour and materials used must be finished in appropriate Heritage palette'.*

10 When viewed in totality the pergola is a minor element added to the front of the building. Further, it is a lightweight structure that can be removed should the owners of the property ever wish to demolish it whilst the landscaping and vines growing over the pergola provide for a shaded attractive area at the front of the building. Although the pergola is painted black, the vines growing over it limit any impact arising from it not being painted in a heritage palette.

15 However should the building ever be repainted it is recommended that the colour scheme be approved by Council prior to work commencing. It is also recommended that various signage attached to the verandah posts also be removed with Councils Heritage Advisor noting that it detracts from the architectural detail and setting of this item. Appropriate conditions of consent have been recommended.

20 The proposal raises no other issues under the DCP.

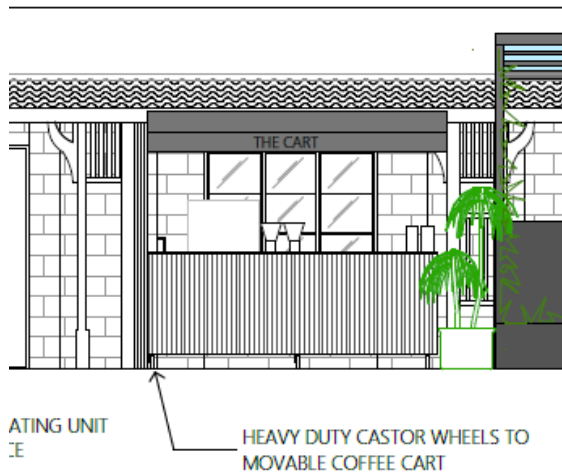
4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

25 No draft EPI's affect the proposal

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

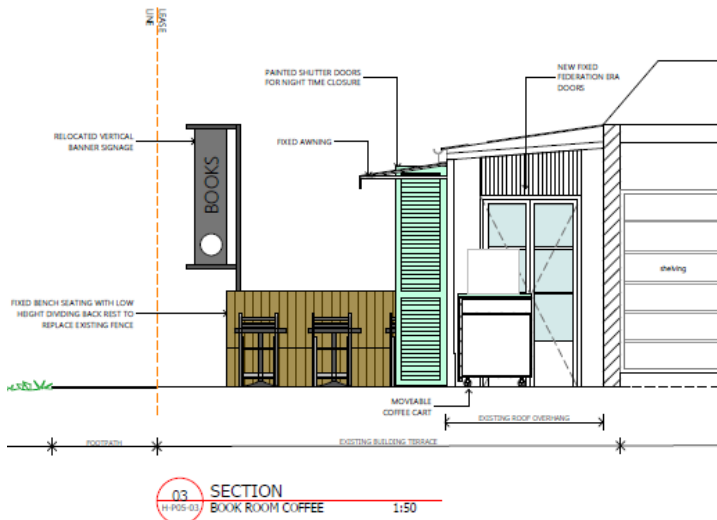
Chapter B10 Signage

30 The cart awning sign on the coffee cart is modest and has no detrimental impact to the appearance of the building. In terms of the above awning sign this has the appearance of a cinema sign but it is considered appropriate in terms of its location facing the corner with its area and dimensions consistent with the maximum area of 3.2 m² under the DCP.



The Cart Awning Sign

5 The smaller banner sign in its context with the book shop is also un-offensive. From a site inspection the banner faces the other way and is much higher then depicted on the plans. Under the DCP such signage should be a minimum of 2.6 metres above ground level to prevent any conflicts with pedestrians or the like. Provided the sign doesn't intrude over the footpath or pedestrian pathways and it remains facing towards the building as currently the case, the banner sign is appropriate. Conditions to apply.



10 **Banner signage**



Actual Banner Signage

15 **Chapter C1 Non Indigenous Heritage**

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.10

5 As discussed above the colour scheme is not sympathetic with Councils colour requirements under DCP 2014. However due to the lightweight nature of the structure and landscaping growing over it, it not recommended that the pergola be repainted. However it is recommended that should the building ever be repainted then it should comply with Councils heritage palette at that time.

4.5 Environmental Planning & Assessment Regulation 2000 Considerations

10 The proposal raises no issues under the EPA Regulations 2000

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

15 Proposal is unlikely to have an adverse impact on the built or natural environment. Conditions to apply that the coffee cart is to operate only whilst the Bookroom is open.

4.7 The suitability of the site for the development

20 The subject site is considered suitable for the proposed development.

4.8 Submissions made in accordance with this Act or the regulations

25 The DA was exhibited for a two week period and Council received one objection raising the following issues.

- 30
- 1) *It would increase the demand for parking in the town area. There is not enough parking already*
 - 2) *It would increase the amount of alcohol consumed in Byron Bay. There is too much alcohol consumed in Byron Bay already*
 - 3) *someone could buy the alcohol, drink, wander across Fletcher street and get hit by a car. There are too many people wandering across Fletcher st already*

35 **Staff Comments:** The proposed coffee cart will not generate a demand for additional parking and there is no proposal to serve alcohol from the coffee cart.

4.9 Public interest

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

5. DEVELOPER CONTRIBUTIONS

45 Provided the Coffee Cart remains mobile, is not connected to Councils Water and Sewer infrastructure and only takeaway food and drink products are sold with no table service, there is no nexus to levy contributions including water and sewer charges.

6. CONCLUSION

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.10

5 The proposed development comprises two main components being the “retrospective approval” for the construction and use of the pergola at the front of the Bookroom and consideration of the coffee cart. The coffee cart can continue in its current location, provided it is not connected to Water and Sewer infrastructure and provides only takeaway food and drink with no table service.

10 The pergola has been considered as not overly sympathetic with the heritage values of the existing building, but it is noted that the structure is lightweight and can be removed in the future. It also has vines covering it already providing an attractive shaded area at the front of the building. Provided that the landscaping is maintained and the pergola remains unroofed it is considered the proposal is acceptable.

15 The application also seeks approval for business signage which is considered acceptable subject to conditions of consent. The proposal raises no environmental issues in terms of impacts and the site being within the central business district of Byron Bay is considered suitable for the proposed development. The application is recommended for approval subject to conditions of consent.

BYRON SHIRE COUNCIL

**Report No. 13.11 PLANNING - Development Application
10.2021.178.1 Studio at 1 Beach Avenue South
Golden Beach**

Directorate: Sustainable Environment and Economy

5 **Report Author:** Rebecca Mercer, Team Leader Planning Services

File No: I2021/778

Proposal:

DA No:	10.2021.178.1			
NSW PP	PAN-85961			
Proposal description:	Studio			
Property description:	LOT: 37 DP: 31166			
	1 Beach Avenue SOUTH GOLDEN BEACH			
Parcel No/s:	98120			
Applicant:	Mr T L Jamieson			
Owner:	Mr T L Jamieson & Ms R J Jerdan			
Zoning:	LEP 1988 2(a) Residential Zone & 7(f2) Urban Coastal Lands			
Date received:	7 April 2021			
Integrated / Designated Development:	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable	
Concurrence required	No			
Public notification or exhibition:	– Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications – Exhibition period: 14/4/21 to 27/4/21 – Submissions received: 1 – from Crown Lands – Submissions acknowledged: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			
Other approvals	<input type="checkbox"/> N/R	<input checked="" type="checkbox"/> W & S (68)	<input type="checkbox"/> OSMS (68)	<input type="checkbox"/> ST (68)
	Other: <input type="checkbox"/> RA (138)			
Variation request	Clause 64A - 32%			
Delegation to determine	Council			
Issues:	<ul style="list-style-type: none"> Floor Space Ratio 			

Summary:

This application seeks approval for a Studio to be constructed above an existing double garage at 1 Beach Avenue, South Golden Beach. The studio has a floor area of 27.3m² with associated decks connecting the space to the existing dwelling

5 The subject site is a small rectangular lot with an area of only 290.m² with some 205.m² of the site zoned 7(f2) Urban Coastal Lands and the remaining 85 m² in the 2(a) Residential zone pursuant to Byron LEP 1988. The proposed studio additions to the dwelling results in an exceedance to the 0.5:1 floor space ratio requirement under clause 14 of the LEP 10 1988. A Clause 64A variation accompanies the application and is supported for the reasons detailed in this report.

15 The site is bordered by Beach Avenue to the west, Helen Street to the South, Jack Lane to the east, and a neighbouring property to the north. The proposed studio is to be sited on top of the existing garage which is accessible from Helen Street. Although encroaching into the street setbacks, the proposal is considered acceptable having regards to general streetscape in Beach Avenue and the curved nature of the lot boundary facing the corner of the two streets. Further, due to the orientation of the site, the studio will not overshadow or impact on the views of any neighbouring properties. The site is also constrained by Acid 20 Sulfate Soils Class 2, Flood Liable Land, and Coastal Erosion Precincts 2 and 3. The proposed studio raises no issues in terms of these constraints.

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




25 NOTE TO COUNCILLORS:

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

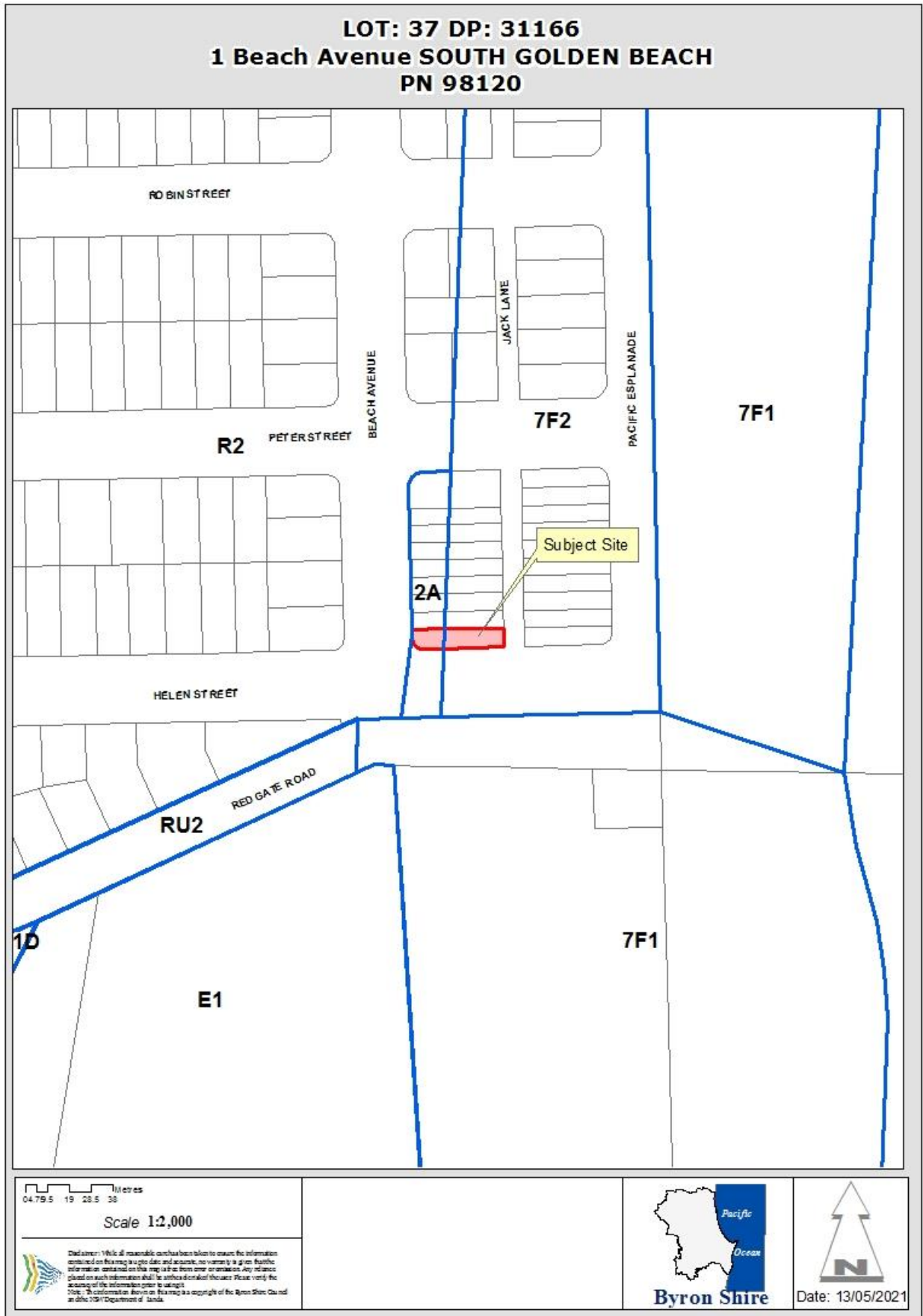
RECOMMENDATION:

35 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.178.1 for Studio, be granted consent subject to the conditions of approval listed in Attachment 2 (E2021/66707).**

Attachments:

- 40 1 10.2021.178.1 DA Plans, E2021/66471 
2 10.2021.178.1 Recommended conditions of consent, E2021/66707 
3 10.2021.178.1 Submission from NSW Crown Lands, E2021/71053 

BYRON SHIRE COUNCIL



Assessment:

1. INTRODUCTION

History/Background

The following previous determinations have been made on the subject site:

- 5 • BA 6.1996.2059.1 for a dwelling was approved 2 February 1996.
- DA 10.1999.102.1 for dwelling 7(f1) zone was approved 16 April 1999.
- DA 10.2009.572.1 for alterations/additions to existing dwelling and new garage was approved 13 March 2010.
- 10 • DA 10.2009.572.2 for s96 modify condition 10 (alteration/additions to existing dwelling and new garage) was approved 28 May 2010.

Description of the proposed development

This application seeks approval for a 27.3m² studio to be constructed above the existing garage also involve small decks and access stairs. A bathroom involving a W/C, shower, and hand basin is included with the rest of the space open. The studio is proposed to be used for as a workspace for each of the owners businesses, namely a marketing consulting business and a photography/film editing business.

Most of the proposed studio is situated within the 2(a) zone with part of the eastern deck within the 7(f2) zone.

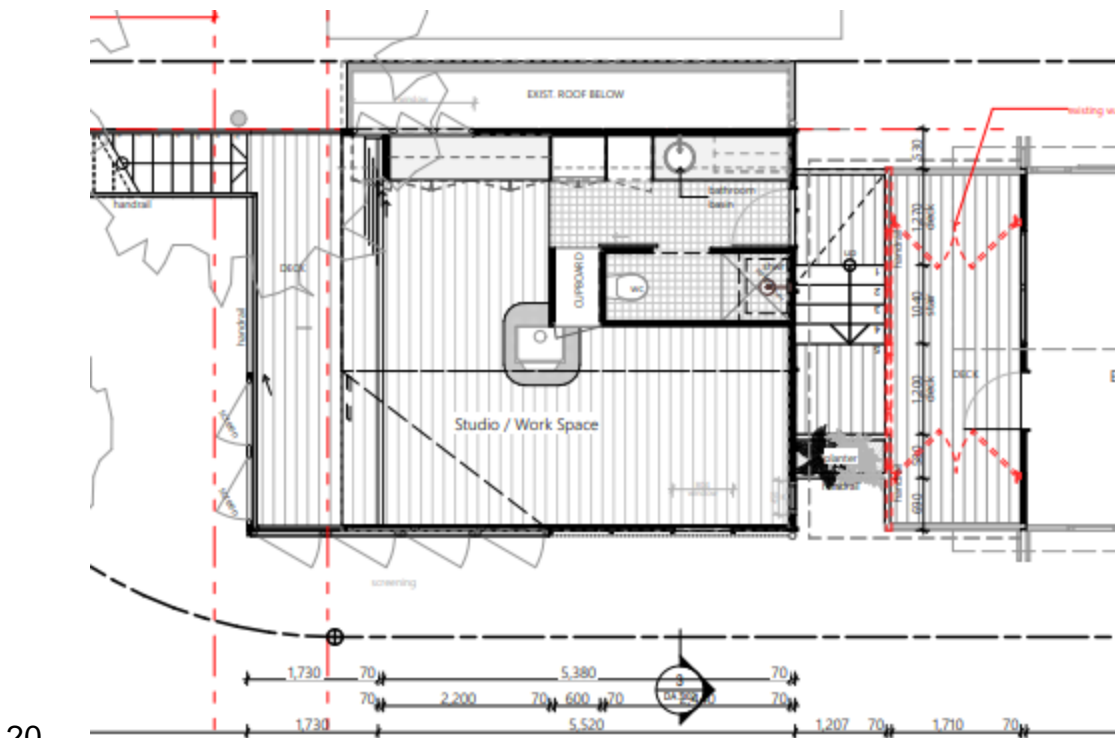


Figure 1 - Proposed studio floor plan

Description of the site

A site inspection was carried out on 30 April 2021

Land is legally described	LOT: 37 DP: 31166	
Property address	1 Beach Avenue SOUTH GOLDEN BEACH	
Land is zoned:	LEP 1988 2(a) Residential Zone & 7(f2) Urban Coastal Lands	
Land area is:	290.9 m ²	
Property is constrained by:	Flood Liable Land, Bushfire prone land, Acid Sulfate Soils Class 2, Coastal Erosion Pre 2 & 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

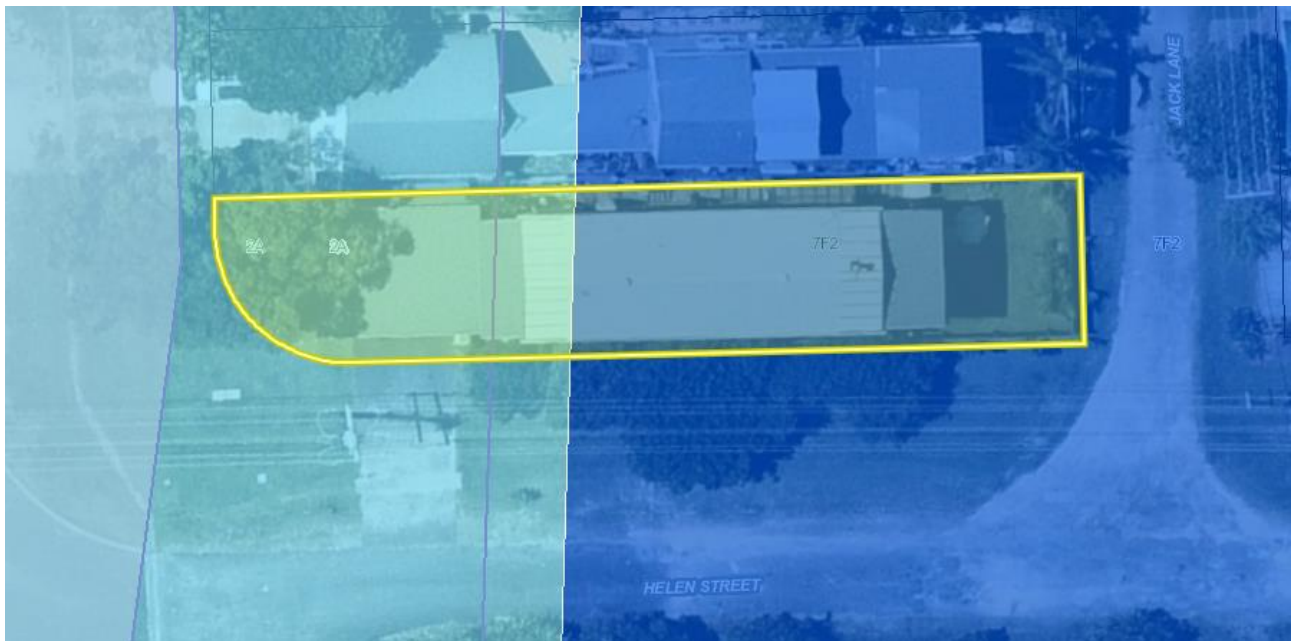


Figure 2 – 1988 LEP zoning and coastal erosion map extract



Figure 3 - Corner view of site



Figure 4 - Front of existing garage which studio is proposed to be constructed above

2. SUMMARY OF REFERRALS

Referral	Issue
Development Engineer	No objections subject to conditions.
Water & Sewer Engineer (Local Approvals Officer)	No objections subject to conditions.

3. SECTION 4.14 – BUSH FIRE PRONE LAND

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

Direction	South
Vegetation formation	Coastal Swamp Forest
Distance between vegetation formation and building	54m
Effective slope	Flat
Asset Protection Zone	Whole site
Bushfire Attack Level (BAL)	BAL– 12.5 to all facades.

A condition is included in the Recommendation of this Report.

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

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

15 4.1 State Environmental Planning Instruments (SEPP)

Considerations	Satisfactory	Unsatisfactory
<i>SEPP No 55—Remediation of Land</i> Consideration: The site is not mapped or listed as contaminated land. The proposal maintains the existing residential land use and doesn’t increase sensitivity. It is	<input checked="" type="checkbox"/>	<input type="checkbox"/>

BYRON SHIRE COUNCIL

Considerations	Satisfactory	Unsatisfactory
satisfactory having regard to this SEPP.		
<p><i>SEPP (Coastal Management) 2018</i></p> <p>Consideration: The subject site is mapped within a coastal wetland buffer, coastal environment area, and coastal use area. It is not considered the proposed studio will impact on surrounding coastal processes.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

4.2 Byron Local Environmental Plan 1988 (LEP 1988)

LEP 1988 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. The LEP 1988 clauses that are checked below are of relevance to the proposed development:

5

Part 1	<input checked="" type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input checked="" type="checkbox"/> 2A <input checked="" type="checkbox"/> 3 <input checked="" type="checkbox"/> 4 <input checked="" type="checkbox"/> 5 <input checked="" type="checkbox"/> LEP 1988 Dictionary <input checked="" type="checkbox"/> 7
Part 2	<input checked="" type="checkbox"/> 8 <input checked="" type="checkbox"/> 9
Part 3	<input checked="" type="checkbox"/> 14 <input checked="" type="checkbox"/> 24 <input checked="" type="checkbox"/> 32 <input checked="" type="checkbox"/> 40 <input checked="" type="checkbox"/> 45 <input checked="" type="checkbox"/> 63
Part 4	N/A

In accordance with LEP 1988 clauses 5, 8 and 9:

- 10
- (a) The proposed development is defined in the LEP 1988 Dictionary as Studio;
 - (b) The land is within the LEP1988 2(a) Residential Zone & 7(f2) Urban Coastal Lands according to the map under LEP 1988;
 - (c) The proposed development is permissible with consent; and
 - (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

2(a) Residential Zone	
Zone Objective	Consideration
to make provision for certain suitable lands, both in existing urban areas and new release areas, to be used for the purposes of housing and associated neighbourhood facilities of high amenity and accessibility,	The studio is ancillary to the existing dwelling; it is consistent with the surrounding low density residential environment.
to encourage a range of housing types in appropriate locations,	
to enable development for purposes other than residential purposes only if it is compatible with the character of the living area and has a domestic scale and character, and	
to control by means of a development control plan the location,	

BYRON SHIRE COUNCIL

form, character and density of permissible development.

7(f2) Urban Coastal Lands	
Zone Objective	Consideration
to identify urban land likely to be influenced by coastal processes,	Parts of the proposed decks are situated within the 7(f2) zone. The proposed studio is situated wholly within Erosion Precinct 3. Conditions have been recommended by Councils Engineers to satisfy the zoning.
to permit urban development within the zone subject to the council having due consideration to the intensity of that development and the likelihood of such development being adversely affected by, or adversely affecting, coastal processes,	
to permit urban development within the zone subject to the council having due consideration to— (i) the need to relocate buildings in the long term, (ii) the need for development consent to be limited to a particular period, (iii) the form, bulk, intensity and nature of the development, and (iv) continued safe public access to the site, and	
to allow detailed provisions to be made, by means of a development control plan, to set aside specific areas within the zone for different land uses and intensities of development.	

Clause 14 Residential areas and rural villages

This clause states that Council may consent to the erection of a dwelling-house on land to which this clause applies only if its Floor Space Ratio (FSR) does not exceed 0.5:1. The LEP 1988 defines a dwelling-house as:

5

Dwelling-house means a building or buildings containing one but not more than one dwelling.

Under the **floor plan area** definition, a studio is not excluded from the Gross Floor Area (GFA) calculation. The area of balconies are also included within the calculation.

10

The site area is 290.9m².

Following the definitions of the LEP 1988 the GFA calculations are as follows:

Existing first floor GFA (including balcony/deck): 91m²

15

Existing ground floor GFA: 66m²

Total existing GFA: 157m²

The proposed studio involves 27.3m² of internal floor area however is 36m² including western balcony as defined under the 1988 LEP.

The proposed GFA is 193m².

20

Therefore the FSR is: 0.66:1

A 32% variation is sought to the 0.5:1 FSR requirement set out under clause 14(7).

Clause 24 Development of flood liable land

As the studio is proposed above an existing garage it will be well above the flood planning level.

5 **Clause 63 Development on land identified on the Acid Sulfate Soils Planning Map**

The subject site is mapped as class 2 acid sulfate soils. The works will be above the garage with only minor ground works for the access stairs and small deck footings. It is not anticipated that the proposal will include earthworks of more than one tonne of soil below the natural ground surface nor have any impacts on potential acid sulfate soils.

10 The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development complies with all clauses of LEP 1988 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

15 **Clause 64A Exceptions to Development Standards**

Applicant has sought a variation to Clause 14(7) by proposing a FSR of 0.66:1 under the definitions of the 1988 LEP.

20 The applicant has submitted a written request that strict compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental grounds to vary the controls as follows:

- The calculations of GFA and FSR under the 1988 LEP are considered highly restrictive as they include balconies and decks. It is unreasonable and unnecessary for the subject property to be constrained by an outdated gross floor area definition while the subject property is awaiting inclusion into Byron Local Environmental Plan 2014.
- The site is extremely constrained by its small area involving only 290.9m².
- There are several lots within the immediate surrounding neighbourhood which exceed the 0.5:1 FSR under the 1988 LEP. For example, DA 10.2018.193.1 at 4 Pacific Esplanade was approved on 11/12/2018 with a FSR of approx. 0.75:1 under 1988 LEP.
- The studio is located above an existing garage; therefore it will not be increasing the coverage of the site. It will also not result in any significant change to the low density residential character of the area. An inspection of the site and surrounding locality indicates very similar forms of development.

35 Having regards to the above, it is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental grounds to vary the development standard. Further If the FSR is calculated under the 2014 LEP, the proposed studio brings the FSR for the whole site to 40 0.53:1. Although exceeding the 0.5:1.0 controls under Byron LEP 2014, considering the small area of the property, its frontage on three sides to public roads and a laneway, and the design of the studio above the garage with minimal – nil impacts on neighbours in terms of overlooking, privacy and overshadowing, the variation to the controls is not unreasonable.

45 The concurrence of the Planning Secretary is not required. It is recommended that the development standard can be varied in this instance.

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

Not applicable

4.4 Byron Shire Development Control Plan 2010 (DCP 2010)

5

Part C: Residential Development

C2.5 – Building Height Plane:

As the studio is proposed to be constructed above the existing garage, it will involve encroachments into the building height plane on the northern and southern boundaries. Due to the orientation of the site and the road on the south and west of the site, the encroachments will not cause overshadowing onto any neighbouring properties. No privacy issues are expected either as the property to the north contains a garage directly adjacent to the proposed studio. South golden beach is characterised by dwellings and structures of a similar form, most involving significant building height plane encroachments. The encroachments are considered to have a negligible impact and are therefore considered acceptable.

15

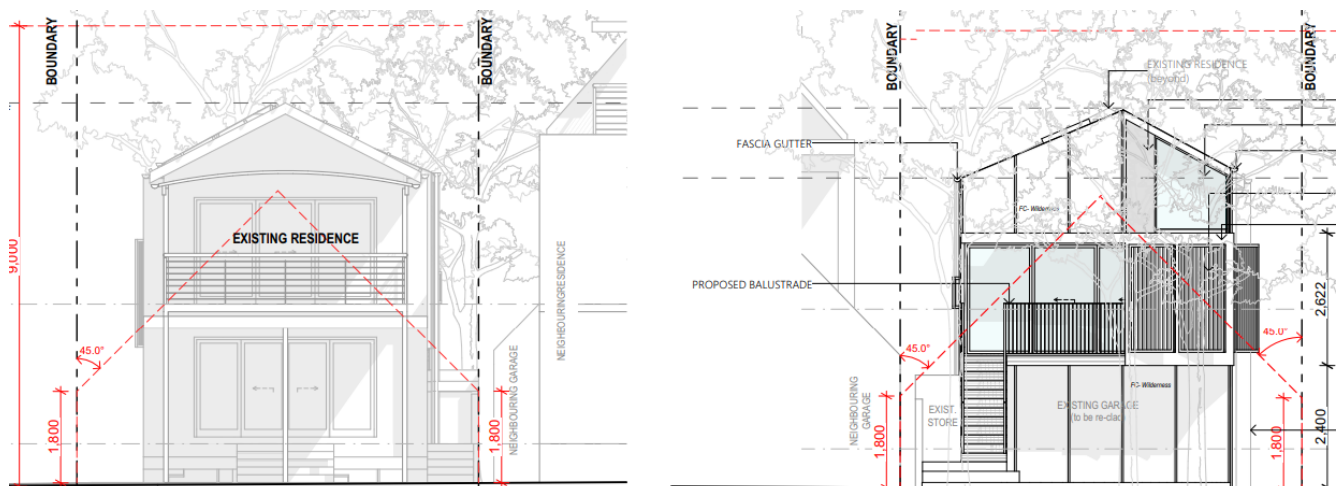


Figure 3 - Building height plane encroachments of existing dwelling and proposed studio

20

C2.6 – Setbacks from Street, Side and Rear Boundaries

The proposal involves encroachments into the minimum setbacks on the western and southern boundaries. This controls required a minimum setback of 6.5 metres from the primary front boundary with a reduction to 3m allowed for corner allotments. The proposed building works match the setback of the existing building to the southern Helen Street frontage being 1.41m. The proposal includes a deck area on the western side of the studio with a setback of 4.937 metres to the Beach Avenue frontage and the stairs further encroach into that. A setback of 900mm is provided to the northern property boundary. Although the proposal involves encroachments on both front boundaries, they are relatively consistent with the existing dwelling and the building lines of surrounding properties, the encroachments are considered reasonable in this instance.

30

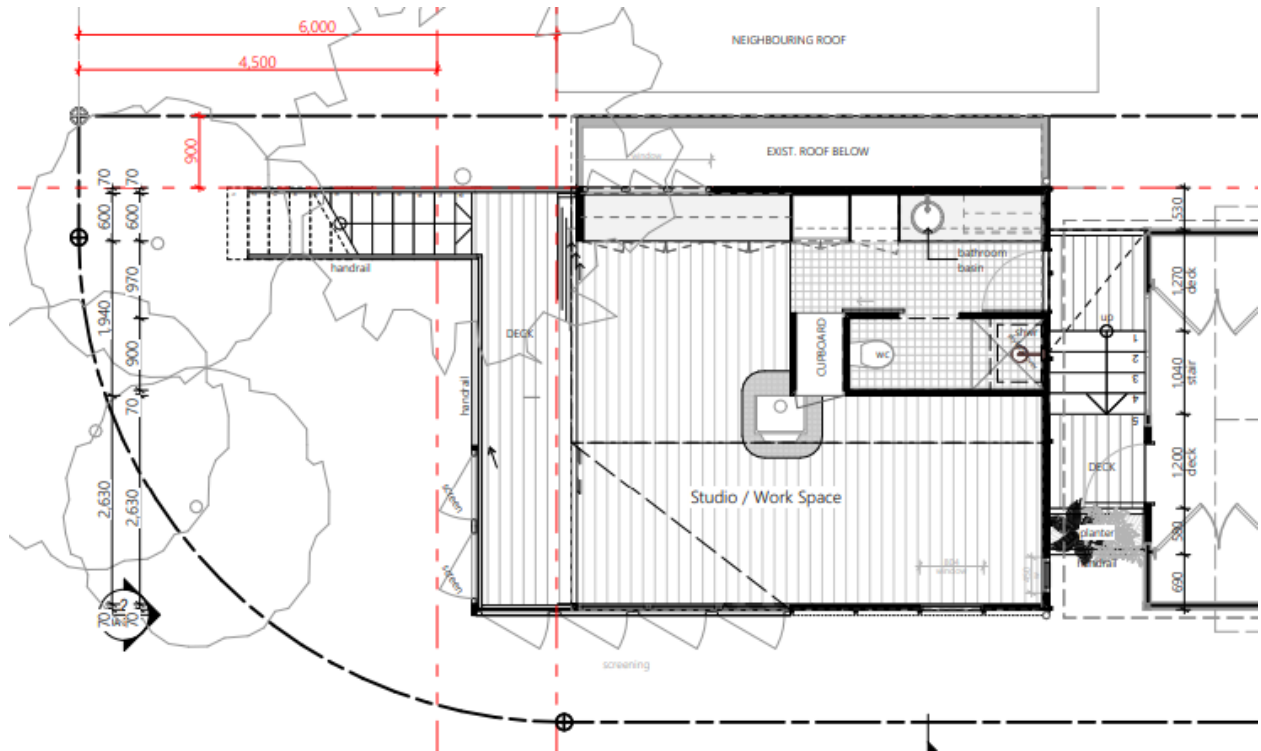


Figure 4 - Floor Plan showing western setbacks

C3.1 – Visual Impact

5 The proposed studio will match the existing dwelling having regard to built form, character, and materials. The building design includes a pitched roof over timber framed walls. The external walls are to be clad in a mix of FC sheeting materials. The roof is to be sheeted in Colorbond steel. It is not considered to adversely impact on the streetscape.

C14 – Studios

10 The internal floor area of the studio is 27.3m² and includes an open workspace plus a bathroom. The space is proposed to be used for both the owner’s businesses involving a marketing consulting business and a photography/film editing business. There are no unnecessary internal partitions to make it capable of being used for separate habitation.

15 Conditions of consent to apply in relation to the studios use.

Part J: Coastal Erosion Lands

20 The dwelling is located in both Precincts 2 and 3 however the proposed development is wholly within Precinct 3. The existing erosion escarpment is currently more than 50m from existing and proposed buildings. Development must cease if erosion escarpment comes to within 50m of any buildings and Restriction on the Use of Land must be placed on title – conditions recommended by engineer.

25 There is an existing positive covenant on title in accordance with Condition 13 of DA 10.2009.572.1.

No removability report was submitted with application, however the proposed works are within Precinct 3 and demolition is an option for removal. The proposed works are above

the garage approved by 10.1999.102.1 which didn't require removability to be demonstrated. The studio above the garage will not compromise the removability of the existing house as it is only connected by a staircase and deck which can be demolished. The proposal raises no other issues under the DCP.

5 4.5 Environmental Planning & Assessment Regulation 2000 Considerations

Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
92	No	Not applicable	Not applicable
93	No	Not applicable	Not applicable
94	No	Not applicable	Not applicable
94A	No	Not applicable	Not applicable

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

10 4.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.
Construction Impacts	The development will generate minor impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

Are there any Council Policies that are applicable to the proposed development? No

4.7 The suitability of the site for the development

The site is a serviced, with constraints affecting the property able to be managed. The site is suitable for the proposed development.

4.8 Submissions made in accordance with this Act or the regulations

5 The development application was publicly exhibited. There was 1 submission from Crown Lands in terms of protecting public lands (ie the beach reserve). The subject development does not adjoin the reserve and is unlikely to impact on Crown Land.

4.9 Public interest

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

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

No Section 64 levies will be required.

5.2 Developer Contributions

15 No Developer Contributions will be required.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

7. CONCLUSION

20 The proposed development is satisfactory having regard to the relevant planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. In terms of the variation being sought to the floor area, it is considered there are sufficient grounds to support the proposal and strict compliance with the development standard is not required in this instance. The application is recommended for approval subject to the conditions of consent.

Report No. 13.12 Place Planning Collective - Additional Community Members

Directorate: Sustainable Environment and Economy

Report Author: Andrew FitzGibbon, Place Liaison Officer

5 **File No:** I2021/806

Summary:

10 There are currently nine community members on the Place Planning Collective. Two additional members are being sought – one from Bangalow and one associated with the Byron Arts and Industry Estate. This aims to provide greater representation for the place plans for those areas. Mullumbimby and Federal are already adequately represented.

An Expression of Interest process for these additional members has been carried out and 15 nominations were received (refer Attachment 2).

15 Council must now consider these EOIs and nominate two additional members to join the Collective – one from Bangalow and one associated with the Byron Arts and Industry Estate.

A minor update to the membership section of the Place Planning Collective Charter is also recommended.


20

RECOMMENDATION:

That Council:

- 25
1. **Nominates the following two representatives from the expressions of interest contained in Attachment 2 (E2021/69485) to be part of the Place Planning Collective: _____ for Bangalow, and _____ for the Byron Arts and Industry Estate.**
 2. **Endorses the update to the Place Planning Collective Charter as detailed in the report.**

30 **Attachments:**

- 1 Place Planning Collective Charter - May 2020 - endorsed Res 20-217, E2020/31059 
- 2 Confidential - Expressions of Interest - Place Planning Collective Membership - May 2021, E2021/69485

Report

5 The Place Planning Collective has been established to promote and facilitate projects and policies relating to the implementation of the place plans in Byron Shire. This includes the place plans for Mullumbimby, Bangalow, and the Byron Arts and Industry Estate. A place plan for Federal is currently under development. Further information about the Place Planning Collective can be found on [Council's website](#).

10 There are currently nine community members on the Place Planning Collective as listed below. Two additional members are being sought – one from Bangalow and one associated with the Byron Arts and Industry Estate. This would help to provide greater representation for the place plans for those areas. Mullumbimby and Federal are already adequately represented.

The Charter for the Place Planning Collective (Attachment 1) allows up to twelve community members and three Councillors. Members are appointed for a two year term.

The table below details existing members of the Place Planning Collective:

Name	Mainly supporting place plan actions for:
David Brown	Mullumbimby
Natalie Eggenberger	Mullumbimby
Madeleine Faught	Mullumbimby
Sasha Mainsbridge	Mullumbimby
Jenny Bird	Bangalow
Clare Hopkins	Bangalow
Jack Dods	Byron Arts and Industry Estate
Alan Goldstein	Federal
Jenna Reed Burns	Federal

15 Councillor representatives currently include Cr Michael Lyon, Cr Basil Cameron and Cr Jan Hackett with other Councillors often attending as guests.

20 Council ran an Expression of Interest process for new members from 23 April to 14 May 2021. A notice was placed on council's website, an advertisement was run in the Echo, there were social media posts, and Council staff spoke with numerous community members/groups during the public exhibition.

Candidates were required to demonstrate their suitability for membership via an online form.

Council received 15 expressions of interest (refer Attachment 2).

Council must now consider these EOIs and nominate two people from this list to join the Collective – one from Bangalow and one associated with the Byron Arts and Industry Estate.

5 Background of Membership for the Place Planning Collective

10 The initial intention of the Place Planning Collective was to have seven community members selected through an Expression of Interest process and five community members selected randomly through the [Citizens Lottery](#). The aim was also to have a wide representation across the shire with members coming from areas where there are place plans already developed as well as members from other locations.

Over its first year of operation, it would be fair to say that some of the Collective members found it challenging to stay as active participants in the group. The key observations are:

- All but one Citizen Lottery appointment members have resigned. As such, an EOI process is preferred over the Citizens Lottery;
- 15 • Members with a direct interest in one of the place plans being managed or developed have maintained active membership engagement; and
- Members without a direct interest in one of the place plans being managed or developed have resigned or disengaged.

20 Given this experience, the Collective has recommended that additional members be sought through an EOI process that focuses on reinforcing representation of existing or developing place plans.

The group is confident that this refined approach to membership will result in less turn-over while also still keeping a broad shire representation which includes the four current place plan locations (Mullumbimby, Bangalow, Byron Arts and Industry, and Federal).

25 Update to the Place Planning Collective Charter

The Place Planning Collective Charter (refer Attachment 1) outlines membership selection requirements (refer Section 2 'Composition of the Group'). It is proposed to update this section to reflect the refined approach noted above as follows:

Section 2. Composition of the Group

30 The Collective will be made up of up to twelve community members and up to three nominated Councillors. Other Councillors are able to attend meetings as guests.

Community members may be selected through an Expression of Interest process (including public advertisement and selection by Council), or randomly selected through Council's Citizen's Lottery project.

If a new masterplan is being developed for an area, representatives from that masterplan steering group may be appointed directly to join the Collective.

5 In appointing Collective members, Council seeks to maximise a diversity of interests and skills, and achieve a mixed representation of the Shire’s community. Future members will be appointed to fill identified skill or representational gaps within the Collective.

Members will be appointed for a two year term (or at the beginning of a new Council term), and existing members will be invited to apply to remain on the group at the end of each term to ensure historical knowledge is retained.

10 If a member wishes to resign from the Collective, they are required to give as much notice as possible to allow their vacancy to be filled. If a member has been inactive for a considerable time, their membership can be cancelled by the group.

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	4.1.1.5	Implement Our Mullumbimby Masterplan, Bangalow Village Plan and Byron Arts and Industry Estate Plan

15 Recent Resolutions

- 20-703: Council Meeting 17 December 2020 – end of 2020 update
- 20-217: Council Meeting 21 May 2020 – endorsed the Charter for the Collective
- 19-690: Council Meeting 12 December 2019 – initial EOI nominations
- 19-451: Council Meeting 19 September 2019 – resolution to establish the Collective

20

Legal/Statutory/Policy Considerations

Nil

Financial Considerations

Nil

5 Consultation and Engagement

As described within the report.