



# Byron Shire Council



## Agenda Ordinary (Planning) Meeting

Thursday, 5 August 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 10.30am on the day of the Meeting. Requests for public access should be made to the General Manager or Mayor no later than 12.00 midday on the day prior to the Meeting.

Mark Arnold  
General Manager

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## CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

### Disclosure and participation in meetings

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

Committee, or

- (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

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

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

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

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

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## RECORDING OF VOTING ON PLANNING MATTERS

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

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

**BYRON SHIRE COUNCIL**  
**BUSINESS OF ORDINARY (PLANNING)**  
**MEETING**

**1. PUBLIC ACCESS**

**2. APOLOGIES**

**3. REQUESTS FOR LEAVE OF ABSENCE**

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

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

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6.1 Ordinary (Planning) Meeting held on 10 June 2021

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## BYRON SHIRE COUNCIL

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

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

NOTICES OF MOTION

**Notice of Motion No. 9.1 Rous Future Water**

**File No:** I2021/1181



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**I move that Council notes the outcome of the 21 July 2021 Extraordinary meeting of Rous County Council and:**

- 10 a) **supports the traditional custodians including the Widjabul Wia-bal Native Title Claim Group's aspirations with regard to the proposed Dunoon Dam project area**
- b) **acknowledges the role of Byron Shire Council to be part of securing our future water supply, both as members of Rous County Council and as responsible**  
15 **custodians of our region**
- c) **begins consultation with our community that**
- i) **assists them to reduce reliance on town water, and**
- ii) **strengthens community preparedness for climate extremes**
- 20 d) **works to implement diverse supply modes and sources and deliver efficiency and water conservation by which Council and the Shire's water supply can be more resilient.**

**Attachments:**

- 1 Draft Regional Water Strategy - Far North Coast, E2021/93271 
- 25 2 Future Water Project 2060 IWCM - public-exhibition - March 2021, E2021/93272 

**Signed: Cr Cate Coorey**

**Councillor's supporting information:**

30 At the time of writing, the Rous Regional Water Supply – draft revised Integrated Water Cycle Management Strategy (Future Water Project 2060) had not been adopted.

Assuming that it has been adopted (in whatever form), the key to embedding resilience into the water supply is to have a diversified portfolio of sources.

# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

9.1

An over-reliance on a single catchment (Rous) should be avoided so that if things go wrong – such as a contaminated water source or a low dam in a severe drought – there are other options.

- 5 Byron is already looking at the supply side – Lavery's Gap weir (or not), re-use of treated effluent from the STP and others.

Additionally, we need to be talking to our community about what they are prepared to do and finding ways to make significant changes to water management from the demand (consumer) side.

### **Staff comments**

- 10 **by Dean Baulch, Principal Engineer – Systems Planning, Infrastructure Services:**

(Management Comments must not include formatted recommendations – resolution 11-979)

- 15 Implementation of demand-side options (demand management, urban effluent reuse and private supplies) will form part of the long-term strategy through the implementation of parallel initiatives including the NSW government BASIX program, BSC's recycled water strategy (currently being reviewed and updated), the Regional Demand Management Plan (including rainwater tank rebates, the Sustainable Water Partner Program, smart metering and community engagement and education) and Council's water loss reduction measures. Increased drought restrictions are not proposed as part of the long-term strategy but may be required until water security is resolved.
- 20 Rous County Council is not a single catchment. It has diverse water sources and as a water utility, is looking into future water source options. All townships in the Shire are already supplied by Rous County Council (Mullumbimby has an emergency supply from Rous).

### **Financial/Resource/Legal Implications:**

- 25 Implications will be dependent on options or strategy adopted by Council to address the issue of water supply security.

### **Is the proposal consistent with any Delivery Program tasks?**

Yes

- 30 1.5.3.2 Implement recommendations from Mullumbimby water supply security investigations and upgrade



## Notice of Motion No. 9.2 Emergency Housing

File No: I2021/1155

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I move that Council:

1. Requests staff to prepare and submit a development application and any required supporting local approval applications for a “Transitional Supported Accommodation” development made under existing definitions in the Local Environmental Plan 2014, on that part of Lot 22 identified for Affordable Housing in the “Plan of Management Community Land Mullumbimby Sports Fields” that meets the following parameters:  
  
“Transitional Supported Accommodation” is temporary accommodation to bridge the gap from those in insecure housing or at risk of homelessness to permanent housing and is located as close as possible to existing residential facilities and social support services.  
  
“Temporary accommodation” is a residential use or development for a period of not more than 48 months from the date on which an occupation certificate is issued under the Act.
2. Requests an update on the progress of the emergency accommodation for women that was requested by the Community Centre and advises the timeframe in which this may be delivered.
3. Requests a report exploring the potential and highlighting the barriers for the Old Mullumbimby Hospital Site to be used for temporary accommodation until the permanent use of the site has been finalised.
4. Provides a report on any Council land zoned RE1 which could conceivably under the current rules provide emergency accommodation as per 1. above.

30

Signed: Cr Michael Lyon

### Councillor’s supporting information:

The June 24 Council meeting reported back on the motion from March looking for ‘vanpacker accommodation’ saying that a recent review of Council land assets and land managed by Council had failed to locate a site within the Shire that has the required location, space and amenities to support the proposal. It also highlighted the need for any

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5 site to ensure appropriate space and amenities and be within permissible land use zones under the Byron LEP for Caravan Parks, Manufactured Home Estates or Low-Key Camping Grounds. This motion is moving on from 'vanpacker accommodation' and looking at 'Transitional Supported Accommodation' as defined above on Lot 22 as per the adopted Plan of Management.

10 It is important to clarify exactly who we are trying to help here and what we are trying to provide in this motion. We are not talking about social housing, as has been noted previously, we need to leave that to State and Federal Governments. Nor are we talking about those people whose circumstances allow for wrap-around services and interventions to occur, such as those in acute domestic violence situations. We are talking about a model which is underpinned by people who have the finance to pay for accommodation in a 'normal' market, including pensioners, key workers on minimum wage, single parents etc. that have the means to finance 'affordable accommodation' which until recently, was available in sufficient quantity for us to not be in a crisis.

15 What needs to be clearly understood here is not just the extent of the emergency we are currently in, but that we are not even close to the peak of this crisis. There are many landlords in Byron Shire who are still currently charging well below "market rent" and by this, I mean the rent that could be achieved. Inevitably, some of these landowners will raise their rents in the coming months to capitalise on the increase in the market, whilst others will sell and be replaced by landlords who will have much higher mortgages to cover, which translates to charging higher rents. I am very grateful to those landlords that do protect our community from the current market forces and seek to simply cover their costs and mortgage and provide affordable accommodation. What is clear, is that more of our community will be displaced and forced to live in sub-standard conditions as this crisis deepens. We need to be bold and innovative and keep pushing for change from a state government planning department which currently is not serving us. There needs to be a cultural change demanded of State planning staff from those who represent us in State Government. This Council has provided at least 6 separate pathways for short and long-term relief of this crisis and each of them is being held up due to a lack of urgency, understanding or will, to assist us in housing our displaced community. The time for talk and imposing barriers is over, we need to see a change of approach which is about enabling solutions and actions implemented on the ground. Our community is depending on it, our local economy is depending on it, and we simply cannot wait any longer.

## Staff comments

35 **by Shannon Burt, Director, Sustainable Environment and Economy:**

(Management Comments must not include formatted recommendations – resolution 11-979)

Lot 22 Mullumbimby and the Former Mullumbimby Hospital site are projects that have been subject to reports to Council.

40 The current uses of both sites are otherwise limited to that which their land use zoning and land classification permits. Both sites also have environmental constraints that need to be considered as part of any future planning approval process, these have not been fully examined to date.

# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

9.2

The Lot 22 Planning proposal project page can be viewed below:

[Lot 22 Mullumbimby - Future housing - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/lot-22-mullumbimby-future-housing-byron-shire-council)

Council owned land zoned RE1 Public Recreation is normally coupled with a community land classification which limits the use of the land to that in a Plan of Management.

- 5 Lot 22 has an RE1 zone and a community land classification under a Plan of Management. The Plan of Management however provides for proposed affordable housing on a portion of it. See plan below.

Byron Shire Council  
#775742 Plan of Management - Community Land  
Mullumbimby Sports Fields



- 10 As such and as per the recommendation, a development application can be prepared and submitted for a “Transitional Supported Accommodation” development made under existing definitions in the Local Environmental Plan 2014 on Lot 22.

# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

9.2

No other Council owned land zoned RE1 and classified community with a Plan of Management has this provision. This restricts the applicability of the above approval pathway to Lot 22 only, without a lengthy and difficult statutory process.

- 5 The Former Mullumbimby Hospital site is a Special Purposes zone which without a change to expand permissible land uses limits the use of the land to that of Health Care Services.

Details of the future uses identified by a stakeholder reference group for the site can be viewed at the report link below. Housing was one of the uses.

*Report No. 13.9 Mullumbimby Hospital Site Project Reference Group Recommendations: future use of the site*

- 10 [Agenda of Ordinary Meeting - 22 November 2018 \(infocouncil.biz\)](https://infocouncil.biz)

This project which has been delayed due to site contamination (now resolved), is to be recommenced this FY.

In relation to Resolution 21-122 Housing Crisis, an update was provided to Council at the meeting 24 June 2021 where Resolution 21-153 was adopted as follows:

- 15 **21-253 Resolved** that Council:

1. Notes the update provided by staff on Resolution 21-112.

2. Continues to work with the other member councils in the NRJO on potential housing solutions for our region.

- 20 3. Continues to work with relevant state government agencies, housing providers and local housing groups to deliver (on ground) safe, secure and location appropriate housing solutions for Byron Shire locals and key workers.

4. Continues to advocate and agitate for housing policy change and financial support from the state and commonwealth governments where opportunities arise.

- 25 5. Hosts a session with staff, interested property/land holders and key stakeholders to specifically look at quick short term options and sites. This could include local language schools, backpacker accommodation providers, and 'meanwhile use' options for vacant buildings, both private and public.

- 30 6. Explores the possibility of doing a public call out to land and property owners outlining the challenges we are facing in the shire in regard to this as per Bega Valley Shire Council's recent move, calling on holiday homeowners to consider putting their vacant properties up for rent during the quieter winter months or transfer it to long term altogether. (Ndiaye/Lyon)

Work on this resolution is ongoing. Updates to Council will be provided in time.

- 35 In regard to item 2 of the NoM the proposal is being actively worked on. Encroachment issues have been resolved and a suitable model of cabin identified, however due to the impact of covid there are considerable delays in availability – on the order of months. Staff are investigating alternative suppliers, but the delivery delays appear to be common across the market. We have even considered overseas suppliers.

**Financial/Resource/Legal Implications:**

Staff and resources required to implement resolutions are considered on a case-by-case basis.

**Is the proposal consistent with any Delivery Program tasks?**

5 4.2 Support housing diversity in appropriate locations across the Shire

2.2 Support access to a wide range of services and activities that contribute to the wellbeing of all members of the Byron Shire community

**Notice of Motion No. 9.3 Rent Reduction for Bangalow Theatre Company Production - RENT**

**File No:** I2021/1174

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**I move that Council agrees to waive the rent payable by the Bangalow Theatre Company to Bangalow A & I Hall S355 Committee in respect of its recent production to enable the Company to recoup costs.**

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**Signed: Cr Michael Lyon**

**Councillor's supporting information:**

15 The Bangalow Theatre Company is a non-profit incorporated association with no corporate sponsors. Covid has severely impacted the company with its main fundraising event, BanGala, cancelled and the current restrictions also impacting RENT, a recent production at Bangalow A & I Hall. This production had been postponed from 2020.

20 The current outbreak and reimposition of 4sq m social distancing requirements, meant the seating capacity of the Hall was considerably curtailed, and the (already reduced) rent of \$5,000 was unable to be recouped through ticket sales. This threatens the viability of the company and its ability to continue to play an active role in the local arts culture.

25 Bangalow Theatre Company productions has a name for professionalism and quality entertainment and tickets sell rapidly. The company received a standing ovation on the evening of 14 July. Now by the time the latest restrictions came into force it was too late for the production to be cancelled, the right to RENT already having been purchased and further costs incurred in preparing the production.

The Bangalow A & I Hall Committee is conscious of the risk to the company's future and had already agreed some rate reductions, however it now supports a full fee waiver.

**Staff comments**

30 **by Vanessa Adams, Director Corporate and Community Services:**

(Management Comments must not include formatted recommendations – resolution 11-979)

If Council resolves to support this NoM staff will advise the Company and Committee accordingly.

**Financial/Resource/Legal Implications:**

There are no significant financial implications in this proposal.

**Is the proposal consistent with any Delivery Program tasks?**

- 5 Yes - 2.1.1 Support a range of inclusive events that encourage broad community participation and promote social inclusion.

## **Notice of Motion No. 9.4 Mining and Mining Exploration in Clarence Valley Catchment**

**File No:** I2021/1156

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**I move that Council:**

1. **Supports the Clarence Valley Council community in seeking a moratorium on future mining and mining exploration in the Clarence Valley Catchment.**
- 10 2. **Advocates to the Premier Gladys Berejiklian MP, Deputy Premier John Barilaro MP and the Minister for Energy & Environment Matt Kean MP.**

**Attachments:**

- 15 1 Confidential - Background to Clarence Valley NOM - CCA LOCAL STAKEHOLDER STATEMENTS, E2021/93263

**Signed: Cr Michael Lyon**

### **Councillor's supporting information:**

20 I have been contacted by the Clarence Catchment Alliance (CVC) on behalf of Clarence Valley ratepayers and visitors, 10,000 of whom who have signed a hard copy petition opposing mining exploration in the Clarence Valley Catchment. The Clarence Valley LGA, whilst not bordering Byron Shire, is only two shires to the south along the coastline and water from the Clarence River flows out to our beaches.

25 The Clarence Valley Council has voted to oppose mineral mining in the Clarence Valley. The CVC has recently written to neighbouring water catchment Councils to ask for support on their decision and to ask for those councils to act likewise.

The CCA is writing to Byron Shire Council as many of the signatories on the petition, and many of their followers on social media are from our LGA, with particular support from the surfing community (and surfing internationally).

30 They have asked for Byron Shire to join with CVC and CCA to oppose mineral mining in our water catchment area. Other Councils to have declared besides Clarence Valley include Bellingen and Glen Innes.

The petition of over 10,000 signatures has been sent to the New South Wales Legislative Assembly for debate.



Attached is a list of stakeholder statements that highlight the concerns.

## Staff comments

**by Shannon Burt, Director, Sustainable Environment and Economy:**

(Management Comments must not include formatted recommendations – resolution 11-979)

- 5 The Clarence Valley Council considered a Notice of Motion Mining in the Clarence Valley at its ordinary meeting 27 April 2021 and resolved as follows:

### COUNCIL RESOLUTION – 07.21.006

That Council:

- 10 1. *Note that at the Council meeting on November 24 Council resolved inter alia to “oppose mining in the Clarence River Catchment and to seek the support of both state and federal governments to impose a moratorium on further mining exploration licences and to cancel existing licences.”*
2. *Acknowledge that this motion does not affect existing mines or quarrying operations;*
- 15 3. *Thank the Hon. John Barilaro for his response on behalf of the Minister for Energy and Environment, Hon. Matt Kean MP and advising that Council was not seeking an explanation of the process of developing mining in the Clarence River Catchment but was advising the state government of its strong opposition to mining in the Clarence River Catchment;*
- 20 4. *Advise Hon. John Barilaro that the council, representing the community’s strong opposition to such mining, is asking for the Clarence River Catchment to be scheduled in the relevant environmental, planning and mining legislation as a no-go zone for minerals mining due to the Catchment’s almost unique natural and cultural values, many of which depend on the Clarence River and its tributaries, and which support essential and valuable industries which contribute to the local economy as*
- 25 *well as providing drinking water for the Clarence Valley (51,000+ residents) and Coffs Harbour City Council (76,000+ residents) and water for local agricultural industries;*
5. *Write to the Premier of New South Wales, the Hon. Gladys Berejiklian advising her of Council’s resolution and seeking her support for a moratorium on mining in the Clarence River Catchment;*
- 30 6. *Write to the adjoining councils that have responsibility for areas draining into the Clarence River Catchment requesting that they support council’s stand and ask them to pass resolutions to oppose mining in areas affecting the Clarence River Catchment.*

35 A link to the Council agenda can be found here: [07.21.006-NOM-Response-to-John-Barilaro-MP-re-Mining](#)

**Financial/Resource/Legal Implications:**

Not applicable

**Is the proposal consistent with any Delivery Program tasks?**

Not applicable.

**Notice of Motion No. 9.5 MOs and CTs – pathway for secondary dwellings and dual occupancies**

**File No:** I2021/1175

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10 I move that Council investigates how to enable a workable pathway to facilitate secondary dwellings on Multiple Occupancies and to facilitate secondary dwellings and/or dual occupancies on Community Titles.

**Signed: Cr Michael Lyon**

**Councillor's supporting information:**

15 It is in Council's interest to find innovative ways to expand the stock of affordable housing destined for locals, family members and essential workers without delay.

Council can investigate the introduction of contemporary provisions that allow for secondary dwellings and/or dual occupancies on community titles that can demonstrate their site's capability for additional houses. This would put them in the same position as  
20 other rural properties, which require site suitability and all the requisites through the normal DA process. For multiple occupancies, only secondary dwellings are potentially permissible. Though there is already a theoretical pathway for the attainment of the above, it has proven to be almost impossible to satisfy.

25 MOs and CTs present a desirable source of potential extra housing in the shire. With associated measures ensuring positive social, ecological and food growing outcomes, existing communities can contribute to creating, in the short term, sustainable, permanent housing stock at no cost to the public. Allowing communities to demonstrate the environmental, social and local economic feasibility of secondary dwelling and/or dual occupancy developments via the DA process can contribute to the provision of diverse and  
30 affordable housing in the Shire's rural areas.

As almost all other rural lots are permitted secondary dwellings or dual occupancies on DA merit, prohibiting them on communities is on the face of it unjust and discriminatory.  
35 Individual lots on communities are often larger than or similar to small acreage lots on rural estate subdivisions. Communities are also responsible for the maintenance of the common assets, usually land of high conservation value. They are subject to strenuous environmental rehabilitation and maintenance measures so it is worth asking if we should be applying this selective prohibition that ignores these facts.

## BYRON SHIRE COUNCIL

### NOTICES OF MOTION

9.5

Claims have been made that the number of dwellings on approved Multiple Occupancies (MOs), and the number of Lots in Multiple Occupancies converted to Community Title (MO to CT) properties were originally determined by an analysis of environmental capacity, presumably having regard to the natural, social, and economic environment. That claim may not be true.

The following contentions have been provided to me in support of this Notice of Motion and are worthy of debate:

1. Formal planning recognition for rural MOs in NSW arose originally from pressure for formation of Intentional Communities, largely in the NSW Northern Rivers area. After extensive investigation (and some hand wringing) the NSW Government in 1988 published State Environmental Planning Policy No. 15 (Multiple Occupancy of Rural Land) (SEPP 15). That Policy determined maximum dwelling and population densities in MO communities by an arbitrary method that used a series of equations based on various land areas, together with a cap on the resultant maximum yield of 4 persons per dwelling.
2. When Byron LEP 1988 introduced its own Multiple Occupancy provisions via Clause 17A and Schedule 10, it once again applied arbitrary limits on dwelling house numbers to 'amendment No. 67 land', and again an arbitrary maximum number of dwelling houses for 'Schedule 10' land, determined largely by the number of houses existing on the site.
3. More recently the number of Dwelling house Lots in MO to CT properties was again based primarily on the number of existing houses on the site.
4. Over the decades since SEPP 15 first came into effect environmental assessment processes have advanced, social norms have changed, population pressures have grown, diversification of our communities has occurred, and now a serious Housing Crisis has been declared in our Shire and far wider. In many cases times have moved on, and environmental assessment techniques have changed since the original approvals. There is a strong need for planning authorities to understand and work positively with contemporary changes in community structure and needs.

#### **Enforcement of a prohibition of STRA on secondary dwellings:**

Intentional communities have expressed their will to impose and comply by legally binding mechanisms to prohibit short-term holiday lettings in their potential extra dwellings.

Communities' internal governance bodies can provide a mechanism for prohibiting short-term holiday-letting to ensure additional housing would be destined for long-term residency.

These, as an added measure to any consent conditions, are considerably more enforceable than a restricting consent condition alone.

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On a strata property (CT) the by-laws in section 5 (By-laws required by Public Authorities) can be amended/updated to restrict STRA including application of fines.

- 5 In case of infringement an application to enforce can be made to the NCAT (NSW Administrative Tribunal). Alternatively the CJs (Community Justice Centres) can be asked to conduct mediations to resolve STRA disputes.

- 10 On MOs such regulatory provisions need to be embedded in company constitutions and co-owners Deeds. For such regulations to be inserted in existing legal arrangements, in the case of tenants in common, all owners must agree and in the case of companies, there must be a sufficient majority of shareholders to pass a special resolution, or some other type of resolution provided for in the constitution.

MOs and CT's may offer better ability to ensure compliance than other privately owned lots for issues such as secondary dwellings not being used for STRA.

CTs are the better equipped as fines can be applied (more easily done by CTs managed by 'Strata Companies')

- 15 MOs are a bit weaker on enforcement but are still much better positioned than other rural private lots.

### **Staff comments**

**by Shannon Burt, Director, Sustainable Environment and Economy:**

- 20 (Management Comments must not include formatted recommendations – resolution 11-979)

### **MO/CTs**

The complexities, historic and current around the mapped MO/CT sites, and the approval pathways for new development of, or on MO/CT sites have been the subject of a recent Notice of Motion and staff report.

- 25 Notice of Motion No. 9.2 Multiple Occupancies and Rural Workers Cottages

[Agenda of Ordinary Meeting - Thursday, 24 June 2021 \(infocouncil.biz\)](https://infocouncil.biz)

**21-221 Resolved** that Council:

- 30 1. Prepares a report exploring the possibilities, hurdles, and opportunities for continuing Multiple Occupancies and Community Title as a pathway to providing more options for accessible and affordable housing in the Byron Shire.
2. Prepares a report on pathways to encourage the use of rural workers' cottages to provide accommodation for farmers wanting to live and work on the land.
3. Progress points 1 and 2 as part of the review of the RLUS to commence FY21/22. Noting this review will enable a fresh dialogue with relevant state government

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agencies on the current needs of our rural community five years on from the original RLUS adoption. (Ndiaye/Lyon).

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

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

[Agenda of Ordinary \(Planning\) Meeting - Thursday, 10 June 2021 \(infocouncil.biz\)](https://infocouncil.biz)

### **Secondary dwellings and dual occupancy dwellings**

- 10 The interplay between Council planning controls, the Short-Term Rental Accommodation (STRA) State Environmental Planning Policy and Strata Titles legislation with a proposed restriction on STRA use of secondary dwellings or dual occupancy dwellings approved on any MO/CT would need to be considered on a case-by-case basis.

[State Environmental Planning Policy \(Affordable Rental Housing\) Amendment \(Short-term Rental Accommodation\) 2021](#)

- 15 Secondary dwellings and dual occupancy dwellings are not residential accommodation types excepted from STRA use (exempt development) under the SEPP.

### **Strata Schemes and By Laws**

[By-laws in your strata scheme | NSW Fair Trading](#)

- 20 Owners' corporations can adopt by-laws that limit short-term rental accommodation in their strata scheme, by banning it in lots that are not the host's principal place of residence.

However, if someone lives in a strata property as their principal place of residence, they will still be able to rent out their home or rooms while they live there, or while they are temporarily away.

- 25 Residential tenancy laws have been changed to clarify that short-term rental accommodation arrangements of 3 months or less are not covered by the residential tenancy laws.

As Council is aware, multiple reports have been presented on agendas over the past few years to advise of the work that staff are progressing to address the current housing crisis in Byron Shire. This work is ongoing.

- 30 **Financial/Resource/Legal Implications:**

Not applicable.

### **Is the proposal consistent with any Delivery Program tasks?**

4.1.3.15 Provide action implementation update on the RLUS.

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This update will enable a fresh dialogue to commence with relevant state government agencies on the current needs of our rural community five years on from the original RLUS adoption, including a review of the current MO/CT controls.

## Notice of Motion No. 9.6 ICOLL Opening Strategy

File No: I2021/1182

5

**I move that Council:**

10

1. Undertakes a review of the current Opening Strategy for the Belongil ICOLL to determine whether it is impacting adversely on upstream lands within the Drainage Union catchment and/or flooding issues within the Byron Bay township.

2. Reviews its performance in comparison to the earlier 2001 Opening Strategy (Belongil Estuary Management Plan – Parker and Pont 2001).

15

3. Supports that this review should also address the likely impacts of the new Overland Flow Route on the ICOLL and from increased effluent flows proposed from the Byron Bay Sewage Treatment Plant (BBSTP), both upstream on Drainage Union lands and downstream at the mouth opening.

**Signed: Cr Michael Lyon**

20

### **Councillor's supporting information:**

Councillors will have received complaints from the Belongil Drainage Union Board regarding the perceived adverse impacts from the current Opening Strategy for the Belongil ICOLL. A site inspection was conducted on Thursday, July 15 and some Councillors have also inspected both the Vidal and Flick lands.

25

The Belongil System ICOLL is unique in that it acts as a critical part of the town stormwater scheme whilst also acting as the major receiver for treated effluent flows from the BBSTP. These flows also include the now-closed South Byron STP.

30

It is critical for the future good health of the relationship between the Drainage Board and Council that the Council respond proactively and expeditiously to these complaints. Council and the Board are inextricably linked in the management of the catchment, primarily by the Water Management Act 2000 and more importantly, because of the explicit Conditions of Approval for the BBSTP.



## Staff comments

**by James Flockton, Infrastructure Planning Coordinator, Infrastructure Services:**

**by Chloe Dowsett, Coast, Biodiversity and Sustainability Coordinator, Sustainable Environment and Economy:**

- 5 (Management Comments must not include formatted recommendations – resolution 11-979)

The Belongil Estuary is a highly valued and unique part of Byron's iconic coastal zone known for its abundant biodiversity and diverse ecosystems and is an integral part of the Cape Byron Marine Park. The Belongil Creek catchment interacts with almost all facets of the Byron Bay community.

- 10 As determined by community consultation (recently and over the years) preservation of the natural environment is a primary concern with the key values of the Belongil Estuary including (but not limited to):

- Healthy vegetation in estuaries, littoral rainforest and dunes providing habitat for wildlife and sand/soil erosion protection

- 15 • Functioning ecosystems with high flora and fauna biodiversity

- Natural systems are maintained to the greatest extent possible, allowing natural coastal and estuarine processes to occur

- Good water quality in the estuaries and open ocean that can support functioning ecosystems with high biodiversity and recreational opportunities

- 20 • Supported and environmentally sustainable agricultural and industrial businesses

- 25 The estuary is a complex ecosystem in its hydrodynamic and environmental processes and has been impacted over the previous century by significant urban and industrial development within the catchment resulting in a variety of threats. A detailed summary of the Belongil Estuary is outlined in the [draft Scoping Study for the Southern Shire Coastline](#) recently out for public comment on Council's website.

Belongil Estuary has variable entrance conditions and is termed as Intermittently Closed and Open Lakes and Lagoons (ICOLL), dominated by oceanic processes and remaining predominately in a 'closed' state.

- 30 The main reason for artificially opening the Belongil ICOLL entrance is to mitigate and reduce the impacts of flooding, with the role and responsibility landing with Council under floodplain management. In February 2020, Council adopted a sustainable, long-term Entrance Opening Strategy (EOS) (Res 20-040). The adopted EOS seeks to minimise the impact of entrance activities on natural littoral processes and the fragile ecosystems which exist within the Belongil Creek catchment, while also protecting the community and
- 35 existing built assets from flooding.

There are a variety of agencies, authorities, land managers and stakeholders with an interest or role in entrance management, resulting in varying management objectives for the Belongil Estuary. An overview of the key values and objectives identified for the estuary opening strategy is provided in the EOS. However, some of these management objectives are conflicting and a degree of compromise is required.

For example, to *‘Maintain as natural as possible entrance opening regime’* conflicts with *‘Limit any increases in the duration of inundation event on agricultural land’*.

Overall, the EOS adopted by Council aims to provide a balanced and sustainable approach to entrance management of Belongil Estuary.

### Strategic Context

In 2016, the NSW government established an integrated coastal management framework to respond to existing and future coastal management challenges and opportunities. The development of Coastal Management Programs (CMPs) aim to set the long-term strategy for the coordinated management of the coast with a focus on achieving the objects of the *Coastal Management Act 2016*. CMPs identify coastal management issues and the actions required to address these issues in a strategic and integrated way. In 2019/20 DPIE strongly advised Council to include the catchment in the CMP process rather than do a separate catchment management plan.

As such, Council has embarked on developing CMPs for its coastline and just recently completed the first stage (of the four-stage process of CMP development) for the Southern Byron Shire Coastline (Cape Byron to south LGA border) including the Tallow and Belongil Estuaries. In a policy sense, estuary opening strategies and environmental management plans sit within a CMP and are developed and/or implemented as an action in a CMP.

A variety of other legislation and policies apply to entrance opening including the Fisheries Management Act; Marine Estate Management Act; Water Management Act which have various objects and goals.

### EOS Reviews

#### 1.EOS Review (minor)

The EOS was adopted in February 2020 and since this time new information regarding ICOLL form, function and management has been developed by the State. New research and information regarding the risk of fish kills in estuaries from entrance management is also known, along with lessons learnt on the methodology of opening from a Council perspective. A minor review of the adopted EOS is intended to be undertaken by the end of 2021.

In June 2021 staff started preparing a report to Council on this subject in preparation for Operational Plan action 3.3.1.10. The report will likely be presented to Council’s November meeting.

The intention of the report is to present minor amendments to the adopted Entrance Opening Strategy (EOS) to Council for endorsement. This is proposed prior to submitting a

new permit application to the Marine Parks Authority and licence renewal application to Crown Lands to ensure Council has suitable approvals moving forward.

As outlined above it is proposed that the report will incorporate new information on 'best practice' ICOLL management and suggested improvements on the operational aspects of the EOS. The main areas include (noting that some of these issues will be considered through the full technical review of the EOS as part of Stage 2 of the CMP):

- Flooding of agricultural land
- Flooding of Council infrastructure – footpaths, etc
- Acid Sulphate Soils
- 10 • Sewage Treatment Plant outflows (including additional flow path)
- Water Quality
- Native Vegetation
- Fish Kill and Existing EOS Decision Support Tool
- Existing EOS Excavation Controls
- 15 • Existing EOS maximum water level Trigger

Further internal group discussion is required before staff can collectively present recommendations on the above.

### 2.EOS – Review (full technical under CMP process)

- 20 The minor review precedes a full technical review identified as a Stage 2 CMP investigation as part of the CMP process. This full technical review is pending adoption of the [draft Scoping Study for the Southern Shire Coastline](#) at the 5 August 2021 meeting and completion of preceding Stage 2 studies which are required to inform the review (i.e. the Coastal Hazard Assessment Study - 2021).

### Wetland Health

- 25 The perceived adverse impacts and assertions by the Drainage Board regarding the destruction of wetlands due to Council operations/current EOS remain unsubstantiated. Preliminary comments regarding the Melaleuca wetland dieback include:
- The assertion that too much water is causing dieback is not based on any scientific historical assessment or impact study (that staff are aware of).
  - 30 - Existing monitoring and assessment reports provide no basis that BBSTP water and estuary inundation (high water levels) are the cause of this dieback. The dieback is in a discrete location and not reported to be occurring on a larger spatial extent in the catchment (which would be expected if due to prolonged inundation).
  - If anything, monitoring is reporting more Melaleuca recruitment.

- This is not the first time that wetland vegetation in the vicinity has experienced dieback, as evident on historic photogrammetry records, with recovery also seen over the years.
- Whilst the latest imagery (2021) appears to show more dieback, there is a variety of possible causes not limited to salinity, heat stress/drought, pathogens, land management (e.g., grazing, drainage changes) and inputs (fertilizer etc.,) that also need to be considered.

Staff acknowledge the dieback at this location and complaints made by the Drainage Board and have engaged local consultant Australian Wetlands to prepare a report on the issue and possible causes.

#### Engagement with the Drainage Board

The Drainage Board is already identified by Council as a stakeholder and has been engaged throughout the Coastal Management Program (CMP) process to date (via email to: [belongildrainageboard@gmail.com](mailto:belongildrainageboard@gmail.com) and also via emails to members of the FRM Advisory Committee, some of whom are also members of the Drainage Board).

Whilst the Drainage Board is not specifically listed as an entity in the CMP Scoping Study Appendix A -Engagement Strategy, (and is not a public authority with a higher level of engagement) it is implied through engagement with "*Private organisations...listed on contact list*" (the Drainage Board email being on that contact list).

This engagement strategy may be updated in the next stage (Stage 2) of the CMP process in which case, the Drainage Board can be explicitly referenced. The Belongil Catchment Drainage Board will continue to be engaged as a stakeholder throughout future stages of development of Council's Coastal Management Program(s), estuary management and other related projects.

#### **Financial/Resource/Legal Implications:**

Council has limited budget for ICOLL management, the current budget is operational and essentially only covers opening operations and environmental monitoring.

Internal staff resourcing could complete the minor Entrance Opening Strategy review suggested above. Additional budget allocation would be required for a more in-depth or peer review. A more in-depth review is planned as part of Operational Plan action item 3.3.1.4 detailed below and the preparation of the CMP.

Under the NSW Floodplain Development Manual 2005, Councils are responsible for floodplain management, therefore, it is important that Council continues to manage the mouth of Belongil Creek from a flood risk management perspective.

#### **Is the proposal consistent with any Delivery Program tasks?**

Yes, three Operational Plan actions are consistent with the proposal as below:

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Code	Action	Measure
3.3.1.4	Continue preparing a Coastal Management Program (CMP) in accordance with the staged process for Cape Byron Southern Coastline (including Tallow and Belongil Creek Catchment)	Stage 1 scoping study complete Stage 2 of the CMP process commenced
3.3.1.10	Belongil Creek Entrance Opening Strategy Review	Review and update the Belongil Creek Entrance Opening Strategy to ensure fish kill risk is appropriately considered. Report updated EOS to Council for endorsement.
3.3.1.11	Belongil Creek Entrance Opening Approvals	Crown Land and Marine Parks Authority applications submitted.

## Notice of Motion No. 9.7 Naming Historical Site

File No: I2021/1162

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I move that the 'dirt road / parking bay / pedestrian pathway / viewing point and beach access', leading from Childe Street to Belongil Beach opposite *East on Byron* and *The Treehouse*, be named the 'New Jetty Track'

10

Signed: Cr Jan Hackett

### Councillor's supporting information:

The Byron Bay Historical Society would like to see the history of The Bay (and the Shire) kept alive for future generations.

15 To this end they have been picture / signposting significant sites around The Bay and linking further audio information for each site signposted to an app.

In this process they noticed that the **primary** beach access, site of the second jetty built in the Bay at Belongil Beach, remains unnamed to this day.

20 Byron Bay had two jetties in its history and they were traditionally called the "old jetty", for the original shipping jetty at Main Beach, and the "new jetty" for the second jetty built at Belongil Beach.

In 1955 the new jetty at Belongil became the off-loading site for a short-lived, fledging whaling industry (7 years of operation).

25 To mark this significant site, the Byron Bay Historical Society asks that this beach entrance, currently used as a drive-in parking spot and major pedestrian access for the beach, be named the "New Jetty Track".

### Staff comments

by James Flockton, Infrastructure Planning Coordinator, Infrastructure Services:

(Management Comments must not include formatted recommendations – resolution 11-979)

30 Anyone can apply to the Geographic Names Board (GNB) to name a place and information on the process is available on GNB's website at [Place naming - Geographical Names Board of NSW](#)



If Council wants to make an application the area to be named will need to be clarified.

Staff have assumed the area highlighted red below is the proposed area to be named.



- 5 If this is the area, it is Crown Land managed by the Department of Planning Industry and Environment – Crown Lands (DPIE-CL). The Bundjalung of Byron Bay (Arakwal) are recognised as traditional custodians and owners of Native Title Rights and Interests in this land. Part of the land and the beach in front of it are the subject of an Indigenous Land Use Agreement (ILUA) between the Arakwal and the NSW Government, so advice would be needed from DPIE-CL on whether naming would be consistent with the requirements of
- 10 the ILUA. An Aboriginal Land Claim is also outstanding over part the area, which DPIE-CL is responsible for determining prior to having any dealings with the land. Key stakeholders that would need to be consulted about potential future names for this area include the

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Bundjalung of Byron Bay Aboriginal Corporation (Arakwal), NSW and Tweed Byron Local Aboriginal Land Councils and DPIE-CL.

- 5 In terms of process, place naming is different to road naming. The Geographical Names Board is responsible for naming places. For proposals by councils, the Geographical Names Board's recommended process still applies. That requires consultation with key stakeholders and includes a 28-day public submissions process.
- 10 If Council is to make the application, it is recommended that Council confirms the area to be named and authorises staff to start initial consultation with key stakeholders, and if appropriate, to seek feedback from those stakeholders on potential names for reporting back to Council for further consideration. Alternatively, Council should confirm its preferred name for 28-days public exhibition and consultation with key stakeholders, with outcomes to be reported back to Council.

### **Financial/Resource/Legal Implications:**

- 15 This is not a current Operational Plan priority and staff resources would have to be reassigned to it.

- Any person can apply to the Geographic Names Board (GNB) to name a place – see information available on the Geographic Names Board website at [www.gnb.nsw.gov.au](http://www.gnb.nsw.gov.au)
- 20 The Geographical Names Act 1966 (NSW) applies to the naming of places and GNB requirements and processes will need to be followed. In addition, under the Native Title Act 1993 (Cth) the ILUA applying to the name will need to be complied with.

### **Is the proposal consistent with any Delivery Program tasks?**

No



## **Notice of Motion No. 9.8 Pedestrian Access and Safety: Dalley/Tincogan Priority Change**


5 **File No:** I2021/1167

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**I move that Council:**

- 10 1. **Seeks a variation to grant funding for the change of priority project at Tincogan and Dalley Streets Mullumbimby to be able to complete identified pedestrian safety and access upgrades at the intersection.**
- 15 2. **In the event that a variation is not forthcoming or if any variation does not provide sufficient funding to complete the pedestrian safety and access upgrades, approves funding from the Infrastructure Renewal Reserve to be able to complete the pedestrian safety and access upgrades.**
3. **Only undertakes priority change at the same time that pedestrian safety infrastructure and systems are implemented (Res 21-043).**

20 **Attachments:**

- 1 24.2020.19.1 - 20210709 OSK5378-TINCOGAN STREET 90% CONSTRUCTION, E2021/94655 

25 **Signed: Cr Basil Cameron**

### **Councillor's supporting information:**

This Notice of Motion is about ensuring that we deliver on commitments we have made to the Community through extensive engagement and consultation.

30 Background is the Our Mullumbimby Masterplan where existing pedestrian access and safety issues were identified at the intersection of Dalley and Tincogan Streets Mullumbimby, in particular, pedestrian movement crossing Tincogan Street from the northern end of Dalley Street to access the town centre. Accordingly, the Masterplan identified the need to 'strengthen pedestrian connections' with 'intersection treatment' to improve access and safety.

35 The Masterplan also proposed a change of priority for traffic on Tincogan Street with give way signs removed and relocated to Dalley Street where traffic would no longer have priority. This would have a further negative impact on the pedestrian access and safety

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issues and as such the two issues have been linked. Safety and access upgrades are required now and must be completed before a priority change is made.

5 On 13 July, over 60 residents gathered at the intersection to advocate for pedestrian safety and access upgrades, concerned that the priority change may occur without these upgrades. Many residents present were older and using various mobility aids. Also present were three blind people who live in Dalley Street. A key message from the group is that the intersection is not currently safe.

The need to improve access and safety at this location has been discussed and acknowledged as follows.

- 10 • Identified at site visit and subsequent workshops with dozens of community representatives during development of the Masterplan
- Adopted Masterplan - principles and project actions
- Local Traffic Committee
- Place Planning Collective
- 15 • Council resolution, Res 21-043
- Engagement with Residents Association

20 Despite this clear direction and advice, a grant funded project has gone forward for the priority change only. These grant funds are time limited, and the project must be signed off by the end of August.

Following discussions with Staff, it may be possible to seek a variation to the funding agreement, however at the time of writing, it is not guaranteed.

25 The purpose of this Notice of Motion is to identify an alternative funding source for the pedestrian safety and access upgrades should a variation not be forthcoming and to ensure the project can proceed in accordance with Res 21-043.

- 30 *1. That Council implement the priority changes to give way signs on Tincogan Street at the intersections of the Dalley Street and Stuart Street, Mullumbimby in order to provide priority to east-west traffic movements in Tincogan Street as amended by Committee comments.*
- 2. That Council note the pedestrian safety issues raised by the Mullumbimby Residents Association and discussed in the Our Mullumbimby Masterplan.*
- 3. That Council only undertake priority change at the same time that pedestrian safety infrastructure and systems are implemented.*
- 35 *4. That Council proceed with a speed zone review request to reduce the speed along Tincogan Street between Dalley Street and Station Street. (Cameron/Lyon)*

Recommended priority relative to other Delivery Plan tasks:

40 As described above

Definition of the project/task:

Provide funding certainty so that pedestrian access and safety upgrades can be completed, and a traffic priority change can be made at Tincogan and Dalley Streets intersection.

5 Source of Funds (if applicable):

Infrastructure Renewal Fund

**Staff comments**

10 **by James Flockton, Infrastructure Planning Coordinator, Infrastructure Planning:**

(Management Comments must not include formatted recommendations – resolution 11-979)

15 The absence of Zebra Crossings from the proposed intersection priority change works on Tincogan Street was not a consequence of funding constraints. Rather, Zebra crossings were not proposed at these locations due to the following considerations:

- During the design stage of the project, the site did not meet the TfNSW warrants for Zebra Crossings. Since the design stage was completed, TfNSW has revised its guidelines. Staff have confirmed with TfNSW that Zebra crossings may now be installed on local roads (but not arterial roads) without regard to the warrants.  
20 However, if a Zebra crossing is to be installed it must still be reviewed by LTC for recommendations to approve or not.
- Staff submitted the current design to the LTC proposing 2m wide pedestrian refuges on all sides of each intersection. This was to provide a parent with a pram safe passage across all roads as a 2m wide refuge provides a wide protected place to stop while crossing, if required. The location and design of these refuges and footpath links  
25 were reviewed and amended by the LTC to provide improved safety for pedestrians and address the agreed action from the Mullumbimby Masterplan to strengthen pedestrian connections' with 'intersection treatment' to improve access and safety.

30 The Mullumbimby Master Plan also identifies the need to formalise alternative vehicular travel routes away from Burringbar Street and along Fern Street and Tincogan Street and identified Tincogan Street as a preferred primary route through Mullumbimby which potentially changes its road hierarchy status. Installing Zebra Crossings in Tincogan Street may have a negative impact on traffic flow and increase the potential for additional traffic congestion in Mullumbimby.

35 Upgrading the project from the Pedestrian Refuges currently approved and supported by LTC to Zebra Crossings may increase the lighting requirements for the project and this could have implications for the construction program and on the project budget. Additional lighting may also create a nuisance for residents adjacent to the intersections.

40 The community's desires for Zebra Pedestrian Crossings over Tincogan Street at the intersections is noted and if supported by Council, must be reviewed by LTC to ensure that:

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- Tincogan Street is not considered an arterial road or a road where warrants must be applied in relation to Zebra Pedestrian Crossings,
- Line marking and signage are appropriate and approved,
- Council takes on board the LTC recommendations prior to implementing works for Zebra Pedestrian Crossings if supported by LTC.

Council has a current grant deadline to meet for this project. Construction was to be completed by the end of August which requires the priority changes to be in place. Subject to further Council resolution and obtaining LTC recommendations on this project, it is extremely unlikely this deadline will be achieved and accordingly, Council will need to negotiate a new deadline. Should an alternative deadline not be approved by the grant provider, Council may be obliged to complete the works as per the current LTC approved drawings that include pedestrian refuges without pedestrian crossings or abandon this project and replace with another project that can be completed within the current deadline.

Should LTC support the installation of Zebra Crossings without the need to meet warrants and Tincogan Street is not considered to be arterial road, Council will need to review intersection lighting requirements and update design drawings to include line marking and signage for the crossings prior to commencing any construction activities. This will require an extension of time and budget amendment to the grant or an alternative funding source to cover any existing approved budget shortfall noting that it is not possible to quantify the extent of any shortfall at this time pending additional design investigation and estimation.

The current drawing set is provided at attachment 1.

#### **Financial/Resource/Legal Implications:**

Council is obliged to work within TfNSW guidelines and warrants, where required. Not working within TfNSW guidelines and warrants will risk legal implications to Council.

#### **Is the proposal consistent with any Delivery Program tasks?**

Yes

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<b>Community Objective 1: We have infrastructure, transport and services which meet our expectations</b>	1.1	Provide a road network which is safe, accessible and maintained to an acceptable level of service	1.1.3	Prioritise road network asset renewal and upgrade programs in line with Community Solutions Panel values (SP)	1.1.3.18	Design Tincogan Street - Intersection Priority Change at Stuart Street
<b>Community Objective 1: We have infrastructure, transport and services which meet our expectations</b>	1.1	Provide a road network which is safe, accessible and maintained to an acceptable level of service	1.1.3	Prioritise road network asset renewal and upgrade programs in line with Community Solutions Panel values (SP)	1.1.3.19	Design Tincogan Street - Intersection Priority Change at Dalley Street

## **Notice of Motion No. 9.9 Tincogan Street Safe Movement and Access**

**File No:** I2021/1173

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**I move that Council:**

1. Notes the concerns expressed by residents regarding safety, access and mobility issues for pedestrians and cyclists along Tincogan Street.
- 10 2. Notes the Councillor background notes attached to this Notice of Motion.
3. Supports a pedestrian (zebra) crossing on Tincogan Street between Dalley and Stuart Streets as a priority action.
- 15 4. Undertakes an outcomes focussed Safe Movement and Access Options Assessment ('Assessment') for Tincogan Street between Main Arm Road and Station Street with the following expected outcomes:
  - 20 a) Identify infrastructure, regulatory and other (e.g., education) improvements that can be made to improve safe access and mobility for pedestrians and cyclists at the 'key locations' referred to in the background notes.
  - 25 b) Strengthen north-south pedestrian connections over Tincogan Street as identified in the Our Mullumbimby Masterplan.
  - c) Make application for a consistent speed of 40 kph along Tincogan Street from Main Arm Road to Station Street.
  - 30 d) Provide advice on a possible maximum speed of 40kph for a) town centre precinct, or b) town centre and residential precincts.
  - 35 e) Ensure the Access Panel, TIAC and other key stakeholders (e.g., Disability Service) have opportunities to inform the Assessment and to consider identified improvements.
5. Provides a report to Council detailing these outcomes and a delivery plan.

40

**Signed: Cr Basil Cameron**

## Councillor's supporting information:

### Councillors

5 As elsewhere, Mullumbimby is facing ongoing challenges as vehicle numbers moving through the town continue to increase. In particular Tincogan Street, the key route to the north-west, is also the only town crossing of the Brunswick River at Federation bridge. It is the effective town centre bypass link to the M1 and thus in peak times has concentrated traffic flows. Pedestrian access between the town centre and both the northern and western residential precincts is currently hazardous at a number of crossing points and needs to be 'strengthened' as identified in the Our Mullumbimby Masterplan.

15 This motion tackles a number of access and safety issues along Tincogan Street from the intersection of Main Arm Road to Station Street. It is divided into two parts addressing a priority need for a pedestrian crossing between Dalley Street and Stuart Street and a Safe Movement and Access Options Assessment ('Assessment') aimed at significant improvements at a number of key locations along Tincogan Street.

### Tincogan Street - key locations

#### 20 *Intersection Main Arm Road*

25 As named, Tincogan Street/Murwillumbah Road begins at the 'T' intersection where Main Arm Road comes in from the west. Continuing north from this point, Tincogan becomes Coolamon Scenic Drive (CSD)/Murwillumbah Road and links to the Brunswick Valley Way at Ocean Shores. At peak times there is often traffic queued back to the Showgrounds on Main Arm Road waiting to turn right into Tincogan Street towards town. Sight lines to the left (CSD) are constrained. Pedestrian access is limited to the south side of Tincogan. Speed limit is 50 kph.

#### 30 *School Zone St Johns*

35 Zone begins just past the Main Arm Road intersection with a current 40Kph during active zone periods. It continues to the eastern side of Federation Bridge. There is a marked pedestrian (zebra) crossing adjacent to St Johns in the middle of the school zone. It is important to note that this crossing is vital at all times, not just school zone periods, as pedestrian access via Federation Bridge to the western residential precinct requires crossing from the north side of Tincogan to the south side at this sole crossing point.

#### 40 *Federation Bridge*

45 A traffic choke point as it is the only town crossing of the Brunswick River. Travel lanes are narrow and there is a curved approach on both ends that reduces sight lines and leaves virtually no margin of error, especially if encountering a large vehicle such as bus or truck at the turn on/off points of the bridge.

Pedestrian access is provided on the northern side only. As such it means that the existing pedestrian route from town centre to Main Arm Road requires safe crossing of Tincogan Street at various points.

- 5 There is no formalised cycleway or infrastructure. Understandably given the narrow travel lanes and approaches, most cyclists can be observed using the pedestrian access.

Speed is either 50kph or 40kph during active school zone periods.

10 *Intersection - Brunswick Terrace*

- 15 At the foot of the eastern approach to Federation Bridge the intersection is at the midpoint of an 'S' bend with traffic sweeping on and off the bridge to the west and around a tight bend on Tincogan to the east. This point is highlighted by the community as of particular concern due to the wide field of vision required for any attempted crossing and the speed of traffic that inhibits safe crossing. It is poorly signed and largely unprotected.

- 20 An alternative pedestrian route from the south-western part of town is the shared path running along the riverside of Brunswick Terrace and terminating at the Tincogan Street intersection. At this point walkers and cyclists must negotiate this hazardous crossing to the north side of Tincogan to access the pedestrian pathway over Federation Bridge.

- 25 This connecting point of two key pedestrian routes is a significant location, however its potential amenity is locked up due to the conditions described. During AM peak and other busy times, it can be too difficult to attempt any crossing.

- 30 The school zone (40kph) ends between the east end of Federation Bridge and the intersection (50kph) which means that peak vehicles are often accelerating off the bridge through the intersection and into the S bend.

*Brunswick Terrace to Dalley Street and Childcare Centre*

- 35 Rapidly changed conditions from the bend moving from predominately residential character to town centre periphery with tree lined shady light and increased roadside parking on gravel shoulders. There is a childcare centre on the corner of Gordon Street and a pedestrian refuge is provided at this point, however this can sometimes be harder to see under dappled light and also crosses to the south side where there is no formed pedestrian access.

- 40 The old Civic Centre housing the Neighbourhood Centre is located on the south-west corner of the intersection. The Neighbourhood Centre coordinates a number of services including disability services, to clients who largely do not drive and have to access by foot. Pedestrian conditions for crossing on the western side of the intersection remain poor and will require further improvement, particularly if there is a change of priority.

- 45 Speed thorough this section is 50kph.

The problematic conditions along this section and at Brunswick Terrace intersection make the crossing of Tincogan at Dalley and Stuart Streets critical pedestrian pathways.



*Dalley Street to Stuart Street to Station Street*

The 'town bypass' providing access to the M1 via Station and Argyle Streets.

Conditions between Dalley and Stuart Street are difficult. The poor access and safety of crossing at Dalley Street is addressed in another Notice of Motion at this meeting, however conditions are made more challenging as there is a turn in to the service station virtually at the intersection of Dalley where cars cut across the road to access. Formed access is limited along part of the southern side, however it is very narrow with a great deal of clutter from businesses operating in the road reserve and angled parking. The result is that there is no real pedestrian access provided other than walking on the road. There is a disability service operating at the midpoint along the northern side of this section with a need for better access and disabled parking.

Strengthened connections over the Dalley and Stuart intersections are vital, however with the concentrated traffic flows and the conditions described above there will continue to be times when crossing at these points is not a realistic option. As such there is a need for a formal pedestrian crossing along this section.

A speed reduction to 40kph has been approved for this section.

Between Stuart and Station Street the road narrows with no pedestrian access on the south side where there is also an intersection with busy McGougans Lane. Sight lines are poor and turning tight for vehicles exiting the lane. Current priority at Station Street is give way. Despite the narrowing and constraints, speed through this section is 50Kph.

Pedestrian Crossing

As noted, there is a critical need for crossing points over Tincogan Street as part of existing pedestrian pathways and to improve access and safety. The most pressing need is between Stuart and Dalley Streets as the main connector of residential areas to the town centre as well as identified existing issues and the presence of the disability service. The need for strengthening pedestrian connections has been identified in the Masterplan and a formal pedestrian crossing should proceed as a matter of urgency.

Safe Movement and Access Options Assessment

The above description of challenging conditions faced by pedestrians and cyclists identifies a number of key locations where improvements need to be made. These are best addressed holistically through an outcomes focussed assessment as they are interconnected. Expected outcomes of the Assessment include

- Identifying infrastructure, regulatory and other (eg. education) improvements that can be made to improve safe access and mobility for pedestrians and cyclists at the 'key locations' referred to above.

# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

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- Strengthen north-south pedestrian connections over Tincogan Street as identified in the Masterplan
- 5     • Making application for a consistent speed of 40 kph along Tincogan Street from Main Arm Road to Station Street.
- Providing advice on a maximum speed of 40kph for a) town centre precinct, or b) town centre and residential precincts.
- 10    • Ensuring the Access Panel, TIAC and other key stakeholders (eg Disability Service) have opportunities to inform the Assessment and to consider identified improvements.
- Providing a report to Council detailing these outcomes and a delivery plan.
- 15    The Assessment is not intended to be a major study to identify known issues. It is intended to identify options for improvement. Conditions are apparent and there is substantial information provided in these notes and within the Community. Local Traffic Committee has discussed many of the issues at 'key locations' in recent times and provided advice to Council. The Our Mullumbimby Masterplan/Access and Movement has
- 20    already identified consistent principles and actions applicable to this precinct. The key task of the Assessment should be to step through the 'expected outcomes', identify further solutions and report to Council.

### Our Mullumbimby Masterplan

25     Excerpts from the Mullumbimby Masterplan

*Access and movement Pg 22.*

30     *In addition, an ageing population will mean that Mullumbimby will have to look for more ways to become truly accessible, for people of all abilities. This will involve embedding inclusivity into any development in the public realm.*

*Principle 3: Ensure Mullumbimby is accessible and well connected Pg 28.*

35     *The town will also need to ensure an inclusive environment for all people through design that chooses to think of the experience of people living with a disability.*

*Walkable Town Centre Pg 28.*

40     *There is great potential to integrate more active transport infrastructure and improve upon the existing network to expand it to other areas. In addition, the accessibility for people with a disability could be improved by utilising the existing benefits of the natural environment, and a relatively flat town centre.*

45     *Precinct 1 - Town Centre Pg 35.*

*Upgrade intersections to increase safety, particularly for pedestrians and cyclists.  
Re-align the intersections at Stuart and Dalley Streets to improve safety and traffic flow.  
Improve the intersection safety along Tincogan Street for pedestrians and cyclists.*

5 *Include traffic calming devices to minimise noise and speed.*

*Precinct 2 - North and South Heritage Areas Pg 40.*

- 10 • *Make crossing Tincogan Street safer for pedestrians.*
- *Prioritise pedestrians and cyclists to encourage active transport.*
- *Undertake a traffic study to test the feasibility of this action.*
- *Consult with local community to understand the long-term implications of any such action.*

# 15 Disability Discrimination Act 1992 (Cth)

*Definition of direct disability discrimination - S.5*

*Direct disability discrimination*

20 (1) *For the purposes of this Act, a person (the discriminator ) **discriminates** against another person (the aggrieved person) on the ground of a **disability** of the aggrieved person if, because of the **disability**, the discriminator treats, or proposes to treat, the aggrieved person less favourably than the discriminator would treat a person without the **disability** in circumstances that are not materially different.*

25 (2) *For the purposes of this Act, a person (the discriminator ) also **discriminates** against another person (the aggrieved person ) on the ground of a **disability** of the aggrieved person if:*

- 30 (a) *the discriminator does not make, or proposes not to make, **reasonable adjustments** for the person; and*
- (b) *the failure to make the **reasonable adjustments** has, or would have, the effect that the aggrieved person is, because of the **disability**, treated less favourably than a person without the **disability** would be treated in circumstances that are not materially different.*

35 ...

Recommended priority relative to other Delivery Plan tasks:

40 Our Mullumbimby Masterplan actions, principles and priorities.  
NoM actions are required for safe delivery of current capital works projects.

Definition of the project/task:

- 45 1. Council approval for a pedestrian crossing on Tincogan Street between Dalley and Stuart Streets.
- 2. Speed review for consistent speed of 40kph on Tincogan Street from Main Arm Road to Station Street.
- 3. Provide a report to Council detailing options assessment at key locations in Tincogan Street with a delivery plan.

Source of Funds (if applicable):

Operational

5

**Signed: Cr Basil Cameron**

**Staff comments**

**by James Flockton, Infrastructure Planning Coordinator, Infrastructure Planning:**

10 (Management Comments must not include formatted recommendations – resolution 11-979)

Councillor comments are noted and staff will need to complete further investigations into the issues raised in this area prior to providing suitably detailed advice.

A further report following further investigations is supported. This would be a report to the new Council in November 2021.

15 It is noted that the proposed Zebra Crossing over Tincogan Street between Dalley and Stuart Streets is being covered by a separate NOM and separate project.

A further report to Council would look to address the various issues on Tincogan that are outside the scope of the existing Tincogan Street intersection priority projects, being:

- Potential future options for the Intersection of Tincogan and Station Street
- 20 • Current and alternative speed limit options for the length of Tincogan Street and Brunswick Terrace
- Safe Movement and Access for Tincogan Street between Main Arm Road and Station Street, including costs for any further investigation that would be required to support the design and construction of any solutions.
- 25 • Identify infrastructure options at key locations that could improve safe access and mobility for pedestrians and cyclists along and over Tincogan Street
- Potential future options for the Intersection of Main Arm Road and Brunswick Terrace\*
- Potential improvements to the school zone outside St Johns
- 30 • Access and speed adjacent the child care centre on Tincogan Street
- How the above fit with the Mullumbimby Master Plan, PAMP and Bike Plan actions that Council have previously endorsed
- All processes required to achieve any recommended solutions.

## BYRON SHIRE COUNCIL

### NOTICES OF MOTION

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\*It is noted that Council is currently designing minor improvements to the Intersection of Main Arm Road and Brunswick Terrace as part of the Main Road – Road Safety Program. The works are minimal as the main constraint and choke point is the bridge over Chinbible Creek. A widening in this area would likely require a new or altered bridge.

- 5 Federation Bridge is not a Council asset, the bridge is owned and maintained by TfNSW. Any changes to this bridge would need to be supported and completed by TfNSW.

#### **Financial/Resource/Legal Implications:**

- 10 The actions and works proposed in this NOM are currently unfunded and not planned for this financial year. A further report can be provided by current staff resources. However, detail design and construction will require a funding source.

Further details on financial, resources and legal implications will be provided in detail when reporting back to Council.

#### **Is the proposal consistent with any Delivery Program tasks?**

No

STAFF REPORTS - GENERAL MANAGER

**Report No. 13.1 Lease to Mercato on Byron Pty Ltd**

**Directorate:** General Manager

5 **Report Author:** Paula Telford, Leasing and Licensing Coordinator

**File No:** I2021/949

**Summary:**

10 Mercato on Byron Pty Ltd (ACN 607 110 430) is required by a development consent condition to obtain an airspace lease with Council for the occupation of two balconies that overhang the Jonson Street road reserve being Council owned land.

Independent market rent valuation reports were obtained by Mercato on Byron Pty Ltd and Council. The value of the base rent established by the reports vary by a value greater than ten percent. As a result, the elected Council must determine the value of the base rent for the airspace lease with Mercato on Byron Pty Ltd.

15 The Director of Wingate being a partner of Mercato on Byron Pty Ltd requests consent from Council to assign the airspace lease, once executed, following the sale of Mercato on Byron at 98 – 116 Jonson Street Byron Bay.

20

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**RECOMMENDATION:**

1. That Council notes the market rent valuation reports from:

25 a) CBRE Valuation and Advisory Services that establishes base rent for the airspace lease to Mercato on Byron Pty Ltd at \$6,200 (exclusive GST) per annum; and

b) Valuers Australia Pty Ltd that establishes base rent for the airspace lease to Mercato on Byron Pty Ltd at \$23,300 (exclusive of GST) per annum.

2. That Council resolves the value of base rent under for the airspace lease to Mercato on Byron Pty Ltd at \$23,300 (exclusive of GST) per annum;

30 3. That Council authorises the General Manager, under delegation, to grant an airspace lease to Mercato on Byron Pty Ltd, subject to consent from the Secretary of the Department of Planning and Environment, on the following conditions:

a) fixed term of 20 years;

## BYRON SHIRE COUNCIL

### STAFF REPORTS - GENERAL MANAGER

13.1

- 5           b)    at a base rent established in point 2 of this recommendation, with the base rent increased annually thereafter by Consumer Price Index All Groups Sydney for the fixed term; and
- c)    the Lessee be responsible, at its cost, for required insurance, maintenance and upkeep of the encroachment structures that overhang the airspace above the Jonson Street road reserve;
- 10          d)    the Lessee, at its cost, demolish and remove the encroachment structures that overhang the airspace above the Jonson Street road reserve at the end of the lease, unless the Lessee has entered into a new lease with Council to commence on the day immediately after the end date its current lease.
- 15          4.    That Council authorise the General Manager, under delegation, to consent to the assignment of the executed airspace lease between Byron Shire Council and Mercato Pty Ltd to coincide with settlement of the sale of Mercato on Byron at 98-116 Jonson Street Byron Bay.

#### **Attachments:**

- 1          Confidential - CBRE Valuation and Advisory Services Report, E2021/35807
- 2          Confidential - Valuers Australia Current Market Rental Assessment Report, E2021/81920
- 20

## Report

Council resolved **(21-259)** at its 27 May 2021 meeting:

1. *That Council defers a decision on this matter and request staff to obtain a further valuation.*
- 5 2. *If the further valuation is less than 10% greater than the current valuation then Council authorises the General Manager, under delegations, to grant an airspace lease to Mercato on Byron Pty Ltd, subject to consent from the Secretary of the Department of Planning and Environment, on the following conditions:*
  - a) *fixed term of 20 years;*
  - 10 b) *initial rent of \$6,200 per annum (inclusive GST) with rent annually increased thereafter by Consumer Price Index All Groups Sydney for the term; and*
  - c) *the Lessee is responsible for all maintenance and upkeep of the encroachment structure at its cost;*
  - 15 d) *the Lessee must, at its cost, demolish and remove the structure in the airspace above the Jonson Street road reserve at the end of the lease, unless the Lessee has entered into a new lease with Council to commence on the day immediately after the end date its current lease; and*
3. *All lease preparation fees to be met by the Lessee.*

### Background:

- 20 Mercato on Byron Pty Ltd ('Mercato') holds development consent (10.2013.587.1) for the construction of two balconies that overhang the airspace above the Jonson Street road reserve. A condition of consent requires that Mercato obtain an airspace lease from Council to occupy the two constructed balconies.

- 25 Council has authority under section 149 of the *Road Act 1993* (NSW), with approval of the Secretary of the Department of Planning and Environment, to grant an airspace lease.

Council staff and agents for Mercato have been negotiating for a new airspace lease since April 2019. The value of base rent payable under the airspace lease is the final essential term of the lease requiring resolution.

### Market rent valuations:

- 30 An independent market valuation report provided by an accredited valuer must set the value of base rent for the airspace lease and must be provided at the Lessee's cost. It is an accepted Council practice to offer the Lessee the choice of obtaining its own valuation report or to pay the cost of Council obtaining a valuation report.

- 35 Mercato elected to obtain its own market rent valuation report from CBRE Valuation and Advisory Services ('the CBRE Report'), refer to Confidential Attachment 1. The CBRE



## BYRON SHIRE COUNCIL

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Report establishes the base rent at \$44 per square metre at a total of \$6,200 (exclusive GST) per annum being a value derived from the following considerations:

- 5 a) the notional freehold land value as set by the New South Wales Valuer General discounted by fifty percent for the first-floor position being \$800 per square metre for valuation purposes,
  - b) Government legislation setting commercial leased rent at six percent of the land value; and
  - c) an investment yield of 5.50% derived from the sale of comparable commercial properties in Byron over four years.
- 10 In accordance with resolution (21-259) Council staff obtained a second market rent valuation report from Valuers Australia Pty Ltd, ('Valuers Report') refer to Confidential Attachment 2. The Valuers Report sets the base rent for the airspace lease at \$23,300 (exclusive GST) per annum being a value derived from the following considerations:
- 15 a) a valuation methodology based on Statutory Land Value determined under the Land Act 1916 for adjoining lands was found to be significantly lower than the current market value of the land resulting in the following methodologies being considered:
    - i) Methodology 1 Percentage of Adjoining Tenancy Rates was not adopted due to rentals paid for adjoining premises in Mercato on Byron appearing to be high for rate/m<sup>2</sup> compared to other market rents in Byron Bay;
    - 20 ii) Methodology 2 Percentage (%) Return Against the Current Market Value of the Land in the Location being an evaluation of current market sales in the location to derive a current market value discounted by 50% to reflect the 'air space' nature of the lease. This approach was adopted in determining base rent for the airspace lease;
    - 25 iii) Methodology 3 Direct Comparison determines rent by comparison to rents per rate/m<sup>2</sup> for other similar premises used for a similar purpose however due to limited comparable rental information this approach was not adopted.

30 The difference between the base rent as established by the CBRE Report compared to the base rent established by the Valuers Report is greater than 10% and therefore requires the elected Council to resolve the value of base rent in the airspace lease.

### **Request to assign executed airspace lease:**

35 A director of Wingate has disclosed the property known as Mercato on Byron located at 98-116 Jonson Street Byron Bay has been sold with a deferred settlement. The director requests consent from Council to assign the airspace lease to the new owner following execution of the lease. The purchaser of Mercato on Byron has yet to be disclosed to Council.

### **Strategic Considerations**

## Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 1: We have infrastructure, transport and services which meet our expectations</b>	1.2	Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.8	Develop capital upgrades, renewal and enhancements works program for buildings-including community buildings, public toilets, emergency services, sports club facilities and Council operations buildings (SP)	1.2.8.1	Consult with user groups to establish user agreements, leases, licenses and Plans of Management

### Recent Resolutions

- Resolution (21-259).

### Legal/Statutory/Policy Considerations

#### 5 **149 Leasing of land above or below public road**

- 10
- (1) *A roads authority may lease the air space above, or land below the surface of, any public road (other than a Crown road) that is owned by the authority.*
  - (2) *Such a lease may not be granted by a roads authority other than Transport for NSW except with the approval of the Secretary of the Department of Planning and Environment.*
  - (3) *The Secretary of the Department of Planning and Environment must not approve a lease in respect of a public road if the granting of the lease would be inconsistent with the rights of passage and access that exist with respect to the road.*
  - (4) *The term of a lease, together with any option to renew, must not exceed 99 years.*
- 15
- Byron Shire Council Policy Road Airspace 2019 provides a list of principles of a roads airspace lease being:
- a. *The owner of the property adjacent to the subject airspace structure is responsible for the maintenance of the structure in a safe and secure condition.*

*Council may require of the landowner at any time that a structural engineer's certificate be provided that the subject airspace structure is safe.*

- b. The owner of the property adjacent to the airspace structure shall maintain the subject airspace structure in an attractive and well-maintained condition.*
- 5      *c. Council reserves the right to require the maintenance is carried out if, in Council's opinion, maintenance is necessary for aesthetic or safety purposes.*
- d. The owner of the property adjacent to the subject airspace structure is to indemnify Council through public risk insurance to a minimum value that is consistent with Councils insurance practices.*
- 10     *e. Where the proposed structure comprises commercial floor space, rather than awning only. Council will levy and collect fees in accordance with Councils Fees and Charges adopted annually*

- Clause 5.6 Where the proposed structure incorporates floor area but is proposed in order to benefit streetscape, heritage or some other public interest, Council may elect to not levy a rental fee. A rental fee will be charges for such uses as restaurant, commercial or similar and the fee will be based on a market valuation.*
- 15

## **Financial Considerations**

This report recommends that rent commence at \$23,300 (exclusive GST) per annum and thereafter increased annually by CPI for the term.

## 20      **Consultation and Engagement.**

Consultation was had with Mercato. No public consultation required

**Report No. 13.2      Extension of market relocations - Byron Bay**

**Directorate:** General Manager

**Report Author:** Claire McGarry, Place Manager - Byron Bay

**File No:** I2021/1040

**5      Summary:**

The Byron Farmers Markets and Byron Community Markets have been operating on temporary sites (Cavanbah Centre and Byron foreshore) since July 2019, when Butler Street Reserve was closed for the construction of the Byron Bay bypass. There is a licence in place for the markets to operate at these locations until 31 October 2021.

- 10      During the period of closure of Butler Street Reserve, Council completed a detailed site contamination report in response to a formal investigation order from the NSW Environmental Planning Authority (EPA). These investigations are ongoing under the advice of the EPA and are unlikely to be completed by October 2021.

- 15      As such, this report recommends an extension of the markets' tenure at their respective sites until such time as relocation to their permanent sites is possible.

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**RECOMMENDATION:**

20      **1.      That Council:**

a)    extend the Byron Farmers Market tenure at the Cavanbah Centre until such time as Butler Street Reserve becomes available; and

25      b) prioritise the Farmers Markets' tenure at the Cavanbah Centre ahead of any other proposals received for use of the same space during their tenure.

**2.      That Council:**

a)    extend the Byron Community Market tenure at the Byron foreshore until development consent for their relocation to the town centre has been granted; and

30      b) note that unauthorised vehicle parking on Denning Park will be dealt with in new market licences to be granted from 1 November 2021 with the mechanisms detailed in this report.

35      **3.      That the licence fees for the markets' tenure at their respective sites be fully subsidised from the Waste Fund.**

## BYRON SHIRE COUNCIL

### STAFF REPORTS - GENERAL MANAGER

13.2

4. That a proposal be submitted to the NSW EPA for a staged return of community use of Butler Street Reserve.

## Report

### Background

Council resolved (**19-062**) at its 28 February 2019 meeting:

- 5 1. *That Butler Street Reserve be closed to the public after the 7 July Community Market for a period of 6 months while the section of the Byron Bay Bypass (including the Somerset Street Roundabout and its western and southern legs and the area of works within Butler Street north of the roundabout) is constructed.*
- 10 2. *That lockable steel gates be installed at the entry points to the Reserve to restrict vehicle access during the closure period and during the 'no parking' periods overnight.*
- 15 3. *That staffs provide market managers with any information available regarding viability of other potential relocation sites identified by the markets, including planning approvals required.*
- 20 4. *That staff ensure The Cav has all relevant approvals in place to host markets during the closure period, should that be required, and provide details to market managers regarding power and water access, amenities and traffic management plans for the site.*
- 25 5. *That the Butler Street Reserve be made available as a site compound for the Contractor for the duration of the closure and one (1) week after this section is constructed and open to traffic, to allow relocation of the site compound.*
- 30 6. *That staff continue to liaise with market managers to facilitate the return of markets to Butler Street Reserve once relocation of the site compound has occurred.*

25 Subsequent investigations resulted in the relocation of the Byron Farmers market to community land at the Cavanbah Centre by resolution (**19-175**). The monthly Community markets were relocated to the Byron Bay beachside by resolution (**19-235**). Temporary markets licences were executed with the Byron Farmers' Market Inc and Byron Bay Community Association Inc with licences commencing in July and August 2019  
30 respectively.

Unforeseen delays to the bypass project and subsequent Environmental Protection Authority (EPA) investigation order resulted in an extension of these licences until 31 October 2021.

35 This report proposes another extension until such time as the future sites for the markets are available.

## Butler Street Reserve

5 During the period of closure of Butler Street Reserve, Council completed a detailed site contamination report in response to a formal Environmental Protection Authority (EPA) investigation order. Subsequently, the EPA requested further testing with specific reference to polyfluoroalkyl substances ('PFAS').

10 Council engaged Cavanbah Consulting to undertake these investigation works and reported the results to the EPA in September 2020. On 17 November 2020 staff met with the EPA case officer and stressed the strategic value of this site for the community and the importance of a clear way forward – both in terms of further investigations / monitoring, and planning for future use of the site.

15 The EPA have required further detailed off site assessment of PFAS and the associated investigative reports prepared by Cavanbah Consulting have been submitted to the EPA in July. According to the outcomes of the most recent report, *"no PFAS exceedances of public open space health-based criteria were reported in all the samples collected from the former site surface and/or landfill material. The site is considered suitable for the proposed community use for open space, market place and car parking."*

This report has been sent to the EPA for their review and advice on next steps.

At the 24 June 2021 meeting, it was resolved (part 21-236) that Council:

20 *Receives a report on Butler Street Reserve addressing issues raised in public access, including contamination investigation status update from the EPA, and outlining options and approval pathways for future use of the Reserve.*

This report is being developed by staff alongside advice from the EPA.

## Timeframes

### Byron Farmers Market

25 Staff are developing a proposal to the EPA for a staged approach to returning community use of Butler Street Reserve.

Stage 1: A return of the weekly farmers markets to a small section of the Reserve, on the existing grassed surface with no interventions in place.

30 Stage 2: A return of the Reserve to community use for a mix of markets, parking and green recreation space, factoring in any constraints or exclusion zones required by the EPA.

The timeframes on both these stages are unknown and will be based on feedback from the EPA, but by separating them the intention is to fast track the Farmers Markets return if at all possible.

### Byron Community Market

A Development Application is underway for the relocation of the Byron Community Market to the middle of town, centred around the railway precinct. It is anticipated that this will be lodged in August 2021 and the project team have allowed for a 90-day DA assessment period, which would mean if granted, approval would likely be December 2021.

It is acknowledged that there is a strong community desire to relocate the markets from the foreshore as soon as possible and it is hoped that this extension of time beyond October 2021 would be no more than a matter of a few months, dependent on the outcome of the DA.

New market licences will be granted in accordance with resolution (21-147) to commence 1 November 2021. The new licence will permit the community markets to remain in Denning Park until the market relocation is finalised. Terms of the new licence will create a framework for stall holder parking in Denning Park.

The licence will:

- a) Define what is an integral vehicle permitted to park in Denning Park based on the relationship between the vehicle to the operation of the stall. For example, a mobile cool room is an integral vehicle. Integral vehicles will be required to park adjacent to the relevant stall. No other vehicles will be permitted to park on Denning Park, and
- b) Introduce new parking permit for integral vehicles at a cost of \$10 per day to be managed by the market manager as per Council's adopted fees and charges.

Council staff will work with the market manager to ensure the new parking framework is in place to commence 1 November 2021. The new parking framework will remain active for the duration that the monthly community market is to remain in Denning Park.

The market managers would like to note that they strongly oppose the proposed introduction of a new parking fee on the foreshore, and intend to put in a submission with alternative solutions.

It is important to note that a return of the Community Market to Butler Street Reserve would only be a potential possibility at Stage 2 of the proposed EPA process above and may inevitably be ruled out due to site constraints. Stage 2, if agreed to by the EPA, is a medium to long term solution and in no way a possibility for the timeframes required for relocation of the Byron Community Market from the foreshore.

### **Other Considerations**

Concurrent to this report, Council is considering a request for an activity at the Cavanbah Centre (Event Application – Bewilderness; file number I2021/1040) which, as proposed, would conflict with the proposed extension of the Farmers Markets in this space.

It is recommended that priority be given to the extension of the Farmers Markets in the first instance, and that approval to move forward with any other proposals at the Cavanbah



Centre during this time be subject to mutual agreement between the Byron Farmers Market, Cavanbah Centre staff and any additional proponents.

## **Strategic Considerations**

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

Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.1	Support and encourage our vibrant culture and creativity	2.1.1	Support a range of inclusive events that encourage broad community participation and promote social inclusion	2.1.1.1	Support innovative and flexible delivery of community events and initiatives
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## **5 Recent Resolutions**

- 19-062
- 19-175
- 19-235
- 20-695

- 10
- 21-230
  - 21-236

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

### **Local Government Act 1993 (NSW)**

#### ***s47 Leases, licences and other estates in respect of community land—terms greater than 5 years***

- 15 (1) *If a council proposes to grant a lease, licence or other estate in respect of community land for a period (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) exceeding 5 years, it must—*
- 20 (a) *give public notice of the proposal (including on the council's website), and*
- (b) *exhibit notice of the proposal on the land to which the proposal relates, and*
- 20 (c) *give notice of the proposal to such persons as appear to it to own or occupy the land adjoining the community land, and*
- (d) *give notice of the proposal to any other person, appearing to the council to be the owner or occupier of land in the vicinity of the community land, if in the opinion of the council the land the subject of the proposal is likely to form the primary focus of the person's enjoyment of*
- 25 *community land.*
- (2) *A notice of the proposal must include—*

- information sufficient to identify the community land concerned
- the purpose for which the land will be used under the proposed lease, licence or other estate
- the term of the proposed lease, licence or other estate (including particulars of any options for renewal)
- the name of the person to whom it is proposed to grant the lease, licence or other estate (if known)
- a statement that submissions in writing may be made to the council concerning the proposal within a period, not less than 28 days, specified in the notice.

(3) Any person may make a submission in writing to the council during the period specified for the purpose in the notice.

(4) Before granting the lease, licence or other estate, the council must consider all submissions duly made to it.

**s47A Leases, licences and other estates in respect of community land—terms of 5 years or less**

(1) This section applies to a lease, licence or other estate in respect of community land granted for a period that (including any period for which the lease, licence or other estate could be renewed by the exercise of an option) does not exceed 5 years, other than a lease, licence or other estate exempted by the regulations.

(2) If a council proposes to grant a lease, licence or other estate to which this section applies—

- (a) the proposal must be notified and exhibited in the manner prescribed by section 47, and
- (b) the provisions of section 47(3) and (4) apply to the proposal, and

(c) on receipt by the council of a written request from the Minister, the proposal is to be referred to the Minister, who is to determine whether or not the provisions of section 47(5)–(9) are to apply to the proposal.

(3) If the Minister, under subsection (2)(c), determines that the provisions of section 47(5)–(9) are to apply to the proposal—

- (a) the council, the Minister and the Director of Planning are to deal with the proposal in accordance with the provisions of section 47(1)–(8), and
- (b) section 47(9) has effect with respect to the Minister's consent.

**Crown Land Management Act 2016 (NSW)**

**s2.20 Short-term licences over dedicated or reserved Crown land**

(1) The regulations may make provision for or with respect to the following concerning short-term licences over dedicated or reserved Crown land—

- (a) any purposes for which the licences may be granted (**prescribed purpose**),
- (b) any conditions to which the licences are subject (**prescribed condition**),
- (c) the maximum term for which licences may be granted (**prescribed maximum term**).

(2) The Minister may grant a short-term licence over dedicated or reserved Crown land for any prescribed purpose.

(3) A short-term licence may be granted even if the purpose for which it is granted is inconsistent with the purposes for which the Crown land is dedicated or reserved.

(4) A short-term licence may be granted subject to conditions specified by the Minister and is also subject to any prescribed conditions.

**Crown Land Management Regulations 2018 (NSW)**

**cl31 Short-term licences over dedicated or reserved Crown land**

(1) Each of the following purposes is prescribed as a purpose for which a short-term licence may be granted under section 2.20 of the Act:

- (p) markets

(2) In addition to any other condition to which a short-term licence granted under section 2.20 of the Act is subject, the condition that the relationship of landlord and tenant is not created between the parties is also prescribed.

(3) The period of one year is prescribed as the maximum term for which a short-term licence may be granted under section 2.20 of the Act (including any further term available under an option or holding over provision).

**cl70 Exemption from operation of section 3.22 of Act for granting short-term licences during initial period**

# BYRON SHIRE COUNCIL

## STAFF REPORTS - GENERAL MANAGER

13.2

- (1) This clause applies to a council manager of dedicated or reserved Crown land during the initial period referred to in section 3.23 of the Act (the **pre-POM Crown land**) until whichever of the following occurs first:
- (a) the council adopts its first plan of management for the land for the purposes of section 3.23 of the Act,
- (b) the land is classified as operational land with Minister's consent under section 3.22 of the Act.
- (2) The council manager is exempt from the operation of section 3.22 of the Act in respect of:
- (a) the granting of short-term licences over the pre-POM Crown land of a kind that can be granted by a Crown land manager under section 2.20 of the Act, and

### 10 Financial Considerations

The proposed extension of market relocations is as a direct result of the legacy issues caused by Butler Street Reserve's history as a former uncontrolled landfill site.

As such, it is recommended that Council provides fully subsidised rent to the markets on their temporary sites out of the Waste Fund. The monthly amount for this would be:

- 15 1. Byron Farmers Market \$198 (inc GST) per market to 1 July 2022.
2. Byron Community Market \$463 (inc GST) per market to 1 July 2022.

### Consultation and Engagement

20 This proposed extension, and the inter-dependencies it has with other live projects for Byron, has required extensive internal and external consultation, engagement and negotiation.

This includes, but is not limited to:

- Byron Farmers Market Management
- Byron Community Market Management
- Cavanbah Centre operational staff
- 25 • Open Spaces staff
- External environmental consultants
- NSW EPA
- Byron Masterplan Guidance Group
- External event proponents

30

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

**Report No. 13.3      Community Initiatives Program - Funding Round 2021/2022**

5    **Directorate:**                      Corporate and Community Services

**Report Author:**                Emily Fajerman, Community & Cultural Development Coordinator

**File No:**                          I2021/1142

**Summary:**

10    The Community Initiatives Program supports initiatives and projects that address a specific local need, build a sense of community, and align with Council priorities.

      14 eligible applications were received. This report recommends that 10 community projects are funded to the value of \$44,200 for the 2021/2022 financial year.

15    \_\_\_\_\_

**RECOMMENDATION:**

1.    **That Council approves the recommendations for the Community Initiatives Program as per Attachment 1 (E2021/77738).**
- 20    2.    **That Council notes the applications not recommended as per Attachment 1 (E2021/77738).**

**Attachments:**

- 25    1      Confidential - Community Initiatives Program 2021-2022 - Assessment Panel Summary and Recommendations for Funding - for Council, E2021/77738

## Report

### Background

5 Byron Shire Council values the many community, cultural, environmental, sporting, and other organisations contributing significant, often voluntary, resources to enhance the quality of life in our community.

Through the provision of grants, sponsorships and funding, Council can work in collaboration with community groups to further the aims identified in the four-year Delivery Program and annual Operational Plan to achieve positive change.

10 Each year, Council offers the Community Initiatives Program to support community organisations, deliver projects and initiatives that address a specific need, build a sense of community, and align with Council priorities. Incorporated not-for-profit organisations and community groups are eligible to apply for grants of up to \$5,000.

15 On 10 May 2021, Council announced the Community Initiatives Program for 2021/2022 as being open for applications via Council's website, with applications closing on 11 June 2021.

Information about the Community Initiatives Program such as application dates, guidelines, eligibility, and criteria were made available on Council's website and Facebook page. Email campaigns were also utilised to target interested stakeholders and networks.

20 14 eligible applications were received. Applications were assessed against the Community Initiatives Guidelines and against Council objectives and plans.

An internal assessment panel reviewed the applications and recommended that Council funds 10 of the community projects, detailed in Attachment 1 (E2021/77738).

The assessment panel included:

- Sustainability Officer
- 25 • Events and Economy Team Leader
- Grants Coordinator

All recipients will be required to sign a contract, share project outcomes, and acquit their funding by June 2022.

### 30 Community Initiatives Application Process

Until now, the Community Initiatives Program application process has been paper-based.

35 Prior to this year's launch, staff redesigned the process to a new online format, making it easier for applicants. This involved redeveloping the application form, guidelines, assessment guides and criteria. Early feedback about the updated process and documents from this year's applicants and assessment panel members is positive.

## **Next steps**

Contracts will be entered into with all successful applicants, pending Council approval by resolution.

- 5 The contract management process will involve staff in the Community and Cultural Development team setting contract conditions for each approved project, establishing communications and information management, meeting with community stakeholders and reviewing project acquittals.

In early 2022, the Community Initiatives Policy is due for review and will include community feedback to improve program aims and objectives.

## **10 Strategic Considerations**

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

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
<b>Community Objective 5: We have community led decision making which is open and inclusive</b>	5.2	Create a culture of trust with the community by being open, genuine and transparent	5.2.2	Incorporate wellbeing framework within organisation to inform decision making	5.2.2.2	Deliver annual Community Donations Program

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

- 15 Section 356 of the Local Government Act 1993 provides that a council may, in accordance with a resolution of the council, contribute money or otherwise grant financial assistance to persons for the purpose of exercising its functions.

The provisions of section 356 (2) have been complied with.

The Community Initiatives Program (Section 356) Policy details the process and approach for delivering the funding.

### **Financial Considerations**

- 20 A total value of \$44,200 is recommended in this report and is provided in the 2021/2022 budget.

## Report No. 13.4 Postponement of the 2021 Local Government Election - Amendment to the 2021 Meeting Schedule

**Directorate:** Corporate and Community Services

5 **Report Author:** Heather Sills, Corporate Planning and Improvement Coordinator

**File No:** I2021/1166

### Summary:

10 Clause 3.2 of Council's *Code of Meeting Practice* states that "*The council shall, by resolution, set the frequency, time, date and place of its Ordinary meetings.*"

This report seeks Council's endorsement for amendments to the 2021 Meeting Schedule that was previously adopted by Council (**Resolution 20-675**). The amendments are required following the receipt of advice from the Office of Local Government (OLG) that the Local Government Elections have been postponed until 4 December 2021.

15

### RECOMMENDATION:

1. That the 2021 Meeting Schedule be amended such that:

- 20 a) A Planning Meeting on 16 September 2021 be scheduled  
 b) An Ordinary Meeting on 23 September 2021 be scheduled  
 c) The Planning Meeting on 11 November is rescheduled to 4 November 2021  
 d) The Planning Meeting on 9 December 2021 is cancelled  
 25 e) The Ordinary Meeting on 16 December 2021 is cancelled  
 f) The Audit Risk and Improvement Committee and Finance Committee meetings on 18 November are rescheduled to 11 November  
 g) The following committee and panel meetings scheduled during caretaker period are cancelled:  
 30 i) 15 November - Communications Panel  
 ii) 17 November - Community Round Table  
 iii) 18 November - Biodiversity Advisory Committee and Arakwal Memorandum of Understanding Advisory Committee

and that notice be given on Council's website of the change of meeting schedule.

- 35 2. That Council extends the term for Advisory Committees, Panels and Section 355 Committees until the end of the current term of Council and notifies the committee members of this decision.

## BYRON SHIRE COUNCIL

### STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.4

#### **Attachments:**

- 1 Revised Council Meeting Matrix - 2021, E2021/95150 

5



## Report

On resolving the 2021 Meeting Schedule (resolution 20-675), Council included meeting dates following the 4 September Local Government Election. Council has subsequently been advised that the Local Government Election has been postponed until 4 December 2021. Caretaker period will now commence on 5 November 2021.

As a result, the previously resolved meeting schedule needs to be amended as outlined below:

- Schedule a Planning Meeting on 16 September 2021 and an Ordinary Meeting on 23 September 2021
- Cancel the Planning Meeting on 11 November and reschedule to 4 November 2021 to allow matters to be considered prior to the caretaker period commencing on 5 November 2021
- Cancel the Planning Meeting on 9 December 2021 and the Ordinary Meeting on 16 December 2021
- Reschedule the Audit Risk and Improvement Committee and Finance Committee meetings on 18 November, to 11 November 2021
- Cancel the following committee and panel meetings during caretaker period:
  - 15 November - Communications Panel
  - 17 November - Community Round Table
  - 18 November - Biodiversity Advisory Committee and Arakwal Memorandum of Understanding Advisory Committee

A resolution of Council is required to endorse the proposed changes to the 2021 Meeting Schedule, in accordance with clause 3.2 of Council's *Code of Meeting Practice* which states that "*The council shall, by resolution, set the frequency, time, date and place of its Ordinary meetings*"

Further, the committee and panel appointments had previously been extended to September 2021 in accordance with the deferral of the 2020 Local Government elections. This recommendation seeks endorsement of the continuation of existing committee arrangements until the election of the new Council.

Should the statutory meeting to swear in the new Council need to be held in January 2022 a report will be brought to a September or October meeting for resolution.

A separate report will be presented to Council for consideration of the 2022 Meeting Schedule, at the first meeting of the new term of Council.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

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

### Recent Resolutions

- 20-675 - Adoption of the 2021 Meeting Schedule

### 5 Legal/Statutory/Policy Considerations

Clause 3.2 of Council's *Code of Meeting Practice* states that "*The council shall, by resolution, set the frequency, time, date and place of its Ordinary meetings.*"

This change to the meeting schedule has no effect on Council's compliance with its obligations under the various sections of the *Local Government Act 1993* that apply to meeting dates, namely:

- Section 9 notes that a council must give notice to the public of the times and places of its meetings
- Section 365 notes that Council is required to meet at least 10 times each year, each in a different month
- Section 367 outlines the required notice period of business papers for Councillors.

### Financial Considerations

There are no financial implications.

### Consultation and Engagement

Notice of the changed meeting schedule will be given to the public on Council's website.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.5 PLANNING - S4.55 Development Application 10.2020.97.2 Modify Weed Control Requirements, Engineering Construction Plan Requirements and Development Contribution Payments at 77 Tuckeroo Avenue Mullumbimby**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Ivan Holland, Planner

**File No:** I2021/756

**Proposal:**

**Proposal description:** S4.55 to Modify Stage 8 Tallowood Ridge Estate Subdivision Weed Control Requirements, Engineering Construction Plan Requirements and Development Contribution Payments

**Property description:** LOT: 147 DP: 1265934, LOT: 162 DP: 1251169  
77 Tuckeroo Avenue MULLUMBIMBY

**Parcel No/s:** 270323, 269619

**Applicant:** Bayview Land Development Pty Ltd

**Owner:** Gainsplay Pty Ltd

**Zoning:** RU2 Rural Landscape / PART R2 Low Density Residential

**Date received:** 24 March 2021

**Integrated / Designated** ☒ Integrated ☐ Designated ☐ Not applicable

**Development:**

**Public notification or exhibition:**

- Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 31/3/21 to 13/4/21
- Submissions received: Nil (0)
- Submissions acknowledged: ☒ N/A

**Delegation to determine**

Council

**Issues:**

- Timing of weed management
- Offsetting of contributions with works in-kind for road upgrades to Clays road and Coral Avenue.

**Summary:**

The Applicant is seeking to modify conditions of the Stage 8 Tallowood Ridge Estate Subdivision consent (DA 10.2020.97.1) relating to:

- 5
- Weed control requirements in the Biodiversity Conservation Management Plan (BCMP);
  - Engineering Construction Plan Requirements (road upgrades and lot frontage – correct a typographical error); and
  - Development contribution payments.

No submissions were received by Council on the modification application.

- 10
- 15
- The proposed amendment of the conditions relating to weed control (condition 17) and the upgrade of Clays Road and Coral Avenue (condition 19a) to defer the works are not supported. However, it is not unreasonable to offset road contributions against the works carried out in Clays Road and Coral Avenue, considering the material public benefit to Council and the public. Condition 65 and the accompanying Schedule of Contributions is recommended to be amended accordingly.

The applicant has also requested that condition 19b be amended to correct a typographical error in terms of the wrong lot number which is supported.

- 20
- The proposed modification does not raise any planning matters that have not already been considered in the assessment of the original application and the development is substantially the same as approved in terms of Section 4.55 of the EPA Act 1979. The application is recommended for approval subject to amended conditions of consent.

NOTE TO COUNCILLORS:

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.5



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.

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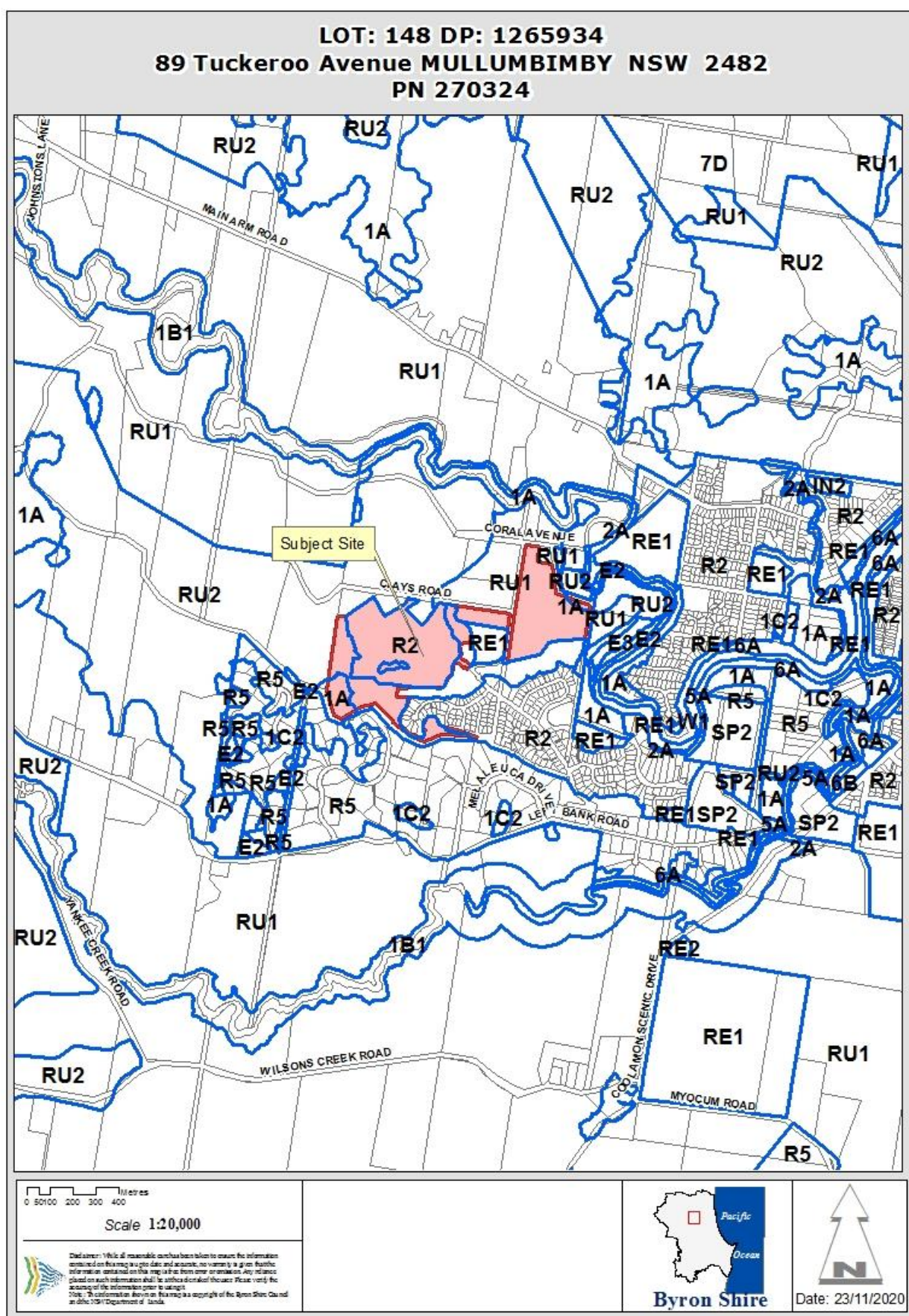
### RECOMMENDATION:

That pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2020.97.2 be approved by amending conditions 19 b), 65 and the development contributions in Schedule 5 of Development Consent No. 10.2020.97.1 in accordance with the modified conditions in Attachment 2 (E2021/93593).

### Attachments:

- 1 10.2020.97.1 - Notice of determination - Stage 8 Tallwood Ridge Estate subdivision, E2020/102556 
- 2 10.2020.97.2 - Recommended modification to conditions, E2021/93593 

## 13.5







*The current application will subdivide the newly zoned residential land as part of Stage 8 which lays to the west of Stage 7.*

## **1.2. Previous Development Applications Relating to the Site**

5 Separate development applications for each stage have been approved and modified as follows:

Development Application 10.2009.314.1	Stage 1 Tallowood Ridge Estate including Future Stages Concept and 29 residential lots - Approved 14 September 2010 (Land Environment Court)
Development Application 10.2011.117.1	Stage 2 Tallowood Ridge Estate for urban subdivision comprising 28 residential allotments – Approved 4 April 2012.
Development Application 10.2013.549.1	Stage 3 Tallowood Ridge Estate for subdivision to create thirty-one (31) residential allotments - Approved 6 February 2014.
Development Application 10.2015.79.1	Stage 4A Tallowood Ridge Estate for subdivision to create thirteen (13) residential allotments – Approved 26 November 2015.
Development Application 10.2015.686.1	Stage 5 Tallowood Ridge Estate for Subdivision to create twenty-four (24) residential allotments - Approved 25 August 2016.
Development Application 10.2016.161.1	Stage 4B Tallowood Ridge Estate for Subdivision to create fifteen (15) residential lots - Approved 31 August 2017.
Development Application 10.2017.402.1	Stage 6 Tallowood Ridge Estate for subdivision to create eighteen (18) residential Lots – Approved 26 July 2017.
Development Application 10.2018.305.1	Stage 7 Tallowood Ridge Estate for subdivision to create thirty-two (32) residential lots – Approved 11 April 2019.

## **1.3. Tallowood Ridge Rezoning and Future Stages**

10 On 22 September 2017, an amendment to Byron Local Environmental Plan 2014 was gazetted that rezoned an additional 12 hectares of rural land to the west of Tallowood Ridge to R2 Low Density Residential. It also back-zoned existing R2 land into the RU2 Rural Landscape zone to protect forested areas near the southern ridgeline and a riparian corridor that traverses the site. Other changes included rezoning the sports fields to RE1 Public Recreation zone and the introduction of a 400m2 minimum subdivision lot size for the western part of the estate.



The current application will subdivide the newly zoned residential land as part of Stage 8. The current application and future stages are not bound by the original Concept Approval although the existing consent conditions for environmental restoration works associated with earlier stages and the Biodiversity Conservation Management Plan remain in force.

#### 5 1.4. Site and surrounds

The site has an area of approximately 35.45 hectares (residual lot) and is located between Tuckeroo Avenue and Clays Road (see Figure 2). The land is within the R2 Low Density Residential zone and RU2 Rural Landscape zone under LEP 2014. A portion of the southwestern corner of the existing residual lot is a deferred matter and fall within the 1(a) (General Rural Zone) under Byron LEP 1988, however this portion of the site falls outside the proposed development area for Stage 8. The southern ridgeline is forested but most of the site is cleared except for grass cover. The site contains bushfire prone land.

Surrounding land uses consist of rural-residential lots to the south and rural land to the north and west.

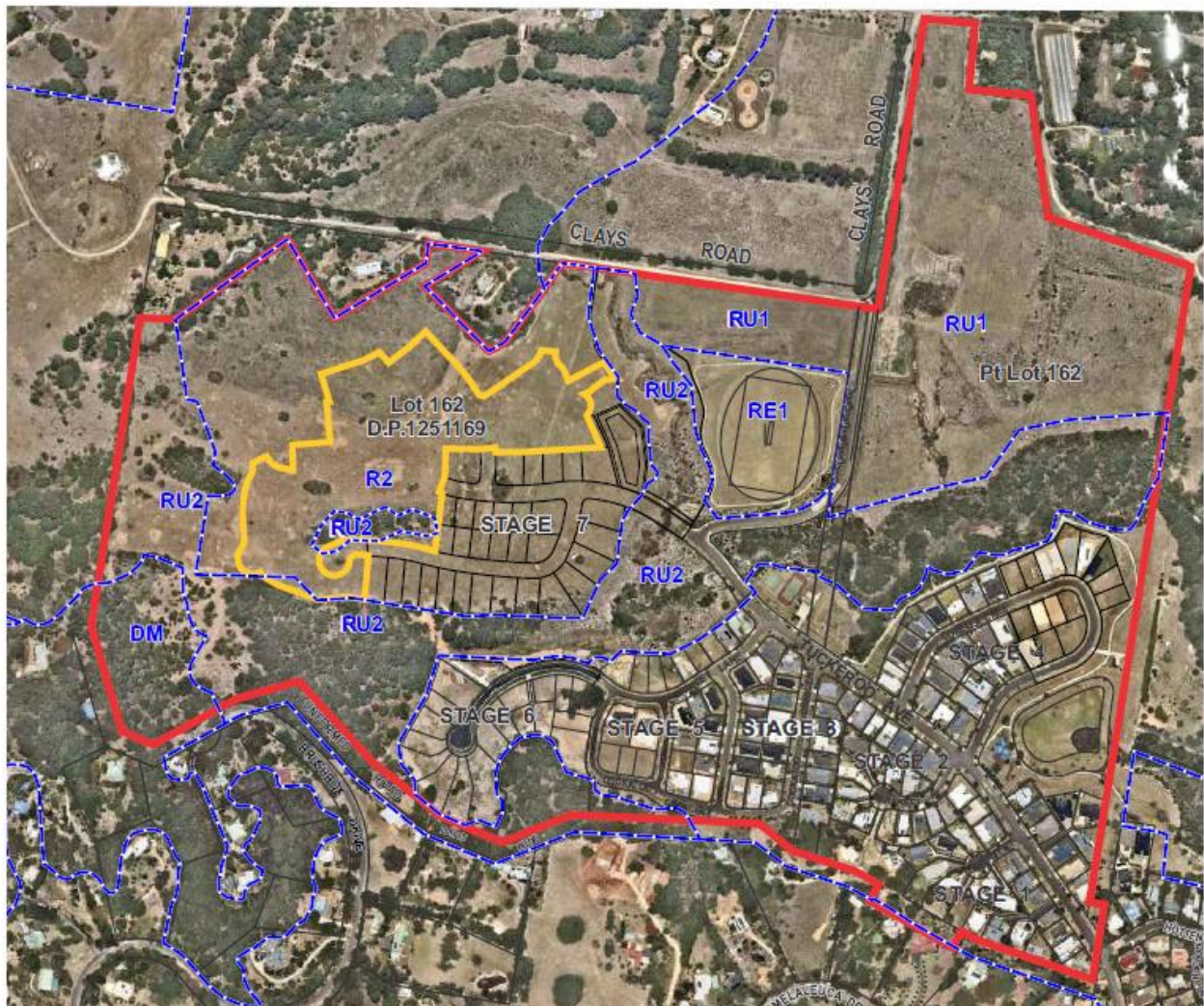


Figure 2: Site Plan (Stage 8 highlighted in Yellow)

## 1.5. Description of the proposed development

The current application seeks to modify the approval of DA 10.2020.97.1 as follows:

### B. DETAILS OF MODIFICATION OF DEVELOPMENT CONSENT:

1. Amend Condition 17 to now read as follows:

#### **Weed Control**

Primary Weed control as required by the amended BCMP to be substantially commenced, defined as being not less than 30% of the total area, in Management Zones 7a, 7b and 10 prior to the issue of the Construction Certificate.

2. Amend Condition 19(a) as follows:

Delete / defer this Condition to a later stage.

3. Amend Condition 19(b) to now read as follows:

**Battle-axe handle width/ frontage of Lot 238**

4. Amend Condition 65, Contributions Schedule for Mullumbimby to delete payment of contributions for each of the following items:

(a)	Local Open Space & recreation	\$279,293.85
(b)	LGA Wide Open Space & Recreation	\$ 34,464.60
(c)	Bikeways & Footpaths	\$ 95,316.30

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

### 5 Condition 17

The current condition reads:

17.

#### **Weed control**

Primary Weed control as required by the amended BCMP to be carried out in Management Zones 7a, 7b and 10 prior to the issue of the Construction certificate.

#### Consideration of proposed amendment:

10 The application provided the following basis for amending this condition to require substantial commencement (at least 30% of the total area) of primary weed control rather than completion:

*"There is no substantive reason that all Primary Weed control must be completed for the whole of Management Zones 7a, 7b and 10 prior to issue of Construction Certificate. It is reasonable to require that all Primary Weed control be completed prior to issue of a Subdivision Certificate."*

Council's Ecologist has reviewed the proposed change to this condition and in summary states (Refer doc#A2021/10164):

5 As discussed in the ecological referral for the original DA (see A2020/7997), the condition  
was included to rectify works that were supposed to have commenced during older stages  
of the subdivision but were never undertaken. Primary weed control, was supposed to  
have been undertaken in Management Zones (MZs) 7a, 7b and 10 concurrently with Stage  
7 of the subdivision. Therefore, the requirement to undertake primary weed control in the  
listed Management Zones prior to issuing of a Construction Certificate for Stage 8 already  
results in the works being carried out years later than they were required to. It is therefore  
10 considered that Condition 17 should be retained as it is worded on the original consent.

Condition 19 a) and b)

The current condition reads:

**19. Engineering Construction Plans**

Three (3) copies of engineering construction plans and specifications must accompany the Construction Certificate application demonstrating compliance with Council's standards for the required engineering works.

Each set of drawings must be accompanied by a Certification Report which must be signed by a suitably qualified Civil Engineer or Registered Surveyor. The Certification Report will comprise the certificate and check lists set out in Annexure DQS-A of the [Northern Rivers Local Government Development & Design Manuals](#).

The information shown on the drawings must be logically collected on discrete sheets generally in accordance with Annexure DQS-B and the Sample Drawings of the Northern Rivers Local Government Development & Designs. The drawings are to provide for the following works:

**a) Clays Road and Coral Avenue upgrade**

Clays Road and Coral Avenue must be upgraded from the intersection with Plover Parkway up the existing seal in Coral Avenue. The upgrade shall also include the Plover Parkway/Clays Road intersection and Clays Road/Coral Avenue intersection and associated drainage. The full section of the Clays Road and Coral Road upgrade must be in accordance with a rural residential standard road in Table T1.27 of Chapter D1.0 of Northern Rivers Local Government Guidelines and Construction Manual.

The finish surface level of the road must be at or minimally above the existing natural ground surface level.

**b) Battle-axe handle width/frontage of Lot 239**



A minimum 6.0m wide frontage width to extend for the full length of the battle-axe handle shall be provided in accordance with prescriptive measures 4 and 6 of section D6.4.1 of Council's DCP.

Provision must be made to provide for services and landscaping in accordance with prescriptive measures 4 and 5 of section D6.4.1 of Council's DCP.

Consideration of proposed amendment:

The application provided the following basis for the amendments to this condition:

- 5 • 19 a) – “...roadworks on roads owned by Council are to be constructed by Council under an amended Contributions Plan ... with the Applicant to pay its pro-rata share of the costs of these works to Council.”
- 19 b) – “The lot with the battle-axe handle is Lot 238. Lot 239 does not have a battle-axe handle.”

10 The requirement in condition 19 a) stems from the assessment of the original development by Council's Development Engineer and as such Council's Development Engineer has advised the condition should remain as drafted.

Council's Development Contributions Planning Officer has reviewed the proposed change to this condition and in summary states that it is reasonable to reduce the roadworks contributions by the value of the works required by condition 19 a). This is discussed further under condition 65.

- 15 Council's Development Engineer has reviewed the requested change to condition 19 b) to reflect the correct Lot number. It is recommended that this condition be amended accordingly.

Condition 65

The current condition reads:

**65. Developer Contributions to be paid**

Contributions set out in the schedule below are to be paid to Council prior to the release of a subdivision certificate. Contributions are levied in accordance with the [Byron Shire Developer Contributions Plan 2012 \(as amended\)](#). The Plan may be viewed on line or during office hours at the Council Offices located at Station Street, Mullumbimby. These contributions are to fund public amenities and services as listed in the schedule. Additional details on the specific amenities are to be found in the Byron Shire Developer Contributions Plan 2012 (as amended).

The local open space and shire wide open may be reduced by the value embellishment

works undertaken on the sports fields for DA 10.2015.686.1 and on lot 130 for DA 10.2017.402.3. Council will offset up to the full value of these contributions based on the contract price for the works or a statement from a quantity surveyor.

The contributions as set out in the schedule may either be paid in full or they may be paid in stages on a proportional basis dependent on the number of lots to be released in the subdivision certificate.

The contributions in the schedule are current at the date of this consent. The contributions payable will be adjusted in accordance with the relevant plan and the **amount payable will be calculated on the basis of the contribution rates that are applicable at the time of payment.** The schedule contains a date for which the schedule remains valid, after this date you will have to contact Council for an updated schedule.

Consideration of proposed amendment:

The application provided the following basis for the amendments to this condition:

*“Contributions ... have been paid by way of works in kind.”*

- 5 Council's Development Contributions Planning Officer has reviewed the proposed change to this condition and states:

*Item 4 (a) and 4 (b) agreed the contribution for open space should be reduced to zero as the developer still has credit for past land dedications and works in kind. The developer has provided up to date quantity surveyors reports for the additional works that had not previously been available to Council.*

- 10 *Item 4 (c) partly approved in a different form. The value of the footpath on lot 93 is incorporated into the value of the open space works in kind for future credit. This is because the bikeways plan does not identify this work and it is not part of the contributions plan. It is more appropriate to offset this value against the open space components.*

- 15 Council's Development Contributions Planning Officer also supports the roadworks contributions being amended to reflect the value of the works in Clays Road and Coral Avenue.

It is recommended that condition 65 and the associated schedule be amended accordingly.

**NSW Rural Fire Service Referral**

- 20 It is noted the proposal was referred to the NSW Rural Fire Service who have re-issued their General Terms of Approval under Section 100B of the Rural Fires Act 1997 as originally issued. No changes have been made to any of their conditions of approval other than the date has been changed to 3 May 2021.

**Section 4.55 of the EPA Act 1979**

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.5

5 The development is substantially the same as approved and satisfies the provisions under Section 4.55 of the EPA Act 1979. Having regard for the matters for consideration detailed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979, the proposed modification does not raise any issues under relevant environmental planning instruments, the regulations, Council's local environment plan and development control plan that have not been previously considered. The proposed amendments do not affect the site suitability and are unlikely to prejudice or compromise the public interest.

### **3. CONCLUSION**

10 The proposed amendment of the conditions relating to weed control (condition 17) and the proposed deletion or deferment of the upgrade of Clays Road and Coral Avenue (condition 19 a) are not supported. The proposed amendment of the conditions relating to lot frontage (condition 19 b), and development contributions (Condition 65) are supported as discussed in the body of this report. The application is recommended for approval subject to amended conditions of consent.

15

**Report No. 13.6 PLANNING - Development Application  
10.2019.466.1 Community Title Subdivision  
Seventeen (17) Lots at 41 Bottlebrush  
Crescent Suffolk Park**

5 **Directorate:** Sustainable Environment and Economy  
**Report Author:** Ivan Holland, Planner  
Noreen Scott, EA Sustainable Environment and Economy  
**File No:** I2021/1029

**Proposal:**

**DA No:** 10.2019.466.1

**Proposal description:** Community Title Subdivision Seventeen (17) Lots

LOT: 282 DP: 1018663

**Property description:**

41 Bottlebrush Crescent SUFFOLK PARK

**Parcel No/s:** 234200

**Applicant:** Tain Investments Pty Ltd

**Owner:** Tain Investments Pty Ltd

**Zoning:** R2 Low Density Residential / PART DM Deferred Matter  
involving 2(a) Residential Zone, 7(d) Scenic/Escarpment Zone,  
& 7(k) Habitat Zone

**Date received:** 10 September 2019

**Integrated / Designated Development:** ☒ Integrated ☐ Designated ☐ Not applicable

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**Concurrence required** Yes – DPIE

**Public notification or exhibition:**

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 3/10/19 to 16/10/19
- Submissions received: four (4) in opposition

**Variation request**

☐ Clause 4.6      ☒ SEPP 1      ☐ Not applicable

**Issues:**

- Inconsistency with previous consents for subdivision of the property – requirement for these consents to be surrendered.
- SEPP No.1 Objection submitted for non-compliance with minimum Lot sizes specified within Clause 11 of Byron LEP 1988 (Variation >10%).
- Submissions in opposition.

**Summary:**

The application seeks development consent for subdivision of 41 Bottlebrush Crescent, Suffolk Park (Lot 282 DP 1018663) into seventeen (17) community title lots comprising sixteen (16) neighbourhood lots (Lots 2- 17) and one (1) neighbourhood property lot (Lot 1). The sixteen (16) neighbourhood lots are proposed within the eastern portion of the site directly adjacent to the Bottlebrush Crescent.

The subject site is identified as containing bushfire prone land and the NSW Rural Fire Service has issued a Bush Fire Safety Authority pursuant to Section 100B of the *Rural Fires Act 1997* for the proposed development.

Some of the lots contain land within zone 7(d) and/or 7(k) and are less than the minimum required lot size of 40ha. A SEPP No.1 objection to the minimum lot size development standard (clause 11) was submitted with the application, DPIE issued concurrence and it is considered that strict compliance with the development standard is not warranted for the reasons set out in this report. The requested variation to the minimum lot size development standard is significantly greater than 10%.

The application is otherwise able to satisfy relevant State Environmental Planning Policies, Council's plans

The application was publicly notified, and four (4) submissions were received. The matters raised in the submissions have been addressed in the body of this report.

The application appropriately addresses the relevant



constraints applying to the site and is recommended for approval subject to the conditions listed in the Recommendation of this Report below.

## Summary:

5 The application seeks development consent for subdivision of 41 Bottlebrush Crescent, Suffolk Park (Lot 282 DP 1018663) into seventeen (17) community title lots comprising sixteen (16) neighbourhood lots (Lots 2- 17) and one (1) neighbourhood property lot (Lot 1). The sixteen (16) neighbourhood lots are proposed within the eastern portion of the site directly adjacent to the Bottlebrush Crescent.

The subject site is identified as containing bushfire prone land and the NSW Rural Fire Service has issued a Bush Fire Safety Authority pursuant to Section 100B of the *Rural Fires Act 1997* for the proposed development.

10 Some of the lots contain land within zone 7(d) and/or 7(k) and are less than the minimum required lot size of 40ha. A SEPP No.1 objection to the minimum lot size development standard (clause 11) was submitted with the application, DPIE issued concurrence and it is considered that strict compliance with the development standard is not warranted for the reasons set out in this report. The requested variation to the minimum lot size  
15 development standard is significantly greater than 10% and for this reason the application has been referred to Council for determination.

The application is otherwise able to satisfy relevant State Environmental Planning Policies, Council's plans

20 The application was publicly notified, and four (4) submissions were received, all in opposition to the development. The matters raised in the submissions have been addressed in the body of this report.

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

25 NOTE TO COUNCILLORS:

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

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## RECOMMENDATION:






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**That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.466.1 for Community Title Subdivision Seventeen (17) Lots, be granted consent subject to the conditions of approval at the end of this report**

#### **5 Attachments:**

- 1 Subdivision layout plan - DA 10.2019.466.1, E2021/85153 
- 2 Stormwater Management Plan - DA 10.2019.466.1, E2021/85157 
- 3 DPIE concurrence - DA 10.2019.466.1, E2021/85161 
- 10 4 Consolidated submissions - DA 10.2019.466.1, E2021/85198 
- 5 Recommended conditions for DA 10.2019.466.1, E2021/85149 

## **Assessment:**

### **1. INTRODUCTION**

#### **1.1. History/Background**

##### Background

5 Council's records indicate the following development approval history for this property:

10.2002.00000378.001	9 Residential Lots and one Community Lot	12/05/2003	Refused Council
10.2005.00000730.001	Subdivision of the land into nine (9) community title allotments -	12/02/2009	Consent Orders
10.2005.00000730.002	S96 - Delete certificate of compliance and charges under the Water	22/08/2011	Refused
10.2005.00000730.003	S4.55 to Amend DA10.2005.730.1 as Required by Condition 5 of	06/12/2018	Withdrawn/Cancelled
10.2006.00000067.001	Stage 2 - Construction of 8 dwellings on allotments identified in	14/11/2007	Withdrawn/Cancelled
10.2011.00000193.001	Subdivision of approved Torrens title Lot 10 into 5 lots and amend	27/05/2013	Approved
10.2017.00000703.001	Community Title Subdivision: Sixteen (16) Lots	22/11/2018	Withdrawn/Cancelled

Details of relevant past development applications are as follows:

#### **10.2005.730.1**

- 10 • Consent orders issued by the NSW Land & Environment Court on 7 May 2010 approved consent for the "subdivision of land into nine (9) community title allotments (comprising eight residential lots and one (1) Community Lot) and one (1) Torrens title allotment on the land known as Lot 282 DP 1018663, Bottlebrush Crescent, Suffolk Park subject to conditions.
- 15 • The proposed residential lot layout approved by this consent conflicts with the layout proposed by the current development application.
- The conditions of this consent include, among other things, requirements for significant drainage and earthworks to be completed by the applicant including the following works:
  - 20 ○ Construction of the new box culverts across Broken Head Road in the vicinity of Beech Drive/Clifford Street and remediation/upgrade works to the drainage system downstream of Broken Head Road.
  - Removal of the existing Coogera Circuit Basin within the site and replace with the construction of open drainage channels/watercourses across the site, which link up with the existing upstream watercourse, and flows to and then beneath
  - 25 Bottlebrush Crescent into the existing Beech Drive Detention Basin.
  - Installation and construction of new box culverts under Bottlebrush Crescent.
  - The modification and re-profiling of the Beech Drive detention basin (down Stream of Bottlebrush Crescent) to provide additional flood storage and improved outlet capacity.
  - 30 ○ The installation and construction of new culverts across Beech Drive downstream of the detention basin.

**10.2011.193.1**

- Consent for “Subdivision (Community Title) to create five (5) neighbourhood lots and one (1) neighbourhood property” on Lot 282 DP 1018663, Bottlebrush Crescent, Suffolk Park was granted on 27 May 2013.
  - 5 • The proposed residential lot layout approved by this consent conflicts with the layout proposed by the current development application and by consent 10.2005.730.1.
  - Condition 5 of this consent includes the requirement to amendment consent 10.2005.730.1, prior to the issue of a construction certificate, as follows:
- 10                   *“with Lots 10-14 to be an extension of the approved 9 Lot Community Title Subdivision. The plan shall also reconfigure Lots 1 & 2 to allow for the drainage swale required by the preliminary stormwater design "FLOOD MITIGATION STUDY FOR BYRON HILLS AND THE BOTTLEBRUSH CRESCENT DEVELOPMENT" dated February 2012 prepared by "WRM - Water & Environment Pty Ltd" for DA 10.2011.193.1.”*
- 15 Evidence of the commencement of these two consents (10.2005.730.1 and 10.2011.193.1) was provided to Council on 13/11/2018 (E2018/107841) and it appears that in response Council confirmed commencement only of consent 10.2005.730.1 (A2018/37026). These consents conflict with the current proposal and will need to be surrendered: a condition has been recommended to require this.
- 20 An aboriginal cultural heritage assessment (J Collins, August 2003) for the site was provided by the applicant. Recommendations from this assessment have been included in the conditions.

Processing history

- 25 Council requested further information regarding the ecological impacts and assessment and the aboriginal cultural heritage assessment on 7 July 2020 (E2020/76385). An amended biodiversity development assessment report (BDAR) was provided to Council on 8 September 2020 (E2020/17530). Council provided review comments on the revised BDAR on 9 October 2020 (E2020/81408). The most recent BDAR provided to Council is Revision E dated 22/10/2020 (E2020/89260).
- 30 An updated land contamination assessment was provided on 28 May 2020 (E2020/39803) and an updated stormwater management plan on 26 June 2020 (E2020/76387).

Amended subdivision layout plans were provided on 27 November 2020 (E2021/59705).

**1.2. Description of the proposed development**

- 35 This application seeks approval for subdivision of Lot 282 DP 1018663 into sixteen (16) neighbourhood lots (Lots 2- 17) and one (1) neighbourhood property lot (Lot 1) (see Figure 1).

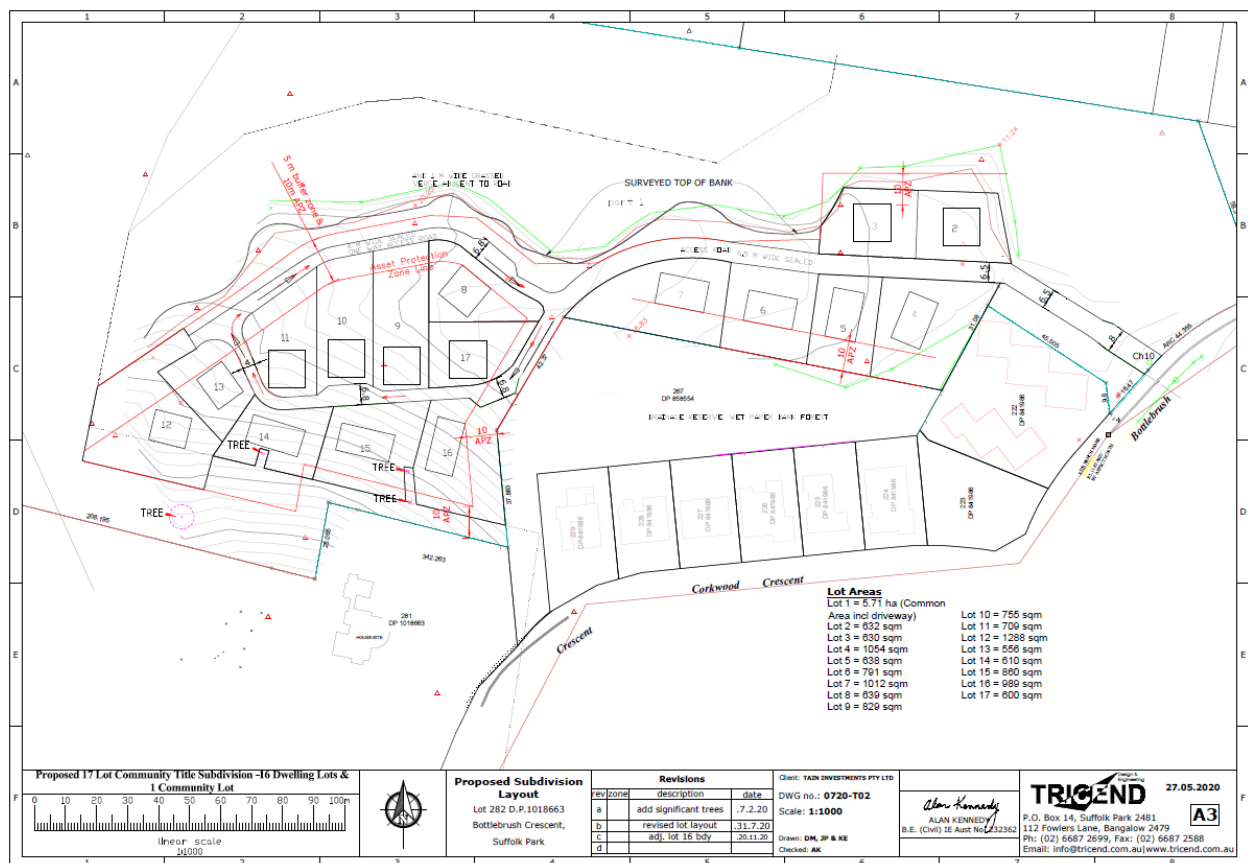


Figure 1 – Proposed subdivision layout.

The 16 neighbourhood lots are proposed to be located within the eastern portion of the property adjacent to Bottlebrush Crescent. Proposed lot areas are as follows:

**Lot Areas**

Lot 1 = 5.71 ha (Common Area incl driveway)	
Lot 2 = 632 sqm	Lot 10 = 755 sqm
Lot 3 = 630 sqm	Lot 11 = 709 sqm
Lot 4 = 1054 sqm	Lot 12 = 1288 sqm
Lot 5 = 638 sqm	Lot 13 = 556 sqm
Lot 6 = 791 sqm	Lot 14 = 610 sqm
Lot 7 = 1012 sqm	Lot 15 = 860 sqm
Lot 8 = 639 sqm	Lot 16 = 989 sqm
Lot 9 = 829 sqm	Lot 17 = 600 sqm

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The proposal also includes construction of an access road from Bottlebrush Drive between 4 and 8m in width and services for the neighbourhood lots and associated earthworks. Construction of the subdivision will require removal of trees and vegetation.

**1.3. Description of the site**

Land is legally described as	LOT: 282 DP: 1018663
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Property address is	41 Bottlebrush Crescent SUFFOLK PARK		
Land is zoned:	R2 Low Density Residential / PART DM Deferred Matter involving 2(a) Residential Zone, 7(d) Scenic/Escarpment Zone, & 7(k) Habitat Zone (see Figure 2)		
Land area is:	6.9 ha		
Property is constrained by:	<ul style="list-style-type: none"> <li>• Bushfire prone land</li> <li>• Flood Liable Land</li> <li>• High Environmental Value vegetation (subtropical rainforest, coastal swamp forest)</li> <li>• Biodiversity values</li> <li>• Contaminated land parcel</li> <li>• Flying fox known camp</li> </ul>		
	Is a BDAR required due to the location of the proposed development?	<input checked="" type="checkbox"/> Yes <input 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	



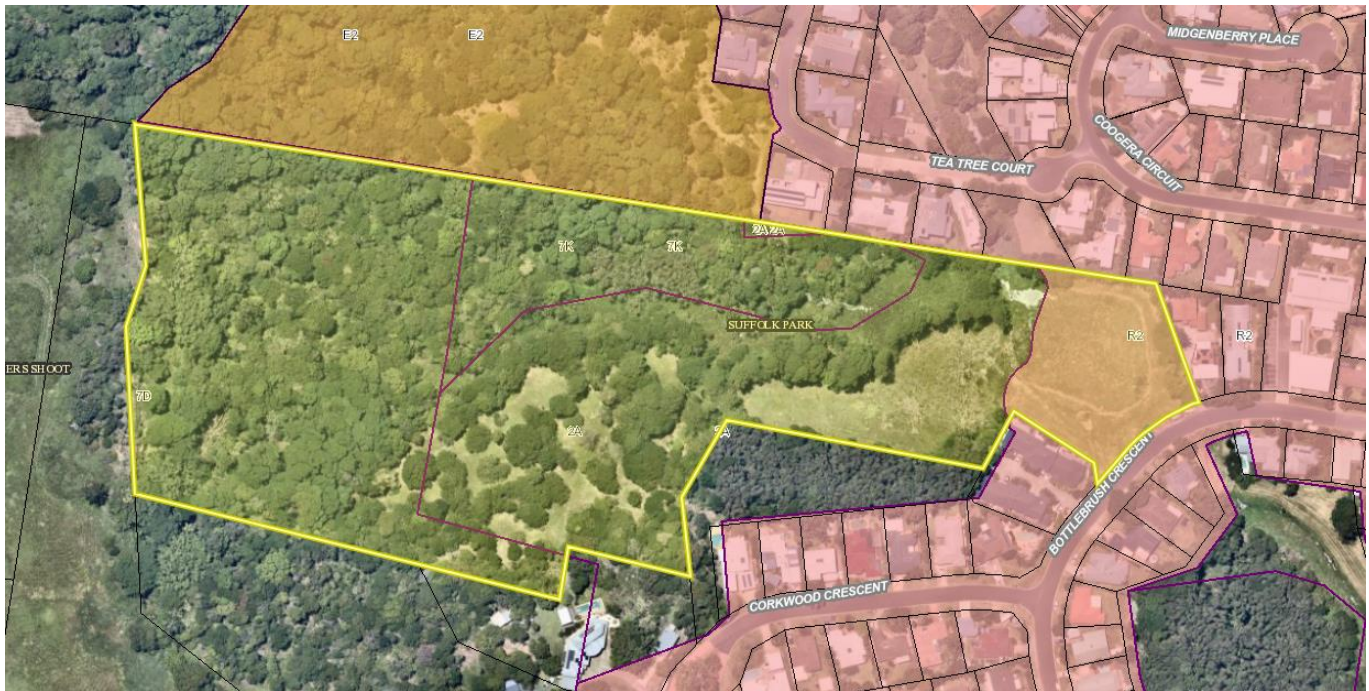


Figure 2 – Aerial photo with subject property identified as yellow polygon.



Photo 1 – view west from eastern end of Bottlebrush Crescent frontage of property



Photo 2 – view south over property from just south of Tea Tree Court cul-de-sac

5 “The site is heavily vegetated and includes littoral and subtropical rainforest as well as relatively smaller patches of coastal swamp forest.” (Refer Doc # A2019/30153).

The following site description is taken from the assessment report for DA 10.2005.730.1 (DM568415):

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5 “The lot has an area of 6.905 hectares, is irregular in shape and fronts Bottlebrush Crescent, Suffolk Park. The lot extends westwards over a distance of approximately 492 metres from its frontage to Bottlebrush Crescent at a contour of 12 m to a contour of 86m at the top of the escarpment. The eastern part is relatively undulating with the grade increasing to the west.

A water course flows west to east from the lower slopes of the escarpment through the centre of the site and at the eastern end flows into a large unapproved detention basin.

10 The eastern end the site is primarily grasslands with closed fernland along the water course. Paperbark forest is located along the southern boundary in the eastern part of the site with a pocket of same in central northern part. The higher western slope contains rainforest and an endangered ecological community.”

The property does is currently undeveloped in relation to roads and buildings.

#### 2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
Ecologist	No objections subject to conditions.
Rural Fire Service (100B/4.14/4.14)	An updated Bushfire Safety Authority/general terms of approval were issued on 5/5/2021. Refer to Doc #E2021/64152
Jali Local Aboriginal Land Council	No response received.
Bundjalung of Byron Bay Aboriginal Corp (Arakwal)	No response received.
Department of Planning, Industry & Environment	The request for concurrence regarding variation to development standards proposed in relation to minimum lot sizes was granted on 10 June 2021.
Office of Environment &	In relation to aboriginal cultural heritage, DPIE made the following recommendation in response to Council's referral for



<b>Referral</b>	<b>Issue</b>
Heritage – Heritage	<p>advice:</p> <p><i>BCD Recommendation:</i></p> <p>6. An Aboriginal cultural heritage assessment should be undertaken for this proposal and submitted in support of the development application.</p> <p>The applicant provided an “Aboriginal Heritage Assessment” (Jacqueline Collins, August 2003). A condition requiring adherence to management recommendations in this report has been recommended.</p>

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

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document ‘Planning for Bush Fire Protection’. The site is bush fire prone land. The development application is for integrated development and was referred to the NSW Rural Fire Service under sections 4.46 and 4.47 of the Act. The NSW Rural Fire Service provided a bush fire safety authority and general terms of approval for the revised development on 5/5/2021

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

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

#### **4.1 State Environmental Planning Instruments**

	<b>Satisfactory</b>	<b>Unsatisfactory</b>
State Environmental Planning Policy No 1— Development Standards	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: Although now repealed, this policy still applies to this application due to the date of lodgement and the savings provision (clause 7) of SEPP (Concurrences and Consents) 2018.</p> <p>The applicant provided a written objection (clause 6) to the development standard within the SEE (pages 10 – 14) which is considered in detail below. Consent may be granted where the consent authority is satisfied that the objection is well founded, is consistent with the aims of this Policy and concurrence has been issued (clause 7). See: Summary of referrals above and consideration of objection below.</p>		

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	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55— Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: In relation to site contamination, Council's Environmental Officer noted that:</p> <p><i>SEPP55 was considered for previous development applications. The proposed subdivision configuration lies within previous investigation areas (refer to Subdivision Layout Option 2 with APZ; Drawing No. 0720-TD2 prepared by Tricend P/L dated 27.05.2020). No further site soil investigations are considered to be warranted.</i></p> <p><i>During routine site inspections council officers observed an old car body dumped on site. It is recommended that a 'car body removal and disposal plan' be prepared and submitted to Council for approval prior to the issue of Construction Certificate.</i></p> <p><i>Given the possible dumping of other wastes on site it is recommended that an Unexpected Findings Protocol (UFP) be prepared and submitted to Council for approval prior to the issue of Construction Certificate.</i></p>		
State Environmental Planning Policy (Koala Habitat Protection) 2020	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: Council's Ecologist has reviewed the proposal and subject property and although over 1ha in area considers that the subject land is not "potential koala habitat" and as such Council is not prevented, because of this Policy, from granting consent to the development application.</p>		

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

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

- (a) The proposed development is defined in clause 6.2 of the EP&A Act as "subdivision of land";
- 5 (b) The land is within the R2 Low Density Residential zone / PART DM Deferred Matter (see LEP 1988 assessment below) according to the Land Zoning Map;
- (c) The proposed development is permissible with consent (clause 2.6); and
- (d) Regard is had for the Zone Objectives as follows:

<b>R2 Low Density Residential</b>	
<b>Zone Objective</b>	<b>Consideration</b>
To provide for the housing needs of the community within a low density residential environment.	The proposal will provide 16 new residential lots adjoining the Suffolk Park residential area. The lots have the potential to provide for the housing needs of the community.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	

#### **4.1 Minimum subdivision lot size**

The minimum lot size for the R2 zoned section of the property is 600m<sup>2</sup>. Only part of Lot 1 (5.71ha), part of Lot 2 (632m<sup>2</sup>) and part of Lot 4 (1054m<sup>2</sup>) are within the R2 zoned section. Each of these lots is greater than the relevant minimum lot size. In any event, minimum lot sizes do not apply to community title subdivisions.

#### **6.2 Earthworks**

The SEE states that all earthworks will be limited to a depth of less than 1m (pg38). No further information on earthworks (i.e., a cut and fill plan) or management of runoff during construction (i.e., and erosion and sediment control plan) was provided with the application but for some generic specifications (see drawing 0619-T10, T11 and T12). Council's Development Engineer is satisfied that the proposed earthworks and construction-phase stormwater can be adequately managed through conditions of consent.

#### **6.3 Flood planning**

Council's Development Engineer is satisfied that the proposed development will meet flood planning requirements, subject to recommended conditions.

#### **6.6 Essential Services**

Council's Development Engineer is satisfied essential services are available, or can be made available when required, for the subdivision, subject to recommended conditions.

#### **6.7 Affordable housing in residential and business zones**

The application does not propose affordable housing and this clause wasn't considered in the SEE.

The remaining underlined clauses have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act.

The proposed development complies with all clauses of LEP 2014 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

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

Note regarding proposed lot zones:

- 5 • Lot 1 (Community lot) - part 2(a), 7(d), 7(k) and R2 LEP 2014
- Lot 2 - 2(a) and R2 LEP 2014
- Lots 3, 5 to 11 and 17 - 2(a)
- Lot 4 - 2(a) and R2 LEP 2014
- Lot 12 – 2(a) and 7(d)
- 10 • Lot 13 – 2(a) and 7(d)
- Lot 14 – 2(a) and 7(d)
- Lot 15 – 2(a) and 7(d)
- Lot 16 – 2(a) and 7(d)

- 15 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:

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"/> 10  <input checked="" type="checkbox"/> 11  <input checked="" type="checkbox"/> 14  <input checked="" type="checkbox"/> 30  <input checked="" type="checkbox"/> 31  <input checked="" type="checkbox"/> 38A  <input checked="" type="checkbox"/> 45  <input checked="" type="checkbox"/> 64A

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

- 20 (a) The proposed development is defined in the in clause 6.2 of the EP&A Act as “subdivision of land”;
- (b) The land is within the 2(a) Residential, 7(d) Scenic/Escarpment and 7(k) Habitat Zones according to the land zones under LEP1988;
- (c) The proposed development is permissible with consent (clause 10); and
- (d) Regard is had for the Zone Objectives as follows:

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 proposed lots within the 2(a) zone are not inconsistent with the objectives of the zone.  As detailed in the body of this report the proposed subdivision is generally able to satisfy the requirements of Council's DCP 2010 for residential subdivision within the 2(a) Zone.
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, form, character and density of permissible development.	
7(d) Scenic/Escarpment Zone	
Zone Objective	Consideration
to protect and enhance the scenic qualities of the Shire of Byron which enhance the visual amenity by controlling the choice and colour of building materials, position and bulk of buildings, access roads and landscaping,	Lots 1 and Lots 12-16 are partially within zone 7(d).  These lots have adequate space for a residential dwelling outside of the 7(d) zoned land.  The majority of the 7(d) zoned land will be contained within the community lot and will be subject to environmental management commitments.
to prohibit development within the zone that is likely to have a visually disruptive effect on the scenic quality and visual amenity of the Shire,	
to enable development for certain purposes where such development would not have a detrimental effect on the scenic quality and visual amenity of	

the Shire,	
to minimise soil erosion from escarpment areas and prevent development in geologically hazardous zones, and	
to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.	
7(k) Habitat Zone	
Zone Objective	Consideration
to identify and protect significant vegetation and wildlife habitats for conservation purposes,	The entire area of zone 7(k) land will be within the community lot and will be subject to environmental management commitments as detailed in the recommended conditions. Consequently, the proposal is not considered to compromise the objectives of the 7(k) zone.
to prohibit development within the zone that is likely to have a detrimental effect on the wildlife habitats which exist,	
to enable the carrying out of development which would not have a significant detrimental effect on the wildlife habitats, and	
to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.	

**11 Subdivision in rural areas for agriculture etc**

The relevant minimum lot sizes for the subdivision of land are as follows:

- Environmental Protection 7 (d) Scenic/Escarpment Zone – 40ha
- Environmental Protection 7 (k) Habitat Zone – 40ha

- 5 There is no minimum lot size specified for zone 2 (a) land. Several of the proposed neighbourhood lots are partially within zone 7(d) and are also below the minimum lot size (Lots 1 and Lots 12-16). Lot 1 is also partially within zone 7(k) and is also below the minimum lot size for this zone. The applicant seeks a variation to the development standard for the minimum allotment size for subdivision within 7(d) Scenic Escarpment
- 10 Zone and 7(k) Habitat Zone and provided a written objection with the development

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application asserting that compliance with the minimum 40 hectare lot size standard is unreasonable and unnecessary in this instance (see consideration below).

#### **14 Residential area and rural villages**

- 5 The subject property is at least partially within the *land in West Suffolk Park as shown on the map marked "Byron Local Environmental Plan 1988 (Amendment No 2)"* as identified in sub-clause (3). Council's Development Engineer is satisfied adequate drainage works have been constructed for the subdivision to be approved. The subject property does not appear to be within the hatched area on the *"Byron Local Environmental Plan 1988 (Amendment No 19)"* map (sub-clause (6)).

#### **10 30 Development within Zone No 7(d) (Scenic)**

This clause applies only to buildings on land and not to subdivisions.

#### **31 Development on ridgetops**

All proposed neighbourhood lots are well below the ridgeline.

#### **15 38A Development of land shown cross-hatched within Zones 1(a), 1(b1), 1(d) and 7(k) adjacent to Environmental Protection Zones 7(a), 7(b), 7(k) and 7(j)**

The subject land is not within a cross-hatched area of zone 7(k).

#### **45 Provisions of services**

- 20 As noted above, Council's Development Engineer is satisfied essential services are available, or can be made available when required, for the subdivision, subject to recommended conditions.

#### **Clause 64A Exceptions to development standards**

This clause has not been added to LEP 1988 at the time the application was lodged and as such *State Environmental Planning Policy No 1—Development Standards* (SEPP1) continues to apply to this application (see above).

- 25 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 of these clauses (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to which considered further as follows:

What clause does the development not comply with and what is the nature of the non-compliance?	Further consideration, including whether the development application is recommended for approval or refusal accordingly
<u>11 Subdivision in rural areas for agriculture etc</u>	See consideration below

As noted above, several of the proposed neighbourhood lots are partially within zone 7(d) and are also below the minimum lot size (Lots 1 and Lots 12-16). Lot 1 is also partially within zone 7(k) and is also below the minimum lot size for this zone.

### SEPP1 Objection to Clause 11 of LEP 1988 – Minimum lot sizes

The applicant seeks a variation to the development standard for the minimum allotment size for subdivision within 7(d) Scenic Escarpment Zone and 7(k) Habitat Zone. Clause 11 of LEP 1988 provides that Council shall not consent to the subdivision of land within this zone unless both allotments achieve the size of 40 hectares.

A written objection was submitted with the development application (pages 10 -14 of the SEE) asserting that compliance with the minimum 40 hectare lot size standard is unreasonable and unnecessary in this instance as:

- the areas of land zoned 7(d) and 7(k) within the property are currently “well below” the minimum lot size; and
- the proposed subdivision includes commitment to “*significant environmental repair and management*” (pg. 11 of SEE).

Clause 3 of SEPP1 specifies the following aims and objectives:

*“This Policy provides flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.”*

Section 5 of the *Environmental Planning and Assessment Act 1979* provides that the objects of the

Act relevant to SEPP1 are:

“(a) to encourage:

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

(ii) the promotion and co-ordination of the orderly and economic use and development of land,”

Clause 7 of SEPP1 specifies that consent may be granted:



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Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3, it may, with the concurrence of the Director, grant consent to that development application notwithstanding the development standard the subject of the objection referred to in clause 6.

The submitted SEPP1 Objection is considered to be well founded and compliance with the 40 hectare minimum lot size in this instance is considered unreasonable and unnecessary in view of the following:

- The existing Lot 282 has an area of approximately 7ha and is already significantly less than the minimum Lot size of 40ha for the 7(d) and 7(k) zones (see Note);
- The proposal does not fragment the land within the 7(d) and 7(k) zones with the majority of that land to be within a single Neighbourhood Lot which, in combination with the biodiversity conservation management plan for this area, should allow for improved environmental protection and management of these areas; and
- The proposed subdivision is otherwise consistent with the relevant provisions, aims and objectives of LEP 1988; and
- There are no objectives provided with the minimum lot size requirement (clause 11).

**Note: The requested variation to the minimum lot size development standard is significantly greater than 10%.**

Compliance with the development standard is considered unreasonable and unnecessary in the circumstances of this case and the SEPP No.1 objection is therefore supported.

In correspondence dated 10 June 2021 NSW Department of Planning, Industry & Environment granted concurrence and advised, in part:

Concurrence has been granted in this instance as the land within the 7(d) Scenic /Escarpment and 7(k) Habitat zones are already below the 40ha minimum lot size and there is no public benefit in maintaining the standard in this circumstance, in addition concurrence to vary the standard has previously been granted for this site.

As advised in previous applications, Council should consider and address any potential impacts to the area of rainforest of Aboriginal cultural significance in the north western corner of the subject land and any regionally significant wildlife corridors.

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

No proposed instruments were identified that are applicable to this application.

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

##### B1: Biodiversity

The subject property has a number of identified environmental attributes including biodiversity values mapping and a BDAR was provided with the application (the BDAR underwent a number of revisions prior to the final version). Council's Ecologist is satisfied with the proposed biodiversity impact management, subject to recommended conditions.

B3: Services and B4: Traffic Planning, Vehicle Parking, Circulation and Access

Council's Development Engineer is satisfied with the proposed servicing and vehicular management for the subdivision, subject to recommended conditions. Water and wastewater from the subdivision can be connected to Council's reticulated systems.

5 B5: Providing for Cycling

Provision of cycling was not considered in the SEE and no cycling infrastructure appears to have been identified on the subdivision plans. There is currently no cycleway on Bottlebrush Crescent and traffic numbers on the subdivision road will be minimal allowing the road to be shared with cyclist relatively safely. Contributions to apply in relation to cycleways.

B9: Landscaping

A landscape plan was not provided with the application and as such a condition has been recommended requiring provision of a landscape plan prior to the issue of a subdivision works certificate.

15 B14: Excavation and fill

The SEE states that all earthworks will be less than 1m in depth. Road long and cross-sections were provided but no other detail on earthworks was included in the application (i.e., a cut and fill plan) and conditions have been recommended accordingly. Concept erosion and sediment controls were submitted, and Council's Development Engineer has recommended conditions requiring a detailed management plan for construction phase stormwater.

C2: Areas Affected by Flood

As noted above, Council's Development Engineer is satisfied that the proposed development will meet flood planning requirements, subject to recommended conditions.

25 D6: Subdivision

None of the development lots are within land zoned under LEP 2014. The proposed subdivision layout is generally consistent with the design guidelines (D6.2.1) with some exceptions including:

- The absence of a site context analysis plan;
- Some lots with less desirable aspect (i.e., NW-SE or NE-SW axis); and
- Requirement to remove native vegetation.

E1: Suffolk Park

Only the easternmost portion of the property is within the "Suffolk Park Urban Area". There are no provisions in this chapter that apply specifically to this development.

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

Where relevant the following chapters and parts of DCP 2010 apply, with comments provided below.

Chapter 1 Parts:	<input checked="" type="checkbox"/> A  <input checked="" type="checkbox"/> B  <input checked="" type="checkbox"/> F  <input checked="" type="checkbox"/> G  <input checked="" type="checkbox"/> H  <input checked="" type="checkbox"/> N
Chapters:	<input checked="" type="checkbox"/> 9  <input checked="" type="checkbox"/> 17

5 The proposed subdivision is generally consistent with the relevant design guidelines (B2) and development guidelines (B3) noting comments made under DCP 2014 above.

But for lot 13 (556m<sup>2</sup>), all proposed lots are at least 600m<sup>2</sup> in area (B5.1). Proposed allotments layouts are generally consistent with prescriptive measures (B5.2) noting that:

- Some lots with less desirable aspect (i.e., NW-SE or NE-SW axis);
- Some lots have double street frontages (i.e., front and rear); and
- Requirement to remove native vegetation.

The subdivision layout plans show indicative building envelopes of varying sizes and shapes that do not have annotated dimensions. A condition has been recommended requiring confirmation of the required building envelopes. But for the absence of a landscaping plan, the subdivision is consistent with allotment design requirements (B5.3).

15 Council's Development Engineer has assessed (a) the proposed road design and construction, (b) vehicle circulation and parking of the subdivision and (c) stormwater management and considers it to be satisfactory subject to recommended conditions (B6, G, N).

20 Council's Development Engineer and Environmental Officer have assessed the proposed servicing of the subdivision and consider it to be satisfactory subject to recommended conditions (B7).

As noted above, a landscape plan was not provided with the application and a condition has been recommended requiring provision of a landscape plan prior to the issue of a subdivision works certificate (H).

### 25 Chapter 9 - Suffolk Park

Development Control Provision	Development Control Requirement	Comment
3.0 – Density	A minimum 25% of small lots shall be dispersed through new	The proposed subdivision does not include small lots but is not

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Development Control Provision	Development Control Requirement	Comment
	release areas.	located in a “new release area”.  The subject site is not within a designated cluster area.
4.1 – Micro-climate control	To conserve the vegetated areas not protected by a habitat zone in Suffolk Park as indicated on the DCP map (Habitat-Vegetation-Open Space Systems).  To create vegetation buffers to the habitat area as indicated on the DCP map (Habitat-Vegetation-Open Space Systems).	The areas on the site containing vegetation within the 7(k) Zone are located within the common property allotment with a buffer provided to the access road.
4.2 – Aspect	Refer to Part C of DCP 2010.	Part C applies to residential development rather than subdivisions however, the proposed allotments are of sufficient size to allow dwellings to achieve reasonable solar access.
4.3 – Drainage	The location of drainage easements and retardation basins must be in accordance with those shown on the DCP map or as agreed by the Council’s Works and Services Director. The design and construction of the drainage facilities must perform to the specific standards for the Council’s Works and Services Division as detailed in Specification for Engineering Works.	Detailed site drainage plans have been assessed by Council’s Development Engineer and the latest plans are considered to be acceptable subject to recommended conditions.
	Drainage easements must be 30m wide unless otherwise	Conditions where necessary have been included in the

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Development Control Provision	Development Control Requirement	Comment
	agreed by the Council's Works and Services Director. Where wider this area will be calculated as being part of the developers open space contributions.	recommendation to require appropriate easements to be created in accordance with the requirements of Council's Development Engineer.
4.4 – Tree Preservation	Subdivision and housing development will not disturb any habitat zoned lands, littoral rainforest areas of SEPP No. 14 wetlands without the consent of the Council	The proposed subdivision does not seek to disturb land or vegetation within the 7(k) habitat zone.
	Pipelines to carry water, sewerage or gas should avoid treed areas and the habitat protection zones wherever possible. Constructing, operations and maintaining water, sewerage or gas pipelines within such zones and within treed areas should only be carried out with the consent of Council.	The subject site requires substantial site drainage works where possible these have been located to minimise impacts on existing vegetation to the satisfaction of Council's Ecologist.
	The construction of roads through treed areas or through habitat protection zones should only be carried out with the consent of Council and wherever possible should be avoided.	The application seeks consent new internal road located within the 2(a) zone.
	The constructions of lines for electricity or telecommunication purposes should wherever possible avoid vegetated areas and the habitat zones and nay construction should only be carried out with the consent of Council.	Noted.

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Development Control Provision	Development Control Requirement	Comment
	The Council will also require that any subdivision or housing developments located adjacent to the habitat zones will provide for appropriate buffer areas.	The subdivision plans show a 5m buffer to the 7(k) habitat zone land.
4.5 – Landscaping	A landscape architect should prepare a landscape plan for any subdivision or commercial development, non-residential or medium density or cluster housing development in Suffolk Park prior to release of the linen plan.	Provision of a landscape plan has been required by a recommended condition of consent.
4.6 – Ridgelines	No houses or other buildings to be constructed on ridgelines.	None of the proposed allotments are on or near the escarpment ridgeline.
4.7 – Site Grading	<p>Subdivision and housing development plans should show areas of concentrated drainage and indicate what provisions have been made for protection against erosion and excessive runoff. The size of any pipes, retardation basins and the like should be clearly stated.</p> <p>Grades should not be designed which direct a concentrated flow of surface drainage over existing or proposed slopes.</p> <p>All earth slopes with grades of 1 in 3 or steeper should be planted with appropriate vegetation cover to minimise erosion.</p> <p>No development should occur adjacent to the western escarpment of Suffolk Park where</p>	A condition has been recommended that requires provision of a cut and fill plan and an erosion and sediment control plan to manage earthworks and construction phase stormwater.

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Development Control Provision	Development Control Requirement	Comment
	there may be a potential for rockslides or landslips.	
4.8 – Public Open Space	Open space to be provided in the area shown on the DCP map, plus elsewhere as required by Council's Planning Director, to meet the minimum public open space requirements.	The DCP plan for the west Suffolk Park residential area does not require public open space to be provided within the subject site itself. Developer contributions are applicable.
4.9 – Pedestrian, Bikeways and Vehicle Movement Systems	The pedestrian, bikeways and vehicle movement system within a subdivision should be an integral part of the overall development. The system should give priority to the safety and convenience of pedestrians and cyclists.	Council's Development Engineer has assessed the road plans and considers them to be acceptable subject to recommended conditions.  The proposed subdivision is not of such a scale as to require the provision of cycling and pedestrian facilities.
5.1 – Lot Sizes, Shapes, Frontage and Setbacks	General lots must have a minimum area of 600m <sup>2</sup> and a minimum frontage of 18 metres.  Fanned shaped lots must have a minimum area of 650m <sup>2</sup> and a minimum frontage of 9 metres.	But for lot 13, all lots are at least 600m <sup>2</sup> . But for Lot 12, all lots have a street frontage of at least 18m.  Lot 12 is less than the minimum lot size of 900m <sup>2</sup> for hatched shaped lots.  <i>Note: "To facilitate the arrangement of lot layouts Council may permit up to 25% of lots to have a minimum frontage at the building line of 15m and a minimum area of 400m<sup>2</sup>".</i>

Urban services (6.1 – 6.4) have been considered above.

These checked Chapters/Parts have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The

proposed development is demonstrated to meet the relevant Objectives of DCP 2010 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

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

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

**5 4.6 Environmental Planning & Assessment Regulation 2000 Considerations**

Proposal raises no issues under the EPA Regulations 2000.

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

10

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

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

The site is capable of being serviced, has manageable constraints and is suitable for the proposed development.



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

The development application was publicly exhibited. There were **four (4)** submissions made in objection to the development application. The following key concerns were raised in the submissions:

5

Key concerns	Response
Stormwater management – lack of on-site detention - risk of flooding neighbouring properties	Council's Development Engineer has assessed the proposed stormwater and flood risk management and considers it to be satisfactory subject to recommended conditions.
Lack of current vegetation mapping - vegetation removal – no vegetation management plan - impact on biodiversity	Council's Ecologist has assessed the likely impact of the subdivision on vegetation and biodiversity and has recommended conditions to avoid, minimise and manage identified impacts.
Too many, small, irregular-shaped lots - overdevelopment	Proposed development lots generally meet size, shape and alignment criteria.
Bush fire safety risk from single vehicular access	The Rural Fire Service has issued General Terms of Approval for the subdivision.

**4.10 Public interest**

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

10

**5. DEVELOPER CONTRIBUTIONS**

**5.1 Water & Sewer Levies**

Section 64 levies will be payable.

**5.2 Section 7.11 Contributions**

Section 7.11 Contributions will be payable.

**6. CONCLUSION**

- 5 The proposed subdivision is considered to be a reasonable response to the constraints applying to the site. The proposal raises no environmental issues or constraints that can't be addressed and the application is recommended for approval subject to conditions of consent.

**Report No. 13.7      PLANNING - Development Application  
10.2020.574.1 Farmstay Accommodation  
comprising Six (6) Cabins and a Central  
Facility at 219 The Saddle Road Brunswick  
Heads**

5

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Chris Larkin, Manager Sustainable Development  
**File No:** I2021/757

**Proposal:**

<b>DA No:</b>	10.2020.574.1			
<b>Proposal description:</b>	Farm Stay Accommodation comprising Six (6) Cabins and a Central Facility			
<b>Property description:</b>	LOT: 4 DP: 810118 219 The Saddle Road BRUNSWICK HEADS			
<b>Parcel No/s:</b>	137160			
<b>Applicant:</b>	Koresoft Pty Ltd			
<b>Owner:</b>	Koresoft Pty Ltd			
<b>Zoning:</b>	RU2 Rural Landscape			
<b>Date received:</b>	2 December 2020			
<b>Integrated / Designated Development:</b>	<input checked="" type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input type="checkbox"/> Not applicable	
<b>Concurrence required</b>	No			
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"> <li>– Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications</li> <li>– Exhibition period: 16/12/20 – 20/01/21 and from 24/2/21 – 9/3/21</li> <li>– Submissions received: Three</li> <li>– Submissions acknowledged: <input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No    <input type="checkbox"/> N/A</li> </ul>			
<b>Other approvals</b>	<input type="checkbox"/> N/R	<input type="checkbox"/> W & S (68)	<input checked="" type="checkbox"/> OSMS (68)	<input type="checkbox"/> ST (68) <input type="checkbox"/> RA (138)
	Other:			
<b>Variation request</b>	Not applicable			
<b>Delegation to determine</b>	Council			

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### **Summary:**

The DA proposes Farm Stay Accommodation comprising Six (6) Cabins and a Central Facility.

- 5 The application appropriately addresses the relevant constraints applying to the site, and is generally satisfactory. However, there are concerns regarding the height of the central facility with conditions proposed to reduce the height to five metres and to limit its impact on the visual amenity of the area.

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

### **NOTE TO COUNCILLORS:**

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




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### **RECOMMENDATION:**

- 20 That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.574.1 for Farm Stay Accommodation comprising Six (6) Cabins and a Central Facility, be granted consent subject to the conditions of approval listed in Attachment 2 #E2021/86480.

### **Attachments:**

- 25 1 10.2020.574.1 Proposed Plans, E2021/86774   
2 10.2020.574.1 Conditions of consent, E2021/86480   
3 10.2020.574.1 Redacted Submissions of objection, E2021/86572 

Report

Assessment:

**1. INTRODUCTION**

**1.1. History/Background**

Recent approvals on the site include:

- 10.2017.742.1 – Alterations and additions to Existing Dwelling and New Dwelling House to create a dual occupancy and two studios – Approved 20/9/2018
- 10.2019.158.1 – Agricultural Produce Industry including use of Wind turbine, ancillary rural Infrastructure and Roadside Stall – Approved 17/10/2019

**1.2. Description of the proposed development**

This application seeks approval for Farm Stay Accommodation comprising Six (6) Cabins and a Central Facility. Each of the accommodation cabins will consist of features including: one bedroom, kitchen, living room, bathroom and toilet, disabled access, verandah and deck area, rainwater collection and solar panels. The cabins will have a drop-off and pick-up area and shared central car parking. The central facility will share the same access entrance from 219 The Saddle Road as the existing dwellings and proposed farm stay cabins. Features of the central facility include: laundry, bathrooms, toilets, communal dining area, storage room, barbecue area, library, office and playground. The proposal also consists of a wastewater management system, associated infrastructure such as a dam for water supply and supplementary biodiversity enhancements.

The proposed development is to be built over four stages; however, it is not a staged consent. The farm stay accommodation units will be constructed in stages 1 and 2, and the central facility will be constructed in stages 3 and 4. Relative infrastructure works and biodiversity enhancements will be conducted over all stages.

**1.3. Description of the site**

A site inspection was carried out on 23 December 2020.

The site is located at Lot 4 DP 810118, 219 The Saddle Road, Brunswick Heads. The property has a 145-metre frontage to Gulgah Road and a 325-metre frontage to The Saddle Road.



The property is entirely zoned RU2 Rural Landscape under Byron LEP 2014 and has an approximate area of 19.3 hectares.

5

The following environmental factors have been identified as relevant to the site:



The site is partially affected by bushfire hazard including an area close to the site of the proposed cabins. It does not contain any mapped bushfire hazard vegetation.

20



Acid sulfate soil class 3 is identified to be affecting a small portion of the site in the south-east corner of the property. A preliminary ASS assessment has been undertaken and no ASS was present to a depth of 4 metres.

25



Areas of high environmental value affect small portions of the north-west area of the site. No vegetation is proposed to be removed for the development.

5



Approximately 50% of the site is classified to have 'regional significant farmland'. The proposal should consider this factor in preserving these areas.

10

Land is legally described	LOT: 4 DP: 810118	
Property address	219 The Saddle Road BRUNSWICK HEADS	
Land is zoned:	RU2 Rural Landscape	
Land area is:	19.3 hectares	
Property is constrained by:	Bushfire prone land	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

## 2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer*	No objections subject to conditions.

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Referral	Issue
	<p>No concerns in relation to acid sulfate soils or land contamination (SEPP 55). There is a possibility that rubbish may have been buried on the subject farmland. It is therefore recommended that the applicant provides an Unexpected Findings Protocol (UFP) to Council for approval prior to the issue of a Construction Certificate. A condition has been imposed in this regard.</p> <p>The wastewater generated from the proposed development is to be disposed of on site. On-site Wastewater Management Report No.17224_ww_Farmstay accomm.doc prepared by Greg Alderson &amp; Associates dated (9 September 2020) demonstrates that wastewater generated by the development can be adequately managed. The applicant has not sought an approval to install the system and therefore a condition has been imposed requiring that prior to the issue of a construction certificate for the development, an approval to install the system must be obtained from Council pursuant to section 68 of the Local Government Act (1993).</p> <p>Section 68 approvals 70.2017.1122.1 and 70.2017.1122.2 granted on 17/11/2017 and 19/12/2018 are to be surrendered. This must be in the form of a written memorandum to Council from the owner of the subject property. This must be complied with prior to the issue of a Construction Certificate for Building Works. A condition has been imposed to this effect.</p>
Development Engineer	<p>No objections subject to conditions.</p> <p><b>Parking</b> – Requirement is 6 parking spaces – 12 are proposed. Parking supply exceeds the minimum requirement and parking design must meet the design requirements of AS2890.1:2004 and AS2890.6:2009. Batter stabilisation/armouring will be required.</p> <p><b>Internal Driveway and Roads</b> – The submitted supporting engineering plans did not provide a cross section of the proposed internal driveway. The assessment assumes width of the internal driveway to be 4.0 metres in accordance with RFS requirement. Should this be the case, there is not sufficient aisle width to comply with AS2890. This can be conditioned. Proposed turnaround will also be conditioned. Sealing of road sections greater than 10-degree grade and must meet non-perimeter road requirements of Table 5.3b in Planning for Bushfire 2018.</p>



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Referral	Issue
	<p><b>Site Access from The Saddle Road</b> – Traffic will enter The Saddle Road via Mullumbimby/The Saddle Road intersection (INGRESS) and advises guests to exit the site in The Saddle Road towards Gulgan Road roundabout (EGRESS). The Mullumbimby/The Saddle Road intersection is deemed to be relatively unsafe with substandard sight distance available. To address safety, the measures by way of designing the access in The Saddle Road to direct all traffic (egress and ingress) towards Gulgan Road roundabout. This will involve in the provision of traffic islands, street lighting, road sealing and a Road Safety Audit (RSA). It is agreed that the existing dwelling can have a separate access to that used by the proposed cabins and that this will be fenced off (with a gate) to avoid cabin occupants using the house access.</p> <p><b>Earthworks</b> – A site plan shall be provided that shows all areas of cut and fill on the site and specifically identifies any areas over one metre, to meet the prescriptive measures of Chapter B14 of BDCP. Geotechnical Investigation and Slope Stability Report of the development site to meet the prescriptive measures of Chapter B14 of BDCP. The Geotechnical Investigation must be in accordance with AS1726 and AS2870, and the Slope Stability in accordance with Land Risk Assessment (Australia Geomechanics Society) 2007. This will be conditioned.</p>
Water & Sewer Engineer (Local Approvals Officer)	<p>No objections subject to conditions.</p> <p>The proposed development does not generate additional loading onto Council's Water, Bulk Water and/or Sewer systems beyond the existing ET entitlements.</p> <p>A section 307 certificate from Rous is required if tanks are to be filled from the Rous water supply connection to the site.</p>
S94 / Contributions Officer	<p>This development does not involve an increase in population. The section 7.11 contribution plan does not apply. The fixed development levy of the section 7.12 plan will apply. A condition of consent will be imposed to require payment of contributions.</p>
Ecologist	<p>No objections subject to conditions.</p> <p>The proposal design has been located such that no established native vegetation is required to be removed to construct the cabins or visitor facility. The proposed development site is located in a relatively degraded part of</p>

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Referral	Issue
	<p>the subject land. The submitted bushfire assessment report provides that no native vegetation removal is needed to establish the required APZs.</p> <p>The proposal does not exceed either of the two triggers that form the Biodiversity Offsets Scheme (BOS) threshold (the Biodiversity Values Map and the area clearing threshold).</p> <p>The application was lodged prior to the commencement of the Koala SEPP 2021, and therefore the Koala SEPP 2020 applies. The Koala SEPP 2020 reproduces the provisions of the previous SEPP 44 – Koala Habitat Protection (SEPP 44). An assessment of the twelve <i>E. microcorys</i> trees did not detect any koala scats. There are no records of koalas within the site. As a result, it is considered that the land does not meet the definition of core koala habitat. It is therefore considered that the proposal is subject to clause 9(3)(a), which states that “if the Council is satisfied that the land is not a core koala habitat, it is not prevented, because of this Policy, from granting consent to the development application”.</p> <p>A Vegetation Management Plan (VMP) is required with a rural tourism DA detailing an ecological restoration effort comprising 900 local native tree plantings or equivalent assisted natural regeneration (work units) per tourist facility. For the present proposal, this equates to 5,400 work units (900 x 6 cabins). The application included a draft VMP that described the proposed ecological restoration effort to meet this requirement. The general approach of the VMP is supported; however, the submitted plan lacks detail. A detailed VMP will be recommended as a condition of consent.</p>
Rural Fire Service (100B/4.14/4.14)	<p>The New South Wales Rural Fire Service (NSW RFS) considered the information submitted and issued General Terms of Approval, under Division 4.8 of the <i>Environmental Planning and Assessment Act 1979</i>, and a Bush Fire Safety Authority, under section 100B of the <i>Rural Fires Act 1997</i>, subject to the following conditions relating to:</p> <p>Asset Protection Zones; Construction Standards and BAL Levels; Access; Water and Utility Services; Landscaping; Emergency and Evacuation Planning Assessment.</p> <p>These conditions have been included in this approval.</p>
Essential Energy	<p>There are unlikely to be potential safety risks if the following conditions are complied with:</p>

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Referral	Issue
	<ol style="list-style-type: none"><li>1. Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with. Essential Energy's records indicate that there is an easement located on the boundary of this property in the location of the proposed development. All farm stay accommodation and the proposed central visitors facility must be constructed outside the easement area.</li><li>2. Satisfactory arrangements must be made with Essential Energy for the provision of power with respect to the proposed development. It is the applicant's responsibility to make the appropriate application with Essential Energy for the supply of electricity to the development, which may include the payment of fees and contributions.</li><li>3. In addition, Essential Energy's records indicate there is electricity infrastructure located within the property and within close proximity to the property. Any activities within these locations must be undertaken in accordance with the latest industry guideline currently known as <i>ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure</i>. Approval may be required from Essential Energy should activities within the property encroach on the electricity infrastructure.</li><li>4. Prior to carrying out any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the <i>Electricity Supply Act 1995 (NSW)</i>.</li><li>5. Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (<a href="http://www.safework.nsw.gov.au">www.safework.nsw.gov.au</a>) has publications that provide guidance when working close to electricity infrastructure. These include the <i>Code of Practice – Work near Overhead Power Lines</i> and <i>Code of Practice – Work near Underground Assets</i>.</li></ol>

**SECTION 4.14 – BUSH FIRE PRONE LAND**

As outlined above, the site has limited native vegetation that can induce bushfire hazard and risk. Small, isolated pockets of vegetation on the site exist but do not generate major risk of bushfire. A risk occurs as a result of vegetation on a neighbouring property to the south.

The farm stay accommodation will incorporate a suitable accessible road, water supply and a bushfire management plan to protect the accommodation and occupants. The conditions imposed by RFS will suffice in managing bushfire hazard.

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

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

**3.1 State Environmental Planning Instruments**

	<b>Satisfactory</b>	<b>Unsatisfactory</b>
State Environmental Planning Policy No 55— Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: A preliminary contaminated land assessment was undertaken in 2017 for the subject site. A review of the site's history demonstrated that soil sampling was not required due to the following findings in the assessment:</p> <ul style="list-style-type: none"> <li>- There was no evidence that the investigation has ever been subject to cropping or plantations</li> <li>- There was no evidence that buildings or structures had ever been constructed in the investigation area</li> <li>- There was no evidence that any other contaminating activities had occurred in the investigation area.</li> </ul> <p>It is evident that the land has not been subjected to contamination through previous activities and land uses, demonstrating that the SEPP has been addressed.</p> <p>However, there is a possibility that rubbish may have been buried on the subject farmland. Therefore, it is recommended that the applicant provide an Unexpected Findings Protocol (UFP) to Council for approval prior to the issue of a Construction Certificate. A condition has been imposed.</p>		
State Environmental Planning Policy (Infrastructure) 2007	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: This SEPP is relevant because clause 101 applies to "Development with frontage to a classified road". The relevant objective is to "ensure that new development does not compromise the effective and ongoing operation and function of classified roads". Gulgan Road is a classified road; The Saddle Road is not. The applicant</p>		

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	Satisfactory	Unsatisfactory
addresses this issue in the Traffic Impact Analysis.		
<p>To ensure the continued operation and function of Gulgan Road, the SEPP requires that Council must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:</p> <p>(a) <i>where practicable and safe, vehicular access to the land is provided by a road other than the classified road,</i></p> <p>The Saddle Road has low traffic volumes and is a narrow, gravel road with a poor intersection to Mullumbimby Road (and a good roundabout access to Gulgan Road). Direct access to Gulgan Road would normally be a safer option subject to intersection upgrades that are already planned for previously approved development. However, clause 6.8 of Byron LEP 2014 acts as a prohibition to rural tourism development using any classified road for access. Therefore, The Saddle Road is the only option. In this case, the safest thing to do is create a driveway access to The Saddle Road so that any traffic generated by the farm stay accommodation will be specifically guided to The Saddle Road, and that once it exits the property it will turn right onto The Saddle Road towards the roundabout intersection with Gulgan Road, and not left towards Mullumbimby Road. It will be imposed as a condition of consent. This will be compliant with the SEPP. It will not compromise the effective and ongoing operation and function of any classified roads.</p>		
State Environmental Planning Policy (Koala Habitat Protection) 2020	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration: The application was lodged prior to the commencement of the Koala SEPP 2021, and therefore the Koala SEPP 2020 applies. The Koala SEPP 2020 reproduces the provisions of the previous SEPP 44 – Koala Habitat Protection. An assessment of the 12 Eucalyptus microcorys trees that are present on the site near the old quarry did not detect any koala scats. There are no records of koalas within the site. As a result, it is considered that the land does not meet the definition of core koala habitat. To be defined as ‘core koala habitat’ the following attributes must be evident: breeding females, recent sightings and historical records of population. None of the above criteria was noted for the site.</p> <p>It is therefore considered that the proposal is subject to clause 9(3)(a), which states that “if the Council is satisfied that the land is not a core koala habitat, it is not prevented, because of this Policy, from granting consent to the development application”. A koala plan of management is not required.</p>		

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

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

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Part 1	<input checked="" type="checkbox"/> 1.1  <input checked="" type="checkbox"/> 1.1AA  <input checked="" type="checkbox"/> 1.2  <input checked="" type="checkbox"/> 1.3  <input checked="" type="checkbox"/> 1.4  <input checked="" type="checkbox"/> Dictionary  <input checked="" type="checkbox"/> 1.5  <input checked="" type="checkbox"/> 1.6  <input checked="" type="checkbox"/> 1.7  <input checked="" type="checkbox"/> 1.8  <input type="checkbox"/> 1.8A  <input checked="" type="checkbox"/> 1.9  <input type="checkbox"/> 1.9A
Part 2	<input checked="" type="checkbox"/> 2.1  <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table   <input type="checkbox"/> 2.4   <input type="checkbox"/> 2.5   <input type="checkbox"/> 2.6   <input type="checkbox"/> 2.7   <input type="checkbox"/> 2.8
Part 3	<input type="checkbox"/> 3.1  <input type="checkbox"/> 3.2  <input type="checkbox"/> 3.3
Part 4	<input type="checkbox"/> 4.1  <input type="checkbox"/> 4.1A  <input type="checkbox"/> 4.1AA  <input type="checkbox"/> 4.1B   <input type="checkbox"/> 4.1C  <input type="checkbox"/> 4.1D  <input type="checkbox"/> 4.1E  <input type="checkbox"/> 4.1F  <input type="checkbox"/> 4.2  <input type="checkbox"/> 4.2A  <input type="checkbox"/> 4.2B  <input type="checkbox"/> 4.2C  <input type="checkbox"/> 4.2D  <input checked="" type="checkbox"/> 4.3  <input type="checkbox"/> 4.4   <input type="checkbox"/> 4.5   <input type="checkbox"/> 4.6
Part 5	<input type="checkbox"/> 5.1  <input type="checkbox"/> 5.2  <input type="checkbox"/> 5.3  <input checked="" type="checkbox"/> 5.4  <input type="checkbox"/> 5.6  <input type="checkbox"/> 5.7  <input type="checkbox"/> 5.8  <input type="checkbox"/> 5.10  <input type="checkbox"/> 5.11  <input type="checkbox"/> 5.12  <input type="checkbox"/> 5.13   <input type="checkbox"/> 5.14   <input type="checkbox"/> 5.15   <input type="checkbox"/> 5.16   <input type="checkbox"/> 5.17   <input type="checkbox"/> 5.18   <input type="checkbox"/> 5.19
Part 6	<input checked="" type="checkbox"/> 6.1  <input checked="" type="checkbox"/> 6.2  <input type="checkbox"/> 6.3  <input type="checkbox"/> 6.4  <input type="checkbox"/> 6.5  <input checked="" type="checkbox"/> 6.6  <input type="checkbox"/> 6.7  <input checked="" type="checkbox"/> 6.8  <input type="checkbox"/> 6.9   <input type="checkbox"/> 6.10  <input type="checkbox"/> 6.11

The development application is consistent with certain aims outlined in LEP 2014 (clause 1.2), in particular subclauses:

- 5                    2) (d) *to promote and coordinate the orderly and economic use and development of land,*
- 2) (g) *to encourage development that contributes to a strong, growing and diversified economy,*

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

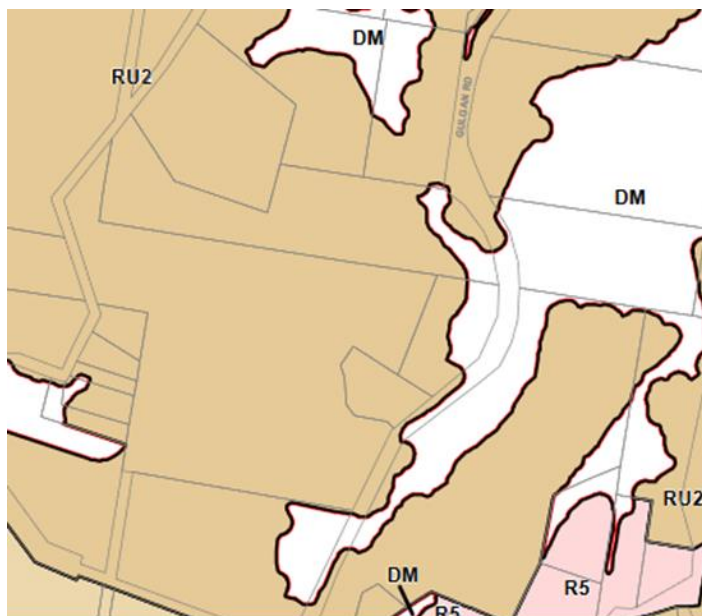
(a)    The proposed development is defined as follows in the LEP 2014 Dictionary:

15                    ***farm stay accommodation*** means a building or place that provides temporary or short-term accommodation to paying guests on a working farm as a secondary business to primary production.

20    Comment: The applicant states that the 6 farm stay accommodation cabins and central facility are proposed to be used for the purposes of supplying accommodation to students to supplement their study in relevant agricultural, sustainability, natural resources and conservation courses. It is stated that the intent is to provide short-term accommodation ranging from 2 weeks to 3 months. If not in use by students, the cabins will be available for temporary and short-term visitors and guests. Despite the applicant's references to "affordable housing", farm stay accommodation is a form of ***tourist and visitor accommodation***. It is ***not*** a form of ***residential accommodation***.

25                    (b)    The land is within the RU2 Rural Landscape zone according to the Land Zoning Map. Farm stay accommodation is permitted with consent within the RU2 Rural Landscape zone.

30



(c) Regard to the Zone Objectives:

Zone Objective	Consideration
<i>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base</i>	The proposal states that the development will primarily accommodate students interested in local agriculture relative to the industry. The proposed works should not interfere with the agricultural land uses on the balance of the land and this will maintain the natural resource base.
<i>To maintain the rural landscape character of the land</i>	The farm stay accommodation and central facility designs do not negatively impact the locality of area. Remnant vegetation is to be maintained and the agricultural uses of the site should not be affected. Landscaping and building materials colour can be used to assist in avoiding landscape impacts.
<i>To provide for a range of compatible land uses, including extensive agriculture</i>	A range of compatible land uses already exist on the site; the farm stay accommodation and its purposes support this objective. Rainbow Farm is an organic operation, which assists in avoiding land use conflict.
<i>To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality</i>	The proposal is to provide tourist accommodation and facilities that are small scale (1-bedroom cabins) and can be used by those interested in primary production.
<i>To protect significant scenic landscapes and</i>	Visual impacts of the proposal will be kept

<b>Zone Objective</b>	<b>Consideration</b>
<i>to minimise impacts on the scenic quality of the locality</i>	to a minimum through the location of the buildings below the ridgeline. Building material colour will assist (earth tones). Landscaping will also be applied to break up the building appearance. Removal of vegetation is not required.

**Clause 4.3 Height of buildings**

Complies. The LEP prescribes a 9-metre building height limit for land zoned RU2. The farm stay accommodation facilities have an approximate height of 6.1 metres. The central facility has an approximate height of 7.1 metres.

**Clause 5.4 Controls relating to miscellaneous permissible uses**

Complies. Subclause (5) states:

*Farm stay accommodation: If development for the purposes of farm stay accommodation is permitted under this Plan, the accommodation that is provided to guests must consist of no more than 12 bedrooms.*

The farm stay accommodation and central facility do not exceed the maximum number of bedrooms (12) for clause. The proposal will supply six 1-bedroom cabins. Each cabin has a mezzanine for storage and this is not to be used as an additional bedroom. The central facility will not have a kitchen to ensure that it is not used as an additional cabin or dwelling.

**Clause 6.1 Acid sulfate soils**

Complies. The objective of this clause is: *to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.* A small portion of the south-east corner of the site has been classified in the Byron LEP to contain acid sulfate soils class 3. A preliminary assessment undertaken in 2019 for the site revealed that no acid sulfate soils or potential acid sulfate soils were present in the tested locations to a depth of 4 metres. The proposed development is not located in the affected area identified in the LEP 2014. Therefore, no ASS management practice is required during the works to be undertaken.

**Clause 6.2 Earthworks**

Complies subject to conditions being met. The objective of this clause is: *to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.*

Earthworks will be required for all cabins and the central facility plus the internal driveway and parking. A site plan shall be provided that shows all areas of cut and fill on the site and specifically identifies any areas over one metre, to meet the prescriptive measures of Chapter B14 of BDCP. Geotechnical Investigation and Slope Stability Report of the development site to meet the prescriptive measures of Chapter B14 of BDCP. The Geotechnical Investigation must be in accordance with AS1726 & AS2870 and the Slope Stability in accordance with Land Risk Assessment (Australia Geomechanics Society) 2007.



**Clause 6.6 Essential services**

*Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—*

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

**Complies:**

- a) Drinking water will be supplied through Rous Water mains connection. An on-site rainwater dam will provide water for non-potable purposes in the cabins and the central facility, plus fire fighting.
- b) Electricity is available to the site; the supply of electricity is supplemented through solar panel sources along with a small wind turbine and a Lithium battery tank.
- c) The applicant's supporting information demonstrates that wastewater generated by the development can be adequately managed. The applicant has not sought an approval to install the system and therefore a condition has been imposed requiring that prior to the issue of a construction certificate for the development, an approval to install the system must be obtained from Council (pursuant to section 68 of the Local Government Act (1993)). Section 68 approvals 70.2017.1122.1 and 70.2017.1122.2 granted on 17/11/2017 and 19/12/2018 are to be surrendered. This must be in the form of a written memorandum to Council from the owner of the subject property. This must be complied with prior to the issue of a Construction Certificate for Building Works.
- d) Roof water from all structures will be collected in tanks for use in the development and excess water directed to the turkeys' nest dam or the existing stormwater drainage lines that traverse the property. The application for a Construction Certificate is to include plans and specifications for stormwater drainage in accordance with AS/NZS 3500.3:2003, Plumbing and drainage, Part 3: Stormwater drainage. All stormwater drainage for the development must be conveyed by a gravity system to the existing stormwater drainage system within the site.
- e) The Saddle Road has low traffic volumes and is a narrow, gravel road with a poor intersection to Mullumbimby Road (and a good roundabout access to Gulgán Road). Direct access to Gulgán Road would normally be a safer option subject to intersection upgrades that are already planned for previously approved development. However, clause 6.8 of Byron LEP 2014 acts as a prohibition to rural tourism development using any classified road for access. Therefore, The Saddle Road is the only option. In this case, the safest thing to do is create a driveway access to The Saddle Road so that any traffic generated by the farm stay accommodation will be specifically guided to The Saddle Road, and that once it exits the property it will turn right onto The Saddle Road towards the roundabout intersection with Gulgán Road, and not left towards Mullumbimby Road.

**6.8 Rural and nature-based tourism development**

The objective of this clause is *to ensure that tourism development in rural and natural areas is small scale and does not adversely impact on the agricultural production, scenic or environmental values of the land*. The clause is applicable to the zoning of the site, RU2 Rural Landscape. The development proposed is a form of rural tourism.

Complies. The proposed development is consistent with the requirements of the clause as follows:

- (a) *there is, or will be, adequate vehicular access to and from a road, other than a classified road, taking into account the scale of the development proposed*

The development will get access from The Saddle Road.

- (b) *the development is small scale and low impact*

The development is small enough to be generally managed and operated by the principal owner living on the property.

- (c) *the development is complementary to the rural or environmental attributes of the land and its surrounds*

The development will complement the farming capability of the site by providing short-term accommodation for farm workers and visitors. It is substantially located south of the regional farmland that is located on the subject land.

- (d) *the development will not have a significant adverse impact on agricultural production, amenity or significant features of the natural environment.*

The development will have minimal impact on the farming capability of the site and will not cause any significant environmental impacts. Potential visual impacts can be ameliorated with building material colours and landscaping.

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

N/A

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

**B3 Services**

Water, on-site wastewater disposal, stormwater are all addressed adequately in this application. Council referral officers have supplied appropriate conditions to address any concerns.

**B4 Traffic and Parking**

The implications of traffic have already been previously addressed in this referral, with a viable management plan adopted concerning the impacts of increased traffic. A central car parking area has been incorporated as part of the development application, which proposes to service all of the farm stay accommodation units. Ten car parking spaces will be provided, which is sufficient to meet the demands of the visitors. The DCP

requires six spaces; therefore, the proposed development is compliant with Council parking requirements.

**B6 Buffers and Minimising Land Use Conflict**

- 5 The DCP recommends rural tourist accommodation be separated from a range of other land uses as follows:

<b>Land Use</b>	<b>Recommended Buffer</b>	<b>Actual Distance</b>
<b>Grazing of Stock</b>	50 metres	Properties to the south and west are not grazing land. The nearest grazing is approx 300 metres from proposed farm stay accommodation to the north.
<b>Rural Industries (timber mill)</b>	500 metres	Approx 650 metres – timber mill located to south-east of proposed farm stay accommodation across Gulgarn Road.
<b>Wholesale and Retail Nursery</b>	200 metres	Approx 220 metres – nursery located to south-east of proposed farm stay accommodation.
<b>Veterinary Hospital</b>	300 metres	Approx 420 metres to neighbour's veterinary hospital.
<b>Horticulture</b>	200 metres	Dragon fruits are being grown within 50 metres of the cabins but this is an organic farm and conflict is unlikely.

- 10 The development is compliant other than for horticulture, but conflict can be managed because it is taking place on the same land and the property is an organic farm. As it is farm stay accommodation, those visiting the site will expect to be on a working farm including noise, dust or odour.

**B8 Waste Minimisation and Management**

- 15 Waste generated by the proposed farm stay accommodation will be serviced by the current collection service provided by Byron Shire Council. Three new general waste and three new recycling bins will be required for the farm stay accommodation and will be stored adjacent to the central facility building for collection at Gulgarn Road (total = 3 x 240 litre general waste and 3 x 240 litre recyclable waste). A Site Waste Minimisation & Management Plan (SWMMP) will be submitted as part of the Construction Certificate application.
- 20

#### B14 Excavation and Fill

Earthworks will be required for the development. A site plan needs to be provided that shows all areas of cut and fill on the site and specifically identifies any areas over one metre, to meet the prescriptive measures of this chapter. Geotechnical Investigation and Slope Stability Report of the development site to meet the prescriptive measures of Chapter B14 of BDCP. The Geotechnical Investigation must be in accordance with AS1726 and AS2870, and the Slope Stability in accordance with Land Risk Assessment (Australia Geomechanics Society) 2007.

Visual impacts of the development will be minimised as the structures are to be constructed below the western ridgeline and no vegetation is required to be removed. A proposed forestry area below the cabins will also assist with screening the earthworks.

#### Chapter C3 – Visually Prominent Sites, Visually Prominent Development and View Sharing

Although it is located in an elevated location, this chapter does not apply to the proposed development because it is located at or below the 49-metre AHD contour and does not meet the definition of a visually prominent site. It is unlikely to impact the character of a visually prominent site. Notwithstanding this, conditions will be imposed to ameliorate the visual impact of the development when viewed from public roads or private property located to the east. This chapter is cross referenced in Chapter D3 as being relevant to rural tourist accommodation.

***Visually prominent site** means land that is wholly or partly within the coastal zone; and land in Zone RU1 Primary Production, RU2 Rural Landscape with a height of 60m AHD or greater.*

***Visually prominent development** means any development located on a visually prominent site or development in a location that has the potential to impact the visual or scenic character of a visually prominent site.*

#### D3 Tourist Accommodation

This chapter provides guidelines to support the Shire's commitments to a sustainable, natural, built and economic environment in relation to the control of tourist accommodation. Farm stay accommodation is included in the definition of tourist accommodation. **Tourist accommodation** has the same meaning as tourist and visitor accommodation, camping ground, caravan park and eco-tourist facility in Byron LEP 2014.

In the DCP, **Rural tourist accommodation** means (in relation to sections D3.3.4 and D3.3.5 of this DCP) a structure containing a room or suite of rooms used, or intended to be used, for the provision of holiday accommodation only. Such accommodation is to have a maximum of two bedrooms and must be freestanding.

The corresponding objective of this chapter and farm stay accommodation is:

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

Comment: The agricultural and primary production processes of the site will be supported through the attraction of visitors, which may include students taking courses in the related rural industries. The six 1-bedroom units and the capacity of the number guests enforce that the proposal can be classified as low scale.

Other controls to be assessed include:

Chapter D3 Objectives and Controls	Compliance / Non-Compliance
<b>D3.2.1 Location and Siting</b>	
<p><b>Performance Criteria</b></p> <ol style="list-style-type: none"> <li><i>The siting, design and operation of tourist accommodation and associated development must not adversely affect important conservation values, ecological systems or characteristics of the site or the Shire. Development must respect and contribute to the natural environmental systems and values of its location and surrounds.</i></li> <li><i>Development applications for proposals located in or near ecologically sensitive areas, areas of high environmental values and/or important natural features or sites must include a full description of those ecological, conservation and natural values and systems, together with a comprehensive, professional assessment of the impact of the proposed development thereon. The impact assessment must include an evaluation of the effectiveness and sustainability of any proposed amelioration and management measures.</i></li> <li><i>Determination of the siting, extent and nature of development must be consistent with the provisions of Chapter B6 Buffers and Minimising Land Use Conflict.</i></li> </ol>	<ol style="list-style-type: none"> <li>The development location has no important conservation values.</li> <li>Sufficient information is supplied to assess the impacts of the development.</li> <li>The location in relation to potential land use conflict is acceptable and addressed in relation to DCP Chapter B6.</li> </ol>
<b>D3.2.3 Character and Design in Rural Zones</b>	
<p><b>Objectives</b></p> <ol style="list-style-type: none"> <li><i>To ensure that tourist accommodation in Rural Zones is compatible with the surrounding landscape and with the character and amenity of development in the locality.</i></li> <li><i>To implement the relevant Aims, Guiding Principles and provisions of the Byron Rural Settlement Strategy 1998.</i></li> </ol>	<ol style="list-style-type: none"> <li>The development is clustered and generally compatible with the surrounding landscape.</li> <li>Generally complies.</li> </ol>

Chapter D3 Objectives and Controls	Compliance / Non-Compliance
<b>D3.3.4 Rural Tourist Accommodation and Farm Stay Accommodation</b>	
<b>Objectives</b> <ol style="list-style-type: none"> <li><i>To ensure that rural tourist accommodation does not detract from the rural and natural character of its locality.</i></li> <li><i>To ensure that rural tourist accommodation does not adversely affect the conduct and productivity of agricultural operations on the site or nearby lands.</i></li> <li><i>To facilitate and support the establishment of low scale farm tourism as a secondary business to primary production, where farm stay accommodation is proposed.</i></li> </ol>	<ol style="list-style-type: none"> <li>The cabins and central facility will all be single storey structures (conditions to apply to central facility to achieve this) and, in combination with non-reflective material and earth tones plus landscaping, should not detract from the character of the locality.</li> <li>Its location on one edge of the property should avoid conflict with agriculture on the site.</li> <li>The cabins will be run as a secondary business to Rainbow Farm.</li> </ol>
<b>Performance Criteria</b> <ol style="list-style-type: none"> <li><i>The development must be located and operated so that it does not:</i> <ol style="list-style-type: none"> <li><i>adversely affect the conduct and productivity of agricultural operations on the site;</i></li> <li><i>create potential for conflict with adjoining land uses;</i></li> <li><i>disrupt environmental enhancement projects on the land;</i></li> <li><i>impact on the ecological or environmental values of the land; and</i></li> <li><i>conflict with buffer requirements pursuant to Chapter B6 Buffers and Minimising Land Use Conflict.</i></li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>Its location on one edge of the property should avoid conflict with agriculture on the site.</li> <li>Conflict with adjacent properties is low as they are not actively farmed in the vicinity of the cabins.</li> <li>Environmental enhancement is part of the farm master plan and a VMP will be required to offset the cabins' impact. A licensed forestry area will need to be amended to allow for the cabins.</li> <li>Minimal ecological impacts are anticipated and no trees will be removed.</li> <li>Buffers are mostly consistent (see B6 assessment).</li> </ol>
<ol style="list-style-type: none"> <li><i>Rural tourist accommodation must be designed and located to be compatible with the surrounding rural and natural landscape. Where new buildings are proposed to be constructed for the purpose of rural tourist accommodation such buildings are to be clustered and located in proximity to the primary dwelling house on the lot.</i></li> </ol>	<p>The cabins are compatible with the landscape but the central facility is excessively large and tall, and conditions will be imposed to reduce its impact. The development will be clustered within 200 metres of the existing house and an approved dual occupancy dwelling.</p>
<ol style="list-style-type: none"> <li><i>The development is to be low scale and designed and located to be compatible with the surrounding rural environment and of minimal environmental impact.</i></li> </ol>	<p><b>Low scale</b> means a rural tourist development that is small enough to be generally managed and operated by the principal owner(s) living on the property. This development is consistent with this</p>

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Chapter D3 Objectives and Controls	Compliance / Non-Compliance definition and this control.
<p>4. <i>Car parking for guests must be provided in accordance with Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access.</i></p> <p>5. <i>Provision of recycling and waste management facilities must be in accordance with Chapter B8 Waste Minimisation and Management.</i></p> <p>6. <i>The development must observe the road and boundary setback requirements specified in Chapter D2 Residential Accommodation and Ancillary Development in Rural Zones (D2.2.2) and the character and visual impact requirements (D2.2.3).</i></p>	<p>4. Car parking complies with Chapter B4.</p> <p>5. Waste minimisation and management complies with Chapter B8.</p> <p>6. The development is set back at least 120 metres from the nearest public road. The cabins are set back 13 metres from the western boundary and 20 metres from the southern boundary. The central facility is located 18 metres from the western boundary and 110 metres from the southern boundary. These distances comply with required setbacks.</p>
<p>7. <i>Rural tourist accommodation to be suitably sited in accordance with the requirements of Chapter C3 Visually Prominent Sites, Visually Prominent Development &amp; View Sharing.</i></p>	<p>The development is located below the 60-metre AHD contour but is still in a high-set and high-profile location. It can be easily seen from Gulgann Road and from rural residential dwellings on the bottom of Tandys Lane and Hyrama Crescent. Conditions will be imposed to address visual impact including landscaping, cladding colours and the height of the central facility.</p>
<p><b>Prescriptive Measures</b></p> <p>1. <i>Rural tourist accommodation can incorporate up to 12 bedrooms collectively and accommodate a maximum of 2 persons per bedroom, with overall accommodation densities in accordance with Table D3.1 below</i></p>	<p>The cabins will only have one bedroom each and the mezzanine area in each will be restricted to storage only.</p>
<p>2 <i>Rural tourist accommodation is to be designed with the following features.</i></p> <p>a) <i>Each rural tourist accommodation structure is to have a gross floor area not more than 60 m<sup>2</sup> comprising a maximum of two (2) bedrooms, a kitchenette and bathroom/toilet amenities.</i></p> <p>b) <i>All weather car parking must be provided on-site</i></p>	<p>a) The proposed cabins will have a GFA of 57 m<sup>2</sup>. Each will have a storage mezzanine of 24 m<sup>2</sup>, which is why this will be conditioned to be storage only and not used as a bedroom. Each cabin will have a kitchen and bathroom but no laundry. A laundry will be provided in the central facility.</p> <p>b) Complies as parking will be all-weather.</p>
<p>c) <i>Provide external pedestrian access between buildings and facilities associated with the development, including car parking.</i></p>	<p>c) A condition will be imposed to ensure there is an all-weather gravel path between the car park and cabins, and the cabins and the central facility.</p>

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Chapter D3 Objectives and Controls	Compliance / Non-Compliance
d) <i>Be designed and constructed to minimise noise and vibration impacts on occupants of adjoining or nearby dwellings or buildings.</i>	d) The cabins will be conditioned to meet acoustic standards.
e) <i>A landscape plan to be submitted with the application in accordance with Chapter B9 Landscaping. The plan to incorporate adequate landscaping and screen plantings when viewed from a public road or a dwelling on other land in the locality, and for privacy between rural tourist accommodation structures.</i>	e) A concept landscape plan has been prepared which shows screen plantings between cabins. However, the screen plantings to the east of the cabins needs to be made taller to lessen the visual impact of the development to those on the other side of Gulgan Road. Conditions will address this.
f) <i>Be located so that it may benefit from existing road and physical infrastructure.</i>	f) The development will have reasonable access to internal roads and back to The Saddle Road.
g) <i>One of the bedrooms within the rural tourist accommodation structure must have disabled access.</i>	g) All cabins are proposed to have a ramp access (1:14) and accessible internal doors. The central facility will have an accessible step ramp. Complies.
h) <i>The siting of rural tourist accommodation must be such that:</i> ii) <i>Maximise solar energy collection and minimise energy use;</i> iii) <i>be arranged in a 'cluster' pattern and located on average no further than 80 metres apart;</i> iv) <i>on-site sewage management to be designed in accordance with Chapter B3 Services;</i> v) <i>it is located and operated so that it does not adversely affect the conduct and productivity of agricultural operations on the site.</i>	ii) The development will have good solar access. iii) The development is arranged in a linear pattern with all cabins within 100 metres. iv) On-site sewage has been addressed in B3. v) It will not adversely affect the organic agriculture taking place on the site.
3. <i>A vegetation management plan (VMP) is to be submitted with each Rural Tourist Accommodation Development Application detailing where 900 local native trees per cabin or rural tourist residence are to be planted as environmental repair and enhancement for development.</i>	A VMP has been provided and its amendment and implementation will be required as a condition.
4. <i>All development applications for farm stay accommodation to include suitable details demonstrating that the accommodation is secondary to farming activity on the land.</i>	The accommodation is planned to be secondary to farming.



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Chapter D3 Objectives and Controls	Compliance / Non-Compliance
5. <i>Night time lighting for outdoor recreational facilities such as tennis courts or sporting facilities is prohibited. All other external lighting should be limited to protect the dark night sky and the rural atmosphere of the locality (e.g. lighting located around pool areas).</i>	A condition will be imposed to achieve the dark night sky outcomes.

### 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	N/A		
93	N/A		
94	N/A		
94A	N/A		

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

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?
<b>Natural environment</b>	No. The proposal will not have a significantly adverse impact on the natural environment of the locality. It will not clear any trees or native vegetation and the VMP will offset other impacts.
<b>Built environment</b>	No. The proposal will not have a significantly adverse impact on the built environment of the locality. Conditions will be imposed to reduce visual impacts from other properties.
<b>Social environment</b>	No. The proposal will not have a significant social impact on the locality. The most noticeable impact will be additional traffic on The Saddle Road and changes to the road frontage to stop farm stay guests exiting left.
<b>Economic impact</b>	No. The proposal will not have a significant economic impact on the locality. The provision of farm stay accommodation should provide an additional source of income for the farm owners.
<b>Construction impacts</b>	The development will generate minor impacts during its construction. Conditions of consent are recommended to control hours of work, builders' waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

10

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 well suited to the proposition of providing farm stay accommodation to guests on a short-term basis (less than 3 months occupancy). Existing and proposed farming activities will also be conducive to supporting students studying courses that correlate with agricultural, sustainability and natural resource industries. However, the subject land already has an original dwelling and an approved dual occupancy dwelling, and this development is not suitable to provide long-term residential options or affordable housing based on the proposed cabins.

The central facility has been proposed as a two-storey metal structure with a 400-square metre footprint including 300 square metres of GFA. This is excessive for this site and the proposed 6 cabins. A single storey structure will contain ample room for farm stay guests and be much less imposing on the landscape.

Minimal environmental impacts of the development are likely as no vegetation is required to be removed. The key issue of traffic can be addressed with a new vehicle access point to The Saddle Road for visitors. They can be physically directed towards Gulgan Road by the use of medians, etc.

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

The development application was publicly exhibited from 16/12/2020 to 20/01/2021. The application was withdrawn and resubmitted and then advertised again from 24/02/2021 – 9/03/2021.

There were 3 submissions made on the development application:

- For – nil
- Against – 3 (two from one objector)

A submission was received from a neighbouring property owner to the west of the site of the proposed development. The submission opposes the development application in its current form, stating that the proposed works are over-scaled and will require major amendments for certain factors of the development. The submission raises concerns about the following matters:

- Number of increased guests, visitors, car parking facilities.
- The need for the central facility in consideration of other site features.
- Excessive scale and scope of the development, in particular the mezzanine storage in each cabin (an extra bedroom) and the 300 m<sup>2</sup> GFA for the central facility.
- Concerns over traffic implications for The Saddle Road.
- Constraints in maintaining the local 'scenic vista' of the surrounding area.
- Qualification/identification as a legitimate 'training facility'.

The submission examines these issues in further depth and suggests that it could support the development on a smaller scale.

**Comment:** It is agreed that the mezzanine in each cabin could be easily turned into a loft bedroom and this would make each cabin exceed the 60 m<sup>2</sup> GFA standard in the DCP.

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The pitched roof in the cabins is a positive architectural feature and a condition will be imposed to ensure it is not used as a bedroom.

It is also agreed that the central facility is too large at 300 m<sup>2</sup> GFA with a 400 m<sup>2</sup> footprint and 7.1-metre height. However, the applicant needs a central facility to house a communal laundry and a meeting place for guests. The structure proposed is essentially a large, metal clad shed with minimal architectural merit. No detailed support is provided for it being so large. The bottom floor is large enough to provide a meeting space for guests with a laundry and bathroom. A condition will be imposed to delete the upper storey. A condition will also be imposed to delete the kitchen area on the ground floor as the applicant was advised that a structure with a laundry, bathroom and kitchen is essentially a dwelling (or cabin) and that is not what is proposed. A condition will also be imposed to ensure that the central facility is only used by guests of the farm stay and not open to public events, or for private hire, etc.

Conditions requiring non-reflective cladding on cabins and the central facility, plus landscaping conditions will also address the scenic impact issue. It is noted that all buildings have been located to be substantially below the ridgeline to the rear. This will allow views 'over the top' from western residents and eliminate the ridge profile impacts for residents of Tandys Lane and Hyrama Crescent.

It is agreed that the Gulgan Road access to the site is better than The Saddle Road. However, Gulgan Road is a classified road that cannot be used to access rural tourism because of clause 6.8 of Byron LEP 2014. It is also agreed that farm stay traffic should not be able to easily access the Mullumbimby Road intersection as it is dangerous. A condition will be imposed to create a separate driveway access to The Saddle Road that will physically direct traffic to the north and connect with Gulgan Road at the existing roundabout. The car parking exceeds Council standards in the DCP and is fit for purpose.

The submission queries the reference to the cabins being used as student accommodation and whether the site is a training facility. The applicant does not have any approval for a private education or training facility. However, the cabins could still be used by students studying elsewhere as long as they do not stay more than 3 months. A condition will be imposed restricting the length of stay for guests.

The other two submissions were from a resident across Gulgan Road, to the east of the subject land. The submitter opposes the development application citing the following concerns:

- The applicant (Mr Kenneth O'Reilly) is applying on behalf of a company named as Koresoft Pty Ltd but it does not have an ABN and the representative is Mr Matthew O'Reilly. Does this entity even exist?
- The DA shows an approved dual occupancy dwelling and studio in the wrong location.
- DA Form says that there will be no staged development and SEE says it will be in four stages?
- The subject land is apparently not currently operated as a farm so how can the farm stay be a secondary use?

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- Properties at Hyrama Crescent have a clear view of the proposed development and would be significantly visually impacted negatively and potentially impacted by noise from the proposed development.
- The development may be mostly single storey, but with steep roofs that increases height, and as a long string of development is not low key.
- The bulk of this DA is inappropriate as it focuses on farm stay and does not address the requirements of rural tourist accommodation.

**Comment:** Koresoft Pty Ltd has an ACN (149332785) rather than an ABN. It owns the subject land and its Director, Mr Kenneth O'Reilly, has given written authorisation for Mr Matthew O'Reilly to represent the interests of the company when dealing with the subject land and Council (etc). The dual occupancy dwelling and associated studio are shown in the DA plans in a location approved by Council. It is different to where they were originally proposed, but they were moved as part of a separate DA process. They are not being moved by this DA.

The term 'Staged Development' has a legal meaning in planning terms. This DA is not a Staged DA but the applicant has indicated it will build the development progressively and not all at once. This is up to the applicant, and Council will not be imposing staging on the DA.

The applicant has shown sufficient farming activity to demonstrate that it is a farm. It has small cropping in some locations and permaculture farming in others, plus farm forestry. Other share farming activities are anticipated and outlined in master planning documents.

The development will be visible from locations such as Hyrama Crescent and a number of conditions will be imposed to address the visual impact, including: use of non-reflective materials; earth tones in cladding; reducing the height and bulk of the central facility; and additional landscaping requirements.

The combined impact of seven new structures is not insignificant but it has been located to mostly avoid breaching the ridgeline that is located behind it. Reducing the central facility's height and bulk is also important. Landscaping will further help soften the impacts. The development is required to be **Low Scale**, which means a rural tourist development that is small enough to be generally managed and operated by the principal owner(s) living on the property. This development is consistent with this definition.

The submission is correct that the applicant focuses on *farm stay accommodation* rather than the *rural tourist accommodation* controls in the DCP. However, this assessment addresses **both** the farm stay controls and the rural tourist accommodation controls and does not accept that they are not interwoven in the circumstances presented in this DA. The development in this DA fits with both the definition for farm stay accommodation and rural tourist accommodation and there is a duality of use being proposed. The occupation of the cabins will be limited to 3 months to ensure that they are used for short term or holiday accommodation and not as dwellings for permanent occupation.

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### 4.9 Public interest

The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent. The proposed conditions will reduce its impact and address the major concerns of objectors. It is consistent with controls in Byron LEP 2014 and substantially consistent with controls in Byron DCP 2014.

### 5. DEVELOPER CONTRIBUTIONS

#### 5.1 Water & Sewer Levies

This site is not connected to reticulated sewerage and has Rous Water connection.

#### 5.2 Developer Contributions

No section 7.11 contributions will be required.

However, prior to the issue of a construction certificate, the section 7.12 levy required by the Byron Developer Contributions Plan 2012 must be paid to Council.

### 6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

Provide Disclosure Statement register details here: Not applicable

### 7. CONCLUSION

The DA proposes Farm Stay Accommodation comprising Six (6) Cabins and a Central Facility. 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 conditions of consent.

### 8. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

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

## BYRON SHIRE COUNCIL

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#### **Statement of Reasons**

The proposed modifications were minor and substantially the same as the original development approval with no detrimental environmental impacts.

The proposed development complies with the provisions of Byron Local Environmental Plan 2014.

The proposed development complies with relevant State Environmental Planning Policies.

The proposed development complies or is justifiably inconsistent with relevant provisions of Development Control Plan 2014.

The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.

The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.

The proposed development is considered suitable for the proposed site subject to conditions.

The development application was notified/advertised in accordance with the Community Participation Plan. Issues raised in the submissions have been addressed during assessment of the application and have resulted in modifications to the development and additional conditions.

The proposed development is unlikely to prejudice or compromise the public interest.

#### **How community views were addressed**

The DA was advertised in accordance with Byron Shire Council Community Participation Plan (CPP). The three submissions received were considered on merit and addressed during assessment of the application. A number of conditions have been imposed in order to accommodate the concerns raised in submissions. The development has been modified in response to these concerns. Conditions address major issues such as local traffic, bulk and scale and visual impact.

**Report No. 13.8 PLANNING - Report of the 3 June 2021  
Planning Review Committee**

**Directorate:** Sustainable Environment and Economy

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

**File No:** I2021/959

**Summary:**

This report provides the outcome of the Planning Review Committee (PRC) held on 3 June 2021.

**NOTE TO COUNCILLORS:**

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

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**RECOMMENDATION:**

**That Council endorses the outcomes of the Planning Review Committee meeting held on 3 June 2021.**

## BYRON SHIRE COUNCIL

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## Report

The Planning Review Committee meeting was held on 3 June 2021. The meeting commenced at 2:10pm and concluded at 2:30pm.

Councillors: Lyon, Hunter, Ndiaye, Martin

5 Apologies: Cr Spooner, Cr Coorey

Staff: Chris Larkin (Manager Sustainable Development)

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

DA No.	Applicant	Property Address	Proposal	Exhibition /submissions	Reason/s Outcome
10.2021.124.1	JV Urban P/L	14 Yalla Kool Drive OCEAN SHORES	Subdivision two (2) into two (2) lots	Level 1 17/3/21 to 30/3/21  1 submission Petition 46 signatures	Staff Delegation
10.2020.628.1	Ms SJ Ramsay	35 Lorikeet Lane MULLUMBIMBY	Dwelling house and Tree removal four (4) trees	Level 1 21/1/21 to 4/2/21  1 submission	Staff Delegation

10 Council determined the following original development applications. The S4.55 application to modify these development consents are referred to the Planning Review Committee to decide if the modification applications can be determined under delegated authority.

DA No.	Applicant	Property Address	Proposal	Exhibition /submissions	Reason/s Outcome
10.2014.753.5	Newton Denny Chapelle	2 Tanner Lane 30 Tanner Lane 35 Yarum Road TYAGARAH	S4.55 to modify condition 18(b) to delete requirement to construct a roundabout, and to extend the timeframe to construct pedestrian bridge under condition 20	Level 2 19/3/21 to 1/4/21  No submissions	Council
10.2020.97.2	Bayview Land Development	7 Tuckerroo Ave MULLUMBIMBY	S.4.55 to modify weed control requirements,	Level 1 31/3/21 to 20/4/21	The perceived public significance



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			engineering construction Plan requirements and Development contribution payments	No submissions	of the application. Council
10.2013.587.8	Mercato on Byron P/L	108-110 Jonson Street BYRON BAY	S4.55 to modify approved use of tenancy 19 from gallery to Gallery and small bar	Level 2 25/2/21 to 10/3/21  1 submission	Staff Delegation
10.2020.145.2	Ingen Consutling P/L	35A Argyle Street MULLUMBIMBY	S4.55 to modify condition 5	Level 1 23/5/21 to 9/4/21  No submissions	Staff Delegation

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## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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### Report No. 13.9 PLANNING - DA 10.2019.343.1 - Tourist and visitor accommodation comprising four (4) one-bedroom cabins

**Directorate:** Sustainable Environment and Economy

5 **Report Author:** Ben Grant, Planner

**File No:** I2021/761

#### Proposal:

<b>DA No:</b>	10.2019.343.1		
<b>Proposal description:</b>	Tourist and Visitor Accommodation comprising Four (4) One Bedroom Cabins		
<b>Property description:</b>	LOT: 5 DP: 863320		
	150 Tandys Lane BRUNSWICK HEADS		
<b>Parcel No/s:</b>	213810		
<b>Applicant:</b>	Planners North		
<b>Owner:</b>	Mr S L Eakin & Ms K Amos		
<b>Zoning:</b>	RU1 Primary Production / PART RU2 Rural Landscape / PART 1 (d) Investigation / PART 1 (a) General Rural / PART 7 (a) Wetlands / PART 7 (b) Coastal Habitat		
<b>Date received:</b>	27 June 2019		
<b>Integrated / Designated Development:</b>	<input checked="" type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input type="checkbox"/> Not applicable

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<b>Concurrence required</b>	No		
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"><li>– Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications</li><li>– Exhibition period: 11/7/19 - 24/7/19</li><li>– Submissions received: twenty six (26) in opposition</li></ul>		
<b>Planning Review Committee:</b>	Not applicable		
<b>Concurrent approvals (S68/138):</b>	Not applicable		
<b>Variation request</b>	<input type="checkbox"/> Clause 4.6	<input type="checkbox"/> SEPP 1	<input checked="" type="checkbox"/> Not applicable
<b>Delegation to determine</b>	Council		
<b>Issues:</b>	<ul style="list-style-type: none"><li>• A Vegetation Management Plan is required.</li><li>• Decentralised rather than centralised carparking.</li></ul>		

### Summary:

5 The subject development application seeks consent for rural tourist and visitor accommodation comprising four one-bedroom cabins plus a new internal driveway, landscaping, and wastewater system at 150 Tandys Lane, Brunswick Heads. The subject site is a 24.5-hectare rural property located at the end of Tandys Lane on the eastern side of the Pacific Highway and lies adjacent to Simpsons Creek.

The proposal is an Integrated Development Application, requiring approval from the NSW Rural Fire Service under the Rural Fires Act, 1997.

10 The application was advertised and notified between 11 July 2019 and 24 July 2019 and a total of 26 public submissions were received, raising concerns in relation to visual impact, scale, amenity, traffic generation, environmental impact, perceived non-compliance with planning controls and alleged unauthorised development.

The application is being referred to Council for determination due to the number of submissions received and the perceived public interest in the application.

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Following an initial assessment by Council staff, further information was requested to address issues relating to landscaping, vehicular access, environmental enhancement, primary production, disabled access and the siting of cabins.

- 5 The amended plans and further information substantially addressed the issues raised, apart from the environmental enhancement requirements of Chapter D3 of DCP 2014 which are discussed further in the body of this report. The applicant has not provided a vegetation management plan, instead putting forward a view that existing vegetation and restoration efforts on the site are sufficient.

- 10 After discussing the matter further with Council's Ecologist, it is concluded that the issue can be resolved with a consent condition that requires a VMP to be prepared and submitted to Council for approval prior to the issue of a construction certificate.

Overall, the proposal is a low-scale, low-impact development that is compatible with the character of the surrounding environment and is generally consistent with the planning controls for rural tourism in Byron LEP 2014 and Byron DCP 2014.

- 15 Environmental enhancement of the land will be achieved through the preparation of a vegetation management plan to be approved by Council and implemented prior to the occupation of the development.

The development application is recommended for approval subject to the conditions in Attachment 1.

- 20 NOTE TO COUNCILLORS:






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

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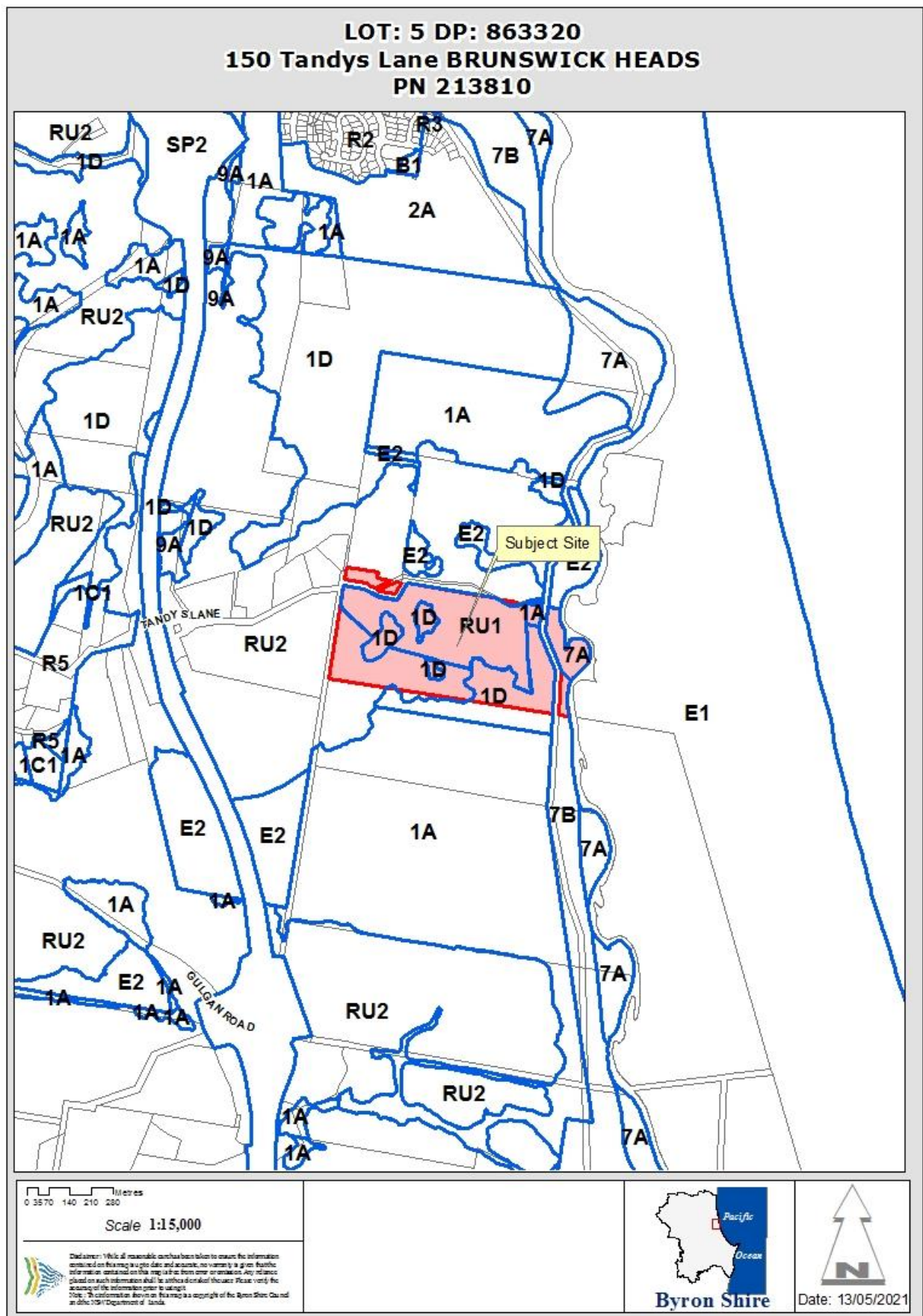
### RECOMMENDATION:

- 30 **That pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979, Development Application No. 10.2019.343.1 for tourist and visitor accommodation comprising four (4) one-bedroom cabins be granted consent subject to the conditions listed in Attachment 1 (E2021/66225).**

### Attachments:

- 35 1 Attachment 1 - 10.2019.343.1 - Recommended conditions, E2021/66225   
2 Attachment 2 - 10.2019.343.1 - Plans, E2021/63960   
3 Attachment 3 - 10.2019.343.1 - Submissions Redacted, E2021/64844   
4 Attachment 4 - 10.2019.343.1 - Amended Bush Fire Safety Authority - Determination Letter, E2021/90236   
40 5 Attachment 5 - 10.2019.343.1 - Timber Plantation Licence, E2021/90231 





## **Report**

### **1. INTRODUCTION**

#### **1.1. History relevant to the development application**

##### **5 Background**

The eastern end of the property near Simpsons Creek (formerly 'Wiltons Quarry') was mined for Rutile in the 1960's. A piggery was later established in the early 1970's which operated until sometime in the mid 1990's. Following closure of the piggery, the property was used for rural living in the 2000's and more recently appears to have been adapted to a mixture of residential and tourist accommodation uses.

##### **Development Applications**

Previous determinations relevant to the subject application are listed below:

- 15 • DA 95/147 for a dwelling, approved 1 March 2005.
- DA 95/249 for sand quarry, withdrawn 24 July 2006.
- DA 10.2004.544.1 for dwelling, approved 1 March 2005.
- DA 10.2016.818.1 for use of an existing building as a dual occupancy (detached), approved on 9 August 2017.
- 20 • DA 10.2016.818.2 for partial retention of movie room, approved 19 July 2019.
- DA 10.2018.366.1 for a change of use of dwelling house to a bed and breakfast accommodation, withdrawn on 7 May 2019.

##### **Compliance Actions**

- 25 The NSW Environment Protection Authority notified Council in relation to alleged illegal sand extraction from the abandoned quarry in November 2017. It is understood the sand was later stockpiled at a rural property in Myocum.

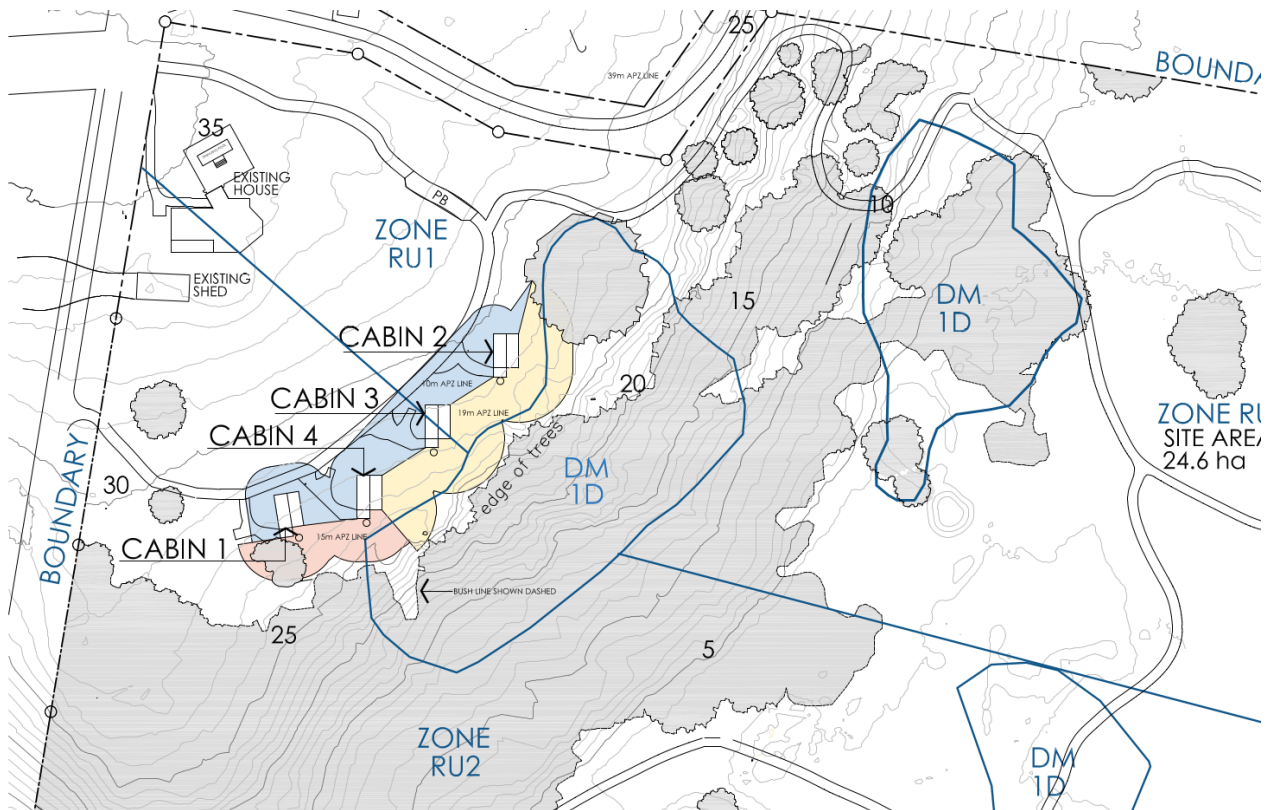
Council records also show that an investigation was undertaken in relation to unauthorised structures adjacent to Simpsons Creek within the 7 (a) (Wetlands Zone). Records indicate that a request to remove these unauthorised structures was issued to the property owners in January 2017 and that the issue is ongoing.

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

The proposed development comprises four (4) one-bedroom tourist accommodation cabins plus a new internal driveway, infrastructure, and landscaping.

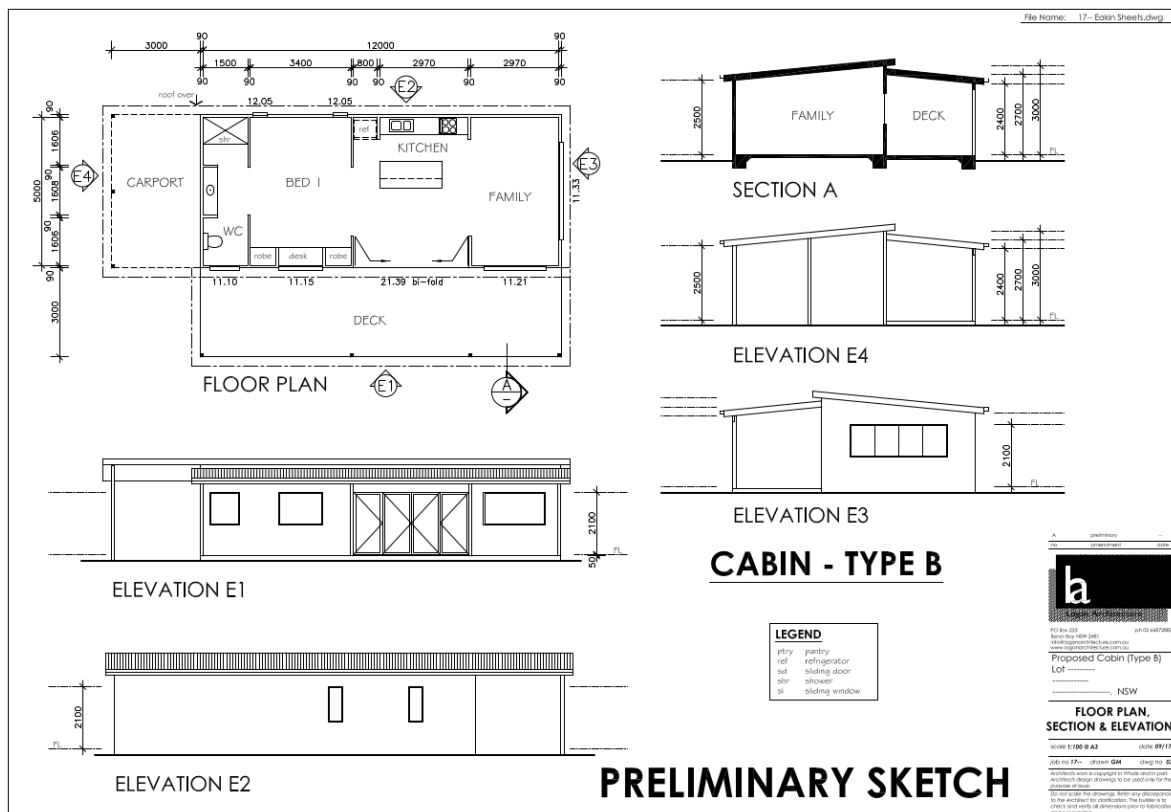
- 35 The four cabins are clustered in a single group approximately 60m east of the primary dwelling house near Tandy's Lane. The cabin sites have an elevation of 30m AHD and provide easterly views over the Tyagarah Nature Reserve towards Cape Byron.

Each of the cabins will be single storey, have a maximum floor area of 60m<sup>2</sup> and comprise one bedroom, bathroom, kitchen, living room that opens onto a deck and single carport. Neither a communal laundry nor individual laundries in the cabins will be provided.



5 **Figure 1:** Extract from the site plan illustrating cabin locations.

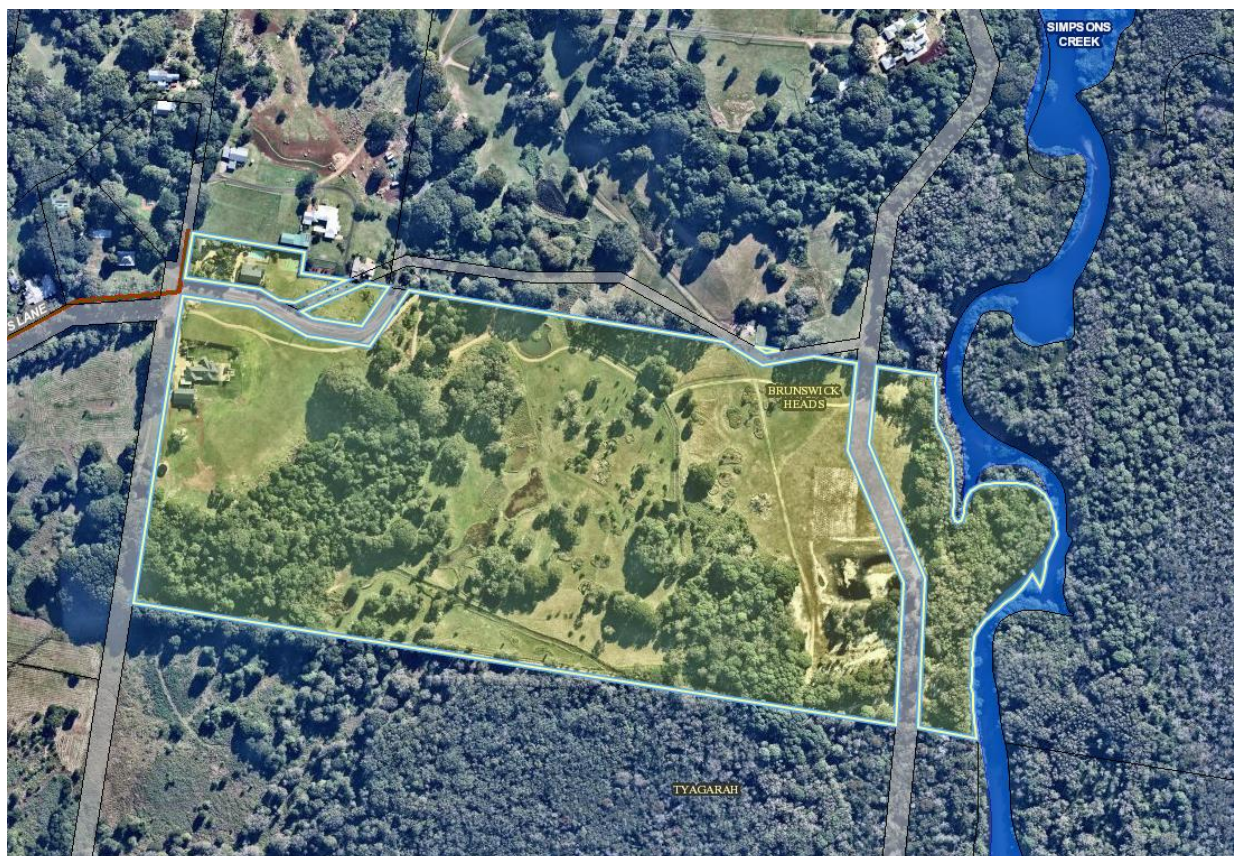




**Figure 2:** Floor plan and elevations of the proposed cabin design.

### 1.3. Description of the site

- 5 The subject site is a 24.5-hectare property located at the end of Tandys Lane on the eastern side of the Pacific Highway. The property is bisected by Anderson Lane which splits the lot into a small northern portion containing a recently approved dual occupancy and studio and a larger southern portion containing the original dwelling house and the balance of remaining land. The land slopes down from the road over undulating terrain for ~1.5km until it meets Simpsons Creek at the eastern boundary.
- 10 Historically, the property has been used for farming and sand mining which has left the landscaped disturbed and mostly cleared of vegetation apart from a patch of subtropical rainforest on the western slopes and a corridor of forest along the bank of Simpsons Creek.
- 15 Land to the north and west of the site near Tandys Lane is characterised by small to medium sized lots used for rural living and small-scale agriculture while land to the south comprises a larger property that is undeveloped and covered by vegetation. Tyagarah Nature Reserve is located on the eastern side of Simpsons Creek.



**Figure 3:** Aerial image of the site.



**Figure 4:** View south-east from driveway to proposed location of the cabins.





**Figure 5:** Proposed location of cabin 2 (orange flag).



**Figure 6:** Proposed location of cabin 3 (orange flag).





**Figure 7:** Proposed location of cabin 4 (orange flag).



**Figure 8:** Northern access to proposed cabins from Tandys Lane.



**Figure 9:** Southern access to proposed cabins (note: “existing shed” in left foreground).

## 2. SUMMARY OF REFERRALS

External Referrals	Comment
Rural Fire Service (s. 100B <i>Rural Fires Act 1997</i> )	<p>The RFS initially refused to issue a Bush Fire Safety Authority on the basis that the development did not meet the 10kW/m<sup>2</sup> requirement for tourist accommodation as required by Planning for Bushfire Protection 2019.</p> <p>Following representations from the application over a period of months, the RFS changed their policy position and issued a BFSA on 26 April 2021.</p> <p>The BFSA was re-issued on 9 July 2021 following modifications to the development layout.</p>
Essential Energy	<p>Essential Energy have endorsed the proposal but commented that the cabins must maintain a minimum of 10 metres clearance from the centreline of overhead powerlines. The amended plans comply with this requirement.</p>
Rous County Council	<p>The site is connected to Rous County Council (RCC) reticulated water supply. RCC recommended that Council</p>

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External Referrals	Comment
	should include a consent condition for the Applicant to obtain a Certificate of Compliance from Rous prior to construction certificate being issued.

Internal Referrals	Comment
Environmental Health Officer	Council's Environmental Health Officer commented that wastewater generated by the development can be managed by an on-site sewage management facility.  In terms of land contamination, a preliminary site investigation report has been provided demonstrating that the land is uncontaminated and suitable for the proposed development.
Development Engineer	Council's Development Engineer commented that the property has three unapproved driveways which is a safety concern. Two of the driveways south of Tandys Lane are required to be consolidated and upgraded in accordance with Council and RMS standards.  Traffic generation was deemed 'low impact' as per DCP 2014, Part B4.2.1.  Other development engineering aspects such as car parking and stormwater were deemed acceptable.
Contributions Officer	Council's Development Planning Officer commented that the development is non-residential and therefore a Section 7.12 levy is applicable.
Ecologist	Council's ecologist commented that conditions of consent can be imposed requiring a vegetation management plan to be submitted to Council for approval prior to the issue of a construction certificate.

### 3. SECTION 4.46 INTEGRATED DEVELOPMENT

- 5 Tourist and visitor accommodation is defined as a type of "special fire protection purpose" and requires a Bush Fire Safety Authority (BFSA) under s. 100B of the *Rural Fires Act 1997*.
- The development application seeks approval for the BFSA concurrently and is therefore classified as integrated development as per s. 4.46 of the *Environmental Planning and Assessment Act 1979*.
- 10 General Terms of Approval were issued by the RFS on 26 April 2021 and then re-issued on 9 July 2021 following an amendment to the site plan.



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

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

**4.1 State Environmental Planning Instruments**

**State Environmental Planning Policy (Koala Habitat Protection) 2021**

The application was lodged prior to the introduction of the Koala SEPP 2021 on 17 March 2021. In accordance with the savings and transitional arrangements under clause 18, the application is to be determined as if the SEPP had not commenced.

**State Environmental Planning Policy (Koala Habitat Protection) 2020**

As the site has an area of more than 1 hectare and is zoned RU1 Primary Production and RU2 Rural Landscape, the proposal must be considered under the Koala SEPP 2020.

Clause 8(1) of the Koala SEPP 2020 provides that “*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*”.

It is considered that the subject land is not a potential koala habitat as defined by the Koala SEPP 2020 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 “*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*”.

The proposed development does not involve any clearing of native vegetation and results in development being clustered near the existing dwelling and road access on the western half of the property. The proposal is unlikely to have a significant impact on koalas or koala habitat and satisfies the provisions of Koala SEPP 2020.

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

The site has historically been used for animal agriculture and sand mining which are both potentially contaminating activities.

A preliminary investigation report was provided which analysed soil samples taken around the development footprint. The report concluded that the site was not contaminated and is suitable for the proposed use in its current state.

Council’s Environmental Health Officer endorsed the report conclusions, noting that the site is suitable for the proposed use in its current state and does not require remediation.

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

A multi-dwelling BASIX certificate has been provided which specifies commitments for insulation, rainwater tanks, 1.5kW solar photovoltaic cells and high efficiency hot water systems.

- 5 Some of the BASIX commitments were not shown on the DA plans as required. A condition is therefore recommended requiring these items to be shown on the construction certificate plans.

**State Environmental Planning Policy (Coastal Management) 2018**

- 10 The far east of the property near Simpson Creek is mapped as a coastal wetland under the Coastal Management SEPP. The closest part of the mapped wetland and buffer area is ~450m from the proposed development and consequently does not trigger the relevant provisions of the policy (clauses 10 and 11). The eastern area of the property is also mapped as coastal use area and coastal environment area; however no part of the proposed development is within the mapped areas (clauses 13 and 14).

- 15 The proposal will not have a significant impact on the coastal environment and is satisfactory having regard to the relevant matters for consideration under the SEPP.

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

- 20 In accordance with Clause 45 of the Infrastructure SEPP, the DA was referred to Essential Energy for comment due to the proximity of the development to overhead powerlines.

Following the submission of additional information, Essential Energy raised no objection to the proposal subject to the cabins being located more than 10m from overhead powerlines. The amended site layout complies with this requirement.

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

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

- 30 The LEP 2014 clauses that are checked below are of relevance to the proposed development:

Part 1	<input checked="" type="checkbox"/> 1.1  <input checked="" type="checkbox"/> 1.1AA  <input checked="" type="checkbox"/> 1.2  <input checked="" type="checkbox"/> 1.3  <input checked="" type="checkbox"/> 1.4  <input checked="" type="checkbox"/> Dictionary  <input checked="" type="checkbox"/> 1.5  <input checked="" type="checkbox"/> 1.6  <input checked="" type="checkbox"/> 1.7  <input checked="" type="checkbox"/> 1.8  <input checked="" type="checkbox"/> 1.9  <input checked="" type="checkbox"/> 1.9A
Part 2	<input checked="" type="checkbox"/> 2.1  <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table   <input checked="" type="checkbox"/> 2.4   <input checked="" type="checkbox"/> 2.5   <input checked="" type="checkbox"/> 2.6   <input checked="" type="checkbox"/> 2.7   <input checked="" type="checkbox"/> 2.8



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Part 4	☒4.3
Part 6	☒6.2  ☒6.6  ☒6.8

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 *Tourist and Visitor Accommodation*;
  - (b) The subject site is within the RU1 Primary Production and RU2 Rural Landscape according to the Land Zoning Map;
  - (c) The proposed development is permitted with consent; and
  - (d) Regard is had for the Zone Objectives as follows:

Zone Objective RU1 Primary Production	Consideration
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	The proposal is not expected to hinder or promote sustainable primary industries in the area. Minimal impact on the natural resource base is expected.
To encourage diversity in primary industry enterprises and systems appropriate for the area.	The proposal will neither encourage nor discourage encourage diversity in primary industry enterprises.
To minimise the fragmentation and alienation of resource lands.	The proposal is not expected to result in fragmentation and alienation of resource lands.
To minimise conflict between land uses within this zone and land uses within adjoining zones.	No potential land use conflicts were identified by Council's Environmental Health Officer.
To encourage consolidation of lots for the purposes of primary industry production.	Not applicable.
To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with	The proposal is for tourist accommodation that can be considered "small-scale". Further environmental conservation and

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primary production and environmental conservation consistent with the rural character of the locality.	enhancement works are required through conditions of consent.
To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.	The proposed tourism development is not expected to adversely impact on the scenic quality due to the low scale of the development and the provision of landscaping as a visual screen.

Zone Objective RU2 Rural Landscape	Consideration
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	The proposal is not expected to hinder or promote sustainable primary industries in the area. Minimal impact on the natural resource base is expected.
To maintain the rural landscape character of the land.	The proposed tourism development is not expected to adversely impact on the rural landscape character due to the relatively small scale of the proposal and screening of the development with vegetation.
To provide for a range of compatible land uses, including extensive agriculture.	The property has space for a range of small-scale agricultural pursuits, having an area of approximately 25ha. The cabins will be located to the west of the property and will leave room for other compatible land uses.
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.	The proposal is for tourist accommodation that can be considered "small-scale". Further environmental conservation and enhancement works are required through conditions of consent.
To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.	The proposed tourism development is not expected to adversely impact on the scenic quality of the locality as it will or can be screened by vegetation.

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Part 4 – Principal Development Standards	Compliance	Comment
4.3 Height of Buildings	Yes	A maximum height of 9m is permitted.  A maximum height of 3.5m is proposed.

Part 6 – Local Provisions	Compliance	Comment
6.2 Earthworks	Yes	The proposal will involve minor soil disturbance for the foundations of the proposed cabins and the internal access road. Excavation and fill will not exceed 1m in depth and is unlikely to have a significant impact on drainage patterns or soil stability.
Clause 6.6 Essential services	Yes	Essential services are available or capable of being made available to the development. Council's Environmental Health Officer is satisfied with the proposed on-site wastewater system. Council's Engineer has reviewed the vehicular access and stormwater management and found them to be adequate or capable of being made adequate via conditions of approval.
Clause 6.8 Rural and nature-based tourism development	Yes	The proposed tourism development is small scale and is not expected to adversely impact on the agricultural production, scenic or environmental values of the land. As noted above, adequate vehicular access can be provided to the development. The proposal is for four cabins, should be able to be managed by the owner living on the property and is therefore considered to meet the definition of "small scale". The proposed location of the cabins is on cleared ground and should not have a significant adverse impact on agriculture or the natural environment. There is an approved dwelling located on the property and the proposal

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		does not include a caretaker's residence.
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### 4.2B Byron Local Environmental Plan 1988 (LEP 1988)

- 5 The proposed cabins and all associated infrastructure are located entirely on RU1 or RU2 zoned land. LEP 1988 is therefore not an applicable matter for consideration in the assessment of the application.

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

- 10 There are no draft environmental planning instruments with relevance to the subject application.

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

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

Part A	<input checked="" type="checkbox"/> Preliminary
Part B Chapters:	<input checked="" type="checkbox"/> B3  <input checked="" type="checkbox"/> B3  <input checked="" type="checkbox"/> B4  <input checked="" type="checkbox"/> B6  <input checked="" type="checkbox"/> B8  <input checked="" type="checkbox"/> B9  <input checked="" type="checkbox"/> B14
Part D Chapters	<input checked="" type="checkbox"/> D2  <input checked="" type="checkbox"/> D3

Chapter B1 Biodiversity	Compliance	Comment
B1.1.5 Biodiversity Planning Principles	Yes	The proposal does not result in any net loss of vegetation or affect habitat connectivity.
B1.2.1 Development Envelope Controls	Yes, subject to conditions	A 20m buffer from high ecological value (HEV) vegetation is required.  The cabins have a separation distance of approximately 10m-15m from HEV (subtropical rainforest) on the western slopes of the property.

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		<p>There is potential for a minor conflict between the required 19m asset protection zones and the HEV.</p> <p>A condition is recommended that requires the cabins to be setback from the HEV by at least 20m, thus ensuring no loss of native vegetation when establishing the asset protection zones.</p>
B1.2.2 Development infrastructure and other controls	Yes	The internal access road, plus water and sewer infrastructure does not require any clearing of vegetation and will not adversely impact biodiversity.
B1.2.3 Koala Habitat	Yes	The site is not considered to be a potential koala habitat.

Chapter B3 Services	Compliance	Comment
B3.2.1 Provision of Services: Water supply	Yes	The site is serviced by Rous County Council. The Applicant has confirmed that the cabins are intended to be connected to town water.
B3.2.1 Provision of Services: Road Access - Council controlled roads	Yes	Council's Development Engineer did not recommend any upgrades to Tandys Lane as part of the development.
B3.2.2 On-site Sewage Management	Yes	<p>A concept wastewater proposal has been submitted with the application and endorsed by Council's Environmental Health Officer.</p> <p>A condition is recommended for Section 68 approval to be obtained for the OSMS prior to the issue of a construction certificate.</p>

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Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access	Compliance	Comment
B4.2.1 Traffic Impact	Yes	<p>The application is supported by a traffic impact assessment that estimates the development will generate an additional 10 car trips per day.</p> <p>The report anticipates an increase in incremental demand of 3.5% over current traffic levels on Tandys Lane, based on the theoretical traffic volume generated by 43 existing dwellings.</p> <p>Council's development engineer endorsed the findings of the report and classified the development as low impact in terms of traffic generation.</p>
B4.2.3 Vehicle Access and Manoeuvring Areas	Yes, subject to conditions	<p>There are two driveways near Tandys Lane and a third driveway off the Crown road which connects from the south.</p> <p>Council's Development Engineer concluded that the current situation is not in accordance with the NRLG Guidelines and recommended the driveways be consolidated and sealed as part of the development. A condition is recommended.</p>
B4.2.5 Car Parking Requirements	Yes	<p>Four (4) car parking spaces are required.</p> <p>The development provides a carport for each cabin, resulting in a total of four car parking spaces for the development.</p>

Chapter B6 Buffers and Minimising Land Use Conflict	Compliance	Comment
B6.2.4 Buffers	Yes	<p>There are no significant primary industries near the subject site. Surrounding land is primarily used for rural living and small-scale agricultural</p>

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		<p>pursuits. It is understood that a landscaping or horticulture business is potentially being developed on the property to the north, approximately 120m from the nearest cabin</p> <p>Proximity to residential properties is addressed under Chapter D3 and Section 4.8 of this report.</p>
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Chapter B8 Waste Minimisation and Management	Compliance	Comment
B8.3 General Development Criteria	Yes, subject to conditions	<p>A site waste minimisation and management plan was not provided with the application.</p> <p>The site has access to Council garbage collection services at the Tandys Lane frontage and adequate room for bin storage and collection in the road reserve is available.</p> <p>A condition is recommended for an SWMMP to be provided for approval with the construction certificate application.</p>

Chapter B9 Landscaping	Compliance	Comment
B9.6.1 Landscaping of Tourist and Visitor Accommodation	Yes, subject to conditions	<p>The applicant submitted a landscape plan in their further information. The plan proposes screening between the cabins and along the northern boundary.</p> <p>However, the plan does not include screening of the development along the western road boundary which is considered necessary to improve privacy and reduce the visual impact of the development when viewed from Tandys Lane to the west.</p> <p>A condition is recommended requiring an amended landscape plan that includes landscaping/screening vegetation along the western boundary of the property, particularly</p>

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		either side of the new driveway.
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Chapter B13 Access and Mobility	Compliance	Comment
B13.2 Development Controls	Yes	The application proposes one of the cabins as being an accessible cabin and plans have been provided for this cabin.

Chapter B14 Excavation and Fill	Compliance	Comment
B14.2 Excavation and Fill in all Zones	Yes	Only a minor amount of excavation is required to place the slabs for the proposed cabins. This is not expected to have a significant visual impact or affect drainage or soil stability.

Chapter C3 Visually Prominent Sites, Visually Prominent Development and View Sharing	Compliance	Comment
C3.2.1 Visual Impact Assessment	Not Applicable	<p>Development applications for visually prominent development must be accompanied by Visual Impact Statement in accordance with Part C3.2.</p> <p>The cabins are located on land outside the coastal zone with an elevation of ~30m AHD. The proposal does not meet the definition of Visually Prominent Development and Part C3.2.1 is therefore not applicable.</p>

Chapter D3 Tourist Accommodation	Compliance	Comment
D3.2.1 Location and	Yes	The proposed cabins are generally in accordance with the Objectives and Performance Criteria of



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Siting		Part D3.2.1. The siting, design and operation of the tourist accommodation will not adversely affect any important conservation values, ecological systems or characteristics of the site.
D3.2.3 Character and Design in Rural Zones	No, but assessed as being acceptable.	<p>The applicant addressed the Byron Rural Settlement Strategy 1998 through submission of further information and amended plans. The proposal is generally consistent with the relevant sections of the Strategy, apart from the following:</p> <ul style="list-style-type: none"> <li>• Performance Criteria 3(a)(iii): The development is not directly linked to the repair, enhancement, and protection of the natural environment – there is no environmental enhancement concept or VMP provided with the application.</li> <li>• Performance Criteria 3(c), Section 7.2 (5) of the 1998 Strategy: The site layout does not incorporate centralised car parking.</li> </ul> <p>Refer to the further discussion and assessment provided under the DCP Issues Section.</p>
D3.3.4 Rural Tourist Accommodation and Farm Stay Accommodation	Yes, subject to condition	<p>The proposed development does not comply with the following Prescriptive Measures of Part D3.3.4:</p> <ul style="list-style-type: none"> <li>• Prescriptive Measure 3: A Vegetation Management Plan (VMP) outlining an ecological restoration concept has not been submitted with the application.</li> </ul> <p>The application does not include a VMP, however, a condition is recommended that requires one to be provided prior to the issue of a construction certificate.</p> <p>The proposal is deemed to comply with the development control subject to this condition.</p> <p>Refer to the further discussion and assessment provided under the DCP Issues Section.</p>

4.5 Byron Development Control Plan 2014 – Issues

D3.2.3 Character and Design in Rural Zones

The relevant objectives and performance criteria of Part D3.2.3 are reproduced below–

**Objectives**

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

**Performance Criteria**

- 15 ...
3. *All development to which this Chapter applies in Rural Zones must be low scale consistent with the relevant Aims, Guiding Principles, Best Practice Guidelines and Performance Standards contained in the Byron Rural Settlement Strategy 1998 ('the Strategy') as follows:*
    - 20 a) *The Strategy's relevant aims are:*
      - 25 i) *To ensure future rural settlement is directly linked to the repair, enhancement and protection of the natural environment, thereby increasing the Shire's natural capital.*
    - 30 d) *The relevant Performance Standards are contained in Chapter 8 of the Strategy.*  
*1998 Strategy Section 7.2: Holiday Cabins – Guidelines:*
      - 35 5. *All weather 'centralised' car parking must be provided on-site at the rate of at least 1 car space per holiday cabin. The paving of car-parking areas is not encouraged (except where roads need to be on more steeply sloping lands), rather these areas should be either grass-covered or topped with gavel to an all-weather standard to ameliorate stormwater runoff.*
    - 40 ...

7. *The siting of holiday cabins must be such that:*

...

- 5                    f. *vehicle access to cabins is for loading and collecting baggage only, while guest car parking instead must be confined to a single centralised area on the site. This requirement does not apply to accessways set aside for disabled persons, emergency purposes (including accident or fire) and other services such as sewerage disposal system, water supply and electricity.*
- 10

8. *Environmental repair and enhancement:*

- 15                    1. *Planting of 900 native plants per dwelling-house or holiday cabin. (Thus a development comprising six (6) dwelling-houses or holiday cabins would require no fewer than 5400 plantings).*

**Assessment:**

20    Section 7.2 (5) of the Byron Rural Settlement Strategy 1998 provides that holiday cabin development should be provided with all-weather “centralised” car parking at a rate of at least 1 car space per holiday cabin. This is further explained in Section 7.2(7)(f) which states “vehicle access to cabins is for loading and collecting baggage only, while guest car parking instead must be confined to a single centralised area on the site”.

25    The intent of this measure is related to the overall objective of facilitating holiday cabin development that is “in harmony with rural and natural environments” (s 7.2). Centralised car parking can contribute to that aim by minimising disturbance on the landscape from internal roads and car parking areas.

30    The proposal does not strictly comply with the DCP requirement because it provides individual (decentralised) carparking for each cabin rather than centralised carparking as stipulated in the DCP.

35    This design choice is partly related to bushfire planning controls, which require suitable access to be provided to the cabins for fire fighting vehicles. Access is achieved by providing an internal road that loops around the main dwelling and past the cabins, connecting to the Crown Road on the western boundary. A secondary driveway for each cabin branches off the internal road, leading to a covered car parking space for guests arriving by vehicle.

40

By comparison, a centralised car parking design would require the creation of a separate carpark in addition to the internal access road (which is required for firefighting access). The result would be similar, in terms of visual impact and character, and is unlikely to provide any significant benefits compared to the proposed decentralised design.

45

On balance, the proposed decentralised car parking design is considered to be acceptable having regard to the DCP aims and objectives and a variation to the control is supported in this instance.

### D3.3.4 Rural Tourist Accommodation and Farm Stay Accommodation

The relevant objectives and performance criteria of D3.3.4 are shown below–

#### Objectives

1. *To ensure that rural tourist accommodation does not detract from the rural and natural character of its locality.*
2. *To ensure that rural tourist accommodation does not adversely affect the conduct and productivity of agricultural operations on the site or nearby lands.*
3. *To facilitate and support the establishment of low scale farm tourism as a secondary business to primary production, where farm stay accommodation is proposed.*

#### Performance Criteria

...

8. *Environmental reparations are required as a part of any Rural Tourist Development. Such repairs are to be focused on the expansion of wildlife corridors, repairing and reconnecting vegetation remnants and enhancing riparian areas and habitat for threatened species and endangered plant communities.*

#### Assessment:

Part D3.3.4 of the DCP and Section 8.2 of the Byron Rural Settlement Strategy 1998 requires a Vegetation Management Plan to be provided detailing an environmental restoration concept including 900 native trees per cabin.

Part D3.3.4 also specifies equivalent ecological restoration criteria where existing native vegetation occurs on site.

The application states that “existing environmental enhancement projects undertaken on the land will continue” but does not provide any detail on these projects. The applicant’s further information confirms that existing native vegetation on the property is “largely self-maintaining” and that no additional planting of native vegetation is proposed other than screening vegetation between the cabins under the landscape plan. The applicant has argued that a VMP should not be required as the application was lodged (June 2019) prior to this requirement being incorporated into DCP 2014 (September 2019). The subject amendment was publicly exhibited by Council from 1 May to 16 June 2019 (i.e., prior to lodgement of the subject DA).

While it is acknowledged that the application was lodged prior to the VMP requirements being introduced into DCP 2014, the relevant planning controls are the ones that apply at the time of determination. Further, a fundamental planning principle for rural tourism is that new development should be directly linked to the repair and enhancement of the natural

environment. It is therefore appropriate that a VMP be developed for the site to provide improved biodiversity outcomes in accordance with the DCP.

- 5 A condition is recommended that requires a VMP to be submitted to Council for approval prior to the issue of a construction certificate and substantially implemented prior to the occupation phase of the development.

**4.6 Any Planning Agreement or Draft Planning Agreement?**

There are no proposed planning agreements or draft planning agreements.

10 **4.7 Environmental Planning & Assessment Regulation 2000 Considerations**

Clause 92 Additional matters that consent authority must consider

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

20 **4.8 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

Impact on:	Likely significant impact/s?
Natural environment	<p><u>Impacts on vegetation and biodiversity</u></p> <p>The proposal will not have a significant impact on the environment, subject to conditions requiring the site to be enhanced through a vegetation management plan including an additional 3600 native trees plus weeding and ongoing vegetation management. The overall outcome is likely to be positive subject to the implementation of the VMP.</p> <p><u>Timber plantation</u></p> <p>A timber plantation has been approved for the property under the <i>Plantations and Reafforestation Act 1999</i> (ref. AV0752P). The plantation will be in the central portion of the site approximately 200m from the proposed cabins (refer to Attachment 4).</p> <p>The proposed development is not incompatible with the future use of the land for forestry, although care will need to be taken to ensure environmental restoration works are kept clear from the timber plantation to prevent unintended clearing of restored areas in the future.</p> <p>Details of the timber plantation will need to be provided with the VMP along with further formation detailing how the restoration areas are to be managed separately from</p>

	<p>the timber plantation.</p> <p><u>Structures near Simpsons Creek</u></p> <p>Council received photos from the public showing two timber platforms and a composting toilet installed near the bank of Simpsons Creek within the 7(a) Wetlands Zone. Council records indicate that a request to remove these unauthorised structures was issued to the property owners in January 2017 (A2017/785) and that the issue is ongoing (E2018/33158 and E2018/44830).</p> <p>Due to the environmentally sensitive nature of this area and its designation as a coastal wetland, a condition is recommended requiring any structures in this area to be removed prior to the issue of a construction certificate (unless they are otherwise deemed lawful following further investigation).</p>
<b>Built environment</b>	<p><u>Character, locating, siting, scale and external appearance</u></p> <p>The design, siting and character of the development is considered to be low scale and generally compatible with the characteristics of the surrounding environment. Additional landscaping closer to the road frontage is recommended to reduce the visual impact of the development from Tandys Lane to the west.</p> <p><u>Impacts on the existing and likely future amenity of the locality</u></p> <p>Subject to conditions, the proposed cabins will have sufficient buffers to neighbouring dwellings and properties such that there is unlikely to be any significant impact on existing and likely future amenity of the area.</p> <p>Conditions are recommended preventing the use of lighting in the evening aside from that needed for reasonable safety and use of the development.</p> <p><u>Use of land for events and functions</u></p> <p>The application is for tourist accommodation only and is unlikely to facilitate future events or functions at the property. Any future use of the land for functions or events requires consent and should be treated as a compliance issue.</p> <p><u>Traffic generation and road access</u></p> <p>The development will generate an additional 10 vehicle trips per day which represents an increase in traffic volumes of ~3.5% over current levels.</p>

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	Tandys Lane is a sealed two way road in reasonable condition and is deemed suitable for the proposed development.
<b>Social Environment</b>	No. The proposal will not have a significant social impact on the locality.
<b>Economic impact</b>	The development is likely to provide a minor economic benefit to the construction sector in the short term and will contribute to the local tourism industry in the longer term.

Council Policies that are applicable to the proposed development are considered below:

<b>Council Policy</b>	<b>Consideration</b>
<b>Management of Contaminated Land Policy</b>	Council's Environmental Health Officer considered land contamination as part of their assessment of the proposal.
<b>Provision of Driveways Policy</b>	Council's Engineer has recommended a condition requiring approval for works within the road reserve.
<b>Enforcement Policy</b>	It is recommended that any unauthorised structures near Simpsons Creek be removed prior to the issue of a construction certificate.

#### 4.9 The suitability of the site for the development

- 5 The site is a serviced property (with respect to access and water), has manageable constraints and is suitable for the proposed development.

#### 4.10 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited and advertised for a period of 14 days in accordance with DCP 2014. There were **26** submissions made on the development application:

- 10
- 0 For,
  - 26 Against.

One of the submissions was endorsed and signed by 22 owners/occupiers of properties on Tandys Lane and Hyrama Crescent.

Consideration of the key issues raised in submissions is included below:

<b>Key issues raised in submissions</b>	<b>Consideration</b>
Non-compliance with planning regulations	Permissibility of the proposed development is considered above under Section 4.2A.  The applicant has provided further information and amended plans and the

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	<p>proposal is now considered to be generally consistent with the relevant planning controls subject to conditions.</p> <p>Consideration of the proposed development in light of applicable planning instruments is included above (see sections 4.2A-4.7).</p>
Loss of amenity/ Impact on scenic values	<p>The proposed cabins can be adequately screened by vegetation to minimise the impact on scenic values. Such screening has been required by a recommended condition of approval. Cabins are suitably located away from neighbouring properties to have detrimental impact on amenity.</p>
Traffic, vehicular access and safety	<p>Council's Engineer concurs with the applicants engineering report that the likely increase in traffic on Tandys Lane from the development being approximately 3.5%. The potential impact of the development on traffic and road safety is considered to be acceptable subject to conditions requiring the consolidation and upgrade of vehicular access to the property/development.</p>
Environmental impact on Simpsons Creek	<p>Information was provided indicating that unauthorised development has occurred on the property adjacent to Simpsons Creek and within the Wetlands (7(a)) zone. Council records indicate that a request to remove these unauthorised structures was issued to the property owners in January 2017 (A2017/785) and that the issue is ongoing (E2018/33158 and E2018/44830).</p> <p>A condition is recommended requiring these structures to be removed or regularised prior to the issue of a construction certificate.</p>
Condition of Tandys Lane	<p>Submissions argue that the increased traffic from this development will exacerbate the already poor condition of Tandys Lane. Council's Development Planning Officer has recommended a condition requiring the payment of contributions for the development. Ultimately the maintenance and upgrade of Tandys Lane is a matter for Council's Infrastructure Services team.</p>



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Lack of primary production	<p>It is acknowledged that the proposal is not directly associated with primary production however this is not required as the proposal is defined as 'tourist and visitor accommodation' rather than 'farm stay accommodation'.</p> <p>The proposal is unlikely to prejudice future primary production on the land (a timber plantation has been approved) and is therefore not considered to be offensive to or incompatible with the RU1 and RU2 zone objectives.</p>
Scale of development	<p>The proposed development is considered to adequately meet the definition of "small-scale". The possibility of the approved dwellings also being used for short-term accommodation is not a relevant consideration for this application.</p>
Unauthorised functions and events	<p>Information was provided that indicates that unauthorised events may have occurred on the property. However, this application does not seek approval for events and any such concerns should be referred to Council's community enforcement team. A condition has been recommended that clearly states that commercial functions/events are not approved.</p>
Lack of consultation with the community	<p>The proposed development does not fall under the definition of "<i>community significant development</i>" and as such, pre-lodgement consultation is not required.</p>
Unauthorised development and use of the property	<p>The alleged unauthorised development on the property has been discussed above and a second recommendation is made to have Council's community enforcement team investigate the matter further.</p>

#### 4.11 Public interest

The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent subject to appropriate conditions of consent.

# BYRON SHIRE COUNCIL

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### 5. DEVELOPER CONTRIBUTIONS

#### 5.1 Water & Sewer Levies

- 5 The development will be serviced by reticulated water from a Rous Water connection. Section 64 levies will be payable to Rous County Council prior to issue of construction certificate.

#### 5.2 Developer Contributions

A Section 7.12 levy is applicable as the development is non-residential and has an estimated cost of more than \$100,000.

### 10 6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

### 7. CONCLUSION

- 15 The proposed development is a satisfactory response to the site's constraints and the applicable planning controls that apply to the land. Potential environmental, visual and amenity impacts have been addressed through conditions of consent requiring additional landscaping and environmental enhancement works through a vegetation management plan.
- 20 Overall, the proposal is a low-scale, low-impact development that is compatible with the character of the surrounding environment and is generally consistent with the planning controls for rural tourism in Byron LEP 2014 and Byron DCP 2014. The application is recommended for approval subject to the conditions of consent in Attachment 1.

## Report No. 13.10 Climate Change Adaptation Plan

**Directorate:** Sustainable Environment and Economy

**Report Author:** Rachel Thatcher, Sustainability and Emissions Reduction Officer

5 **File No:** I2021/574

### Summary:

10 In 2018, Council declared a climate emergency (**Res 18-680**). In 2019, it was decided that a Climate Action Tank would be delivered to advance the development of a Climate Change Adaptation Plan. Unfortunately, due to COVID-19 this was unable to go ahead, however in June 2020, Council resolved (Res 20-351) to develop a Climate Change Adaptation Plan (CCAP) in-house.

15 In late 2020 and early 2021, Council completed a Climate Change Risk Assessment with Council's insurer, Statewide Mutual. Seven workshops were held involving over 20 cross-directorate staff to identify the key climate risks for Byron Shire. A comprehensive list of adaptation initiatives were developed in response to the identified climate risks for Byron Shire. Initiatives identified as High or Extreme were then used as the basis of Council's CCAP Actions.

20 As per Resolution **20-351**, a first draft of the CCAP was sent to the previously confirmed Action Tank participants for peer review, in addition to several Council advisory committees. The peer reviewers consisted of:

- Joelle Gergis – IPCC Climate Scientist
- Rebecca McNaught – Southern Cross University / Pacific Connections
- Jean Renouf – Resilient Byron
- Marcello Sano – Griffith University
- 25 • Hamish McCallum – Griffith University
- Danny Almagor – Small Giants
- Damon Gameau
- Arakwal Corporation
- Rous County Council
- 30 • Zero Emissions Byron
- Sustainability and Emissions Reduction Advisory Committee

- Biodiversity Advisory Committee

The peer review process was highly valuable in developing a thorough, well considered Adaptation Plan and many key improvements were achieved through this process. In total, 100 Adaptation Actions were developed, many of which are already funded and in progress. Those that are not yet in progress will be considered annually in the development of future Operational Plans and budget resourcing. Future occurrence of climate related events and opening of grant funding opportunities may also trigger the ad hoc implementation and resourcing of appropriate Adaptation Actions.

As proposed by Councillors at the June 3 Strategic Planning Workshop, a community information session was held on June 15 to give community members and peer reviewers a chance to informally discuss the CCAP and raise any questions or concerns. The CCAP was also available on Your Say for a period of 3 weeks to allow for community feedback. A summary report of submissions received, and changes made is in Attachment 2. A full version of submissions can be accessed in Attachment 3.

The CCAP can be viewed in Attachment 1. The final graphic designed version of the CCAP will be made available following adoption by Council.

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## RECOMMENDATION:

That Council

1. **Adopts the Climate Change Adaptation Plan (Attachment 1 - E2021/89746), noting that final graphic design is to follow.**
2. **Acknowledges the Peer Reviewers for their time, commitment and valuable expertise in shaping the Climate Change Adaptation Plan.**

## Attachments:

- 1 Final Draft Climate Change Adaptation Plan, 5 August 2021 Council Meeting, E2021/89746
- 2 Climate Change Adaptation Plan - Submissions Report, E2021/89751
- 3 Confidential - Combined submissions on draft Climate Change Adaptation Plan, attached to 5 August 2021 Council report, E2021/88039

## **Report**

In 2018, Council declared a Climate Emergency (**Res 18-680**). In order to advance the development of a CCAP, in 2019 Council planned to facilitate a Climate Action Tank workshop involving input from a range of community members, universities, government agencies and council staff. Due to COVID-19, this was unable to go ahead. However, in an effort to progress an adaptation response, Council resolved (**Res 20-351**) for staff to develop a CCAP in-house which –

a) Considers the:

i) Identified areas of concern determined at the 6 September 2019 Councillor workshop;

ii) Council researched gap analysis conducted and presented to Council 12 December 2019; and

iii) Contemporary and current science as it relates to Local Government best practice for Climate Adaptation within Australia.

b) Is peer reviewed where possible by the previously confirmed workshop participants; and

c) Undergoes a Councillor and community engagement process before reporting to Council for consideration for adoption.

These components are addressed in further detail in a separate section of this report.

### **Climate Change Risk Assessment**

In late 2020 and into early 2021, Council staff completed a Climate Change Risk Assessment with Council's insurer, Statewide Mutual. Four initial workshops were held and attended by staff from each directorate. The results of this risk assessment were reported to the Executive Team and the Sustainability and Emissions Reduction Advisory Committee in December and November 2020, respectively.

An additional three internal workshops, facilitated by Statewide Mutual, identified controls and adaptation initiatives required to mitigate the previously workshopped climate risks. The outcome was a comprehensive list of feasible actions within Council's operational control that could be used as the basis of a CCAP.

Risks identified in the risk assessment process were categorised into low, medium, high, or extreme, however only risks identified as high and extreme have been prioritised for inclusion in the CCAP. The remaining low to medium risks will be considered in future 5 year reviews of the CCAP and the Climate Change Risk Assessment.

### **How the Climate Change Adaptation Plan responds to Resolution 20-351**

Res 20-351 required the CCAP to consider -

**a-i) Identified areas of concern determined at the 6 September 2019 Councillor workshop;**

The identified areas of concern were –

- Resilient Communities
- Emergency Management
- Biodiversity
- Infrastructure and Water
- Settlement and Land Use Planning

The Climate Change Risk Assessment workshops involved staff from across all directorates. As a result, all identified areas of concern were addressed by the relevant teams. For example, Council's Biodiversity Team were engaged to develop actions to mitigate climate risks to biodiversity in the region, and so on. All Adaptation Actions that correspond to the areas of concern above are included in the CCAP.

**a-ii) Council researched gap analysis conducted and presented to Council 12 December 2019; and**

A gap analysis was conducted to identify which existing plans, policies, and controls Council had in place to address climate change. A summary has been included in the CCAP (Section 5.0). In addition, current controls already within Council's Operational Plan are also identified within our Adaptation Actions (Section 5.3).

**a-iii) Contemporary and current science as it relates to Local Government best practice for Climate Adaptation within Australia.**

The CCAP incorporates climate science and policy from leading international, national, and state agencies including the Intergovernmental Panel on Climate Change (IPCC), United Nations, CSIRO, BOM, the Australian Government, and NSW Government.

The climate projections for Byron Shire are sourced from NARClIM, CSIRO, and BOM, and are based on the most recently available data for the region. This information can be found in Section 4.0 and 5.3 of the Adaptation Plan.

**b) Is peer reviewed where possible by the previously confirmed workshop participants.**

The CCAP was sent to all previously confirmed Action Tank workshop participants for peer review and most were able to provide valuable expertise and constructive feedback. The participants are highly skilled and experienced in their respective fields and many are also Byron Shire residents. The CCAP was peer reviewed by –

- Joelle Gergis - IPCC
- Rebecca McNaught – Southern Cross University / Pacific Connections

- Jean Renouf – Resilient Byron
- Marcello Sano – Griffith University
- Hamish McCallum – Griffith University
- Danny Almagor – Small Giants
- 5 • Damon Gameau
- Arakwal Corporation
- Rous County Council
- Zero Emissions Byron
- Sustainability and Emissions Reduction Advisory Committee
- 10 • Biodiversity Advisory Committee

**c) Undergoes a Councillor and community engagement process before reporting to Council for consideration for adoption.**

15 The CCAP has undergone Councillor engagement at the 3 June Strategic Planning Workshop. The community was invited to submit feedback through a 3 week public exhibition period on Your Say supported by community newsletter, social media, and local radio promotion. Eleven submissions were received and summary is in Attachment 2. A full version of submissions can be accessed in Attachment 3.

20 A community information session was also held on June 15 in the Council Chambers to discuss the CCAP with the community and answer any questions about the Plan. Overall there was support for the CCAP.

**Next Steps**

It is recommended that Council adopt the CCAP (Attachment 1), noting:

- the peer review process used throughout the development of the Plan;
- the changes made based on community Your Say submissions (Attachment 2);
- 25 • the implementation and review process for the Plan, allowing for future revisions as new information, data, or events arise; and
- that final graphic design is to follow adoption.

**Strategic Considerations**

**Community Strategic Plan and Operational Plan**

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CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 3: We protect and enhance our natural environment	3.2	Strive to become a sustainable community	3.2.1	Work towards Council's zero-emissions target	3.2.1.9	Develop and implement a Climate Adaptation Plan

### Recent Resolutions

- Resolution 18-680
- Resolution 20-351

### Financial Considerations

- 5 Adaptation Actions will be considered annually for the Operational Plan (OP) and resourced accordingly by the responsible Directorate. Grant funding will also be sought out to assist in the implementation of the actions. Many Actions are already in progress and therefore have funding allocated for implementation. Future climate events and opening of grant funding opportunities may also trigger the ad hoc implementation and resourcing of
- 10 appropriate Adaptation Actions.

### Consultation and Engagement

- 15 The CCAP has been developed through extensive cross-directorate workshops involving over 20 staff from across Council. Individual staff involved in these workshops were responsible for developing Adaptation Actions that would mitigate the identified climate risks to Byron Shire.

- 20 Following this, further consultation took place via an external peer review process, involving highly skilled members of the community, Council advisory committees, and other experts on Climate Change. Additional internal consultation then took place with the Executive Team prior to presenting to Council for discussion at a Strategic Planning Workshop. The community consultation process is outlined under part c) of the Council resolution above.



## Report No. 13.11 Preparing for Climate Active carbon neutral certification 2025/26 - establishing Council's emissions boundary

**Directorate:** Sustainable Environment and Economy

5 **Report Author:** Hayley Briggs, Sustainability and Emissions Reduction Officer  
Julia Curry, Sustainability and Emissions Reduction Officer

**File No:** I2021/860

### Summary:

10 The purpose of this report is to seek Council's endorsement of the proposed emissions boundary for Council operations, in preparation for becoming certified carbon neutral under the Climate Active standard in 2025/26.

In March 2017, Council resolved to be net zero emissions for its operations by 2025 (**17-086**). In December 2019, Council further resolved to become certified carbon neutral under the Climate Active national standard by 2025/26 (**19-634**).

15 To set the framework to deliver on its emissions reduction goals, Council endorsed the *Net Zero Emissions Strategy for Council Operations 2025* in June 2019 (**19-268**) and the *Net Zero Emissions Action Plan for Council Operations 2025* in November 2020 (**20-628**). Under the *Governance* objective in the Action Plan, Action D5 is to "Develop an emissions disclosure framework for Council staff". Further, one of the measures under 2020/21 Operational Plan Activity 3.2.1.1 *Deliver the Net Zero Emissions Action Plan for Council Operations 2025* is "Report to Council to define Council's emissions boundary".

25 The process for achieving Climate Active certification involves a number of steps over several years. Establishing Council's emissions boundary is step 1 and standard practice for any organisation seeking certification. Consultant '100% Renewables' has been engaged to assist staff with the process.

30 The proposed boundary will increase Council's emissions footprint significantly. This is to be expected; it is an inevitable part of the journey to Climate Active certification. Staff are unable to estimate by how much it will increase because the source data is yet to be collected (this will take place in 2021/22). Staff will report back to Council after the first year of tracking the new boundary to give Council the opportunity to review progress (as part of the annual emissions report in December 2022).

35 An increased emissions footprint means that more tonnes of carbon dioxide equivalent will need to be offset in 2025/26 (and all following years that Council resolves to remain carbon neutral). Staff are presently unable to give an estimate as to the cost of offsetting Council's emissions footprint. Staff will begin development of an offsetting strategy and costs in the 2021/22 financial year alongside tracking the new boundary and will report findings back to Council as part of the annual emissions report in December 2022.

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Additional staff time and resources will be dedicated to setting up new data gathering and reporting systems. The Sustainability Team has factored this into future planning and will absorb most of the additional work.

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#### **RECOMMENDATION:**

##### **That Council:**

- 10 1. **endorses the proposed Climate Active-compliant emissions boundary for Council operations in Table 1 of this report.**
2. **notes the attached report from consultant '100% Renewables', *Establishing Climate Active-compliant emissions boundary for Council operations* (Attachment 1 - E2021/64201).**
- 15 3. **notes that staff will report back to Council after the first financial year of tracking the proposed boundary (2021/22) as part of the annual emissions report (December 2022).**
4. **notes that a discussion of offsetting strategy and its financial implications will be reported to Council as part of the annual emissions report (December 2022).**

##### **Attachments:**

- 20 1 Establishing Climate Active-compliant emissions boundary for Council operations - report from 100% Renewables, E2021/64201 

25

## **Report**

In March 2017, Council resolved to be net zero emissions for its operations by 2025 (**17-086**). In December 2019, Council further resolved to become certified carbon neutral under the Climate Active national standard by 2025/26 (**19-634**). One of the measures under 2020/21 Operational Plan Activity 3.2.1.1 *Deliver the Net Zero Emissions Action Plan for Council Operations 2025* is "Report to Council to define Council's emissions boundary".

On 19 May 2021, the Executive Team endorsed the proposed emissions boundary and resolved that a report to be brought to the Executive Team to confirm the emissions boundary and discuss carbon offsets in 2021/22.

### **Process for achieving Climate Active Certification**

The Sustainability Team has engaged consultant '100% Renewables' to assist Council in becoming certified under Climate Active. The process will comprise the following steps:

1. Boundary: determine emission sources for Climate Active Inventory (2020/21).
2. Inventory: collation of data and calculation of carbon footprint (2021/22 onwards).
3. Offsets: establish offset policy (2021/22 or 2022/23, depending on resourcing) and facilitate purchase of suitable carbon offsets (2025/26).
4. Trial Year: practice run of calculating emissions in line with Climate Active (2024/25)
5. Finalise: finalise Climate Active deliverables and publish public statement (2025/26).

Throughout the process, Council will also be working to deliver emissions reduction projects that reduce the size of its carbon footprint.

### **Completing step 1: determining Council's emissions boundary**

100% Renewables has assisted the Sustainability Team with step 1, drafting an emissions boundary that will meet the Climate Active standard. For 100% Renewables' full report, see Attachment 1. The boundary includes emissions sources under three scopes:

1. Scope 1: emissions that are owned or controlled by Council.
2. Scope 2: emissions from Council's use of electricity.
3. Scope 3: emissions that are a consequence of Council's activities but are not directly owned or controlled by Council.

The proposed boundary includes all the scope 1 and 2 sources we already track (fugitive emissions from landfill and sewage treatment plants, general and streetlight electricity, fleet and bottled gas) and adds missing scope 1 emissions (HVAC refrigerants) and relevant scope 3 emissions. The Climate Active "relevance test" was applied to each emission source to determine if it would be included (see p. 24 of Attachment 1 for a detailed explanation of the relevance test). The proposed boundary is as follows:

**Table 1. Proposed Climate Active-compliant emissions boundary for Council operations**

Proposed included emission sources	Proposed excluded emission sources
<p>Scope 1 emissions:</p> <ul style="list-style-type: none"> <li>• Refrigerants</li> <li>• LPG – stationary</li> <li>• Diesel – stationary</li> <li>• Diesel</li> <li>• Petrol</li> <li>• Ethanol</li> <li>• Closed landfill</li> <li>• Wastewater</li> </ul> <p>Scope 2 emissions include Electricity and Street lighting.</p> <p>Scope 3 emissions:</p> <ul style="list-style-type: none"> <li>• Scope 3 facilities</li> <li>• Water</li> <li>• Acetylene</li> <li>• Air travel</li> <li>• Business accommodation</li> <li>• Employee commute</li> <li>• Fuel from waste contractors</li> <li>• Paper</li> <li>• IT equipment</li> <li>• IT software</li> <li>• Office equipment</li> <li>• Food and catering</li> <li>• Postage and couriers</li> <li>• PopCar</li> <li>• Waste</li> <li>• Telecommunications</li> <li>• Cleaning</li> <li>• Pest control</li> </ul>	<ul style="list-style-type: none"> <li>• Taxis and Uber</li> <li>• Embodied emissions in other purchased goods</li> </ul>

<ul style="list-style-type: none"> <li>• Stationery</li> <li>• Chemicals</li> <li>• Professional services</li> <li>• Asphalt</li> <li>• Concrete</li> <li>• Other road building materials</li> <li>• Machinery and vehicle repairs</li> <li>• Equipment hire</li> <li>• Clothing</li> <li>• Non-quantified – hire cars</li> </ul>	
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### **Implications of adopting the proposed boundary**

Adopting the proposed boundary will have the following implications:

1. Council will complete the first step towards becoming certified Climate Active carbon neutral and completing resolution **19-634**.
- 5 2. Given the significant number of additional emissions sources that Council will need to track, additional staff time and resources will be dedicated to setting up new data gathering and reporting systems. The Sustainability Team will absorb most of this additional work.
- 10 3. The proposed boundary will increase Council's emissions footprint significantly. This is to be expected. Staff are unable to estimate by how much it will increase because the source data is yet to be collected (this will take place in 2021/22). An increased emissions footprint means that more tonnes of carbon dioxide equivalent will need to be offset in 2025/26 (and all following years that Council resolves to remain carbon neutral). Staff are presently unable to give an estimate as to the cost of offsetting Council's emissions footprint. The Sustainability Team will begin development of an offsetting strategy and costs in the 2021/22 financial year and report findings back to Council.

### **Risk**

20 Establishing Council's emissions boundary in preparation for becoming certified carbon neutral under the Climate Active standard is linked to the following Strategic Risk:

- Strategic Risk Reference 4: Environmental Resilience. One of the existing controls for this risk is the *Net Zero Emissions Action Plan for Council Operations 2025*. Establishing Council's emission boundary is one of the actions in the Plan.

### **Strategic Considerations**

## Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 3: We protect and enhance our natural environment	3.2	Strive to become a sustainable community	3.2.1	Work towards Council's zero-emissions target	3.2.1.1	Deliver the Net Zero Emissions Action Plan for Council Operations 2025
Community Objective 3: We protect and enhance our natural environment	3.2	Strive to become a sustainable community	3.2.1	Work towards Council's zero-emissions target	3.2.1.2	Prepare Annual Emissions Inventory to determine progress towards 2025 Net Zero Emission Target

## Recent Resolutions

- **17-086** – Council resolved to be net zero emissions for its operations by 2025, and to source all of its energy from renewable sources by 2027.
- 5 • **19-268** – Council endorsed the *Net Zero Emissions Strategy for Council Operations 2025*.
- **19-634** – Council resolved to become certified carbon neutral under the Climate Active national standard by 2025/26.
- 10 • **20-628** – Council endorsed the *Net Zero Emissions Action Plan for Council Operations 2025*.

## Legal/Statutory/Policy Considerations

There are no legislative considerations when becoming Climate Active certified.

15 *Net Zero Emissions Strategy for Council Operations 2025* – establishing Council's emissions boundary is an essential step in the process to becoming certified carbon neutral under the Climate Active standard; becoming carbon neutral will fulfil the central purpose of the Strategy.

*Net Zero Emissions Action Plan for Council Operations 2025* – establishing Council's emissions boundary is a measure under the Governance Objective in the Action Plan.

## **Financial Considerations**

The cost of establishing Council's emissions boundary has already been absorbed by the Sustainability Team, using pre-existing budget allocation.

- 5 This report has no direct financial implications. However, as discussed above at Point 3 under "Implications of adopting the proposed boundary", there is an indirect financial consideration relating to the increased emissions footprint and resulting increased tonnes of carbon dioxide equivalent that will need to be offset to become carbon neutral. Carbon offsetting costs vary widely depending on the location and type of offset project, and it is not yet known by how much Council's emissions footprint will increase with the proposed
- 10 boundary therefore staff are presently unable to give an estimate as to the cost of offsetting Council's emissions footprint. The Sustainability Team will research an offsetting strategy and related costs in the 2021/22 financial year, and report findings back to Council in December 2022 as part of the annual emissions report. That report will be drafted in consultation with Manager Finance.

## **15 Consultation and Engagement.**

<b>Who was consulted?</b>	<b>How did consultation occur? e.g. email, verbal etc.</b>	<b>Comments/Feedback</b>
External: Consultant 100% Renewables	Email, verbal.	See attached report from consultant.
Manager Open Spaces & Resource Recovery, IS	Email.	Provided leased facilities data.
Manager Utilities, IS	Email.	Provided leased facilities data.
Property Maintenance Coordinator, CCS	Email, verbal.	Provided information on HVAC system.
Management / Asset Accountant CCS - Financial Services	Email, verbal.	Provided financial data.
Leasing Coordinator, GM	Email.	Provided leased facilities data.

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Team Leader Electrical Maintenance, IS	Email.	Provided generator data.
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**Report No. 13.12 PLANNING - 26.2020.5.1 158 Jonson Street  
Planning Proposal Submissions Report**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Sam Tarrant, Planner

5 **File No:** I2021/859

**Summary:**

This report presents the exhibition outcomes of the 158 Jonson Street planning proposal 26.2020.5.1.

The planning proposal seeks to rezone the site from SP2 (rail corridor) to SP2 (car park).

10 The planning proposal was placed on exhibition from 10 May to 7 June 2021. Nine (9) public submissions and three agency responses were received.

Most submissions had concerns regarding design and amenity impacts which will be addressed as part of the development application process.

15 It is recommended that the planning proposal (as exhibited) be sent to the Department of Planning, Industry and Environment for finalisation.

**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.

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**RECOMMENDATION:**

25 **That Council forwards the planning proposal, as contained in Attachment 1 (E2021/9574), to Department of Planning, Industry and Environment for finalisation.**

**Attachments:**

- 30 1 26.2020.5.1 Planning Proposal Jonson St car park (v2 Public exhibition version and final version for Council), E2021/9574 
- 2 26.2020.5.1 Combined submissions for attachment to Council report - public version, E2021/85162 
- 3 26.2020.5.1 Combined agency response, E2021/89363 
- 35 4 Form of Special Disclosure of Pecuniary Interest, E2012/2815 



## **Report**

At the November planning meeting Council resolved to place the planning proposal to rezone 158 Jonson Street on public exhibition.

- 5 The planning proposal seeks to rezone the site from SP2 (rail corridor) to a mix of SP2 (car park), E2 Environmental Conservation and E3 Environmental Management.

The planning proposal was on exhibition from 10 May until 7 June 2021. Notification was sent to the adjoining landowners as well as several government agencies as per the Gateway determination.

- 10 Nine (9) public submissions were received and are attached to this report (Attachment 1). All submissions objected to the rezoning for the reasons summarised below.

The planning proposal governs the zoning and associated LEP maps only. Design considerations are assessed as part of the development application process, which is currently underway.

- 15 Submission issues applicable to the development application process have been recorded and relayed to the development assessment officer.

A development application has been submitted for this site and will be presented to Council in a separate report. The development application will not be determined until the site rezoning has been completed.

- 20 The public will also be given an additional opportunity to provide comment when the development application is placed on public exhibition.

Submission Issue(s)	Response
<p>Inappropriate location.</p> <p>The design goes beyond reasonable development standards and is in opposition of the precautionary principle.</p> <p>The proposal is at odds with the existing streetscape and the residential character to the east and will detract from the integrity of the protected wetlands to the west.</p> <p>This is a prime CBD location and should not be used for a car park.</p>	<p>Design of the car park is considered at the development application stage.</p> <p>The site is located adjacent to the business zone and part of the site is proposed to be zoned E2 and E3.</p> <p>Providing additional parking space on the peripherals of the town will enable people to park and walk into town which is consistent with the Byron town centre masterplan.</p>
<p>Two storey car park.</p> <p>The rezoning will enable a two-storey 200+</p>	<p>A 9m height limit already applies to the site. The directly adjacent B2 zoned land has a height limit of 11.5m. Specific design</p>

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Submission Issue(s)	Response
car park which is excessive for the site. The height will cause light spill and increase noise dispersal.	measures can be used to minimise noise and light impacts to adjoining residents, which will be considered as part of the DA process.
<p>Light and noise pollution.</p> <p>A two-storey car park will cause significant light spill at night and have adverse impacts on the adjoining residents and wildlife in the adjacent wetland.</p>	<p>Noted. Design considerations can be used to minimise noise and light impacts to adjoining residents as part of the associated development application.</p> <p>Conditions of consent can also be imposed to limit hours of operation and reduce associated impacts on adjoining residents.</p> <p>The environmental zoned part of the site will enable replanting and provide a buffer to the adjoining wetland.</p>
<p>Increased traffic/roundabout.</p> <p>The addition of a 200+ cars coming onto the Browning St. roundabout will exacerbate traffic issues in addition to the new Jonson Lane development.</p> <p>There is no clear pedestrian crossing at the roundabout and this development will make pedestrian access dangerous.</p>	<p>The submitted traffic study does account for the Byron Bypass and new roundabout. It acknowledges that this will generate additional traffic, noting that this will be within the roadway capacity and that acceptable access can be achieved.</p> <p>Measures to ensure suitable pedestrian access can be conditioned as part of the development application process.</p>
<p>Carpark security.</p> <p>A fence should be required along the paper road to ensure the site cannot be accessed after hours.</p>	<p>Security and access issues will be considered as part of the development application process.</p>
<p>Jonson St. Paper Road.</p> <p>There is an emergency exit from the Seadrift Complex and emergency vehicle access for Fire/Police/Ambulance is via the Jonson St road reserve between the Proposed Carpark and Seadrift Complex. It is vital that this access and exit always remains clear and unobstructed, and that</p>	<p>Noted. No changes to the paper road are proposed in this planning proposal.</p> <p>Formalisation of the access to/from the site will be required should the resulting development application be approved.</p>

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### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Submission Issue(s)	Response
<p>any proposed development is aware of this.</p> <p>The existing car park for mitre 10 should be upgraded.</p>	
<p>Not in keeping with Byron low scale development and character.</p> <p>The rezoning will enable a massive structure of up to 9 m high with no limit on FSR. It does not fit in the landscape and design of our town placed in a quiet undeveloped part and it should zoned MG market gardens.</p>	<p>The site is privately owned and directly adjacent to business zoned land. FSR is not relevant in the case of a car park. The application of environmental zones on part of the site reduces the footprint which can be used for a car park.</p> <p>A 9m height limit already applies to the site, which is the same height limit applicable to all residential areas of Byron. The business land directly adjacent has a height limit of 11.5m.</p>
<p>Loss of amenity.</p> <p>There should be restrictions on the hours the Proposed Carpark operates. If the Carpark were to operate 24/7, the impact of constant lighting, constant vehicle noise, constant vehicle emissions, security and safety issues, etc. would seriously disrupt the nature of this primarily residential neighbourhood, as well as affect the wildlife habitat around the Proposed Carpark.</p> <p>The design of the car park should minimise visual impact to Seadrift residents with a green or solid easterly facing wall and to mitigate light and noise spill.</p> <p>The entrance for the car park should remain at the northern end of the site and a gate installed for the paper road to prevent illegal camping and people accessing the site after hours.</p> <p>The associated retail redevelopment and car park should have limited hours of operation. If approved there should be adequate fencing/walls and tree planting for</p>	<p>The development application will consider design and amenity impacts. Conditions can be included to limit hours of operation.</p> <p>The site directly adjoins the business zone (B2 Local Centre) which has a height limit of 11.5m. A future car park on the site will be restricted to a 9m height limit.</p> <p>The Jonson Street paper road that separates the site from the residential area opposite will remain.</p>

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Submission Issue(s)	Response
screening.	
<p>Car Park will not increase walkability of the town.</p> <p>Since the carpark will be privately owned, is there a guarantee that parking will not be exorbitantly priced anyway? Or used for workers rather than people going into town?</p> <p>Secondly, it is very unlikely to affect the town centre as people will wish to park closer to town. They will not walk from such a distance (otherwise they could park in Woolworths carpark anyway).</p> <p>We do not need any more open space being used for cars.</p>	<p>The Byron Masterplan states that parking areas should be located out of the town centre. This will provide a parking space on the southern end of town enabling pedestrians to walk into town.</p> <p>In addition, the car park will enable the existing adjacent warehouse to be repurposed.</p>
<p>Inconsistent with the aims of Byron LEP.</p> <p>The proposal is inconsistent with the aims of Byron LEP in that it will totally and adversely detract from the amenity of the residential area to the east, particularly in relation to noise, traffic safety, streetscape, camping, tree removal, drainage and the environment.</p> <p>The proposal is also inconsistent with the DCP Chapter D4.</p>	<p>It is considered that this planning proposal is consistent with the aims of the Byron LEP 2014 — namely that it is responding to the site no longer being utilised for rail infrastructure.</p> <p>The DCP deals with development applications. This will be examined as part of any subsequent development applications.</p>
<p>Environmental</p> <p>The proposed E zones are supported, however the area should be replanted with indigenous trees and the E3 area managed so it does not become a fire danger.</p> <p>Trees should be planted along the paper road to soften the impact to the residential area.</p>	<p>Compensatory planting in the environmental zones with a vegetation management plan will be required as part of the development application (ie. using native vegetation).</p> <p>Screening of the car park will also be considered to minimise impacts on the adjoining residential apartments.</p>

The planning proposal was sent to RFS, Transport for NSW, Heritage NSW, Biodiversity Conservation Division, Tweed Byron Local Aboriginal Land Council and Arakwal.

Transport for NSW, Heritage NSW and Biodiversity Conservation Division responded and had no objection to the planning proposal.

- 5 Biodiversity Conservation Division recommended that prior to finalisation of the planning proposal that Council enters into a Voluntary Planning Agreement (VPA) with the applicant that specifies the biodiversity offset requirements and that a vegetation management plan will be prepared for the E2 and E3 zoned areas of the site.

- 10 The accompanying ecologist report notes that the vegetation removal on site does not exceed the 'biodiversity offsets scheme' threshold. Notwithstanding this, Councils DCP chapter *B1 - Biodiversity* sets out a framework requiring development to achieve no net loss of biodiversity on-site. In this regard development must be designed to avoid and/or minimise impacts on biodiversity values such as the mapped high environmental value vegetation that occurs on the subject site. Where avoidance and minimisation measures
- 15 have been clearly considered and implemented, residual biodiversity impacts may be allowable. In these cases, Chapter B1 requires that offset measures must be implemented on-site via a vegetation management plan. The area subject to the vegetation management plan must then be protected from further impacts in perpetuity.

- 20 The environmental zones have been included on site so that ecological restoration based on the principles in Chapter B1 can be accommodated on site.

Based on the above information it is considered that a VPA is not necessary in this instance.

### Conclusion

- 25 No changes to the exhibited planning proposal are recommended. Concerns regarding design, traffic and amenity impacts will be assessed as part of the development application process.

### **Options**

Proceed with the planning proposal as attached noting that a thorough assessment of the design will occur as part of the development application process

- 30 Or

Not proceed with the planning proposal and provide reasons for this decision to the applicants.

### **Next steps**

- 35 Should Council wish to proceed, the planning proposal will be sent to the Department of Planning, Industry and Environment for finalisation.

In this instance, Council does not have delegation to make this plan, therefore the role of finalising the proposal will remain with the Department of Planning, Industry and Environment.

## **Strategic Considerations**

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

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
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 20-601: Proceed to public exhibition and consider a report post exhibition.

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

10 Should Council proceed with this planning proposal, an amendment to Byron LEP 2014 will be made.

## **Financial Considerations**

This is an applicant-initiated planning proposal with all costs borne by the landowners.

## **Consultation and Engagement**

As outlined in the report.

15



# **Report No. 13.13 Final Coastal Management Program (CMP) Stage 1 Scoping Study for the Southern Byron Shire Coastline and Belongil Estuary - for adoption by Council**

5 **Directorate:** Sustainable Environment and Economy

**Report Author:** Orla Seccull, Coastal & Estuary Officer

**File No:** I2021/448

## **Summary:**

10 This report provides the final Coastal Management Program (CMP) Stage 1 'Scoping Study for the Southern Byron Shire coastline and Belongil Estuary' for adoption by Council.

15 An update on the development of CMPs for the Byron Shire Coastline was provided at the Council meeting 22 April 2021. At that meeting, Council resolved (**Res 21-164**) that the draft Scoping Study be sent to agencies for their review [i.e. those agencies with a role or responsibility associated with the Forward Plan for the remaining stages of the CMP] and that a copy be placed on the web for public feedback.

The agency review and public feedback took place in May and early June 2021. Eleven responses were received from the community and submissions were received from the following State agencies and stakeholders:

- 20 • DPIE – EES (Coast and Estuaries).
- DPIE – Crown Lands.
- Department of Primary Industry - Fisheries (Marine Parks).
- DPIE – National Parks and Wildlife Service (NPWS).
- Transport for NSW - Maritime Infrastructure Delivery Office (MIDO).
- 25 • Transport for NSW – Maritime (TfNSW – Maritime).
- Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) Registered Native Title Body Corporate (RNTBC) (BOBBAC).

30 Feedback and agency submissions were assessed and where relevant, amendments have been incorporated into the finalised Scoping Study. A response to each comment and submission received identifying what amendments (if any) were made in the final Scoping Study is provided in the full Assessment of Submissions provided in **Attachment 1**. Combined agency (and BOBBAC) responses are provided in **Attachment 2**, and combined community responses are provided in **Attachment 3**.

## BYRON SHIRE COUNCIL

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In summary:

- Feedback received from State agencies and stakeholders (BOBBAC) required some amendments be made to the Scoping Study, primarily the provision of additional context and clarification on some aspects (e.g. economic value, the rights and interests of Aboriginal people, reference to adopted studies, plans and policies etc.), as well as amendments to supporting agencies in the Forward Plan.
- The majority of community feedback received revolved around threatening processes already considered in the Scoping Study, or management options. Development of management options will occur at Stage 3 of the CMP. No amendments were made to the Scoping Study in response to community feedback received.

Council staff also made several amendments to the Scoping Study, primarily relating to the Forward Plan, i.e. reordering and combining/separation of recommended Stage 2 and 3 studies and inclusion of a study already funded and underway that informs other Stage 2 studies.

- 15 The final amended version of the Scoping Study is presented in **Attachment 4** for Council adoption at this meeting.

- 20 The total cost of preparing the CMP (5 stage process\_ is estimated to be between \$187,000 and \$365,000 with the next stage (Stage 2 – FY2021/22) of the CMP expected to cost between \$62,000 and \$130,000. The range provides for uncertainty in the costs of certain activities as recommended in the Forward Plan.

- 25 A budget of \$78,000 in the FY2021/22 budget under ledger item 2605.156 'Coastline & Belongil Est Scoping Study' has been allocated to enable the project to continue to Stage 2 of the Coastal Management Program process. This budget is considered sufficient to complete the required Stage 2 investigations with a grant funding contribution.

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#### RECOMMENDATION:

That Council:

- 30 1. **Notes the submissions received during the public comment period and agency feedback on the draft CMP Stage 1 Scoping Study for the Southern Byron Shire Coastline and Belongil Estuary (Assessment of submissions in Attachment 1 - E2021/90327 and full copy of submissions in Attachment 2 – E2021/87905 and Attachment 3 – E2021/87909).**
- 35 2. **Adopts the finalised CMP Stage 1 Scoping Study for the southern Byron Shire coastline and Belongil Estuary in Attachment 4 (E2021/90329) incorporating the amendments outlined in the report.**





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- 3. Notes the allocation of \$78,000 through the FY2021/22 budget process to enable the project to continue to Stage 2 of the Coastal Management Program process (OP Action 3.3.1.4).**

#### **Attachments:**

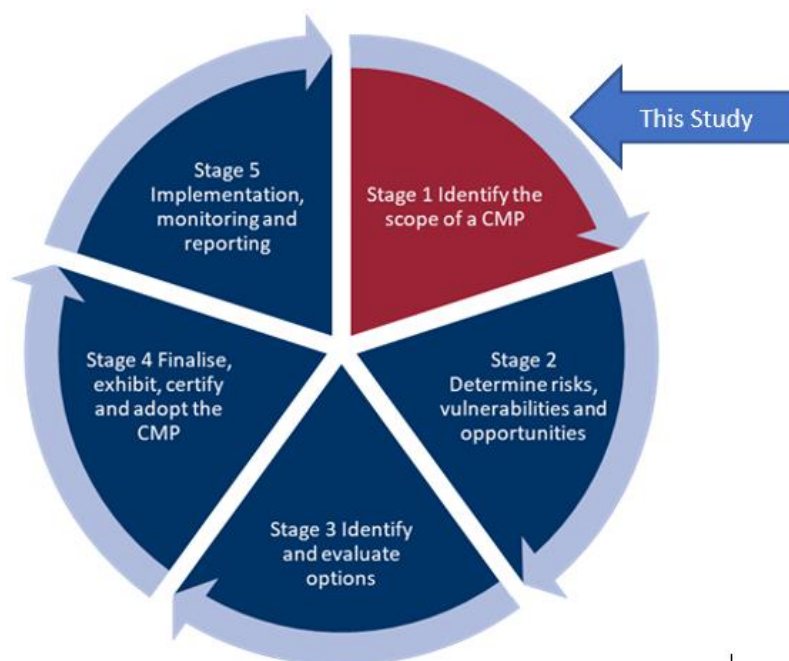
- 5
- 1 Assessment of Agency Submissions and Community Feedback - draft CMP Scoping Study Southern ByronShire Coastline and Belongi Estuary, E2021/90327 
  - 2 Combined agency submissions - draft CMP Scoping Study Southern Byron Shire Coastline and Belongil estuary, E2021/87905 
  - 10 3 Combined community feedback - draft CMP Scoping Study Southern ByronShire Coastline and Belongi Estuary, E2021/87909 
  - 4 FINAL Coastal Management Program (CMP) Stage 1 Scoping Study for the Southern Byron Shire coastline including Belongil Estuary - COMPILED, E2021/90329 

15

## REPORT

### Background

- Council has commenced preparation of Coastal Management Programs (CMPs) for its coastline. Development of CMPs is partially funded by the NSW Department of Planning, Industry and Environment (DPIE). CMPs set out the long-term strategy for the coordinated management of the coastal zone by council, public authorities, land managers and the community. CMPs will consolidate the funding and delivery of priority management actions to balance the environmental, cultural, recreational and economic needs of the coastal zone and to adapt to emerging issues such as population growth and climate change.
- The development of a CMP is a staged process comprising five stages as per the figure below.



**Figure 1: The five stages of developing and implementing a Coastal Management Program (adapted from the Coastal management Manual, NSW Govt, 2018)**

### 15 **Final Coastal Management Program (CMP) Stage 1 Scoping Study for the Southern Byron Shire Coastline**

The CMP for the Southern Byron Shire coastline encompasses:

- Coastal areas from Cape Byron to Seven Mile Beach (to the LGA boundary) including Ti-Tree Lake and Tallow Lake and its catchment.
- Belongil Creek Estuary to the west of Cape Byron as well as the wider Belongil catchment.

- Marine areas to 3 nm offshore.

Council engaged Rhelm Consulting as the project consultant for the Scoping Study in partnership with other experienced coastal and estuary specialists including Bluecoast (coastal engineers), H2O Consulting Group (ecological specialists) and Coastal Zone Management and Planning (Angus Gordon, a highly experienced coastal specialist).

### **Agency review and public comment on the draft Scoping Study**

Council at the 22 April 2021 meeting, resolved (**Res 21-164**) (relevant parts only) that the draft Scoping Study be sent to agencies for their review and that a copy be placed on the web for public feedback

- 10 The draft was sent to key stakeholders for review, i.e. those agencies with a role or responsibility associated with the Forward Plan for the remaining stages of the CMP, as well as BOBBAC, Jali Local Aboriginal Land Council (LALC) and Tweed-Byron LALC.

- 15 The draft was also made available for public comment for 5 weeks on Council's website with associated media release, social media post, and an email to community members and general community stakeholders who had previously registered interest in the coastal management projects. The agency review and public feedback took place in May and early June 2021 (closing on 11 June).

### **Agency and Stakeholder submission on the draft Scoping Study**

- 20 Submissions were received from the following NSW Government agencies and stakeholders:

- DPIE – EES (Coast and Estuaries).
- DPIE – Crown Lands.
- Department of Primary Industry - Fisheries (Marine Parks).
- DPIE – National Parks and Wildlife Service (NPWS).
- 25 • Transport for NSW – Maritime (TfNSW – Maritime).
- TfNSW - Maritime Infrastructure Delivery Office (MIDO).
- Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) Registered Native Title Body Corporate (RNTBC) (BOBBAC).

- 30 Feedback received from State agencies and stakeholders required some amendments made to the Scoping Study, primarily the provision of additional context and clarification on some aspects (e.g. economic value, the rights and interests of Aboriginal people, reference to adopted studies, plans and policies), as well as amendments to supporting agencies in the Forward Plan.

Copies of submissions received from agencies and stakeholders are provided in **Attachment 2**. A response to each comment received is provided in the full Assessment of Submissions provided in **Attachment 1**. Table 1 below provides a summary of those submission responses that have resulted in significant amendments being made to the Scoping Study.

**Table 1: Comments in submissions from public agencies and key stakeholders resulting in amendments to the final Scoping Study.**

Agency	Submission Comments	Response
NPWS	<p>Management Areas</p> <p>NPWS identified the reserves managed by NPWS, their values and provided relevant Plans of Management.</p>	<p>Amendments made:</p> <ul style="list-style-type: none"> <li>- Suffolk Park Reserve removed from the list of reserves managed by NPWS (Section 3.2.1.</li> <li>- Inclusion of Attachment 1 as provided by NPWS into the data compendium (Appendix D).</li> </ul>
NPWS	<p>Scoping study direction</p> <p>NPWS supports the direction of the CMP and the inclusion of the four Coastal Management Areas (CM Act) in the scope with a preference to minimise demands on staff and the community for participation in consultation/engagement/review.</p> <p>NPWS supports the inclusion of NPWS as a supporting agency in the Forward Plan action lists (S2-4, S2-8 (now S2-3), S3-1 (now S2-10 and S2-11), Add-9).</p>	<p>Noted.</p> <p>Amendments made:</p> <ul style="list-style-type: none"> <li>- NPWS added as a support agency against Items S2-10 and S2-11 (former Item S3-1) in Table 9-2.</li> </ul>
DPI Fisheries (Marine Parks)	<p>Vision Statement</p> <p>The Vision Statement could more clearly identify the importance of the Conservation Values of the study/Program area, which DPI Fisheries regards as a significant factor in the development of the Program.</p>	<p>Amendments made:</p> <ul style="list-style-type: none"> <li>- Bold text added to the Vision Statement in Section 2.2: "<i>The Byron Shire's coast is resilient and adaptive to ensure it retains its iconic natural, conservation and cultural values now and into the future. These values underpin the coast's Aboriginal cultural heritage, ecological function, amenity, recreational use, local and tourism uses, and they are kept central in</i></li> </ul>

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Agency	Submission Comments	Response
		<i>the development of future management approaches."</i>
DPI Fisheries (Marine Parks)	<p>Economic value of agriculture</p> <p>There was discussion around catchment health and practices – particularly for Belongil Creek. It would be useful for context if the nature and economic value of grazing/agriculture could be identified or estimated to inform discussions. (eg is the value of cattle grazing \$5000/year or \$5 million).</p>	<p>Amendments made:</p> <ul style="list-style-type: none"> <li>- Inclusion of the following context in Section 3.4.4 Recreational and Economic Value: <i>"A land use mapping exercise undertaken for the Scoping Study identified a large portion of agricultural land within the study area (approximately 1,293 ha), primarily within the Belongil Creek catchment (approximately 1,060 ha). The majority (approximately 90%) of these agricultural lands are used for grazing, with 1,171 ha of grazing lands within the study area and 946 ha within the Belongil Creek catchment. For the mapping exercise agricultural lands were considered to be grazing (native vegetation and modified pastures), cropping, horticulture and intensive animal/plant production areas as well as rural residential with agriculture areas. Note that plantation forests were not included as an agricultural land use".</i> The economic value of landuses would be explored and considered in Stage 3, if management options have an impact on commercial/business activities.</li> <li>- Bold text added to Add-3 in Table 9-3: <i>"Economic valuation of the coastal zone (i.e. all cultural, natural and built assets, including beaches themselves as well as commercial and business activities i.e. agriculture)..."</i></li> </ul>

# BYRON SHIRE COUNCIL

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Agency	Submission Comments	Response
DPIE - EES	<p>Conceptual model of current coastal processes</p> <p>The Scoping Study meets all the necessary requirements of this tool. DPIE has had the opportunity to provide ongoing comments on several working paper versions of this scoping study throughout its development which have all been incorporated.</p> <p>Suggested amendment:</p> <p>DPIE suggests that values in <i>Figure 3-2 – Summary of the current coastal processes</i> be amended to reference data from the current adopted hazard study (WBM BMT 2013).</p>	<p>Amendments made:</p> <ul style="list-style-type: none"> <li>- Figure 3-2 and Figure E-2 (Appendix E) have been amended to reflect the adopted BMT WBM (2013) values where available (i.e. for headland bypassing, long-term shoreline behaviour and net longshore transport). The bold text was also added to the paragraph in Section 3.5.1 as follows: <i>"Conceptual sand movement pathways shown in Figure 3-2 are based on adopted relevant <del>studies</del> study (WBM BMT, 2013) carried out within the area."</i></li> </ul>
DPIE - Crown Lands	<p>Related visions for the coastal zone</p> <p>The 'Crown land 2031 – State Strategic Plan for Crown land' vision statement is 'Crown land supports resilient, sustainable and prosperous communities across NSW.'</p> <p>Suggested action: May be relevant for Table 2-2.</p>	<p>Amendments made:</p> <ul style="list-style-type: none"> <li>- The vision from 'Crown land 2031 – State Strategic Plan for Crown land' (DPIE, 2021) has been added to Table 2-2 and the reference included in Section 10.</li> </ul>
DPIE - Crown Lands	<p>State, Regional and Local Level Plans and Strategies</p> <p>IN Table 3-1, include 'Crown land 2031 – State Strategic Plan for Crown land', i.e. DPIE-Crown lands which reflects Government and community aspirations to deliver social, environment and economic benefits from Crown</p>	<p>Amendments made:</p> <ul style="list-style-type: none"> <li>- A summary of 'Crown land 2031 – State Strategic Plan for Crown land' (DPIE, 2021) has been added to Table 3-1.</li> </ul>



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Agency	Submission Comments	Response
	land as well as agency priorities.	
DPIE - Crown Lands	<p>Rights and interests of Aboriginal people with respect to Crown land</p> <p>Incorporate and acknowledge the <i>Aboriginal Land Rights Act 1984</i> and the <i>Native Title Act 1993</i> which provide a framework for recognising the rights and interests of Aboriginal people with respect to Crown land – which may include Crown land within the CMP study area. For example, the Northern end of Seven Mile Beach is subject to an incomplete claim made under the <i>Aboriginal Land Rights Act 1984</i>.</p>	<p>Up to date land claim information that may affect proposed management options will be sought at Stage 3.</p> <p>Amendments made:            - Section 3.4.3 amended as follows (bold text): "<i>In recognition of this Native Title, under the Commonwealth Native Title Act 1993, has been determined over the majority of the study area, (refer National Native Title Register number NCD2019/001 - Bundjalung People of Byron Bay #3). The NSW Aboriginal Land Rights Act 1983 and the Commonwealth Native Title Act 1993, provide a framework for recognising the rights and interests of Aboriginal people with respect to Crown land.</i>"</p>
DPIE - Crown Lands	<p>Section 3.5.3.5 ICOLLs – Belongil Creek</p> <p>Note that land below the mean high water mark (MHWM) is Crown land.            Belongil Creek is a Crown waterway with submerged Crown land below the mean high-water mark (MHWM). Crown land includes the seabed and subsoil to three (3) nautical miles from the coastline of NSW that is within the limits of the coastal</p>	<p>Amendments made:            - Text in bold added to end of Section 3.5.3.5 - Belongil Creek:  <i>"Belongil Creek is a Crown waterway with land below the mean high water mark (MHWM) being Crown land. Crown land includes the seabed and subsoil to three nautical miles from the coastline of NSW that is within the limits of the coastal water of the state. There is also a DPIE - Crown Lands licence to artificially open Belongil Creek (Licence No 453621)."</i></p>

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Agency	Submission Comments	Response
	<p>water of the state.  Note: - There is a Crown Lands licence to artificially open Belongil Creek – Licence No 453621.</p>	
<p>DPIE - Crown Lands</p>	<p>DPIE Crown Lands as a support agency in the Forward Plan</p> <p>DPIE – Crown Lands provides in principle support as a support agency for:</p> <ul style="list-style-type: none"> <li>- Table 9-2, S2-8 "Audit of Council's coastal planning framework" (now S2-3).</li> <li>- Table 9-3 Add-1 "Review and update Part C of the BBE CZMP..." based on information provided by Council 16 June 2021 [i.e. that support "would be limited to provision of data (e.g. land tenure, reserve numbers, relevant strategic plans etc) and attendance at workshops/meetings"].</li> <li>- Table 9-3 Add – 7 "Shire-wide policy for beach use, access..."</li> </ul> <p>Further information is required as to how DOPIE Crown Land would support Add-3 "Economic valuation of the coastal zone..." in Table 9-3.</p>	<p>Noted.</p> <p>Amendment made:</p> <ul style="list-style-type: none"> <li>- Added "(in principle support)" after Crown Lands as a support agency to Table 9-2 Item S2-3 (previously S2-8), and Table 9-3 Add-1 and Add-7.</li> <li>- Removed Crown Lands as a Support Agency to Table 9-3 Item Add-3.</li> </ul>

# BYRON SHIRE COUNCIL

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Agency	Submission Comments	Response
TfNSW - Maritime	<p>Stakeholder Engagement Strategy</p> <p>TfNSW – Maritime requested to be included in any future consultation (via <a href="mailto:navigationadvicenorth@transport.nsw.gov.au">navigationadvicenorth@transport.nsw.gov.au</a>), being responsible for compliance and boating safety on NSW navigable waters.</p> <p>There is a significant amount of boating (both commercial and recreational) that takes place along the Byron Shire Southern Coastline that should be considered in the study along with compliance and safety matters associated with these activities.</p> <p>Of particular note:</p> <ul style="list-style-type: none"> <li>The Pass at Byron Bay – there has been a number of incidents involving vessels in this multi-use area in the past. Continued and sometimes conflicting use (launch for commercial dive vessels, local fishing clubs, government agencies and passive craft (e.g. ocean kayaks, SUPs) requires further consideration and discussion with TfNSW Maritime</li> <li>There is also a boat ramp located at Lennox Head that is utilised by the public, providing an amount of boating activity in this area also.</li> </ul>	<p>TfNSW is included in CMP governance and management arrangements in Table 6-1 and will be involved in future stages of the CMP process, refer Appendix A (Community and Stakeholder Engagement Strategy).</p> <p>The Pass at Byron Bay and the boat ramp located at Lennox Head are both outside of the current study area. Council notes the issues at The Pass at Byron Bay and will consult with TfNSW - Maritime regarding these issues when progressing through the CMP stages relating to the Cape Byron to South Golden Beach study area (Scoping Study prepared by BMT (2020)).</p> <p>Amendments made:</p> <ul style="list-style-type: none"> <li>- Table 6-1 was amended to specify the maritime division of Transport for NSW.</li> <li>- Table A-4 in Appendix A was amended to reflect an involve/collaborate/involve/collaborate level of engagement with Transport for NSW - Maritime in CMP Stages 2/3/4/5 respectively. It was also amended to specify the maritime division of Transport for NSW.</li> <li>- MIDO was also added to Table A-4 in Appendix A, with an involve/collaborate/involve/collaborate level of engagement for MIDO in CMP Stages 2/3/4/5 respectively.</li> </ul>

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## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Agency	Submission Comments	Response
BOBBAC (Arakwal)	<p>Two scanned PDF documents were received with handwritten changes to some text, primarily regarding:</p> <ul style="list-style-type: none"> <li>- nomenclature.</li> <li>- Arakwal Jugun boundaries.</li> <li>- positioning of "Lack of Aboriginal involvement in decision-making and insufficient knowledge sharing..." as the threat 19, i.e. the last in the list of threats (Figure 4-3), and a suggestion for "involvement" to be changed to "engagement".</li> <li>- BOBBAC missing as a support organisation for S2-6.</li> </ul>	<p>Regarding Threat 19: The suggestion to change 'involvement' to 'engagement' in this threat was not made, to keep the wording consistent with the Marine Estate Management Strategy (MEMA, 2018).</p> <p>Amendments made:</p> <ul style="list-style-type: none"> <li>- Nomenclature changes.</li> <li>- Inclusion of the following text to Section 1.4.2.1 to explain RNTBC: "<i>The Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) is the Registered Native Title Prescribed Body Corporate (RNTBC) for the Bundjalung of Byron Bay Arakwal People, established in 1996. An RNTBC has prescribed functions under the Native Title Act 1993.</i>"</li> <li>- Inclusion of the following sentence in Section 4.3.2 to clarify the threat numbering system: "<i>The numbering system for the threats in no way denotes a priority order.</i>" This numbering provides consistency with the BMT WBM (2020) Scoping Study for the northern coastline (Cape Byron to South Golden Beach)).</li> <li>- Inclusion of BOBBAC as a support agency for S2-6 "Preliminary Aboriginal cultural heritage and values mapping" in Table 9-2.</li> </ul>

### Public comments on the draft Scoping Study

5 A total of eleven responses were received from community members, the majority of which revolved around threatening processes already considered in the Scoping Study (e.g. coastal erosion, climate change, population growth, accessible pathways, stormwater, funding arrangements, entrance opening strategies etc) and associated suggestions for management options. Development of management options will occur at Stage 3 of the CMP.

No amendments were made to the Scoping Study in response to community feedback received.

10 Copies of community feedback on the draft Scoping Study are provided in **Attachment 3**. A response to each comment received is provided in the full Assessment of Submissions provided in **Attachment 1**.

**Amendments initiated through review by council staff**

Council staff also made several amendments to the Scoping Study comprising:

- Section 3.5.2.2 Estuarine Waters – Tallow Creek:
  - Clarification regarding the future consideration of management options at Baywood Chase at Stage 3, i.e. including options other than recycled water use.
- Section 6.2 (Table 6-2) and Appendix A:
  - TfNSW - Road and Rail divisions identified added to the stakeholder engagement strategy.
- Section 9.3 Forward Plan, Table 9-2:
  - Reordering and combining of several Stage 2 studies in the Forward Plan.
  - Inclusion in the Forward Plan of a Stage 2 study: (now) S2-9: “Development of an integrated hydrodynamic and water quality model for Tallow Creek as a decision-making tool for Council’s use in managing water levels in Tallow Creek whilst maintaining suitable dissolved oxygen concentrations”. This project has already been funded, is underway, and informs several other aspects of the Forward Plan.
  - Moving of the study to review Tallow and Belongil Creek entrance opening strategies (then S3-1) from Stage 3 to the end of Stage 2, and division into separate studies for each estuary (now S2-10 and S2-11) cognisant with the level of review and additional associated activities required (e.g. for Tallow Creek, inclusion of cultural knowledge on the processes and management of the estuary and entrance management).
  - Inclusion of BOBBAC as a support agency for item S2-10 Review of Tallow Creek entrance opening strategy.
- Appendix C – Inclusion of missing meeting minutes from discussions with Tweed-Byron LALC.

The recommended changes as outlined above based on the feedback and submissions received have been incorporated into the final Scoping Study (**Attachment 4**).

**Stage 1 Scoping Study - completed**

Council has now completed the first stage of a five-stage CMP process. The Stage 1 Scoping study has:

- identified the community and stakeholders and prepared an engagement strategy
- determined the context of coastal management in the local area

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- established the purpose, vision and objectives of a coastal management program
  - determined the key coastal management issues and the spatial extent of management areas
  - reviewed current coastal management arrangements
- 5
- established roles, responsibilities and governance arrangements
  - identified knowledge gaps and information needs
  - determined where action is required through a first-pass risk assessment
  - determined whether a planning proposal will be prepared to amend the coastal management area maps and the Local Environmental Plan
- 10
- Importantly, through this process the scoping study has arrived at a forward plan supported by a business case that identifies the program of works required through Stages 2 to 4 of the CMP, as provided in Table 2 below.

**Table 2: Forward Plan and associated costs of each future stage of the CMP**

Stage	Recommended Studies and Actions	Estimate Cost Range
	Coastal Hazard Assessment (2021)	Already funded
	Consider mapping of erosion escarpment as an outcome of Coastal Hazard Assessment (2021)	\$10,000 - \$20,000
	Coastal planning framework audit and consideration of coastal vulnerability area mapping	\$10,000 - \$20,000
	Verification of Littoral Rainforest and Coastal Wetlands Mapping	\$5,000 - \$10,000
	Identify water pollution sources	\$5,000 - \$10,000
<b>Stage 2</b>	Preliminary Aboriginal cultural heritage and values mapping	\$10,000 - \$15,000
	Ongoing implementation of the Community and Stakeholder Engagement Strategy (CSES) in Appendix A	\$5,000 - \$10,000
	Activities involving engagement of Aboriginal cultural knowledge holders	\$5,000 - \$10,000
	Integrated hydrodynamic and water quality model for Tallow Creek	Already funded
	Review and update Tallow Estuary entrance opening strategy	\$10,000 - \$30,000
	Review and update Belongil Estuary entrance opening	\$2,000 -

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Stage	Recommended Studies and Actions	Estimate Cost Range
	strategy	\$5,000
<b>Stage 3</b>	Develop draft coastal management planning controls	\$10,000 - \$20,000
	Identify and assess coastal management measures	\$30,000 - \$60,000
	Prepare a business plan	\$15,000 - \$30,000
	Ongoing implementation of the Community and Stakeholder Engagement Strategy (CSES) in Appendix A	\$5,000 - \$10,000
	Activities involving engagement of Aboriginal cultural knowledge holders	\$5,000 - \$10,000
	Prepare Draft CMP	\$30,000 - \$40,000
<b>Stage 4</b>	Planning Proposal (only as required) to adopt the coastal vulnerability mapping as a "Coastal Vulnerability Area" of the coastal zone in the <i>Coastal Management SEPP</i>	\$10,000 - \$20,000
	Finalise CMP	\$10,000 - \$20,000
	Ongoing implementation of the Community and Stakeholder Engagement Strategy (CSES) in Appendix A	\$5,000 - \$15,000
	Activities involving engagement of Aboriginal cultural knowledge holders	\$5,000 - \$10,000

The total cost of preparing a CMP for this study area is estimated to be between \$187,000 and \$365,000, with the next stage (Stage 2) of the CMP expected to cost between \$62,000 and \$130,000. The range provides for uncertainty in the costs of certain activities as recommended in the forward program. As the lead agency, Council has the ability to

- 5 apply for a financial assistance through the state government's Coast and Estuary Grants Program to assist with the cost of completing Stages 2 to 4, however, this funding applies to the costs of external arrangements for completing technical and planning studies, and generally does not apply to Council's internal costs in funding and conducting these studies.
- 10 All actions recommended in the Forward Plan to prepare the CMP (Stages 2 to 4) are eligible for funding from state government at a ratio of 2:1, i.e. Council is only required to provide one third of the costs to prepare the CMP.

### Next Steps

It is recommended that Council:

## BYRON SHIRE COUNCIL

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- Note the submissions received during the public comment period and agency review of the CMP (Stage 1) Scoping Study for Southern Byron Shire Coastline and the Belongil Estuary.
- 5 • Adopt the finalised CMP (Stage 1) Scoping Study for Southern Byron Shire Coastline and the Belongil Estuary (Attachment 4) incorporating the amendments outlined in this report (Attachment 1).
- 10 • Note the allocation of \$78,000 in the FY2021/22 budget under 2605.156 'Coastline & Belongil Est Scoping Study' and OP Activity 3.3.1.4 to enable the project to continue to Stage 2 of the Coastal Management Program process - 'Continue preparing a Coastal Management Program (CMP) in accordance with the staged process for Cape Byron Southern Coastline (including Tallow and Belongil Creek Catchment)'. Then budget is considered sufficient to complete the required Stage 2 investigations with grant funding contribution.

## Strategic Considerations

### 15 Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 3: We protect and enhance our natural environment	3.3	Partner to protect and enhance the health of the Shire's coastlines, estuaries, waterways and catchments	3.3.1	Implement Coastal Management Program	3.3.1.4	Continue preparing a Coastal Management Program (CMP) in accordance with the staged process for Cape Byron Southern Coastline (including Tallow and Belongil Creek Catchment)

## Recent Resolutions

Res 21-164 (Council meeting 22 April 2021): Resolved that Council:

- 20 1. Writes to the Department of Planning, Industry and Environment and the Coastal Council to request a meeting to discuss how the Coastal Management Process could be improved, timeframes shortened and the development of a Coastal Management Program ("CMP") for Byron Shire resourced more effectively.
- 25 2. Notes that the draft Scoping Study for the Southern Shire - Cape Byron to Seven Mile Beach including the Belongil Creek estuary will be sent to state agencies for their review as required by the CMP process and a copy placed on the web for public feedback.



## Legal/Statutory/Policy Considerations

The Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, and associated NSW Coastal Management Manual.

## Financial Considerations

- 5 The total cost of preparing the CMP (5 stage process\_ is estimated to be between \$187,000 and \$365,000 with the next stage (Stage 2 – FY2021/22) of the CMP expected to cost between \$62,000 and \$130,000. The range provides for uncertainty in the costs of certain activities as recommended in the Forward Plan.
- 10 A budget of \$78,000 in the FY2021/22 budget under ledger item 2605.156 'Coastline & Belongil Est Scoping Study' has been allocated to enable the project to continue to Stage 2 of the Coastal Management Program process. This budget is considered sufficient to complete the required Stage 2 investigations with grant funding contribution.

## Consultation and Engagement

- 15 Consultation and engagement activities undertaken as part of the development of the Scoping Study as outlined in Section 1.4 of the Scoping Study (**Attachment 4**).
- Stakeholder and community engagement for the general development of CMPs is ongoing and has comprised:
- Council website updates.
  - Social media messaging.
  - 20 • Community surveys.
  - A series of stakeholder workshops on coastal zone values, management issues and risks.
  - Discussions with relevant internal staff (e.g. regarding sewerage treatment, recycled water, flooding, drainage, stormwater, planning, biodiversity).
  - 25 • Face-to-face community engagement at farmers markets during the process of Scoping study preparation or period for public comment.
  - A series of agency workshops presenting the Forward Plan and Business Case.
  - Regular contact with DPIE representatives for technical guidance and review of the series of working papers that collated, make up the Scoping Study.

30

## Report No. 13.14 Federal Village Masterplan Progress Report

**Directorate:** Sustainable Environment and Economy

**Report Author:** Andrew FitzGibbon, Place Liaison Officer

**File No:** I2021/580

### 5 Summary:

The purpose of this report is to provide an update on the community-led Federal Village Masterplan process.

Specifically in relation to:

- Steering Group membership
- 10 • Community consultation
- Masterplan program
- Access and movement project

15 The Federal Community led Masterplan is progressing with the guidance of a hard-working and motivated steering group. The group have led the first of a series of workshops with the wider community and have conducted an array of community consults through online surveys and in person.

This report provides a summary of the work completed to date and next steps.

20

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### RECOMMENDATION:

**That Council notes the report and update provided on the Federal Village Masterplan and Federal Main Street Design Project.**

### Attachments:

25

- 1 Confidential - Steering Group - EOI Process - Federal Masterplan, E2021/90224

## Report

Council resolved on 10 December 2020 to support a community-led approach to masterplanning for the village of Federal ([refer resolution 20-689](#)).

5 This report provides an update on progress to date, specifically in relation to the following key topics:

- Steering Group membership
- Community consultation
- Masterplan program
- Access and movement project

10 The Federal Community led Masterplan is progressing with the guidance of a hard-working and motivated steering group. The group have led the first of a series of workshops with the wider community and have conducted an array of community consults through online surveys and in person.

The masterplan aims to be completed by early 2022.

15 Project background and scope information can be found in the Council report from the 10 December 2020 meeting ([linked here](#)).

### Steering Group membership

Council previously endorsed the Federal Community Village Masterplan Steering Group to lead the masterplanning process ([refer resolution 20-689](#)).

20 The purpose of the Steering Group is to:

- Guide the masterplanning process and engagement with the community
- Use their well-established connections in the community to inform the masterplan process

The initial Steering Group members included eight people:

- 25
- Gary Haughton
  - Toni Appleton
  - Megan Passey
  - Alan Goldstein
  - James Mayson
- 30
- Julie Lipsett
  - Ant Solomon
  - Megan Louis

These members primarily come from established community groups such as the Federal Community Centre and the Federal School of Arts.

The project scope enabled the Steering Group to expand by up to another five members in order to create a robust group to guide the process.

- 5 Nominations to join the Steering Group have been sought through: the community newsletter (December 2020); a letter box drop/mail out of flyers to the whole community (February 2021); the masterplan email list; and social media posts.

This resulted in seven nominations from interested community members (as detailed in confidential Attachment 1).

- 10 Nominations were assessed by the Steering Group as per the following assessment criteria (as outlined in the [masterplan scope document](#)):

- Local resident
- Be nominated the representative of or demonstrate involvement in a local community group

- 15
- Demonstrated interest in key topics of the project
  - Motivated by community interest
  - Bring to the group specific technical expertise that may be helpful

Two nominations were accepted (Jenna Reed Burns and Peter Garrard) and they have now joined the Steering Group.

- 20 Full information about Steering Group members is provided on the [Council website](#).

Three positions remain available on the Steering Group going forward if needed. However at this time, the Steering Group is satisfied that the members are sufficient and that past and future consultation events will allow for enough input from the wider community.

### **Community consultation**

- 25 The first of two major workshops have been held, with an impressive turn-out in the Federal Hall. The two 'Stage 1 Workshops' aimed to capture the community vision for Federal and map challenges and opportunities for the village. The workshops were:

- Wednesday 9 June – 60 people in attendance
- Sunday 13 June – 100 people in attendance (as per photo below)



The next round of community consultation workshops will aim to consider key action areas for the masterplan to include. Each session will be held in Federal Hall, and be run by independent facilitator, Kath Fisher. The workshops are key consultation events for community input into the masterplanning process.

Three options are provided for people to attend one of these 'Stage 2 Workshops':

- Sunday 22 August, 10am to 12 noon
- Sunday 22 August, 1:30pm to 3:30pm
- Thursday 26 August, 7pm to 9pm

These events will complement significant engagement already undertaken including:

- the online survey (20 February – 26 March 2021) that received 154 respondents
- the door-to-door survey (February 2021) that interviewed 84 households
- the Listening Post held in Federal Park (13 March 2021)
- The creation of a Movement & Access sub-group to act as a community jury to assist the Steering Group on the detail design/inclusions within the Main Street design process.
- Many one-on-one interviews with key stakeholders in any village plan: including: major landholders, commercial land owners, commercial operators, bus companies and drivers, RU5 property owners etc.

Results of these consultations can be found on the Federal Village Masterplan website: [Federal Village Masterplan - Byron Shire Council \(nsw.gov.au\)](https://www.byrongov.au/federal-village-masterplan).

A variety of other smaller communication and engagement has also already taken place including:

- Initial email sent to list from all known Federal community groups plus village post office and letter boxes (20 Nov 2020)
- Second formal email with flyer sent to 200 addresses in wider catchment and also distributed through email groups (20 Feb 2021)
- 5 • Landing page created on Council's website (Feb 2021)
- Posters promoting the project placed around town including new purpose-built notice board in Federal Park (12 March 2021)
- Suggestion Box installed at the Federal Store (20 March 2021)

### **Masterplan program**

- 10 Following the 'Stage 2 Workshops' the Federal Village Masterplan Steering Committee will have the job of collating all the information collected so far and drafting the Masterplan. Once a draft has been created, further community consultation will occur.

The Masterplan is expected to be finished by early 2022.

### **Access and movement project**

- 15 The Federal Village Masterplan Steering Group would like to thank Council for the 2021/22 budget allocation for the detailed design of Federal Main Street and consideration of improvements to approach roads.

The Steering Group is working closely with Council staff to map a process to move forward with this project and will be reporting back to Council in due course.

- 20 Photo below showing traffic congestion and conflicts on main street in Federal.





## **Strategic Considerations**

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

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

### **Recent Resolutions**

- Resolution 20-418: Request to Prepare Project Scope (27 August 2020)
- 5 • Resolution 20-689: Federal Community Led Masterplan – Project Scope (10 December 2020)
- Resolution 21-243: Movement and access budget allocation (24 June 2021)

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

- 10 The proposed masterplan will not be a statutory document. However, it would be used to inform or initiate future changes to the Byron Local Environmental Plan 2014 and the Byron Development Control Plan 2014.

### **Financial Considerations**

Nil.

### **Consultation and Engagement**

- 15 As discussed in the report.

**Report No. 13.15 PLANNING - Modification Application  
10.2019.616.3 Mixed Use Development cnr  
Jonson & Browning Streets Byron Bay**

**Directorate:** Sustainable Environment and Economy

5 **Report Author:** Rob van Iersel, Place Activation Coordinator

**File No:** I2021/880

**Proposal:**

**Modification No:** 10.2019.616.3

**Proposed modification:** Amend consent to provide residential recreation area, including swimming pool, amenities, gardens and landscaping on the roof of Building 1; an additional external podium planter/landscape bed at the north-western corner of Building 1 on Level 1; and relocate two (2) photovoltaic arrays on the roof of Building 2.

**Original Development:** Demolition of Existing Buildings and Construction of Mixed-Use Development

**Type of modification sought:**

**Property Description:** LOT: 29 DP: 1270920  
137 Jonson Street BYRON BAY, 139 Jonson Street BYRON BAY, 3 Browning Street BYRON BAY

**Parcel No/s:** 270510

**Applicant:** Mr M Scott

**Owner:** JD Property Group Pty Ltd

**Zoning:** B2 Local Centre

**S96 Date received:** 17 March 2021

**Original DA determination date:** 21/05/2020



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**Integrated Development:** No

**Public notification or exhibition:**

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 26/03/21 to 30/04/21
- Submissions received:  
15 in support  
36 objections

**Delegation to determination:** Council

**Issues:**

- Building height breach
- Potential amenity impacts – noise and overlooking

### Summary:

An application has been received to modify aspects of an approved mixed-use development at the corner of Jonson and Browning Streets, Byron Bay. As approved, the development involves retail and commercial development at ground level, with two levels of long-term residential apartments above and two levels of basement car parking. The development is designed as two buildings located either side of a central courtyard. The existing approval prohibits holiday letting of the shop-top apartments.

The modifications currently proposed include:

1. Addition of a small podium planter/ landscape bed at the north-western corner of Building 1 at Level 1;
2. Provision of 2 photovoltaic arrays on the roof of Building 2; and
3. Construction of a roof-top swimming pool and recreational area, including toilets, change rooms, landscaping and a community garden area.

There are no planning or merit issues associated with the planter bed as proposed, or the provision of photovoltaic arrays.

As originally approved, approx. 183m<sup>2</sup> of the 1,924m<sup>2</sup> total roof area breached the 9.0m maximum building height, with a maximum height of 9.9m. This equated to a 10% height variation, over approx. 9.5% of the roof area, mainly the building edges on the Jonson and Browning Streets frontages. The original approval also granted a 9.6% variation to Floor Space Ratio (FSR).

A modification was approved in November 2020, extending the lift over-run on Building 1 to provide access to the roof space for maintenance purposes. The maximum height of

the lift over-run was approved at 12.7m. This was a 41% exceedance, but over a very small area that would not be visible from any adjoining or nearby areas. The modification did not change the approved FSR. As approved, therefore, 199.2m<sup>2</sup> of the roof breaches the 9.0m limit, equating to 10% of the total roof area.

- 5 The current proposal does not increase the maximum height of any roof-top elements. It increases the extent of roof area above the 9.0m limit by an additional 65m<sup>2</sup>, resulting in a total of 264m<sup>2</sup>, representing approx. 14% of the total roof area.

The proposed roof-top elements that would breach the 9.0m height limit include:

- a roof above the previously approved stair well;
- 10 • a new bathroom/ change room adjacent to the approved lift; and
- parts of the western pool deck and fence.

Floor space is also slightly increased by an additional 12m<sup>2</sup> for the amenities / change rooms. This small addition does not change the approved FSR.

- 15 In response to advertising of the modification application, 36 objections were received, most concerned that hours of operation and resident use of the pool cannot be appropriately managed to ensure that noise doesn't impact neighbours. Most objectors are of the view that the apartments will be available for short-term holiday letting, increasing potential for noise.

- 20 The existing consent prohibits short-term holiday use of the apartments. The condition requires the prohibition to be included in a By-Law of the Strata title for the building. Compliance with the approval will ensure that the roof-top facilities are for the use of residents and their guests. With access only available via a lift 'swipe card' or the like, the pool will not become a 'public venue'. Hours of operation can be conditioned to prevent evening and night-time use, further protecting local amenity.

- 25 Objectors were also strongly of the view that the original approval for this building allowed a significant height variation and that this should not be increased incrementally by way of modifications to that approval.

- 30 The proposal for additional height exceedance is consistent with the objectives of the development standard, in that the design of the roof-top facilities do not result in any visual impacts, do not result in significant privacy or overlooking issues, and do not change the bulk and scale of the approved building or its consistency with the character of the town centre.

- 35 The modified development as now proposed remains substantially the same development as that approved. There are sufficient environmental planning grounds to justify additional exceedance of the maximum building height standard. It is recommended that the application to modify the consent be approved, subject to conditions.

NOTE TO COUNCILLORS:

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

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## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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




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### **RECOMMENDATION:**

10 That, pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, Application No. 10.2019.616.3 be approved by amending approved plans and relevant conditions of Development Consent No. 10.2019.616.1 in accordance with the modified conditions in Attachment 2 (#E2021/94275).

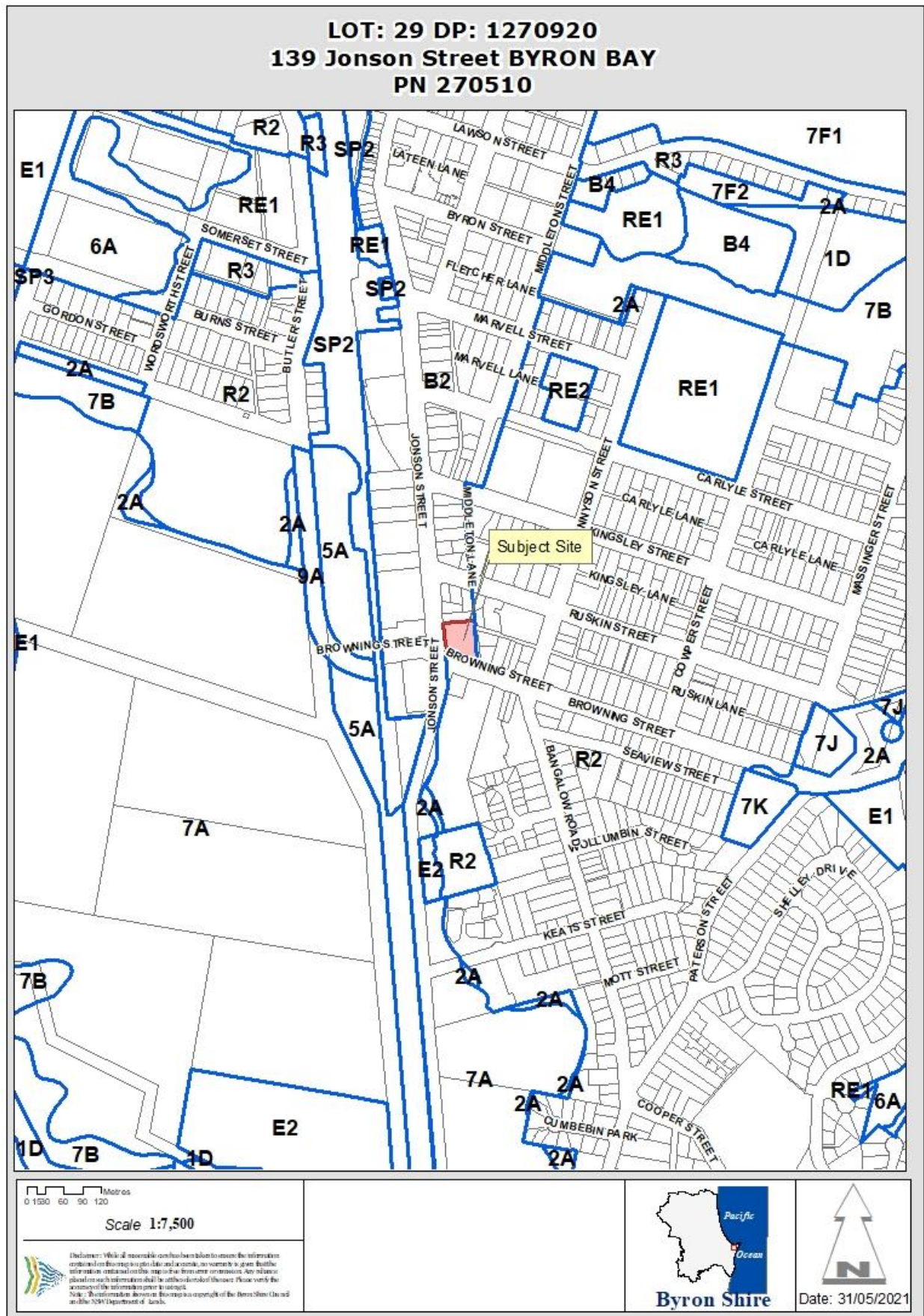
### **Attachments:**

- 15 1 10.2019.616.3 Proposed Plans, E2021/47487 
- 2 10.2019.616.3 Conditions of consent, E2021/94275 
- 3 10.2019.616.3 Redacted submissions, E2021/94590 

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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## Assessment:

### 1. INTRODUCTION

#### 1.1. History/Background

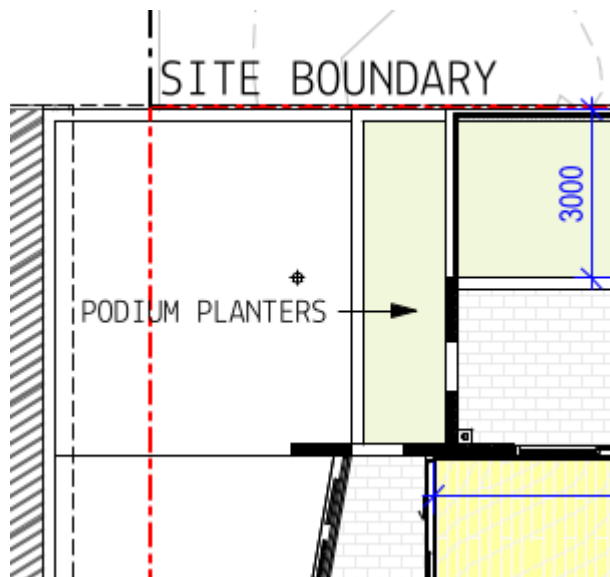
DA 10.2017.510.1	Mixed use development comprising demolition of all existing structures, removal of vegetation and construction of commercial premises, cafe, child care centre, shop top housing, serviced apartments and associated basement car parking and landscaping.	Refused (NRPP) 14/11/2018
DA 10.2019.616.1	Demolition of Existing Buildings and Construction of Mixed Use Development	Approved 21/05/2020
S4.55 10.2019.616.2	Modify design of basement car park; raise ground floor level by 300mm; extend lift to provide roof access; modify roof to reduce thickness; and minor internal modifications	Approved 19/11/2020

5

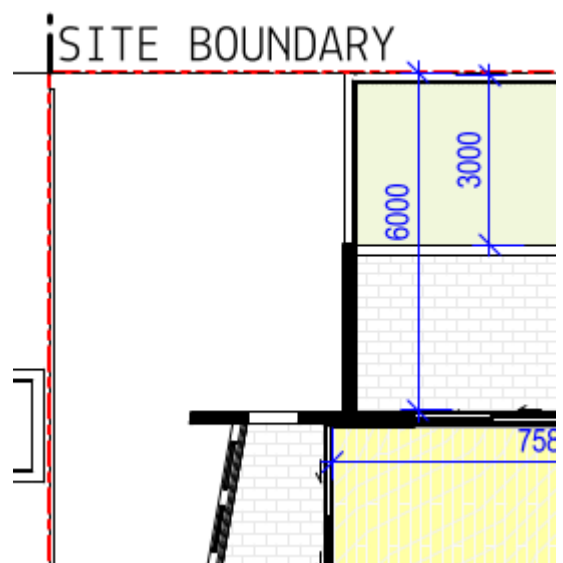
#### 1.2. Description of the proposed development

The approved development comprises two levels of basement car parking, a ground floor level of retail and commercial development, with two upper levels of residential apartments.

- 10 The plans submitted with the current application are contained in **Attachment 1**. The application seeks to modify the approved development to:
1. Provide an additional podium planting/ landscaping bed at the north-western corner of Building 1, Level 1. The planter will have a width of approx. 700mm and a length of 3.0m (See Plan TP1.02 Rev 3 in Attachment 1).

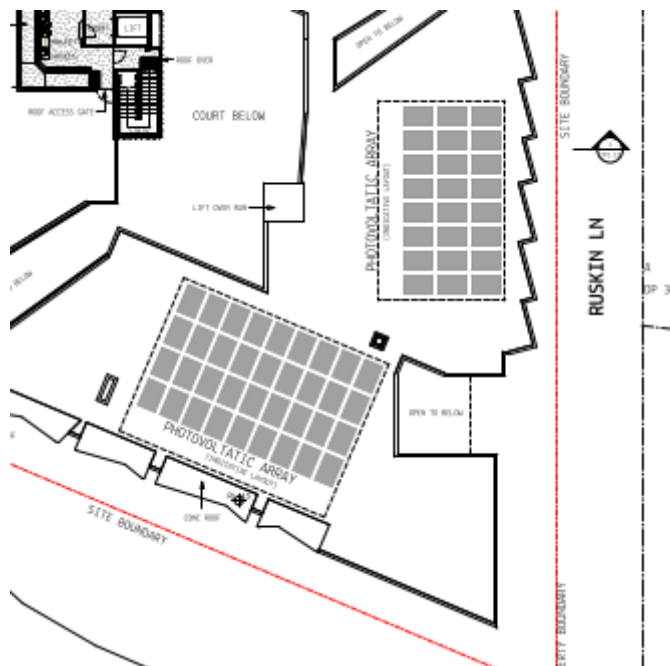


Proposed



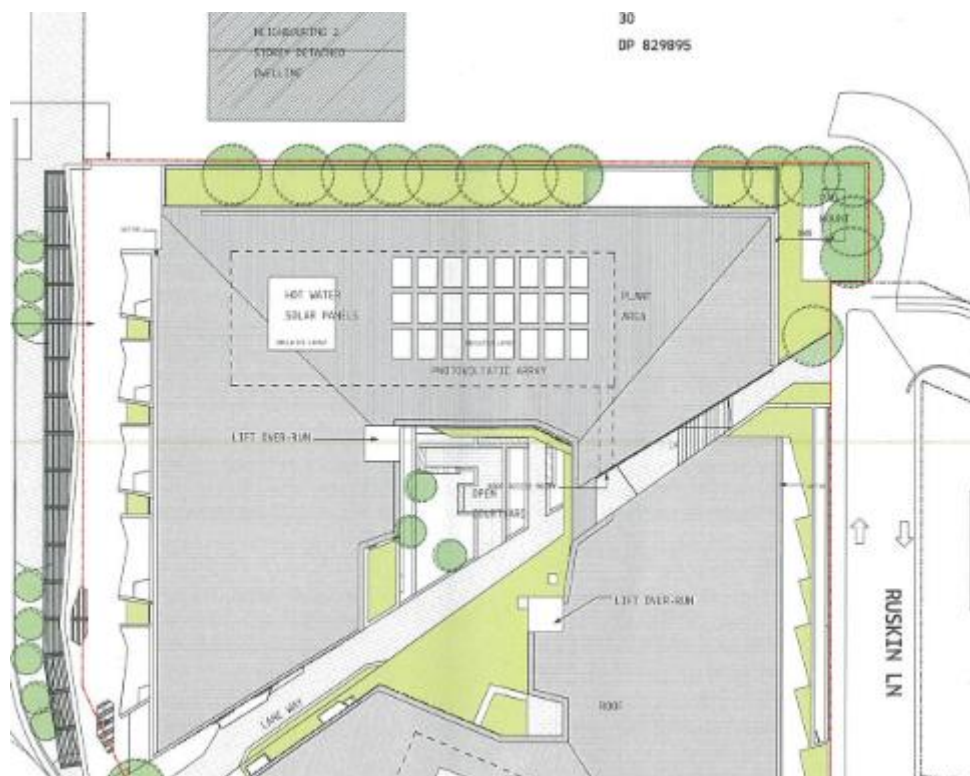
As Approved

2. Relocate photovoltaic arrays to the roof of Building 2. The arrays were shown in the original approved plans on Building 1, in the location now proposed for the recreation facilities (See Plan TP1.05 Rev 3 in Attachment 1).



5 **Proposed**





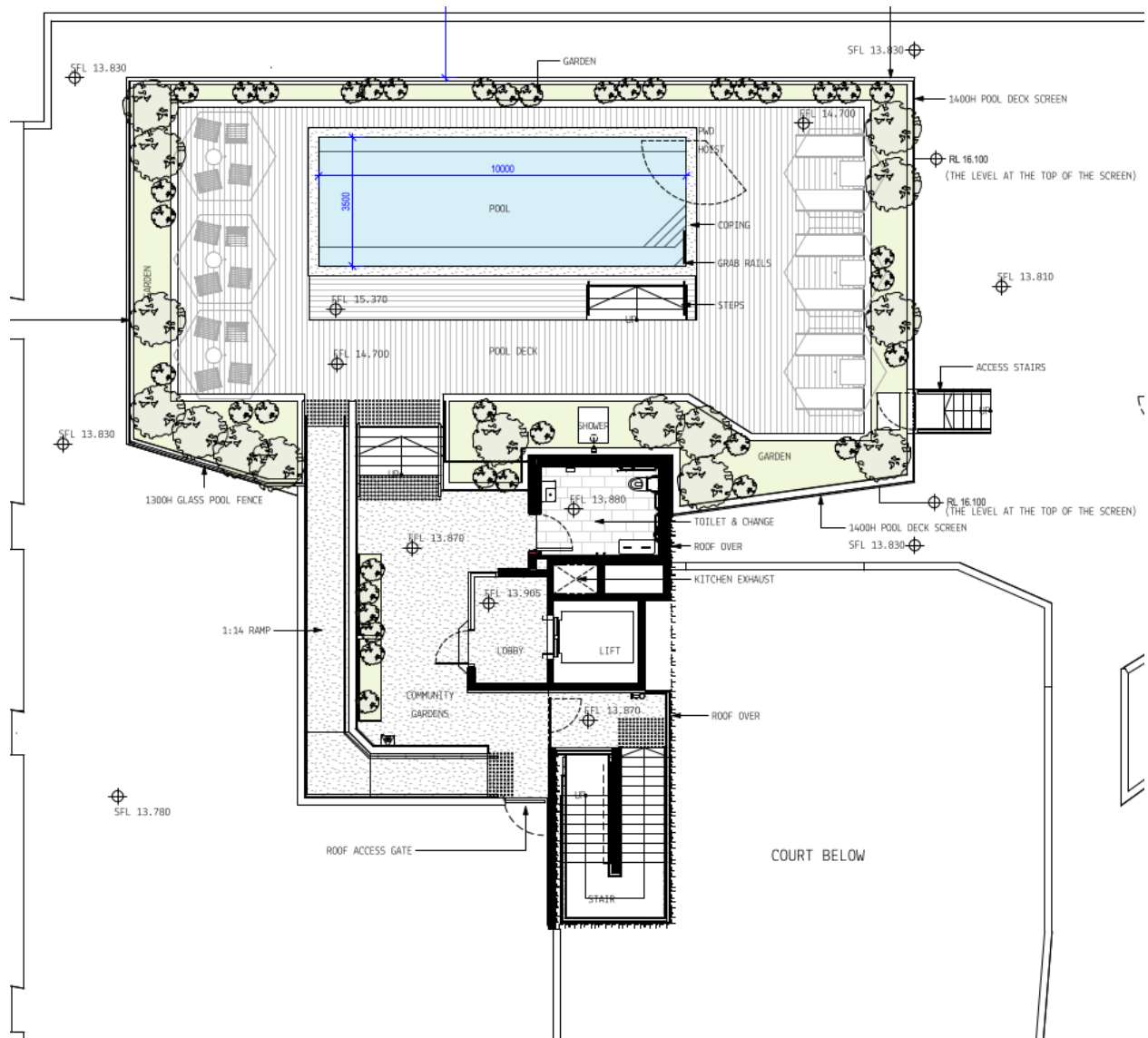
### As Approved

2. Construct a roof-top swimming pool and recreational area. The facilities are proposed on Building 1, the northern building, located approx. 1.8m back from the roof edge, and 4.8m from the northern property boundary (See Plan TP1.24 in Attachment 1).

The recreation area would be approx. 3,200m<sup>2</sup> in area and contain:

- a 10m x 3.5m swimming pool;
- a pool deck and seating area of approx. 110m<sup>2</sup>;
- amenities, including toilets and change room, 12m<sup>2</sup>;
- community garden area of approx. 22m<sup>2</sup> located outside of the lift lobby;
- landscaping around the perimeter of the pool deck of approx. 71m<sup>2</sup>; and
- roof cover over the approved stairwell.

*[Note: lift, lift lobby and stairwell were approved in previous modification].*



### Proposed roof-top facilities

Access to the pool and recreation area is proposed to be controlled for residents and guest only, between 7.00am and 10.00pm Monday to Friday and 8.00am to 10.00pm Saturdays and Sundays.

In terms of height above existing ground level, the main roof area, the pool and deck remain compliant with the 9.0m development standard. The additional elements proposed in the current modification application are:

<i>Building Element</i>	<i>Height above Existing Ground (m)</i>	<i>Compliance with 9.0m Height Limit</i>
Pool deck	8.6	Compliant
Pool edge	9.2	2% exceedance
Top of pool fence	10.9	21% exceedance



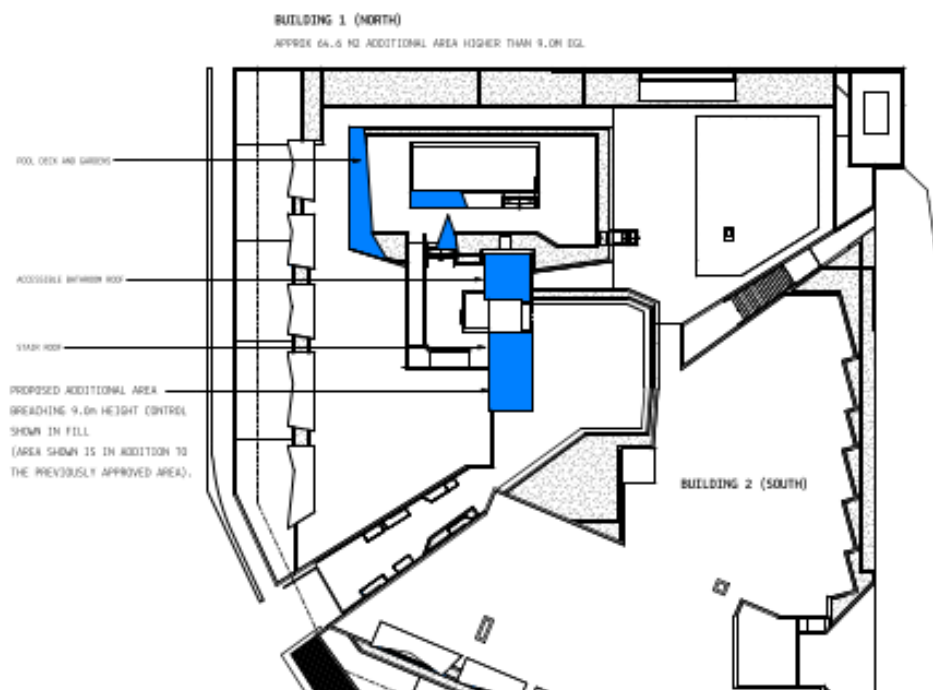
<i>Building Element</i>	<i>Height above Existing Ground (m)</i>	<i>Compliance with 9.0m Height Limit</i>
Toilets & change room; roof over stairwell	11.8	31% exceedance

The lift over-run and lift lobby were approved under a previous modification, with a maximum height of 12.7m above existing ground (a 41% exceedance), and a roof area of 16.2m<sup>2</sup>.

5 As originally approved, 183m<sup>2</sup> of roof area breached the 9.0m limit. The previous modification increased this to 199.2m<sup>2</sup>.

The current proposal seeks to increase this by an additional 65m<sup>2</sup>, to a total of 264m<sup>2</sup>.

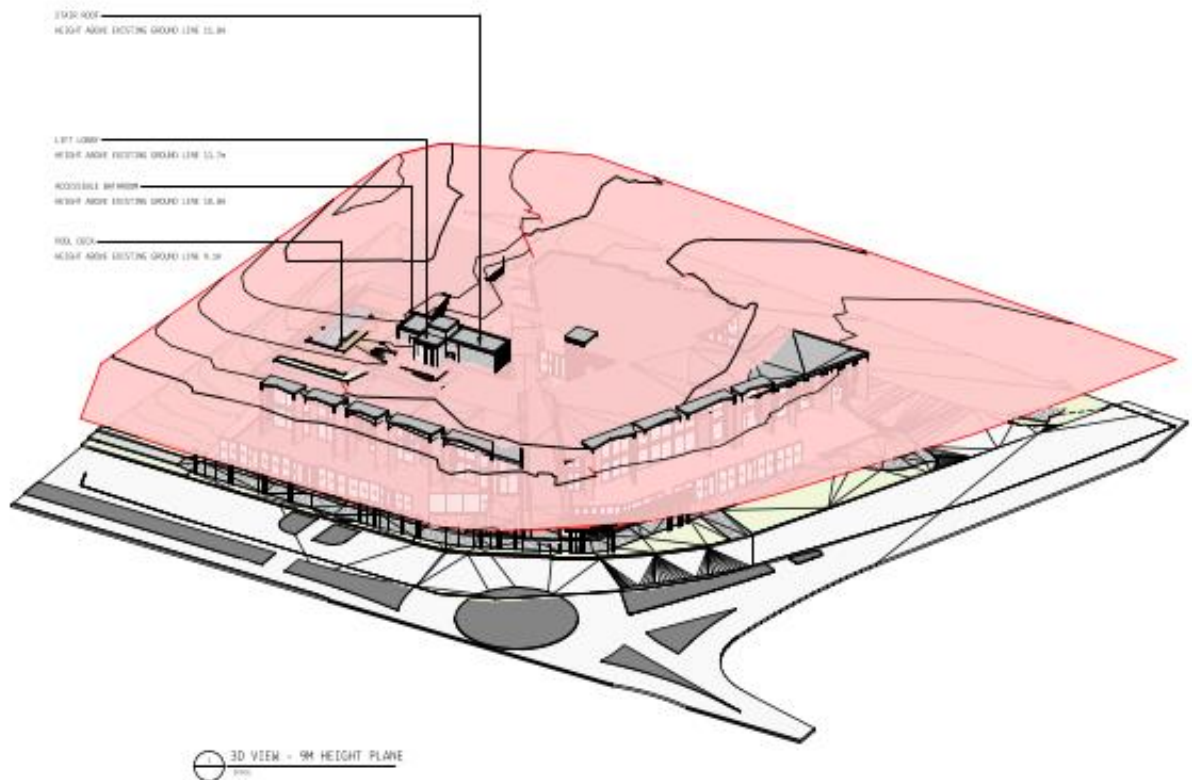
The plans below show the areas that would exceed the 9.0m height limit (See Plan TP3.10 Rev 3 in Attachment 1).



10 The roof has a total area of approx. 1,924m<sup>2</sup>, so the current proposal represents approx. 14% of the total roof area being above 9.0m, increased from approx. 10% as approved.

The pool / recreation facility is set:

- approx. 1.8m from the northern edge of the building;
- 15 • approx. 3.8m from the western (Jonson Street) edge; and
- approx. 18m from the eastern (Ruskin Lane) edge of the building.



### 1.3. Description of the site

The site:

Property	137-138 Jonson Street, Byron Bay Lot 29 DP 1270920
Area:	2,835m <sup>2</sup>
Land is zoned:	B2 Local Centre
Property is constrained by:	Acid Sulfate Soils (Class 5)

- 5 Construction of the first stage of the approved development is underway, involving excavation for the basement carparking. The site has been levelled, with hoarding erected around the perimeter of the construction zone.

The property is located at the southern fringe of the Byron Bay Town Centre. It is zoned B2 Local Centre, as is land immediately north and on the opposite side of Jonson Street. Land on the eastern side of Ruskin Lane is zoned R2 Low Density Residential.

- 10 Land in the vicinity of the property, on the eastern side of Jonson Street and further to the east, is currently largely residential in nature, although there are several holiday properties among the existing dwellings. A two-storey dwelling joins the property to the north.

On the opposite side of Jonson Street, land uses are more commercial, other than shop-top dwellings immediately opposite. Byron RSL Club is in close proximity.

The recently completed Byron Bypass roundabout is located at the front of the property, at the Jonson/ Browning Streets intersection.

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

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

10     The modifications are such that the development as modified is substantially the same as that originally approved under 10.2019.616.1. The additional roof-top elements do not substantially change the nature, type, bulk or scale of the building as proposed.

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

The proposed amendments raise no issues under the relevant SEPPs or clauses of the EPA Regulation 2000.

**15     2.2.     Byron Local Environmental Plan 2014**

As discussed above the proposed amendments increase the extent to which the building exceeds the maximum building height. The addition of the toilets and change rooms also result in a slight increase in floor space.

**Clause 4.3 Building Height:**

20     The proposed modifications do not increase the maximum height of any building elements; but increase the area of the roof that exceeds the maximum building height standard of 9.0m above existing ground level.

The roof-top facilities are set back from the Jonson Street frontage of the building and from the northern building edge.

25     The objectives of the Building Height development standard are:

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

30     The proposal does not meet this objective, however the planning controls under the LEP and the EPA Act 1979 permit variations to development standards, provided the variation has planning merit in terms to justify the contravention of the controls and it can be demonstrated that compliance with the development standards is unreasonable or unnecessary in the circumstances of the case.

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

35     The edges of the proposed roof-top elements, primarily the top of the north-eastern corner of the pool fence, would be visible from adjoining public areas and some

private properties. This does not result in a significant change to the impact of the approved building on the local streetscape.



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

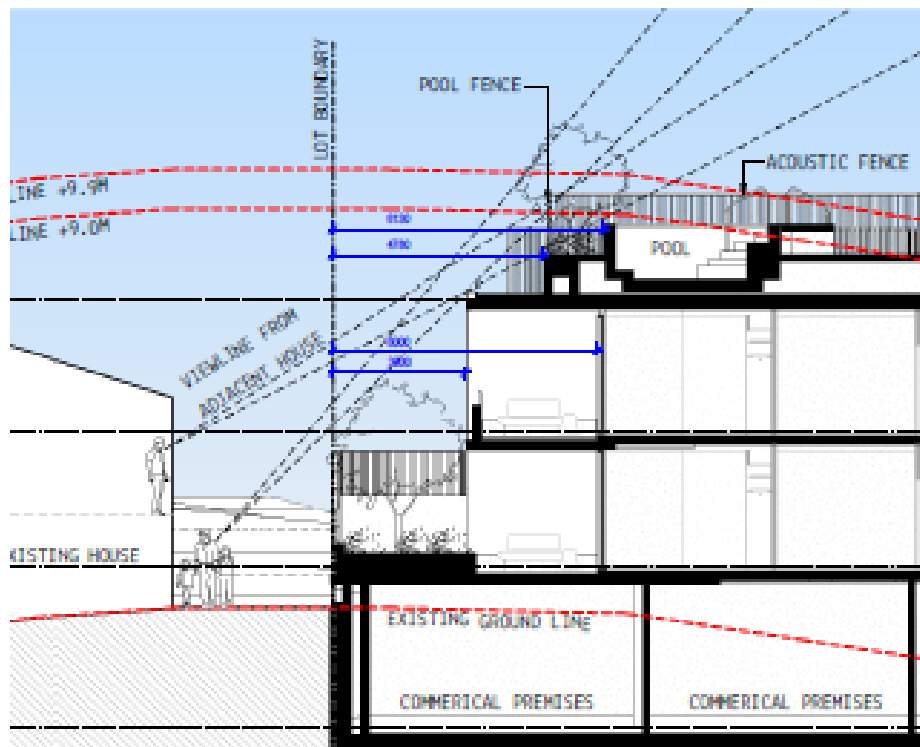
The proposed roof-top facilities will not disrupt views or generate increased shadowing.

- 10 Glimpses of the pool fence will be partially visible from the residential property to the north. Users of the pool will be able to stand next to the pool fence and gain glimpses of the neighbouring property.

As shown below, the glimpses are minimal and would not result in significant privacy impacts.

The rooftop could potentially be visible from two residential properties located on the high point of Ruskin Street to the north, given they are at approximately the same RL. Large trees are currently located between the sites, preventing a direct line of sight between the two.

- 5 Overall, the proposed roof-top facilities will not result in a loss of privacy or a loss of solar access for adjoining properties, whilst the actual increase in height to the building when viewed from the public domain will have no adverse impact on the streetscape or the character of the area. It is considered the proposed variation to the height limit has planning merit and strict compliance with the planning controls is unwarranted in this
- 10 instance.



#### Clause 4.4 Floor Space Ratio:

- 15 The original approval provided for a variation to exceed the applicable 1.3:1 floor ratio, approving a floor space ratio of 1.425:1. The addition of the toilets and change room provide an addition 12m<sup>2</sup> of floor space, which results in an overall floor space of 1.43:1.

None of the remaining roof-top components are enclosed and therefore do not constitute additional floor space.

The addition of 12m<sup>2</sup> is insignificant in terms of the bulk and scale of the building and has no impact in terms of meeting the objectives of the floor space ratio objectives.

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

5 A draft LEP amendment was recently exhibited seeking to amend a range of controls relevant to the Byron Bay Town Centre. The draft amendment is being finalised at the time of drafting this report.

Relevant to this application, the amendment will introduce Design Excellence provisions. The proposed modifications do not significantly alter the building as approved, and therefore do not raise any issues of design excellence.

**2.4. Development Control Plans**

10 The proposed modifications do not result in any issues that have not previously been considered and addressed.

**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**

15 Use of the proposed roof-top facilities has the potential to generate noise which could negatively impact nearby residences. An acoustic assessment has been submitted in support of the application, concluding that, subject to management conditions, recreational use will not generate intrusive noise at nearby residential receivers.

The mitigation measures include:

- 20 • use of the facilities will be restricted to residents and their guests, with access controlled via 'swipe card' in the internal lift;
- acoustic fencing around the entire perimeter of the pool;
- use to be limited to day and evening hours – 7.00am to 10.00pm (Council's Environmental Health Officer recommends that the hours as proposed be reduced,
- 25 such that use would cease at 8pm rather than 10pm as proposed).

Further conditions are recommended, including limits on patron numbers at any one time and banning of amplified music.

30 The roof-top facilities will be used by residents of the shop-top apartments. This will not be a commercial 'venue' open to the general public, nor is the development approved as tourist and visitor accommodation. This limits the potential for amenity impacts.

As highlighted above, most of the roof-top elements will not be visible from adjoining or nearby properties or public areas. The modifications as proposed, therefore, will not result in visual impacts nor will they significantly alter the character of the building as approved.

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

35 The proposed modifications do not affect the site's suitability.

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

The application was publicly exhibited from 26/03/21 to 30/04/21. There were 51 submissions made on the development application:

- 5       • 15 for;
- 36 against.

Many of the submissions objecting to the proposal were 'form letters' which included the following points, summarising the key areas of concern:

- 10       1. *This is a non-conforming application breaching the height limits in our Local Environmental Plan by going as high as 12.7 metres in a 9-metre limited area.*

As originally approved, the maximum height was 9.9m, with 183m<sup>2</sup> of roof area was above the 9.0m limit. This was made up primarily of building edges on the Jonson and Browning Streets frontages.

- 15       A previous modification approved extension of an internal lift for the northern building, to access roof-top mechanical plant. The roof of this lift was approved with a height of 12.7m above existing ground, and a roof area of 15m<sup>2</sup>, resulting in a total of 199m<sup>2</sup> of roof area above the 9.0m limit. This represents approx. 10% of the roof area.

- 20       The current proposal will not increase the maximum height nor the roof area at that maximum height. It will increase that area of roof that breaches 9.0m by an additional 65m<sup>2</sup>, to a total of 264m<sup>2</sup>, representing approx. 14% of the total roof area.

The height of the proposed roof-top elements are:

- pool deck: approx. 8.6m;
- pool edge: approx. 9.2m;
- top of pool fence: approx. 10.9m;
- 25       • roof over stairwell: approx. 11.7m.

- 30       2. *We must apply the LEP strictly. If the 4th storey pool had been part of the original Development Application, would Council have approved such generous non-compliances on communal space and deep planting, car parking and Floor Space Ratio?*

Clause 4.6 of the Standard Template LEP specifically provides for flexibility in the application of development standards, recognising that circumstances will exist where environmental planning grounds support an exceedance of a nominated standard.

- 35       Council considered the exceedance of the 9.0m height limit for the original development application and again for the previous modification, concluding that environmental planning grounds exist to support the variation request, mainly because the building as proposed was consistent with the objectives of the building height standard.



In relation to the proposed modifications, the roof-top elements that breach the height limit will not be visible from nearby public spaces, will not result in significant privacy or overlooking issues and do not alter the overall bulk or scale of the approved building.

5 The roof-top recreational facilities do not constitute a fourth storey, which is defined as a space between one floor level and the floor level above.

3. *In 2019, the developer successfully argued that because the development is only 10 minutes' walk from the beach, sports grounds and a large public swimming pool, he should be given major concessions to the SEPP design standards for:*

- 10 • *green space*
- *communal space*
- *natural light in the units*

15 *If the developer's logic is applied here, then there is no reason to grant them further concessions to make the development even bigger because residents already have access to the beach, a large public swimming pool and outdoor leisure areas, all within an easy 10 minutes' walk.*

This point refers to a criterion in the State Governments' *SEPP 65 Apartment Design Guide*, suggesting that communal open space with an area of at least 25% of the site should be provided for apartment buildings. As approved, the development includes a central courtyard which is approx. 14% of the site area.

20 The design guide indicates that, where developments are unable to achieve the design criteria, they should:

- *provide communal spaces elsewhere such as a landscaped roof top terrace or a common room;*
- *provide larger balconies or increased private open space for apartments;*
- 25 - *demonstrate good proximity to public open space and facilities and/ or provide contributions to public open space.*

In support of the original application, the applicant argued that each unit has a larger than average balcony, and that the site is located in walking distance of open space areas.

30 The objection suggests that, if the full 25% communal open space requirement were achieved in the original application, the building would have been smaller. However, in accordance with the guideline, the communal area could have included the roof-top facilities without significantly increasing the bulk and scale of the building, assuming that such facilities could have been provided in compliance with the height standard.

35 4. *The community and Council were told this was a "build to rent" undertaking to satisfy the urgent need to provide longer-term rental accommodation in town for employees and others. Rather than renting them, the units have now been sold by the developer. New unit owners cannot be relied upon to supply rental accommodation for local workers, particularly given they had a price tag of over \$1m each.*



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The original application made no reference to “build to rent”. It did state that the apartments were intended for residential use as opposed to visitor accommodation and a condition of approval reinforces this as a requirement.

- 5     5. *Body Corporate Laws cannot prevent Airbnb style short-term holiday letting under the new Short Term Rental Housing SEPP. Current NSW law exempts owners of units that are principal places of residence from being limited in any way by a Body Corporate or Council from offering their places for STHL. Only the Australian Tax Office could investigate this status independently for the purposes of compliance.*

A condition of consent is in place to the effect that:

- 10    *The residential dwellings are not to be used as tourist and visitor accommodation or holiday let. Should the development be Strata subdivided, the by-laws must include provisions specifying the above.*

Council would be able to take enforcement action under the Environmental Planning and Assessment Act 1979 for non-compliance with this condition.

- 15    6. *Additionally, since holiday letting is currently everywhere all over Byron and Council is not enforcing compliance, there is virtually no chance that a STHL prohibition would have any impact.*

As above.

- 20    7. *The likely impact on neighbours is also unacceptable and the proposed measures to mitigate impacts are inadequate. The new facility is to operate on 7 days a week, 52 weeks of the year basis from 8 am to 10 pm. There will be no full-time evening employees to enforce closure times, music volumes, portable barbecues and the numbers present.*

- 25    The roof-top facilities will be available for residents and their guests. Access will be by way of ‘swipe card’ or the like in the lift. It will not be a venue open to the general public or staff, customers of ground floor shops. This can be reinforced by condition of consent.

An acoustic assessment report has been submitted in support of the proposal, demonstrating that use of the pool will not generate intrusive or offensive noise at adjoining and nearby residences.

- 30    8. *The proposed sound mitigation barrier only extends to waist height, therefore having no effect on noise emitted by persons standing, drinking and conversing and music devices placed at table height.*

- 35    The acoustic assessment concludes that the proposed barrier around the pool deck provides sufficient attenuation to the neighbouring residences and is predicted to comply with assessment criteria. Council’s Environmental Health Officer has reviewed the assessment and finds no reason to challenge this conclusion.

Other issues raised in objections are summarised below:

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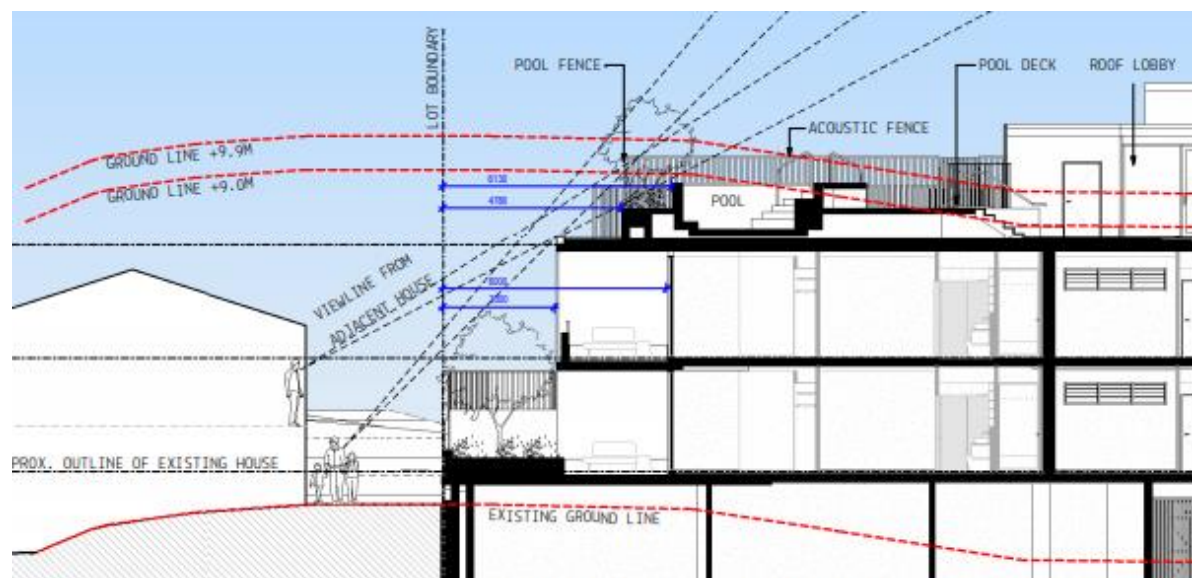
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<i>Issues raised in submissions</i>	<i>Consideration</i>
<p>Management measures/ assurances agreed to by the developer are meaningless, as future management of the recreational facility will be the responsibility of others, through the Strata Corporation</p>	<p>Conditions of consent can be imposed requiring hours of operation and other management measures for the pool to be included as By-Laws in the Strata Management contract.</p> <p>Compliance with By-Laws would be a requirement for all owners.</p>
<p>Enclosed toilet/ change room constitutes a fourth storey – approval would inevitably lead to a request for shade structures, which would increase the scale of a fourth storey</p>	<p>A storey is defined in BLEP 2014 to mean:  <i>a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include:</i></p> <p>(a) <i>a space that contains only a lift shaft, stairway or meter room, or</i></p> <p>(b) <i>a mezzanine, or</i></p> <p>(c) <i>an attic.</i></p> <p>The approved lift over-run, therefore, does not constitute a fourth storey.</p> <p>The lift lobby and the toilet &amp; change room do meet the definition of a storey. They have a combined area of 18m<sup>2</sup>.</p> <p>None of the remaining recreational facilities are enclosed, so they do not constitute a storey. Any further applications for additional roof-top facilities would be assessed on their merits.</p>
<p>Amenity impacts – noise</p> <ul style="list-style-type: none"> <li>• apartments likely to be holiday let, increasing potential for parties on the roof-top</li> <li>• insufficient management to control behaviour</li> <li>• noise barriers not sufficient</li> </ul>	<p>As indicated above, a condition is in place restricting the use of the apartments for tourist and visitor accommodation.</p> <p>The roof-top facilities will not become a public entertainment venue, as their use is restricted to apartment residents and their guests.</p> <p>Council's Environmental Health Officer has reviewed the acoustic assessment and supports approval of the application subject to effective management conditions and limited hours of operation.</p>

Amenity impacts – potential for overlooking as setbacks are too small; pool users will be able to look into the private open space at the rear of the adjoining property

The diagram below shows view lines in relation to the adjacent property. The pool fence along the northern edge of the facility is 1.3m high above the pool deck. There is a 0.5m wide garden bed immediately inside the fence. Given this arrangement, an adult of average height – 1.7m – would be able, standing at the edge of the garden bed, to look over the fence to get a glimpse of a small part of the adjoining rear yard and a view of an upper storey of a two storey building. The extent of this glimpse is minimal and does not result in privacy impacts.



Approval would set a precedent that will further erode the special character of Byron Bay

All development applications are assessed on their individual merit.

## 2.8. Public interest

Approval of the roof-top additions does not offend the public interest. The facilities are for residential rather than commercial use and are design and located to minimise impacts on the amenity of the neighbourhood.

## 3. DEVELOPER CONTRIBUTIONS/ WATER AND SEWER CHARGES

The proposed modifications do not generate additional developer contributions or water and sewer charges.

**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.	No

**5. CONCLUSION**

- 5 Based on the assessment above, the proposed amendments to the existing approved building are supported. It is recommended that the development consent be modified, including additional conditions to manage the use of the roof-top recreation facilities.

## Report No. 13.16 PLANNING - 26.2016.6.1 Submissions Report, Planning Proposal for The Farm, Ewingsdale

**Directorate:** Sustainable Environment and Economy

5 **Report Author:** Rob van Iersel, Place Activation Coordinator

**File No:** I2021/883

### Summary:

This report presents the outcomes of the recent exhibition of a Planning Proposal for The Farm at Ewingsdale.

10 The Planning Proposal addresses existing unauthorised land uses at The Farm (it does not authorise any additional uses). It was commenced some years ago to provide an approval mechanism for those uses but had been delayed to resolve traffic issues, primarily related to the adjacent Pacific Motorway roundabout.

15 Recent progress regarding those issues allowed Council to resolve in December 2020 to move forward to exhibition of the Planning Proposal (**Res 20-702**).

Transport for NSW (TfNSW) had previously indicated that they could only support the Planning Proposal if it was accompanied by a Voluntary Planning Agreement (VPA) to 'lock in' measures to contribute to future traffic upgrades in the area.

20 Following further discussion in April, TfNSW agreed to allow the planning proposal to proceed without such a VPA, acknowledging that future road infrastructure improvements can be addressed by a separate process.

The planning proposal was therefore publicly exhibited during May 2021. 182 submissions were received in support of the proposal, with 4 objections.

25 The planning proposal will provide an approval pathway for some existing uses at the site, which are otherwise prohibited in the RU1 Primary Production zone:

- the bakery (defined as artisan food and drink industry);
- agricultural training/education facilities and activities (i.e. farm tours, seminars, etc);
- administration offices; and
- a small-scale information centre.

30 The proposal will not authorise any new land uses at the site. Additional controls are also proposed to be implemented by way of an amendment to Chapter E5 of the Byron DCP to support the approval pathways.

Two additional changes to Chapter E5 are recommended based on comments received during public exhibition including an additional 2m cleared buffer along boundaries

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adjoining privately owned farmland and a requirement for the preparation of biosecurity management plan.

It is recommended that the planning proposal be sent to Parliamentary Counsel Office (“PCO”) for finalisation, as exhibited and the draft DCP Chapter E5 be adopted as attached to this report.

### NOTE TO COUNCILLORS:

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


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### RECOMMENDATION:

#### That Council:

1. forwards the planning proposal, as contained in Attachment 1 (E2020/98549), to Department of Planning, Industry and Environment for finalisation.
2. adopts the amended Byron DCP Chapter E5 as included in Attachment 2 (E2021/84440), to become effective on finalisation of the LEP amendment and provides notification as required by the Environmental Planning and Assessment Act and Regulation.

### Attachments:

- 1 26.2016.6.1 Planning Proposal The Farm - Exhibited Version, E2020/98549 
- 2 Byron Shire DCP 2014 Chapter E5 Certain Locations in Byron Bay and Ewingsdale - Updated for The Farm, E2021/84440 
- 3 Community submissions The Farm Planning Proposal, E2021/80300 
- 4 The Farm, Ewingsdale, Planning Proposal - DPI Agriculture Comments, E2021/77936 
- 5 TfNSW response The Farm, E2021/75098 

## Report

Planning Proposal 26.2016.6.1, relating to The Farm at Ewingsdale, was originally commenced in 2016 to provide an approval mechanism for a range of existing unauthorised uses at the property.

- 5 The Planning Proposal addresses existing unauthorised land uses at the Farm (it does not approve additional uses). Council had previously resolved (**Res 17-671**) to initiate this Planning Proposal and seek a Gateway Determination from the Department of Planning that would allow for its public exhibition.

10 The support for the Planning Proposal was to provide an approval pathway for the following uses at the site:

- the bakery;
- agricultural training/education facilities and activities;
- administration offices; and
- a small-scale information centre.

- 15 **Additional controls are also proposed to be implemented by way of an amendment to Chapter E5 of the Byron DCP 2014 to support the approval pathways.**

20 Previous compliance action was undertaken to address the produce store, which was significantly reduced in scale to be consistent with the existing approval for 'roadside stall', and the homewares/ gift shop, which was modified to operate in accordance with the approval for a plant nursery.

The original planning proposal was delayed to resolve traffic issues, primarily related to the adjacent Pacific Motorway roundabout.

Recent progress regarding those issues allowed Council to resolve in December 2020 to move forward to exhibition of the Planning Proposal (**Res 20-702**).

- 25 Transport for NSW (TfNSW) had previously indicated that they could only support the Planning Proposal if it was accompanied by a Voluntary Planning Agreement (VPA) to 'lock in' measures to contribute to future traffic upgrades in the area.

30 Following further discussion in April, TfNSW agreed to allow the planning proposal to proceed without such a VPA, acknowledging that future road infrastructure improvements can be addressed by a separate process.

The planning proposal was therefore publicly exhibited during May 2021.

182 submissions were received in support of the proposal, with 4 objections.

Support for the proposal came from a wide range of individuals and groups such as:

- 35
  - Byron Bay Chamber of Commerce
  - Byron Community Association

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- Brunswick Valley Landcare
- Zero Emissions Byron Shire Council Young Farmers Connect
- Northern Rivers Food

5 Most supporting submissions noted the education and information component of activities at The Farm, which highlight organic regenerative farming, the existing opportunities for start-up farmers, and the various community/ social activities associated with the various operators.

Issues raised in opposition to the proposal are discussed below:

<i>Issue</i>	<i>Comment</i>
The dominant use of the property is not farming but tourism – the property is on Regionally Significant Farmland, which should be protected for farming  Land is zoned RU1 Primary Production – activities that are not rural in nature should not be permitted	Two existing approvals are in place, providing consent to most uses conducted at the site: primarily the Three Blue Ducks restaurant/ café. This approved use is commercial/ tourist in nature but does retain a link to farming conducted on the property by utilising some of the produce grown at the site.  The intent of the planning proposal is to strengthen the link between site uses and farming, either using produce or in an educational way through farm tours, field days and the like.
Produce store consistently selling produce/ items not associated with the property	Goods retailed at the site should be limited to produce grown on the property (i.e. 'roadside stall') and items ancillary to the Three Blue Ducks restaurant (i.e. cook books, sauces, etc).  Council's compliance team will continue to monitor the produce store
Proposal should not be finalised until there is a resolution to traffic issues	Transport for NSW have advised that they support the planning proposal and that traffic matters can be managed through a subsequent DA process.
Land use conflict: <ul style="list-style-type: none"><li>• LUCRA report recommends 5m vegetated buffer along northern boundary set back 2m clear of boundary – Draft DCP control does not include clear 2m</li></ul>	Agreed – draft DCP has been updated to reflect the LUCRA report and include the 2m clear from fence within the overall buffer.



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<ul style="list-style-type: none"> <li>northern lot – Lot 1 DP 78234 – contains an area mapped under SEPP (Coastal Management) as Coastal Wetland. This lot should be excluded from Farming Precinct.</li> </ul>	<p>In addition to farming, the only activities authorised by this planning proposal within the Farming Precinct are farm tours and fields days. Development consent will be required to activate these uses, and the development control provisions of SEPP (Coastal Management) will provide adequate protection for the areas mapped as wetland.</p>
<ul style="list-style-type: none"> <li>a 300m buffer should be applied to the farming precinct from the macadamia de-husking shed on the adjoining property</li> </ul>	<p>Such a buffer would only apply to the proposed Farming Precinct. The only activities authorised by this planning proposal within the Farming Precinct are farm tours and fields days. These uses are temporary in nature and therefore would not require any more than the 5m vegetated buffer.</p>
<ul style="list-style-type: none"> <li>The DCP should include a provision to the effect that the consent authority must be satisfied that any development/ activity within the farming precinct does not pose or increase any biosecurity risks to existing farming on the adjoining land.</li> </ul>	<p>Accepted – draft DCP updated to require a Biosecurity Management Plan to be prepared.</p>
<p>Bakery should be limited to a wholesale bakery rather than an artisan food and drink industry, so as to limit non-rural uses that do not have a direct link to agriculture</p>	<p>The bakery has been in operation for some time. It does use a small amount of the produce grown at the site but is not reliant on that.</p> <p>While it is essentially non-rural, the scale of the use, in combination with the other businesses does not result in significant local impacts.</p>
<p>Traffic impacts have not been resolved</p>	<p>Transport for NSW are currently working on a range of road network upgrade options for the area and are committed to working toward implementation of solutions which will ease capacity issues at the motorway roundabout.</p> <p>It has been acknowledged that, while contributing to the capacity issues, traffic from the unauthorised uses at The Farm is not a significant cause of the issues.</p>
<p>Transpiration beds associated with the wastewater disposal area is too close to the</p>	<p>Most of the irrigation falls away from the adjoining land. It is set up with separate</p>

<p>adjoining macadamia orchard, impacting on that operation</p>	<p>'cells', which can be turned off or on. A small number of these cells are within land that falls to the northeast, toward the neighbouring property.</p> <p>The existing system operates under an existing approval and ongoing monitoring have demonstrate compliance with the parameters of that approvals, with no residual public health risks associated with the irrigation scheme.</p>
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The two recommended changes to the draft DCP from the above comments have been included in attachment 2.

State Agency comments:

Transport for NSW:

- 5 Issues associated with traffic and access can be managed through a subsequent DA process. Consideration of access off Woodford Lane will also be guided by proposals currently being examined for the upgrade of the motorway off-ramps and the surrounding road network.

Department of Primary Industries:

- 10 The Department recognises The Farm's contribution to the local and regional economy and supports the promotion of agriculture that the enterprise provides. The Department supports the connection between the uses authorised by the planning proposal and the farming at the site.

- 15 The vegetated buffer will be important, and The Farm should be required to have a Biosecurity Management Plan. These matters can be adequately managed though the subsequent DA process.

**Next steps**

- 20 Based on the technical assessment of the planning proposal and the feedback received from public exhibition, it is recommended that the amendments to Byron LEP 2014 proceed toward finalisation.

The draft will be sent to Parliamentary Counsel Office of the Department of Planning Industry and Environment to finalise the legal wording and provide an opinion that the amendment can be made. The amendment can then be finalised.

- 25 Concurrently the proposed amendment to Chapter E5 can be adopted, to come into force upon finalisation of the LEP amendment.

This will allow The Farm to lodge a development application seeking consent for the land uses addressed in the planning proposal.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

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

### Recent Resolutions

20-702

**5 Resolved** that Council:

1. Notes the update provided on the Planning Proposal for The Farm.
2. Agrees to withdraw the current Gateway Determination and associated Planning Proposal before 24 December 2020, as requested by the Department of Planning, Industry and Environment.
- 10 3. Simultaneously with 2 above, authorises staff to submit an amended Planning Proposal to the Department of Industry and Environment for Gateway determination. The new Planning proposal to be the same as the current, with the exception of the need for an SP2 Infrastructure zoning over the land that would be now covered by the Voluntary Planning Agreement.
- 15 4. Initiates discussions with the proponent and TfNSW to develop key principles that could form the basis of a Voluntary Planning Agreement, and report the results of discussions to Council prior to public consultation.
- 20 5. Pending Gateway Determination undertakes public exhibition of the Planning Proposal and consult with government agencies in accordance with the Gateway Determination.
6. Concurrently exhibits the draft amendment to Chapter E5 of Byron DCP 2014 - Certain Locations in Byron Bay and Ewingsdale (Attachment 2 E2020/6033)
7. Receives a report outlining the public exhibition outcomes.
- 25 8. Continues to suspend enforcement action in relation to matters subject of the Planning Proposal until such time as a determination is made. Council may, however, use its discretion to take enforcement action in circumstances where it is

demonstrated that an unauthorised activity or use imposes significant impacts on the environment. This undertaking does not exclude Council from its regulatory obligations in relation to the Food Act, Local Government Act and/ or Protection of the Environment Operations Act.

**5 Legal/Statutory/Policy Considerations**

The planning proposal will amend Byron Local Environmental Plan 2014 as outlined in this report.

- 10 In accordance with Council's enforcement policy, and the resolution above, enforcement action will continue to be suspended pending finalisation of the LEP amendment and determination of a subject development application.

**Financial Considerations**

The planning proposal continues to be progress on a cost-recovery basis paid for by the landowner.

**Consultation and Engagement**

- 15 The report above presents the outcomes of the latest community engagement process.

## Report No. 13.17 PLANNING - 24.2020.27.1- Bangalow DCP Updates

**Directorate:** Sustainable Environment and Economy

**Report Author:** Isabelle Hawton, Planner

5 **File No:** I2021/1035

### Summary:

Council staff have been working with the Bangalow community for some time to improve the development control plan provisions for Bangalow. This was an action that originated in the Bangalow Village Plan, which was adopted in February 2019 (*RES 19-006*).

- 10 Staff have worked with the community to audit the existing Development Control Plan 2014 (DCP) provisions, looking for gaps and areas of improvement.

Given the important heritage character of Bangalow, the resulting draft updates include changes to both the E2 Bangalow Chapter and the C1 Non-Indigenous Heritage Chapter.

- 15 These updates to the DCP 2014 make some significant changes to improve future development outcomes in Bangalow. These include:

- Providing a clearer structure for the E2 Chapter
- Removing outdated or contradictory sections in C1 and E2
- Removing double up between C1 and E2
- Moving heritage architectural guidelines for buildings in Byron Street to Chapter C1
- 20 • Creating new heritage architectural controls for Station Street precinct
- Adding in an Active Street Frontages provision
- Adding in provisions around connectivity and permeability
- Adding Urban Design outcomes and specific controls for Station Street in lieu of a separate 'Structure Plan'
- 25 • Amending and updating relevant maps and graphics

The full explanation of these changes can be found in Attachment 2.

It is recommended that wider community engagement now be undertaken to test the efficacy of the updated development controls.

#### 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

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Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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### 5 **RECOMMENDATION:**

1. **That Council exhibits the draft DCP 2014 Chapters E2 Bangalow and C1 Non-Indigenous Heritage (Attachment 3 - E2021/3759 and Attachment 4 - E2021/72759) for a minimum period of 28 days.**
2. **That Council receives a submissions report at the end of the exhibition period.**

### 10 **Attachments:**

- 1 Form of Special Disclosure of Pecuniary Interest, E2012/2815 
- 2 Explainer Sheet - Bangalow DCP Changes, E2021/85498 
- 3 DRAFT - Byron Shire DCP 2014 Chapter E2 Bangalow, E2021/3759 
- 15 4 DRAFT Byron DCP 2014 Chapter C1 Non-indigenous Heritage, E2021/72759 

## **Report**

The Bangalow Village Plan (the Plan) was adopted in 2019 following extensive engagement with the local community. A key action of the Plan is to review development controls applicable in the village, to better reflect the vision and intent of the Village Plan.

- 5 Since adoption of the Plan, staff have been engaging with representatives of the Bangalow community to undertake the DCP review. Based on the engagement, updates are now recommended to several individual Chapters of Byron Development Control Plan 2014.

These updates make some significant changes to improve future development outcomes in Bangalow, and include:

- 10 • Providing a clearer structure for the Chapter E2 Bangalow
- Removing outdated or contradictory sections in Chapters C1 Non-Indigenous Heritage and E2 Bangalow
- Removing 'double up' between Chapters C1 and E2
- 15 • Moving heritage architectural guidelines for buildings in Byron Street from Chapter E2 Bangalow to Chapter C1 Non-Indigenous Heritage
- Creating new heritage architectural controls for Station Street precinct
- Adding in an Active Street Frontages provision
- Adding in provisions around connectivity and permeability
- 20 • Adding Urban Design outcomes and specific controls for Station Street in lieu of a separate 'Structure Plan'
- Amending and updating relevant maps and graphics.

The full explanation of these changes can be found in Attachment 2.

## **Community engagement to date**

- 25 This project has involved considerable community engagement to date. Council staff hosted an online 'drop-in session' over Zoom in August 2020. Community members had an opportunity at this session to let staff know what kinds of changes they would like to see as a part of the DCP updates. There was also a Your Say page launched at the same time, to capture general comments on the preferred direction of the amendments.

- 30 Following this, Council staff began an audit of the existing controls, analysing how these related to the themes that were emerging as a part of the early community consultation.

A further workshop was held with key stakeholders and landowners in May 2021. This workshop focussed on development outcomes for the Triangle (the area located between the rail lands, Station Street and Byron Street) and touched upon other issues relevant to the E2 and C1 Chapters.

- 35 This workshop provided further valuable input into the proposed changes.

Recently, once a very early draft was completed, Council staff met with the president of the Bangalow Progress Association and Bangalow's Place Planning Collective representative to run through the changes proposed. This session allowed for further detailed community input into the proposed draft.

- 5 Council staff have also spoken in depth with Council's Heritage Consultant and DA Planning Team.

Further community engagement, including online engagement and targeted meetings is suggested as a part of the public exhibition process.

### Key issues

#### 10 **Specific Controls for Station Street Precinct**

At the inception of this project, there was some discussion of DCP changes and a separate Structure Plan for the area known as the Triangle.

- 15 As staff worked through early consultation for this project, it became evident that rather than a separate Precinct Plan, the appropriate balance between certainty and flexibility could be achieved by incorporating key development principles and built form controls into the revised DCP Chapter.

The 'structure plan' principles include:

- providing pedestrian connectivity and permeability through the precinct
- encouraging active street frontages with commercial uses at street level
- 20 • promoting a green and leafy village centre.

Key built form controls include retention of the two-storey maximum building height (9m) and a requirement for a 3m front setback from the Station Street boundary.

#### **Affirming the two distinct precincts in the town centre**

- 25 New controls have been added to C1 Non-Indigenous Heritage chapter to acknowledge the important differences between Byron Street and Station Street. The new controls specifically for Station Street seek to uphold the different 'vibe' the street has from Byron Street by requiring setbacks, a different palette of materials, landscaping and a 'looser urban fabric'. This requires any new development in Station Street to be subservient to and complementary to the existing Heritage Items and Contributory Items in the precinct.

#### 30 **Protecting the low-rise heritage character of Bangalow whilst providing flexibility for the future**

- 35 The general controls in the E2 Bangalow chapter seek to retain and enhance the existing character in Bangalow, whilst allowing additional housing through infill development. The controls require new development to be complementary to existing low-rise, leafy and heritage-influenced character in Bangalow.



The Character Narratives continue to provide important guidance for the various residential 'pockets' around Bangalow. Some of these have been minorly updated and finessed. The maps relating to the Character Narratives have also been updated.

**Other planning issues relating to the Station Street precinct**

- 5 Throughout their discussions with community, staff also floated other planning issues relating to the Station Street precinct, including floor space ratio, heights, and zoning controls. To date, there has been no clear desire to change these Local Environmental Plan controls. Staff have therefore assumed based on the information provided to date, that the current provisions in the Station Street area are adequate.

**10 Next steps**

The next steps are to exhibit the proposed changes and rework any suggested changes through a second exhibition process (if required). It is then suggested that staff report any submissions back to Council along with a draft for final adoption.

**Strategic Considerations**

**15 Community Strategic Plan and Operational Plan**

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
<b>Community Objective 4: We manage growth and change responsibly</b>	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.1	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

**Legal/Statutory/Policy Considerations**

Discussed in the report.

**Financial Considerations**

Nil

**20 Consultation and Engagement**

Discussed in the body of the report.

**Report No. 13.18 PLANNING - Letter of Offer and Draft Voluntary Planning Agreement for Affordable Housing - 68 Rankin Drive, Bangalow**

5 **Directorate:** Sustainable Environment and Economy

**Report Author:** Alex Caras, Land Use Planning Coordinator

**File No:** I2021/1041

**Summary:**

10 A Letter of Offer to enter into a Voluntary Planning Agreement (VPA) and draft VPA have been submitted to Council. This follows lodgement of a corresponding planning proposal in mid-May to rezone Lot 261 DP 1262316 and Lot 11 DP 807867 (known as 68 Rankin Drive Bangalow) to *R2 Low Density Residential*. The subject land is identified as Area 11 in the Byron Residential Strategy.

15 This report considers the letter of offer and draft VPA, as contained in Attachments 1 - 3, in the context of Council's Affordable Housing Contribution Policy and Procedure, Byron Residential Strategy and draft Affordable Housing Contribution Scheme. Importantly, the report seeks Council decision as to whether or not to proceed with the VPA in the absence of an Affordable Housing Contribution Scheme (AHCS) being in place.

**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

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





- 30 1. **advises the applicant that due to the complex interaction with the Residential Strategy and draft Affordable Housing Contribution Scheme (AHCS), and given the significant risks identified in this Report, it is considered premature to proceed with the draft Voluntary Planning Agreement (as contained in Attachment 2 E2021/90306) until a statutory AHCS is in place for Byron Shire.**
- 35 2. **does not accept any 'urban residential' planning proposals pertaining to a non-Council owned and or managed investigation area (as identified in the Residential Strategy), until a statutory AHCS is in place for Byron Shire, noting that the timeframe for this may be at least 6 months away.**

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#### **Attachments:**

- 1 Confidential - Letter of Offer to enter into a Voluntary Planning Agreement - 68 Rankin Drive Bangalow\_23 June 2021, E2021/90301
- 5 2 DRAFT Voluntary Planning Agreement - 68 Rankin Drive Bangalow\_12 July 2021, E2021/90306 
- 3 Proposed Residential Layout Plan\_68 Rankin Drive Bangalow\_June 2021, E2021/90298 
- 4 Letter from Department of Planning, Industry and Environment Planning Proposal PP-2021-3965 : Affordable Housing Contribution Scheme - Adequacy Assessment decision, E2021/90169 
- 10 5 Special Disclosure of Pecuniary Interest Form, E2012/2815 

## **Background**

Council resolved in 2018 (**Res 18-410; 18-543**) to commence an early implementation program to accelerate delivery of affordable housing, ahead of completing the Byron Residential Strategy (the Strategy). Among the sites considered at the time was 68 Rankin Drive, Bangalow, which was already identified as an investigation area in the draft Strategy.

The Strategy was adopted in December 2020 and is currently undergoing an independent review with the Department of Planning, Industry & Environment (DPIE). The above land is identified as Area 11 in the Strategy. Since adoption, the landowner and their consultant have met with staff on several occasions to discuss the use of a voluntary planning agreement (VPA) to accelerate the delivery of affordable housing on the subject land as part of a future planning proposal.

As a result of these discussions a Letter of Offer to enter into a VPA and draft VPA have been submitted to Council. This follows lodgement of a corresponding planning proposal in mid-May to rezone Lot 261 DP 1262316 and Lot 11 DP 807867 (known as 68 Rankin Drive Bangalow) to *R2 Low Density Residential*.

This report focuses on the letter of offer and draft VPA, as contained in Attachments 1 and 2 respectively, and seeks a Council decision as to whether or not to proceed with the Agreement in the absence of an Affordable Housing Contribution Scheme (AHCS) being in place.

## **Report**

Council received a Letter of Offer to enter into a VPA together with a draft VPA on 25 June 2021. Relevant particulars of the draft VPA are as follows:

- Proposes to dedicate eight (8) lots out of a fourteen (14) lot Affordable Housing Community Title Scheme (see Attachment 3);
- Affordable housing contribution to Council equates to approximately 20% of developable (community title) land to be rezoned to *R2 Low Density Residential*;
- Developer Contributions and Water and Sewer Headworks will also apply to the eight (8) lots to be transferred to Council;
- Clause 10 – provides that the VPA is complete when Council is granted the titles to the eight (8) lots to be transferred into Council ownership;
- Clause 12 – the Planning Agreement may be enforced by either party in the Court and that either party may bring proceedings in the Land and Environment Court to enforce any aspect of the Agreement;
- Clause 16 – provides that the applicant will pay up to \$5,000 towards the cost of preparing or amending the Agreement and Council is at liberty to suggest alterations to the Agreement in accordance with this clause.

**Relationship to Affordable Housing Contribution Policy & Procedure**

Council's Affordable Housing Contributions [Policy](#) and [Procedure](#) were adopted on 13 August 2020.

- 5 The Policy provides an overarching framework to facilitate, provide and manage affordable housing contributions in our Shire. Importantly it provides a mechanism to secure land and or monetary contributions to deliver affordable housing on certain land identified in the Residential Strategy. Although the Policy is not legally binding, it is intended that the Council and all persons dealing with Council in relation to affordable housing contributions will follow this policy to the fullest extent possible.
- 10 Section 4.10 of the Policy supports engaging with developers on Planning Agreements for the provision of affordable housing however, acceptance of an offer to enter into a Planning Agreement is at the absolute discretion of Council.
- 15 The supporting 'Procedure' is intended to assist with implementation of the Policy and detail how Council intends to operate the contribution framework in Byron Shire. The information contained in the Procedure is considered most relevant to Council's assessment of the draft VPA.

This assessment is provided in Table 1 below.

**Table 1 – Assessment of draft VPA against Council's [Procedure](#)**

<a href="#">Affordable Housing Contribution Procedure 2020</a>		
<i><b>Applicable Section in Procedure</b></i>	<i><b>Draft VPA</b></i>	<i><b>Consistent (Y/N)</b></i>
<p><b>Diagram 1: Contribution setting:</b> provides a visual overview of the steps required to enable submission of a planning proposal for Gateway determination.</p> <ul style="list-style-type: none"> <li>States that "even if the proponent offers to enter into a VPA, Council will seek to apply an Affordable Housing Contribution Scheme (AHCS) clause for the subject land in LEP 2014" (ie. both AHCS and VPA will be applied 'in parallel' as part of a planning proposal).</li> </ul>	<p>Council does not have an Affordable Housing Contribution Scheme (AHCS) in place, as this is caught up in the independent review of the adopted Residential Strategy by the Department of Planning, Industry &amp; Environment (DPIE).</p> <p><b>Note:</b> Although the absence/presence of an AHCS for Byron LGA is outside the scope of a draft VPA, it is the most relevant issue to Council's consideration of this VPA. This is further discussed below.</p>	N/A
<p><b>2. Affordable Housing Contribution Rates:</b> "Bangalow greenfield housing contribution areas: <b>20%</b> of the additional lots or developable area whichever the greater that is to be used for residential uses."</p>	<p>Proposes to dedicate eight (8) lots out of a fourteen (14) lot Community Title Scheme, which equates to approximately 20% of developable land to be rezoned to <i>R2 Low Density Residential</i>. (see Attachment 3).</p> <p>However the 8 lots are all grouped together and best practice is to have them</p>	<p>Yes</p> <p>No</p>

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<a href="#"><u>Affordable Housing Contribution Procedure 2020</u></a>		
<b>Applicable Section in Procedure</b>	<b>Draft VPA</b>	<b>Consistent (Y/N)</b>
	dispersed throughout the development, consistent with the <a href="#"><u>Residential Strategy</u></a> 'affordable housing criteria' (Appendix D).	
<b>4.4.2.1</b> The contribution rate may be fulfilled using: a) a percentage of dedicated floor space b) land (may be part of the said land, or other land of the applicant) c) monetary contribution or d) combination of the above.	Proposes contribution in the form dedicating fully serviced land (8 lots) within a 'small lot' Community Title Scheme.	Yes
<b>5.18.1:</b> "... if the Planning Agreement relates to an application by a developer for an instrument change, <b><i>the developer will pay the whole of Council's costs.</i></b> "	Provides that the applicant will pay up to \$5,000 towards the cost of preparing or amending the Agreement	No
<b>5.1.5:</b> "Any letter of offer for a Planning Agreement with Council is to be made by the proponent <b><u>before lodging a planning proposal application.</u></b> "	The applicant lodged a planning proposal (on the Planning Portal) in mid-May, prior to Council being able to consider the Letter of Offer and draft VPA in this report.  Acceptance of the planning proposal from the portal is pending the outcome of this report. Hence the purpose of this report.	No
<b>5.1.7</b> Council will endeavour to consider the offer within 40 days of receipt and advise of the proponent of the in-principle determination to enable the proponent to progress with the lodgement of the planning proposal. This in principle determination will provide the basis for the agreement negotiation. Council may decide to delegate this advisory determination process in the interest of efficiency.	The applicant has lodged both Letter of Offer and draft VPA for Council's consideration. These documents are being reported to Council for a decision within the 40 day period from receipt.  Refer also to comments in 5.1.5 above.	N/A

**Affordable Housing Contribution Procedure 2020**

<b><i>Applicable Section in Procedure</i></b>	<b><i>Draft VPA</i></b>	<b><i>Consistent (Y/N)</i></b>
<b>5.3 Form of Contribution:</b> <ul style="list-style-type: none"> <li>• “A contribution for affordable housing will only be accepted in the form of a land dedication free of cost. The dedicated land has to be part of the development application land. A land contribution to Council for the purpose of affordable housing requires the land is fit for purpose.”</li> <li>• “ .. Planning Agreements must be in addition to s7.11 or s7.12 of the Act contributions.</li> </ul>	<p>Proposes contribution in the form dedicating fully serviced land (8 lots) as part of a ‘small lot’ Community Title Scheme.</p> <p>Section 7.11 Developer Contributions and Water and Sewer Headworks charges will still apply to the eight (8) lots to be dedicated to Council.</p>	<p>Yes</p> <p>Yes</p>
<b>5.4 Acceptability test to be applied to Planning Agreements</b> (pp 9-10 list 12 questions to be considered for a Letter of Offer and negotiated planning agreement)	Meets all relevant acceptability questions.	Yes
<b>5.5 When will Council not consider entering a Planning Agreement</b> (pp 10-11 identify the specific circumstances where Council will not consider entering a Planning Agreement)	None of the 11 circumstances identified in 5.5 apply to the draft VPA.	Yes

**Relationship to Residential Strategy**

5 The Strategy was adopted in December 2020 and is currently undergoing an independent review with the Department of Planning, Industry & Environment (DPIE). The review is aimed at resolving a number of outstanding issues, including the relationship with the Strategy and Council’s draft Affordable Housing Contribution Scheme (recently submitted) along with how to best ensure their integration when assessing future planning proposals. This review has only just commenced is still some months away from completion.

10 To date the DPIE have not raised any issues about the subject land, which is identified as Area 11 in the Strategy.

**Relationship to draft Affordable Housing Contribution Scheme**

Council currently does not have an Affordable Housing Contribution Scheme (AHCS) in place in LEP 2014. Although a draft AHCS planning proposal was lodged in June with DPIE (in accordance with **Res 19-152**), this was returned to Council on the grounds that it

was “premature and dependent on further studies and reviews being completed”. (Attachment 4). This includes DPIE’s review of the Residential Strategy which is still months away from completion.

- 5 The subject land was among those identified in the draft AHCS maps along with a 20% contribution rate (ie. of developable residential lots) to be applied.

### Internal legal advice

A copy of the draft VPA was circulated to internal legal staff for comment. The feedback identified a number of issues requiring further attention and/or clarification, with the most relevant being:

- 10
- Definition of certain terms used
  - Triggers and timing for dedication for the purposes of affordable housing
  - Implications of accepting land in a community title scheme
  - Enforcement of Agreement
  - Developers’ mortgage over the subject land
- 15
- VPA costs to be borne by the Developer/Landowner

The above issues are not considered absolute constraints to Council accepting the applicants Letter of Offer and draft VPA; rather they represent matters that need to be addressed to Council’s satisfaction prior to accepting a corresponding planning proposal for the subject land.

### 20 Main Issue: Council’s ability to ensure dedication of land for affordable housing

- Should Council choose to proceed with the attached VPA ahead of an AHCS being in place, there is no guarantee that 20% of the rezoned land (or any %) will be dedicated for affordable housing purposes. This is because a planning agreement is only ‘voluntary’ and the applicant can choose to withdraw from the VPA anytime before the rezoning
- 25 process is finalised, leaving Council without a fall-back mechanism (ie. AHCS) to ensure dedication of any part of the land for affordable housing purposes. To address this risk the contribution framework in the “[Affordable Housing Contribution Procedure 2020](#)” is based on applying both an AHCS and VPA ‘in parallel’ as part of any residential planning proposal received. This is currently not possible given (i) the draft AHCS is caught up in
- 30 DPIE’s review of the adopted Residential Strategy and (ii) DPIE’ approval of Council’s Residential Strategy and AHCS must occur together.

- A decision to proceed with this VPA ahead of an AHCS being in place also risks creating a precedent for other applicants to lodge residential planning proposals, again with no fall-back mechanism to ensure that any part of the land will be dedicated for affordable
- 35 housing purposes (i.e.. should the applicant withdraw the VPA before the rezoning process is finalised).

It is acknowledged that Council has repeatedly expressed a strong commitment to delivering affordable housing outcomes within its current term, a commitment which is equally shared by staff. However, the abovementioned risks are very real and need to be



fully appreciated in deciding whether or not to proceed with this VPA ahead of an AHCS being in place.

## **Options going forward**

Having regard to the information presented above, Council's options are as follows:

- 5     1. Do not proceed with the attached VPA nor accept any residential zone planning proposals for non-Council owned or managed land until a statutory AHCS is in place for Byron Shire, noting that this may be at least 6 months away.

10     This option is in recognition of the complex interaction with the Residential Strategy and draft Affordable Housing Contribution Scheme, together with the significant risks identified in this report, if Council were to proceed with the attached VPA ahead of an AHCS being in place.

- 15     2. Proceed with the attached VPA ahead of an AHCS being in place, subject to further amendments to address the inconsistencies in Table 1 and legal matters identified above, as a basis for accepting a planning proposal. Once the draft VPA has been amended to Council's satisfaction, commence assessment of the applicant's planning proposal (lodged in mid-May) and report the outcomes to Council for Gateway decision.

20     This option is a departure from the process set out in the Affordable Housing Contribution Policy and Procedure and accepts that there is a real risk of undermining Council's ability to ensure dedication of land for affordable housing — with this and future residential planning proposals.

## **Strategic Considerations**

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

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
We manage growth and change responsibly	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.3	Prepare an Affordable Housing contribution scheme under SEPP 70 to be incorporated in the local planning framework controls (Action in Residential Strategy)

**Recent Resolutions**

- Res 19-152 (11 April 2019 Planning Meeting)
- Res 20-686 (10 December 2020 Planning Meeting)

**Legal/Statutory/Policy Considerations**

- 5 The Letter of Offer and draft Voluntary Planning Agreement have been considered in the context of the Environmental Planning and Assessment Act and supporting regulations, as well as Council's Affordable Housing Contribution Policy & Procedure and Byron Residential Strategy.

**Financial Considerations**

- 10 Should Council choose to proceed with the attached VPA ahead of an AHCS being in place, all work associated with the VPA and corresponding planning proposal must be funded by the applicant.

## **Report No. 13.19 PLANNING - NSW Flood Planning Reforms: Mandatory and Optional LEP clauses**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Alex Caras, Land Use Planning Coordinator

5 **File No:** I2021/1161

### **Summary:**

10 The NSW government's Flood Prone Land Package commenced on 14 July 2021. This follows an earlier public exhibition in 2020 and includes compulsory and opt-in reforms to land use regulations and planning controls. When fully implemented, the package will mean 2 new flood-related development clauses are included in the Byron Local Environmental Plan 2014 (LEP). One of the clauses is mandatory and the other will be optional. Both are the subject of this report, which recommends that Council include the Optional 'Special Flood Consideration' Clause in LEP 2014.

### 15 **NOTE TO COUNCILLORS:**

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


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### **RECOMMENDATION:**

#### **That Council:**

- 25 1. **notes the Mandatory 'Flood planning' Clause which took effect on 14 July 2021 and replaces the previous flood planning clause 6.3 in Byron LEP 2014;**
2. **resolves to include the Optional 'Special Flood Consideration' Clause in Byron LEP 2014, noting this will not come into effect until the state government has completed a further extended period of consultation with the public, councils and industry; and**
- 30 3. **receives a further report to resolve which land uses will make up the optional clause definition of 'sensitive and hazardous development'.**

#### **Attachments:**

- 35 1 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

## **Report:**

The NSW government's Flood Prone Land Package commenced on 14 July 2021. This follows an earlier public exhibition in 2020 and includes compulsory and opt-in reforms to land use regulations and planning controls. When fully implemented, the package will mean 2 new flood-related development clauses are included in the Byron Local Environmental Plan 2014 (LEP).

### **Mandatory 'Flood planning' Clause**

The first clause is mandatory and has been automatically inserted into our LEP. It replaces the existing flood planning clause [6.3](#) and applies to all land within the flood planning area. It requires Council to consider changes to flood risk as a result of climate change (which Council's LEP/DCP already does). Although some updates are required to DCP 2014 to ensure consistency in the flood planning terminology used, the new clause will have a limited impact on the current development assessment and administrative practices of Byron Shire Council.

A comparison of the new mandatory flood planning clause with the previous LEP clause [6.3](#) is provided Table 1 below.

**Table 1: Comparison of new mandatory flood planning clause with the previous LEP clause [6.3](#)**

<b>(NEW) 6.3 Flood planning (mandatory)</b>	<b>6.3 Flood planning (previous)</b>
<p>(1) The objectives of this clause are as follows—</p> <ul style="list-style-type: none"> <li>(a) to minimise the flood risk to life and property associated with the use of land,</li> <li>(b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,</li> <li>(c) to avoid adverse or cumulative impacts on flood behaviour and the environment,</li> <li>(d) to enable the safe occupation and efficient evacuation of people in the event of a flood.</li> </ul> <p>(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</p> <ul style="list-style-type: none"> <li>(a) is compatible with the flood function and behaviour on the land, and</li> <li>(b) will not adversely affect flood</li> </ul>	<p>(1) The objectives of this clause are as follows—</p> <ul style="list-style-type: none"> <li>(a) to minimise the flood risk to life and property associated with the use of land,</li> <li>(b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,</li> <li>(c) to avoid significant adverse impacts on flood behaviour and the environment.</li> </ul> <p>(2) This clause applies to land at or below the flood planning level.</p> <p>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—</p> <ul style="list-style-type: none"> <li>(a) is compatible with the flood hazard of the land, and</li> <li>(b) will not significantly adversely affect</li> </ul>

<b>(NEW) 6.3 Flood planning (mandatory)</b>	<b>6.3 Flood planning (previous)</b>
<p>behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and</p> <p>(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and</p> <p>(d) incorporates appropriate measures to manage risk to life in the event of a flood, and</p> <p>(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.</p> <p>(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—</p> <p>(a) the impact of the development on projected changes to flood behaviour as a result of climate change,</p> <p>(b) the intended design and scale of buildings resulting from the development,</p> <p>(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,</p> <p>(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.</p> <p>(4) A word or expression used in this clause has the same meaning as it has in the Considering Flooding in Land Use Planning Guideline unless it is otherwise defined in this clause.</p>	<p>flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and</p> <p>(c) incorporates appropriate measures to manage risk to life from flood, and</p> <p>(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and</p> <p>(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</p> <p>(4) In determining a development application for development at or below the future flood planning level, the consent authority must, in addition to the matters referred to in subclause (3), also consider the following matters—</p> <p>(a) the proximity of the development to the current flood planning area,</p> <p>(b) the intended design life and scale of the development,</p> <p>(c) the sensitivity of the development in relation to managing the risk to life from any flood,</p> <p>(d) the potential to modify, relocate or remove the development.</p> <p>(5) A word or expression used in this clause has the same meaning as it has in the <i>Floodplain Development Manual</i> (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.</p> <p>(6) In this clause—</p> <p><b><i>flood planning area</i></b> means the area of land that is at or below the flood planning level.</p> <p><b><i>flood planning level</i></b> means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.</p>

(NEW) 6.3 Flood planning (mandatory)	6.3 Flood planning (previous)
<p>(5) In this clause—</p> <p><b>Considering Flooding in Land Use Planning Guideline</b> means the <i>Considering Flooding in Land Use Planning Guideline</i> published on the Department's website on 14 July 2021.</p> <p><b>flood planning area</b> has the same meaning as it has in the Floodplain Development Manual.</p> <p><b>Floodplain Development Manual</b> means the <i>Floodplain Development Manual</i> (ISBN 0 7347 5476 0) published by the NSW Government in April 2005.</p>	<p><b>future flood planning level</b> means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard, plus allowances for projected climate change to the year 2100.</p>

### Optional 'Special Flood Consideration' Clause

The second clause, known as the *Special Flood Consideration* clause, is 'optional' and requires a separate State Environmental Planning Policy amendment. This clause would require Council to be satisfied that a proposed development:

- 5
  - complies with any Council flood policies, development control plan and is consistent with any adopted floodplain risk management plan
  - will not affect the safe occupation of and evacuation from land
  - incorporates appropriate measures to manage risk to life from flooding
  - is designed to incorporate high level evacuation routes appropriate to the flood risk
- 10
  - will not adversely affect the environment during flood events due to hazardous materials

The new clause does not control land use, but only identifies matters for consideration at the DA stage.

- 15
 

Given the strong similarity between the new 'optional' clause and our existing LEP 2014 clause [6.4 Floodplain risk management](#) (ie. both apply to land between the flood planning area and the probable maximum flood), it is recommended the optional clause included in our LEP. This aligns with what many other coastal councils are doing with their LEPs.

- 20
 

Although application of this clause includes development that "is" and "is not" **sensitive and hazardous development**, councils will have the ability to identify which land uses

make up this definition. A future report will be presented to Council for decision in this regard.

- 5 If Council chooses to 'opt in' the new clause will not yet come into effect until the state government has completed a further extended period of consultation with the public, councils and industry (expected by early 2022). In the meantime Byron LEP 2014 Clause [6.4](#) shall remain in effect until there is a subsequent SEPP amendment to replace with the 'Optional' clause.

Table 2 below provides a comparison of Byron LEP cl [6.4](#) and 'Optional' clause.

10 **Table 2: Comparison of existing Byron LEP [cl 6.4](#) and 'Optional' Special flood considerations clause**

<b>6.4 Floodplain risk management (existing)</b>	<b>6.4 Special flood considerations [optional]</b>
<p>(1) The objectives of this clause are as follows—</p> <ul style="list-style-type: none"> <li>(a) in relation to development with particular evacuation or emergency response issues, to enable evacuation of land subject to flooding above the flood planning level,</li> <li>(b) to protect the operational capacity of emergency response facilities and critical infrastructure during extreme flood events.</li> </ul> <p>(2) This clause applies to—</p> <ul style="list-style-type: none"> <li>(a) land between the flood planning area and the level of the probable maximum flood, and</li> <li>(b) land surrounded by the flood planning area, but does not apply to land subject to the discharge of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.</li> </ul> <p>(3) Development consent must not be granted to development for the following purposes on land to which this clause applies unless the consent authority is satisfied that the development will not, in flood events exceeding the flood planning level,</p>	<p>(1) The objectives of this clause are as follows—</p> <ul style="list-style-type: none"> <li>(a) to enable the safe occupation and evacuation of people subject to flooding,</li> <li>(b) to ensure development on land is compatible with the land's flood behaviour in the event of a flood,</li> <li>(c) to avoid adverse or cumulative impacts on flood behaviour,</li> <li>(d) to protect the operational capacity of emergency response facilities and critical infrastructure during flood events,</li> <li>(e) to avoid adverse effects of hazardous development on the environment during flood events.</li> </ul> <p>(2) This clause applies to—</p> <ul style="list-style-type: none"> <li>(a) for sensitive and hazardous development—land between the flood planning area and the probable maximum flood, and</li> <li>(b) for development that is not sensitive and hazardous development—land the consent authority considers to be land that, in the event of a flood, may— <ul style="list-style-type: none"> <li>(i) cause a particular risk to life, and</li> </ul> </li> </ul>



6.4 Floodplain risk management (existing)	6.4 Special flood considerations [optional]
<p>affect the safe occupation of, and evacuation from, the land—</p> <ul style="list-style-type: none"> <li>(a) caravan parks,</li> <li>(b) correctional centres,</li> <li>(c) emergency services facilities,</li> <li>(d) group homes,</li> <li>(e) hospitals,</li> <li>(f) residential care facilities,</li> <li>(g) tourist and visitor accommodation.</li> </ul> <p>(4) In this clause—  <b>flood planning area</b> means the area of land at or below the flood planning level.  <b>flood planning level</b> means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.  <b>probable maximum flood</b> has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in 2005.</p> <p>Note—  The probable maximum flood is the largest flood that could conceivably occur at a particular location, usually estimated from probable maximum precipitation.</p>	<ul style="list-style-type: none"> <li>(ii) require the evacuation of people or other safety considerations.</li> </ul> <p>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—</p> <ul style="list-style-type: none"> <li>(a) will not affect the safe occupation and efficient evacuation of people in the event of a flood, and</li> <li>(b) incorporates appropriate measures to manage risk to life in the event of a flood, and</li> <li>(c) will not adversely affect the environment in the event of a flood.</li> </ul> <p>(4) A word or expression used in this clause has the same meaning as it has in the Considering Flooding in Land Use Planning Guideline unless it is otherwise defined in this clause.</p> <p>(5) In this clause—  <b>Considering Flooding in Land Use Planning Guideline</b>—see clause 5.21(5).  <b>flood planning area</b>—see clause 5.21(5).  <b>Floodplain Development Manual</b>—see clause 5.21(5).  <b>probable maximum flood</b> has the same meaning as it has in the Floodplain Development Manual.  <b>sensitive and hazardous development</b> means development for the following purposes—</p> <ul style="list-style-type: none"> <li>(a) [list land uses]</li> </ul> <p><b>Direction— Only the following land uses are permitted</b> to be included in the list—</p> <ul style="list-style-type: none"> <li>(a) boarding houses,</li> <li>(b) caravan parks,</li> <li>(c) correctional centres,</li> <li>(d) early education and care facilities,</li> <li>(e) eco-tourist facilities,</li> </ul>



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6.4 Floodplain risk management (existing)	6.4 Special flood considerations [optional]
	<ul style="list-style-type: none"> <li>(f) educational establishments,</li> <li>(g) emergency services facilities,</li> <li>(h) group homes,</li> <li>(i) hazardous industries,</li> <li>(j) hazardous storage establishments,</li> <li>(k) hospitals,</li> <li>(l) hostels,</li> <li>(m) information and education facilities,</li> <li>(n) respite day care centres,</li> <li>(o) seniors housing,</li> <li>(p) sewerage systems,</li> <li>(q) tourist and visitor accommodation,</li> <li>(r) water supply systems.</li> </ul>

## 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

## Legal/Statutory/Policy Considerations

The information presented in this report is for noting only.

**Financial Considerations**

Not applicable.

**Consultation and Engagement**

- 5 Internal consultation undertaken with flood planning staff; external consultation with other Northern Rivers councils.

**Report No. 13.20 Request for Owners Consent -  
"Bewilderness" - Cavanbah Centre**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Jess Gilmore, Events & Economy Team Leader  
Sharyn French, Manager Environmental and Economic  
Planning

**File No:** I2021/1134

**Summary:**

An unsolicited proposal has been received for a commercial activity to be located on the Southern Carpark of The Cavanbah Centre for six months, from late-2021 to mid-2022.

The proposal is described as: 'Bewilderness – a temporary space, consisting of a geodesic dome and ancillary structures, which will house 360-degree immersive film experiences and possibly other wellness activities such as yoga, talks and fund-raising events'.

This proposal will be assessed via two pathways:

1. Unsolicited Proposal: the application will be assessed and processed in accordance with Council's adopted Supporting Partnerships Policy, and Partnership Proposal Guidelines.
2. Development Application: the proposal requires a development application, which will be assessed in accordance with Council's development assessment process and public notification requirements.

The proponent has requested land owners consent to lodge the development application so that both assessments can run concurrently. Granting land owners consent to enable lodgement of a development application does in no way imply the assessment will be favourable.

There are a number of considerations around the proposed location for this activity at the Cavanbah Centre. These are outlined in this report and will be considered in the assessment processes along with other matters.

The purpose of this report is to request land owners consent to lodge the development application. Note, the unsolicited proposal will be the subject of a separate and future report to Council.

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**RECOMMENDATION:**

**That Council:**

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1. Note that an unsolicited proposal has been received for a commercial activity, *'Bewilderness'*, on part of The Cavanbah Centre carpark, and that this application will be managed and assessed in accordance with Council's adopted Supporting Partnerships Policy, and Council's Partnership Proposal Guidelines.
2. Grant land owners consent for the proponent to lodge a development application for the proposed commercial activity, *'Bewilderness'*, noting that the development application will follow Council's assessment process and public notification requirements.

## Report

An application has been received from Bewilderness Pty Ltd for use of Council land for a commercial activity to be located on the southern carpark of the Cavanbah Centre (Cav) for six months, from late-2021 to mid-2022. The project description is a ‘temporary space, consisting of a geodesic dome and ancillary structures, which will house 360-degree immersive film experiences and possibly other wellness activities such as yoga, talks and fundraising events.’

A meeting between the applicant and staff was held to determine the assessment pathway and identify potential areas of concern.

Assessment pathway:

1. Confirm activity is permitted under Cavanbah Centre Plan of Management (complete)
2. Request Owner’s Consent from Council to lodge a DA and assess application.
3. Assess and process the Unsolicited Proposal in accordance with Council’s adopted [Supporting Partnerships Policy](#), and [Partnership Proposal Guidelines](#).

## Key issues

### Byron Farmers Market location

Council is also considering a separate report at this meeting on extending the farmers market at the Cavanbah Centre until such time they can be returned to the Butler Street site. The proposed location of Bewilderness at the Cavanbah Centre is for a space that is currently occupied by the existing farmers market lease. Whilst Council’s planning has been for the farmers markets to relocate to Butler Street, unresolved environmental issues on this site mean that the markets will need to stay longer at the Cavanbah Centre. The security of around 80 businesses that the farmers market supports takes priority with their continued occupation at the Cavanbah Centre until they can relocate.

The Bewilderness applicant advised they have held discussions with the farmers market about both activities co-locating on the site and the farmers market are receptive to this. The applicant has also advised that if at any time, such as the DA stage, the farmers market oppose the Bewilderness activity they will withdraw their application.

Co-location on the site is possible and discussions between Byron Farmers Market, Bewilderness, and Council will continue as the application is assessed.

### Cavanbah Centre operations – considerations

The following matters will be addressed as part of the DA and unsolicited proposal assessment process:

- Potential for impact on Centre’s ability to accept larger bookings if car parking is reduced due to the footprint of the activity. Further, potential impact on Centre bookings if the proposal is in direct competition with the Centre as an event space.

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- Access to return and earn container deposit area, and any contractual obligations relating to access.
- Access to the criterion track for existing users and user groups.
- Availability and access to the Centre if required as Emergency Evacuation Facility.
- 5 • Availability and access to the Centre is required for emergency COVID-19 testing facilities.
- Increased wear and tear on car park areas, and additional costs to Council to maintain higher volumes of access to power, water and lighting.
- 10 • Waste management, provision of additional toilets and or cleaning of existing amenities, fencing, responsible service of alcohol, security, signage and traffic management impacts on Ewingsdale Road. These will be addressed as part of the DA / unsolicited proposal process.

#### Next steps

- 15 If owners' consent is granted and a DA lodge, the application will be assessed in accordance with Council's DA assessment process.

The Unsolicited Proposal will be assessed in accordance with Council's Policy and Guidelines.

#### Strategic Considerations

#### 20 Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.1	Support and encourage our vibrant culture and creativity	2.1.1	Support a range of inclusive events that encourage broad community participation and promote social inclusion	2.1.1.1	Support innovative and flexible delivery of community events and initiatives

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Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.1	Support and encourage our vibrant culture and creativity	2.1.7	Support range of existing, emerging and major events	2.1.7.1	Continue to support event organisers in the delivery of a range of events
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.3	Provide accessible, local community spaces and facilities	2.3.7	Deliver Open Space and Recreational services in line with Community Solutions Panel values (SP)	2.3.7.1	Operation of Cavanbah Centre and sports fields and delivery of adopted capital works programs
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.1	Assess and determine development applications
Community Objective 4: We manage growth and change responsibly	4.3	Promote and support local business development, education and employment opportunities	4.3.1	Facilitate and support sustainable development of our business community	4.3.1.2	Continue to strengthen partnerships between Council and the business community through the Strategic Business Panel and Business Roundtable

Community Objective 4: We manage growth and change responsibly	4.4	Support tourism and events that reflect our culture and lifestyle	4.4.1	Build a tourism industry that delivers local and regional benefits in line with the community's values	4.4.1.2	Continue to lead, build and strengthen strategic tourism partnerships
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### **Legal/Statutory/Policy Considerations**

The following legislation relates to the Supporting Partnerships Policy, and as such are relevant considerations in moving forward:

*The Local Government Amendment (Public Private Partnerships) Act 2004*

5 *The Local Government (General) Regulation 2005*

*The Local Government Act 1993, section 47*

Council's *Supporting Partnerships Policy (2019)* applies to the unsolicited proposal. This policy refers to the *Partnerships Proposals Guidelines* for the process to review unsolicited proposals.

### **10 Financial Considerations**

Funded by applicant.

### **Consultation and Engagement**

There will be opportunities for consultation and engagement as part of both the development application process, and the unsolicited proposal process.



## Report No. 13.21 Housing above Council owned Car Parks

**Directorate:** Sustainable Environment and Economy

**Report Author:** Kylie Grainey, Business Improvement Officer

**File No:** I2021/1145

### 5 Summary:

Council considered and supported a Mayoral Minute on 27 February 2020 give in principle support to establishing affordable housing on Council owned car parks.

Due to COVID-19 restrictions the scope of the resolution was changed to an online expression of interest.

- 10 No formal interest was received through the online submission process, although there were several informal discussions held with registered housing providers. It is recommended that these discussions continue.

15

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### RECOMMENDATION:

1. That Council re-confirms the in-principle support to facilitating the establishment of diverse and affordable housing on suitable Council owned car parks.
- 20 2. That should discussions with interested housing providers continue, the outcomes be reported to Council, to determine if the project/s have merit and can proceed.

25

## Report

Council considered a [Mayoral Minute](#) (8.1) on 27 February 2020 to support housing above council owned car parks. It was resolved that Council:

- 5 1. Support, in principle, facilitating the establishment of diverse, lower cost, and accessible housing on Council owned carparks, without decreasing the current number of available car parking spaces and having regard to the need to avoid negative impact on recent investment in emissions reduction capability.
- 10 2. Extend an invitation to housing providers to a preliminary session to ascertain requirements, possibilities, and challenges for establishing housing above Council carparks, and that:
  - 15 a) This session is to be a 'without prejudice' discussion prior to any activation of a more formal EOI process.
  - 15 b) Council provides for internet-based attendance.
3. Prior to this meeting, create a list of possible sites for discussion and consideration.

20 Due to COVID-19 and in discussion with the Mayor, the resolution was delayed and re-scoped to invite registered housing providers or charitable organisations to submit a five-minute video pitching ideas or examples for a mixture of housing types above Council owned car parks.

25 Following submission of the video, Council staff were to identify possible sites for discussion and consideration, and to investigate the legalities for leasing space above Council owned car parks. Any other planning, legal or public interest matters pertinent to the suitability of the car parks being developed would also be explored by staff at that time.

The Expression of Interest was published on Council's website and sent to 15 registered housing providers within NSW. While there was some interest expressed from local providers, no formal submissions were received.

30 Council is currently pursuing several other [Affordable Housing policies and initiatives](#) such as the Affordable Housing Contributions Policy and Procedure, SEPP 70 Affordable Housing Contribution Scheme and the establishment of a community trust.

35 It is recommended that 'in-principle support' to housing above Council owned car parks be re-confirmed, and discussions continue with interested parties should they wish to pursue this type of development. As part of these discussions' identification of suitable sites and investigation of the legalities of leasing air space above Council owned car parks and other pertinent matters will be undertaken.

## **Strategic Considerations**

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

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
Community Objective 4: We manage growth and change responsibly	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.2	Prepare a report on deliberative development models to facilitate the delivery of accessible housing

### **Recent Resolutions**

- 21-062
- 21-065
- 21-123 Housing Trust

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

Not applicable to this report.

### **Financial Considerations**

Not applicable to this report.

### **Consultation and Engagement**

Not applicable to this report.

## Report No. 13.22 Development Assessment eSymposium

**Directorate:** Sustainable Environment and Economy

**Report Author:** Kylie Grainey, Business Improvement Officer

**File No:** I2021/1147

### 5 Summary:

Council resolved **(19-679)** to hold a Development Assessment Symposium, inviting participants involved in the submission of large or small development applications to provide feedback on their experiences.

10 Due to COVID-19 restrictions the scope of the resolution was changed to an online Development Assessment eSymposium.

This report summarises the feedback received.

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### 15 RECOMMENDATION:

1. That Council notes the submissions received via the Development Assessment eSymposium.
2. That a development assessment feedback form be developed for inclusion on Council's website, with links to development related correspondence to collect  
20 feedback from applicants and the community on their experiences for review by staff as part of an internal continuing improvement process.
3. That development assessment related questions be included in the bi-annual Community Survey.
4. That issues raised in relation to flooding and drainage be referred to  
25 Infrastructure Services for consideration and response.

### Attachments:

- 30 1 Confidential - Project Detailed Report Development Assessment ESymposium, E2021/93132

## **Report**

Council resolved (19-679) on 12 December 2021 through a Mayoral Minute to hold a Development Assessment Symposium in the first quarter of 2020.

- 5 Due to COVID-19 and restrictions around group meetings, it was moved to an online Development Assessment eSymposium forum.

The eSymposium was hosted on Council's [Your Say](#) page and gave opportunity for feedback through surveys (development assessment or building certification), a Guest Book or an Ideas Board that could generate community discussions. It has been open since late 2020.

- 10 The industry and community were invited to submit feedback on their development assessment through targeted eNewsletters and social media.

## **Surveys**

- 15 There were two Development Application Assessment surveys submitted on the Development Assessment survey. There were no surveys submitted in relation to Building Certification.

## **Guest Book**

Issues raised on the Guest Book are outlined below:

DA Tracker issues	<p>Contact was made with the user and advice given on how to navigate and use the DA Tracker.</p> <p>It was found the issue was with an unsupported web browser.</p> <p>Where there is feedback on the use of the DA Tracker, the user is contacted and assisted where necessary.</p>
Building Height Plane rules	<p>The Building Certifier is responsible for identifying breaches during inspections.</p> <p>Not knowing the specific circumstances surrounding this application, and whether it was a development or complying development and who was the building certifier make it difficult to comment further..</p>
Ecological assessment requirements	<p>Ecological assessment requirements are complex and site specific.</p> <p>Ensuring Vegetation Management Plans are robust and</p>

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	<p>approved prior to Construction Certificate stage provides surety that the requirements are met prior to construction commencing.</p> <p>The comments around the timeliness of assessment are noted and will be addressed in the formulation of a new development assessment procedure manual.</p>
Relevance of development consent conditions.	<p>Development consent conditions are being reviewed later in the year with the introduction of model conditions by the Department of Industry and Environment.</p> <p>Comments are noted and will be considered as part of this review.</p>
Requirements for certain works	<p>As stated above, consent conditions are being reviewed, including the requirements around at what stage works need to be completed or other requirements need to be met.</p> <p>The necessity to have certain works or items submitted at construction certificate stage provides confidence that that they will be carried out as expected.</p> <p>An example of this is the registration of an easement at construction certificate stage where works are proposed close to underground infrastructure in accordance with the <a href="#">Building in the Vicinity of Underground Infrastructure Policy</a>.</p>
Accuracy of the DA Tracker	<p>Noted. The accuracy of the application tracker is important.</p> <p>Changes to the referral assessment processes should improve this issue.</p>
External referrals on the DA Tracker	<p>Now that all applications are submitted using the NSW Planning Portal, including Concurrence and Referral (CNR) to external bodies reliance on the Application Tracker should be reduced.</p> <p>External referrals noted on the DA Tracker is an internal administrative process.</p>

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Flood level certificates	<p>It is a requirement of Clause 6 <a href="#">DCP 2014 Chapter C2: Areas Affected by Flood</a> that flooding is addressed at DA lodgement stage.</p> <p>Flood information is available by purchasing a Flood Information Certificate prior to submitting the development application.</p> <p>Flood Information Certificates are a 'full cost recovery' fee within Council's Fees &amp; Charges.</p>
DCP Amendments and savings provisions	<p>DCP 2014 includes a statement "It is the responsibility of persons submitting a development application to ensure that the proposal is consistent with the current version of this DCP".</p> <p>Typically, DCPs do not include savings provisions.</p> <p>Comments are noted and will be considered as part of a future review of the DCP.</p>
Requests for further information.	<p>Requests for further information are generated on an as-needs basis.</p>
DA timelines	<p>Applications are considered formally lodged once payment has been made. DAs are reviewed for completeness and fees invoiced prior to this as provided by the functionality of the NSW Planning Portal.</p> <p>Assessment timeframes are stopped in accordance with 109 of the Environmental Planning and Assessment Act and restarted once additional information is received.</p> <p>Clause 102 of the Environment and Assessment Regulation 2000 provides a 14-day period between determination and issuing of a determination notice. There are certain administrative functions that need to occur once an application is determined (ie. signed by delegated officer or determination made by Council).</p>
Environmental Health Officer Referral process	<p>Noted.</p> <p>The Environmental Health referral process is currently under review to improve performance and customer service levels.</p>

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Local Traffic Committee referral process	<p>The Local Traffic Committee referral process is a regulatory process and outside Council's delegation.</p> <p>Transport for NSW (TfNSW) is legislated as the organisation responsible for the control of traffic on all roads in New South Wales. Traffic is controlled by the installation of prescribed traffic control devices, such as regulatory signs or traffic control facilities.</p> <p>TfNSW delegates certain aspects of the control of traffic on Regional and Local Roads to the Councils of Local Government areas while TfNSW continues to manage State Roads. The Local Traffic committee is a requirement of the delegation process. The Local Traffic Committee meeting schedule is determined by Council.</p> <p>The Local Traffic Committee (LTC) has no decision-making powers and is primarily a technical review committee. It only advises the Council on matters for which the Council has delegated authority, being certain prescribed traffic control devices and traffic control facilities.</p> <p>The Council must refer all traffic related matters to the LTC prior to exercising its delegated functions. Matters related to State Roads or functions that have not been delegated to the elected Council must be referred directly to Roads and Maritime Services or relevant organisation. Such matters must not be referred to the LTC.</p> <p>Council is not bound by the advice given by its LTC. However, if Council does wish to act contrary to the unanimous advice of the LTC or when the advice is not unanimous, it must notify Roads and Maritime Services &amp; the NSW Police and wait 14 days before proceeding.</p>
External mapping	<p>Noted, the information on the external facing GIS is being updated regularly.</p> <p>If there is other information that the community would like to see, please forward it to Council.</p>
Informal GIPA applications	<p>Noted. Certain information as it relates to development applications is 'open access information'. Council pro-actively releases some of this information on the DA Tracker.</p>



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	<p>Other information requires an application using the <a href="#">Informal Access to information</a> as it has not either previously been uploaded or it is considered 'not in the public interest' to have it displayed (ie. submissions).</p>
Consent conditions	<p>See above comments in relation to consent conditions.</p>
Planner contact time	<p>Noted. The reduced timeframe is to allow staff time to be able to carry out assessments and site inspections.</p> <p>Staff should be available during the noted times. It maybe they are returning calls or have meetings with other applicants given then high workload.</p>
Customer Service	<p>Noted. Council's Customer Service Standards require phone calls and emails to be returned.</p>
Delegations of authority	<p>Delegations to staff are determined by council.</p> <p>Decision making under delegation is a matter for the relevant staff member, who may due to the type of application or its complexity need to defer to higher management for advice before making a decision. This is an acceptable and reasonable approach to any planning assessment process.</p>
Staff attitude and perceptions	<p>Planners are under constant demand given the emotional and financial pressures attached to development of any size, from both applicants and the wider community.</p> <p>Currently some planners are assessing over 60 development applications, this is way above the 25 suggested in the Department of Planning Best Practice Guide.</p> <p>There may be a perception of oversight or over-zealous attitudes, but these neither common nor deliberate.</p> <p>Planners aim to do their best under the high-pressure environment of development planning in the Byron Shire. Planning staff over the past 12 months have also received letters of appreciation for the work and effect put in on various applications.</p>

<p>Flooding and drainage in Ocean Shores</p>	<p>We received several comments in relation to flooding and drainage in Ocean Shores in both the Guest Book and the Ideas Board.</p> <p>Flooding and drainage is assessed as part of the development application process in accordance with current regulations, including <a href="#">DCP 2014 Chapter C2 – Areas Affected by Flood</a>, <a href="#">Comprehensive Guidelines for Stormwater Management</a> and relevant <a href="#">Floodplain Management Plans</a>.</p> <p>Existing drainage infrastructure does not form part of the Development Assessment eSymposium. These comments will be referred to Councils Infrastructure Services division for consideration.</p>
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### **Ideas Board**

As mentioned above, existing drainage infrastructure does not form part of the Development Assessment eSymposium. These comments will be referred to Councils Infrastructure Services division for consideration.

## **5 Other development assessment issues**

There are other issues outside of those raised in the Development Assessment eSymposium that affect the community's perception of development assessment process. This includes perception of applicants and those that may oppose or question certain developments.

- 10 There has been a sharp increase in the number of development applications received over the 12-month period to the 30 June 2021. This has placed pressure on Council's ability to meet the specified timeframes and expectations.
  - Between 1 July 2019 and 30 June 2020 there were 623 DAs received (plus 243 modifications)
- 15 • Between 1 July 2020 and 30 June 2021 there were 722 DAs received (plus 240 modifications)

This increase may be attributed to a number of reasons, including:

1. **Property market:** As with other regional areas has increased exponentially post-COVID. Anecdotally, many buyers were from Sydney and Melbourne who were required to work from home. Byron Shire is located between Coolangatta and Ballina airports and makes a feasible option when looking to relocate from the city with disposal income for major renovations or developments

In addition to this, the inability to travel freely, both nationally and internationally has left people with money they may not have had, to spend on development and renovations.

2. **Government incentives:** The Federal Government introduced HomeBuilder in June 2020 to encourage the commencement of new home builds and renovations.

Since the introduction there have been a number of changes and extensions to increase take-up and assist the building industry in meeting the timeframes. This included extending the construction commencement timeframe from three to 18 months. This is likely to have attributed to increasing the number of applications Council has received.

3. **Staffing:** As mentioned above, Council has seen a sharp increase in development application numbers and the staff responsible for assessing these applications are under pressure.

Additional resources have been sought but not secured to assist in assessing the increased application numbers. This negatively impacts the applicants because assessments are not as timely as they would expect.

Although there has been an increase in development applications and other external pressures, development assessment timeframes for 2020/21 remain steady:

- DAs received: 962
- DAs determined 806
- Average time to determine a DA – 59 days
- Median time to determine a DA – 35 days

These timeframes are well within acceptable assessment periods given the number of applications received, the community interest and environmental constraints.

### Recommendations

Council has been continually working on improving development assessment processes over the last few years. The Development Assessment eSymposium has raised additional areas of improvement that will be considered.

It is recommended that lines of communication between the community and Council in relation to development assessment are continued by providing means to report feedback on an ongoing basis through a targeted feedback process and the inclusion of development assessment specific questions in the bi-annual Community Survey.

**Report No. 13.23    Update Resolution 21-062 Council's role in Housing Delivery and Resolution 21-065 Byron Shire's Key Workers Issue Paper**

**Directorate:** Sustainable Environment and Economy

5    **Report Author:** Shannon Burt, Director Sustainable Environment and Economy  
Natalie Hancock, Senior Planner

**File No:** I2021/769

**Summary:**

Council at the Planning Meeting on 11 March 2021 considered two reports:

10    Report No. 13.4 Council's role in Housing Delivery and Report 13.3 Byron Shire Key Workers Issue Paper. The following was resolved respectively:

**Res 21-062**

That Council:

1. Note the staff report on Council's role in Housing.
- 15    2. Request staff to further investigate the Community Land Trust, Live-Work and Restricted Purchase models to see how they can be applied to Council owned land and developments including contributions under a SEPP 70 Affordable Housing Contribution Scheme.
- 20    3. Receive a report by or before mid-year on the findings of 2 with recommendations on the appropriate next steps for application and implementation of the preferred model/s to Council land and developments.

**Res 21-065**

- 25    1. That Council receives and notes the staff report on 'Byron Shire Key Workers Issues Paper'.
2. That Council requests staff to:
  - a) Invite the Hon. Melinda Pavey, MP Minister for Water, Property and Housing, and the Hon. Rob Stokes, MP Minister for Planning and Public Spaces to Byron Shire to:  
30    • discuss key worker housing stress;  
• visit key council project sites; and

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- discuss the potential for state government grant funding to support infrastructure delivery needed to facilitate local affordable and diverse housing initiatives already commenced in Byron Shire.

5        b) Seek interest from other northern rivers councils about undertaking a case study of local employer/s facing attraction/retention challenges due to housing unaffordability. This study to support point d.

10       c) Seek cross council collaboration from other northern rivers councils to identify innovative solutions to regional housing affordability challenges that go beyond the current LGA boundaries. These solutions to support point d and form the basis of pilot projects for the region.

15       d) Advocate for Federal and State Government to change the policy and regulatory setting to facilitate investment through to councils undertaking development. This could include councils directly facilitating development through planning, providing land, and financial levers such as subsidies and private public partnerships, thereby providing the private sector with the certainty that it needs to invest confidently in the region.

3.      That Council receives an update report on 2 a-d at the Ordinary June Council meeting.

20      Following from these reports Council at the 8 April Planning Meeting considered Report 13.3 on the creation of a Byron Shire Council Community Land Trust where it resolved **Res 21-123** to 'agree in principle to the establishment of a Land Trust as a Council legal entity to hold land for the development of local housing that meets the needs of the community'.

This report presents:

- 25      • the findings of an investigation into Live-Work and Restricted Purchase models and how these can be applied to Council owned land and developments
- an update on **Res 21-065** Item 2 b, c & d. Item a the invitation to various Ministers to come to Byron Shire remains outstanding due ongoing and ever changing restrictions from COVID.
- 30      • a copy of an application made to the Minister for Local Government to form an affordable housing land holding entity (Attachment 1).

35      It seeks Council support for staff to collaborate as part of the Housing Working Subgroup (HWG) of the Northern Rivers Planners Group for Byron, Ballina, Lismore, Kyogle, Richmond Valley and Tweed Councils to prepare and lodge a submission to the Minister's Regional housing taskforce.

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#### **RECOMMENDATION:**

1. That Council notes the staff report on Live-Work and Restricted Purchase housing delivery models and how they can be applied to Council owned land and developments.
- 5 2. That Council supports the work of the Housing Working Subgroup (HWG) of the Northern Rivers Planners Group for Byron, Ballina, Lismore, Kyogle, Richmond Valley and Tweed Councils on advocacy and collaboration on innovative solutions to housing affordability.

#### **Attachments:**

10

- 1 Special Disclosure of Pecuniary Interest Annexure for matters relating to environmental planning instruments., E2012/2815 

## Report

### Background

Council at the Planning Meeting on 11 March 2021 considered two reports: Report No. 13.4 Council's role in Housing Delivery and Report 13.3 Byron Shire Key Workers Issue Paper and resolved pertinent to this report:

**Res 21-062 - 2.** *a report by or before mid-year on the findings of 2 with recommendations on the appropriate next steps for application and implementation of the preferred model/s to Council land and developments.*

**Res 21-065** measures to progress advocacy and collaboration with other Northern Rivers Council to identify innovative solutions to regional housing affordability challenges that go beyond the current LGA boundaries.

Following from these reports Council at the 8 April Planning Meeting considered Report 13.3 on the creation of a Byron Shire Council Community Land Trust where it resolved **Res 21-123** to 'agree in principle to the establishment of a Land Trust as a Council legal entity to hold land for the development of local housing that meets the needs of the community'.

In actioning **Res 21- 123** for the Byron Land Limited formation, an application has been submitted by staff as per the Local Government Circular to the Local Government Minister, The Hon. Shelly Hancock for an initial review and feedback to Council prior to a determination. Council awaits a response from the Minister in this regard.

This report presents:

- Live-Work and Restricted Purchase models findings
- an update on **Res 21-065** Item 2 b, c & d.

### Live – Work models

The Live/Work Co Living model is a setup where a building's bedrooms are private, but nearly all other spaces and facilities are communal. In this arrangement, the building operates as modern "dorms for grown-ups".

The Live/Work Co living model continues to move further away from long term commitment with the model evolving from signing a lease to being provided only with a "membership" to provide for a furnished bedroom and common areas. This model is attractive to a young, urban, professional, and mobile population.

Under the umbrella of a Live / Work model is an arrangement where your workspace is combined with your living quarters, so you essentially work from home but with a dedicated section for your office. This model is attractive to kitchen-table start-ups and freelancers.

The model is distinct a shop-top where the residential and commercial activity do not need to be interrelated.

5 The model currently may be applied land with a B4 Zone as mixed commercial and residential activities are permissible with consent.

10 Reforms are underway by the NSW government for the employment zones (i.e. business and industrial zones) and housing diversity. To date it appears no specific definition for live – work models is to be incorporated under these reforms.

15 Under the employment zone reform, a MU – Mixed Use zone is proposed to replace B4 Mixed Use, some B2 Local Centres. This zone is intended to: support a mix of residential, retail, light industry and tourist accommodation; support a genuine mixed-use development rather than one dominant use; and promote activities at ground floor and on street fronts.

20 Under the housing diversity reform consideration has been given to the introduction of a ‘co-living’ definition indicating such developments share many features with traditional boarding houses, such as small private rooms for one or two people and access to communal living areas and other facilities.

In this context it is suggested Council await the NSW government reforms.

### Restricted purchase

25 Price-controlled dwellings can only be resold at a limited cost or can be made available to purchasers on defined incomes.

30 The idea is that Restricted Purchase housing is made available at a discount, usually because a council or state government provides land at a discount rate. Resale of dwellings in this situation is controlled so that the discount remains in perpetuity to future occupants.

35 This model sits within the *supported homeownership* category of the housing spectrum set out in the NSW government [Housing 2041 - NSW Housing Strategy](#) . It should be noted that the Land and Housing Corporation currently offer this model to select tenants.

40 For council, it appears a restrictive covenant created by s88D *Conveyancing Act 1919* may be a mechanism to apply the model. This provision enables a limit to be set on how a property can be used. The restrictions "run with the land," meaning they apply to all future owners of the property, not just the person who owns it when the restriction is adopted.

[CONVEYANCING ACT 1919 - SECT 88D Regulation of use of land held by a prescribed authority \(austlii.edu.au\)](#)

45 One means to deliver on this model, may be for Council to retain certain affordable housing contribution land or its own land as *Restrictive purchase* properties.

Under this model the steps could entail:



1. Council or a Community Housing Provider (CHP) builds the homes
2. homes are available to rent to qualifying tenants (using current systems in place for determining recipients of subsidised housing)
- 5 3. a secure tenant (say after 3 years) of a *Restricted purchase* property owned by Council or a CHP (*Restricted purchase* landlord) has a right to buy the property – potentially using a share equity scheme (as explained below)
4. the *Restricted purchase* property holds a Restricted Purchase covenant
- 10 5. owner can sell it whenever they like but are bound by the covenant restricted purchase terms.

Thereby establishing a pool of affordable housing under the *supported homeownership* category.

- 15 Shared equity schemes are where the home buyer shares the capital cost of purchasing a home with an equity partner (is this case the potentially the *Restricted purchase* landlord). It can allow **lower income homebuyers to buy sooner** as they need a lower initial deposit and have lower ongoing housing costs.
- 20 The link below also provides to a fact sheet (by Cheshire West & Chester Council UK) giving insight as to how this model may operate.  
[what-you-need-to-know-when-buying-an-affordable-home-031018](https://www.cheshirewestandchester.gov.uk/what-you-need-to-know-when-buying-an-affordable-home-031018)  
[cheshirewestandchester.gov.uk](https://www.cheshirewestandchester.gov.uk)
- 25 It is suggested Council await progression of the affordable housing contribution scheme and Lot 22 rezoning prior to progressing further on a feasibility assessment of a Restrictive purchase program.

### Update on Res 21-065 Northern River Councils Housing Working Subgroup

- 30 In actioning Res 20-065, Byron Shire Council planners have joined a Housing Working subgroup (HWG) of the Northern Rivers Planners Group – with Ballina, Lismore, Kyogle, Richmond Valley and Tweed Councils - to support advocacy and collaboration on innovative solutions to housing affordability.

35 The HWG held a workshop on 20 May 2021 to share experiences and broadly map out a path for moving forward with two key lead actions resulting:

- 40 • Scoping paper on Northern River Councils based housing initiatives (co-funded by Byron, Ballina, Lismore, Kyogle and Richmond Valley Councils) to summarise existing conditions, identify common threads across the Local Government Areas and recommend priority actions for follow up. The paper also assists by placing a face to the people/workers in our community being affected by housing supply and cost issues.
- 45 • Participating in a NRJO of Mayors Housing Workshop on 18 June 2021 to introduce the HWG. The Mayors in attendance at the NRJO workshop were generally supportive of the group's work to date.

The NRJO participants also received short presentations from:

- North Coast Community Housing
- Housing Industry Australia on industry supply issues
- Regional NSW Executive Director - Ash Albury
- 5 • Queanbeyan-Palerang Regional Council crown land / skills proposal
- Business NSW – issues overview
- Landcom

### **Next Steps**

- 10 The NRJO workshop was held at the same time of an announcement by the Hon. Rob Stokes, MP Minister for Planning and Public Spaces to establish a taskforce to speed up the delivery of homes in regional NSW, as pressure mounts on housing supply outside major cities. The Taskforce will be consulting local councils, communities, industry, and non-for-profit organisations and provide a set of recommendations in early September
- 15 2021.

Noting this short timeframe, a few Majors in attendance saw an opportunity for the HWG to assist with a joint submission to the taskforce.

- 20 Post the workshop it has been announced Garry Fielding will head the Taskforce and submissions are invited by 27 August. More detail on the Taskforce including the terms of reference and councils role can be found in a separate report on the agenda.

## **Strategic Considerations**

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

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
Community Objective 4: We manage growth and change responsibly	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.2	Prepare a report on deliberative development models to facilitate the delivery of accessible housing

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Community Objective 4: We manage growth and change responsibly	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.3	Progress future use of Lot 22, Mullumbimby Planning Proposal and Plan of Management
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### Recent Resolutions

- 21-062
- 21-065
- 21-123 Housing Trust

### 5 Legal/Statutory/Policy Considerations

Not applicable to this report.

### Financial Considerations

Not applicable to this report.

### Consultation and Engagement

10 Not applicable to this report.

## Report No. 13.24 Responding to our Housing Crisis

**Directorate:** Sustainable Environment and Economy

**Report Author:** Shannon Burt, Director Sustainable Environment and Economy

**File No:** I2021/1176

### 5 Summary:

This report provides Council with an update on some of the current work of staff to respond to our Housing Crisis.

10

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### RECOMMENDATION:

That Council:

15

1. Notes that multiple innovative housing initiatives progressing to address our housing crisis have now been stalled/delayed by the DPIE including Lot 22 Planning Proposal, Tiny Homes Planning Proposal, Short Term Rental Accommodation Planning Proposal and Affordable Housing Contributions Scheme (SEPP 70).

20

2. Notes that Council is still to receive a response from the Office of Local Government on its submission to the Minister for Local Government to create Byron Land Limited.

25

3. Requests the General Manager seek an urgent meeting with the Coordinator General, Planning Delivery and Local Government to discuss 1 and 2.

30

4. Supports the work of staff on the Housing Working Subgroup (HWG) of the Northern Rivers Planners Group that is collaborating to prepare and lodge a submission to the Minister for Planning and Public Spaces Regional Housing taskforce and the Parliamentary Inquiry into Options to improve access to existing and alternate accommodation to address the social housing shortage.

35

5. Due to the short submission periods of 4, is provided with a copy of both submissions once finalised by the HWG.

## Report

### Housing initiatives

5 Since 2016, there have been many resolutions passed by the current Council that have highlighted the need to find a way to address housing availability and affordability in Byron Shire.

10 However, due to the current state planning framework, and the constraints in which local government operates in terms of finance and co-investment options for housing development and its associated infrastructure, progress remains slow on delivery of any of the Council initiated projects.

15 Council has an adopted Residential Strategy and policy framework and has multiple innovative housing initiatives progressing to address our housing crisis, which have now been stalled/delayed by the DPIE. These include Lot 22 Planning Proposal, Tiny Homes Planning Proposal, Short Term Rental Accommodation Planning Proposal and Affordable Housing Contributions Scheme (SEPP 70).

[Housing Affordability Initiatives - Byron Shire Council \(nsw.gov.au\)](https://www.byrongov.au/housing-affordability-initiatives)

20 Just this year, there have been multiple submissions to, and meetings with the DPIE about these projects without resolution; and advocacy direct to various Ministers on same to no avail. This is as disappointing as it is frustrating given the current media coverage on our acute housing stress. Some examples follow:

<https://www.abc.net.au/news/2021-03-01/rental-housing-crisis-in-byron-bay-worsens/13179236>

<https://www.theguardian.com/australia-news/2021/may/29/hollywood-and-homelessness-the-two-sides-of-byron-bay>

25 <https://www.smh.com.au/national/nsw/how-a-perfect-storm-of-covid-19-influencers-and-airbnb-created-byron-bay-s-housing-crisis-20210422-p57lmw.html>

<https://www.abc.net.au/news/2021-04-09/byron-bay-housing-emergency-council-establishes-land-trust/100057680>

30 Housing Affordability Stress Definition: When a household is in the bottom 40% of income distribution and spends more than 30% of household income on rent or mortgage payments, adjusted for household size, they are considered in housing stress. (Australian Housing and Urban Research Institute, 2019)

## BYRON SHIRE SNAPSHOT



- Population 35,773 (ABS ERP 2020)
- 24.5% private rentals
- 73% housing stock detached dwellings
- 3 bedrooms in most dwellings
- Average household size 2.4 persons
- 28% single person households
- Byron Shire LSPS, Byron Residential Strategy, Housing Needs Report

- Projected population by 2036 – 37,950
- Requiring additional 3,150 dwellings
- 74% residents live & work locally
- 15% residents are in housing stress
- Median weekly household income - \$1,150
- Rents increased by 26.4% in last year to \$885 p/w (higher than the median rent in many Sydney suburbs)
- Median house price increases in 2020
  - Byron Bay 37% to \$1.68 million
  - Bangalow 24 % to \$1.175 million
  - Mullumbimby 16.6% to \$830,000
- Managing 4.5 million visitor nights annually



(Source: Landcom)

### 5 Byron Land Limited

In addition to the above, Council at the 8 April Planning Meeting considered Report 13.3 on the creation of a Byron Shire Council Community Land Trust where it resolved Res 21-123 to 'agree in principle to the establishment of a Land Trust as a Council legal entity to hold land for the development of local housing that meets the needs of the community'.

- 10 In actioning Res 21- 123, an application has been submitted by staff as per the Local Government Circular to the Local Government Minister, The Hon. Shelly Hancock for initial

review and feedback to Council prior to a determination. Council awaits a response from the Minister in this regard.

### Housing Working subgroup (HWG)

- 5 As discussed in a separate report on the agenda, in actioning Res 20-066, Byron Shire Council planners have joined a Housing Working subgroup (HWG) of the Northern Rivers Planners Group – with Ballina, Lismore, Kyogle, Richmond Valley and Tweed Councils - to support advocacy and collaboration on innovative solutions to housing affordability.

- 10 The HWG is preparing a Housing Scoping report and submissions to the Regional Housing Taskforce and Inquiry into options to improve access to existing and alternate accommodation to address the social housing shortage, discussed below.

### Regional Housing Taskforce

- 15 The Minister for Planning and Public Spaces has announced a Regional Housing Taskforce *“to examine the obstacles in the planning system preventing new housing being brought into the market in the regions, and to identify solutions that will boost supply and encourage greater housing choice”*. This task force is to be headed by a new planning expert with work to commence shortly.

Full details on the Taskforce can be found here: [Regional Housing Taskforce | Planning Portal - Department of Planning and Environment \(nsw.gov.au\)](https://www.planning.nsw.gov.au/regional-housing-taskforce)

- 20 The taskforce membership at this time is limited to senior representatives from relevant NSW Government agencies including the Department of Planning, Industry and Environment and the Department of Regional NSW (DRNSW)

The meetings of the Taskforce may also be attended by non-members, to be determined by way of invitation from the Chair.

- 25 A series of meetings will be scheduled in key locations across regional NSW to allow key stakeholders such as local government, industry, and the community to inform the Taskforce’s deliberation and consideration of recommendations.

**A call for submissions** has been made to inform the recommendations to Government about changes to the planning system that will assist in delivering appropriate housing in regional NSW **until 27th August 2021**.

- 30 The Taskforce is to submit a report outlining its findings into the investigation of planning barriers to regional housing delivery to the Minister for Planning and Public Spaces in September 2021, followed by a second report with recommendations to address identified barriers to the delivery of regional housing in October 2021.

- 35 Following delivery of the reports, the Taskforce will cease to operate unless the purpose and scope of the Taskforce is revised or expanded in consultation with, or as requested by, the Minister.

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### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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This report to Council seeks support for the Housing Working (HWG) of the Northern Rivers Planners Group to collaborate in lodging a submission to the Taskforce.

The Taskforce's scope extends to investigating planning barriers and developing recommendations to address regional housing issues

- 5 That said, the following provides Council with an indication of key messages to be conveyed in a submission.

Key messages:

- Housing Crisis declaration by Byron, Tweed, Lismore, Coffs Harbour LGAs
- The Councils for Byron, Ballina, Lismore, Kyogle, Richmond Valley and Tweed have formed a Housing Working Subgroup (HWG) of the Northern Rivers Planners Group and are ready and willing to work with the NSW government.
- Federal and state government are falling short in their understanding and support for local governments on housing issues and solutions.
- Whilst the primary responsibility for housing policy and housing funding (particularly social housing) lies with federal and state/territory governments, local governments may play a role in facilitating housing delivery and retaining existing affordable housing.
- Endeavours by local government to be more effective in a local housing response are being directly and indirectly constrained by the federal and state government policy, institutional and funding framework.

Issues	Drivers & Barriers	Solutions currently being explored by Councils & local communities
<ul style="list-style-type: none"><li>• inability for employers to attract and retain key worker (nurses, medical support staff, teachers and child carers, hospitality and retail workers, artists and musicians) due to housing crisis</li><li>• increasing median property prices</li></ul>	<ul style="list-style-type: none"><li>• attractive property investment climate with financial incentives and advantages</li><li>• return of 'ex pats', international and interstate travellers and residents to their homes</li><li>• tree and sea changers</li></ul>	<ul style="list-style-type: none"><li>• Council specific Affordable Housing Development Policy</li><li>• Planning Agreements (for planning proposal and development application)</li><li>• Inclusionary zone provisions (LEP and DCP)</li><li>• Land Banking sunset clause to activate of land development</li></ul>



Issues	Drivers & Barriers	Solutions currently being explored by Councils & local communities
<ul style="list-style-type: none"> <li>• increasing median rents</li> <li>• decreasing private rental vacancies</li> <li>• large deficit in available social housing supply</li> <li>• increasing short term rental accommodation (STRA) use take up by property owners</li> <li>• land supply subject to 'drip release'</li> <li>• land supply subject to land banking</li> <li>• rental supply largely private market driven.</li> </ul>	<ul style="list-style-type: none"> <li>• buying up</li> <li>• part time residents aka FIFO City commuters</li> <li>• status quo of state and commonwealth policy and funding initiatives to incentivise attainable and diverse housing stock</li> <li>• divergent community views on what is, and where affordable housing should be located</li> <li>• local government access to funding to deliver housing and supporting infrastructure.</li> </ul>	<ul style="list-style-type: none"> <li>• Meanwhile Uses (repurposing vacant buildings, interim use of vacant crown and council lands e.g., road reserves, rail corridors for alternate uses such as short term/transitional residential accommodation)</li> <li>• Create a Land Trust entities such as the Byron Shire Land Limited under <b>Res 21-123</b>.</li> <li>• Affordable Housing Contribution Scheme (SEPP 70).</li> </ul>

**Inquiry into options to improve access to existing and alternate accommodation to address the social housing shortage**

A lack of affordable housing is impacting communities right across NSW.

- 5 The Committee on Community Services is conducting an inquiry looking at options to improve access to existing and alternate accommodation to address the social housing shortage.

[Options to improve access to existing and alternate accommodation to address the social housing shortage \(nsw.gov.au\)](https://www.nsw.gov.au/affordable-housing/alternatives-to-social-housing)

This inquiry was self-referred on 25 June 2021 with the following terms of reference (ToR):

- 10 a) options to better support 'meanwhile use' (temporary supportive accommodation), and the current major planning barriers to 'meanwhile use';

- b) options to improve access to existing accommodation to provide community housing;
- c) options for crisis, keyworker and other short-term accommodation models;
- d) barriers to additional supply across NSW, including for smaller non-CHP housing providers;

- 5 e) support for and accountability of registered community housing providers.

**Submissions directly to the inquiry are due by 13 August 2021.**

Staff are currently preparing a submission to the Inquiry to address the above ToR that will talk to the many recent resolutions of Council and the work of the Housing Working Subgroup (HWG) of the Northern Rivers Planners Group.

10 **Key Issues**

In Australia, housing policy has not been the traditional domain of local government. While councils have a strong role in setting and implementing planning controls, they have not typically been involved in broader aspects of housing policy, which has been the responsibility of the Commonwealth and State Governments.

- 15 Commonwealth and State Government legislation and policy directly influence the provision and cost of housing in Byron Shire.

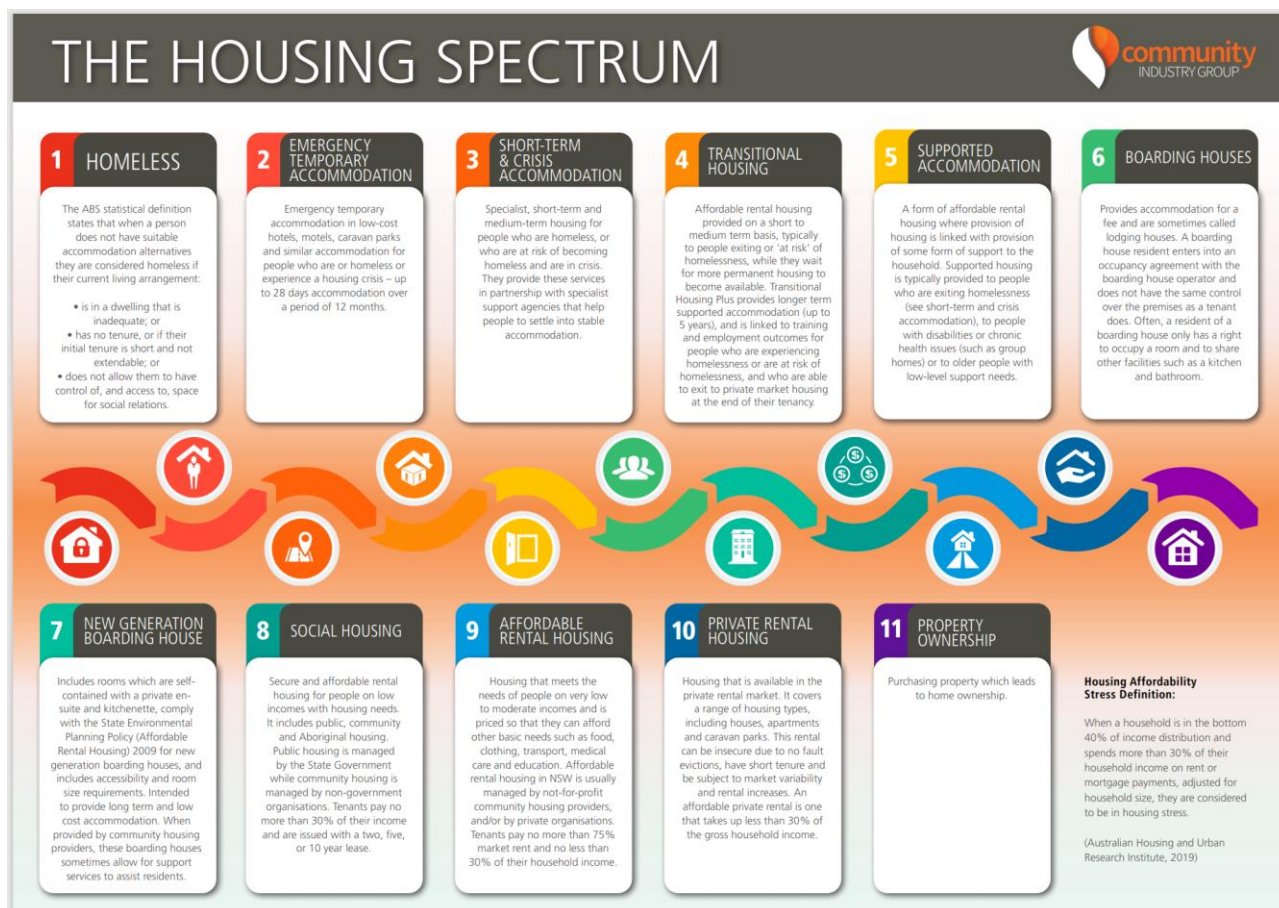
Commonwealth policy has a major influence on housing supply and demand, through the setting of economic policy, taxation policy, pension benefits, immigration levels, and residential aged care, which in turn influences interest rates, income levels and employment.

20

The State Government also sets planning policy, which influences housing provision, through the New South Wales Planning Provisions, including the State Planning Policy Framework and the suite of zones, overlays and other planning controls that are made available to Councils as part of their local environmental plans.

- 25 Typically, Councils have not been responsible for developing housing but given the current housing crisis many like Byron Shire, are investigating possible options with state government entities and community housing providers. The types of housing that Council could have a role in facilitating on its own land are types 9, 10 and 11 in the Spectrum below.

- 30 [The-Housing-Spectrum-Information-Sheet-2020.pdf \(communityindustrygroup.org.au\)](https://communityindustrygroup.org.au/The-Housing-Spectrum-Information-Sheet-2020.pdf)



## NSW Housing Strategy 2041

To respond to the housing crisis, and to assist informed approaches on same, the State Government recently released: NSW housing Strategy 2041 – Action Plan 2020 -22. See link below:

[A Housing Strategy for NSW](#)

The Strategy Action Plan includes actions that look to address issues with the current housing sector and market that need to be resolved in the short, medium, and long term. These are set in in 5 priority areas.

Priority Area 1 – Enabling access to and promoting the use of data and evidence-based decision-making

Priority Area 2 – Providing planning, regulation and guidelines to support the NSW Government housing objectives

Priority Area 3 – Maximising the impact of government-owned land, investment or assets and government-led development projects or funding to achieve the housing objectives

Priority Area 4 – Establishing a research agenda that invests in best practice and new ways of building and living

Priority Area 5 – Working with local governments and communities to achieve the NSW Government housing objectives

The Housing Strategy also emphasises the need to provide the right housing in the right locations for communities and refers to the Housing Spectrum and planning system changes to do so.

The below table summarises the housing types by residents (Spectrum) and the relationship to the planning system and responsible level of government and or agency to deliver. This will be discussed further in the submissions to the Taskforce and Inquiry.

<b>Housing types by resident need</b>	<b>Explanation</b>	<ul style="list-style-type: none"> <li>- <b>Relationship to the ‘planning system’</b></li> <li>- <b>Key responsibility to deliver and or support</b></li> </ul>
<b>Crisis housing</b>	Emergency temporary accommodation factors such as: <ul style="list-style-type: none"> <li>* domestic or family violence situation</li> <li>* has custody of children &amp; homeless</li> <li>* natural disasters <sup>1</sup>.</li> </ul>	Delivery largely outside the planning system  NSW Government Department of Communities and Justice (DCJ)
<b>Social housing</b>	Social housing is secure and affordable rental housing for people on <u>low incomes</u> with housing assistance needs. It includes public, community and Aboriginal housing. <sup>1</sup> .	Delivery largely outside the planning system Fed: National rental assistance State: NSW Govt FACs
<b>Affordable rental housing</b>	Affordable housing is housing that is appropriate for the needs of a range of very low to moderate income households and priced so that these households are also able to meet other basic living costs such as food, clothing, transport, medical care and education. <sup>1</sup> .	Federal: National rental assistance State: NSW Govt FACs Private rental where the tenant’s rent is subsidised
<b>Private rental</b>	Rental accommodation in the private market even if this rent is subsidised or partly refunded. Historical role as a transitional housing sector for households moving into home ownership or social housing to a long-term housing sector for a significant number of Australian households	Delivery effected by planning system – SEPP enabling STRA Private rental market - in the NSW, most private sector tenancies are regulated by the Residential Tenancies Act 2010 (NSW).
<b>Supported home</b>	A type of home ownership that can take a variety of forms and	Delivery largely outside the

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Housing types by resident need	Explanation	<ul style="list-style-type: none"> <li>- Relationship to the 'planning system'</li> <li>- Key responsibility to deliver and or support</li> </ul>
<b>ownership</b>	largely requires innovative financing arrangements to support the buyer to enter the market. Includes (but are not limited to) shared equity arrangements, rent-to-buy models, and co-living arrangements.	<p>planning system</p> <p>The equity partner assists by sharing ownership, usually up to 30% of the property.</p>
<b>Homeownership</b>	<p>Households who own the property in which they usually reside and have either:</p> <ul style="list-style-type: none"> <li>- owner with mortgage</li> <li>- owner without mortgage</li> </ul>	Delivery effected by planning system
<b>Specialist housing</b>	Accommodation designed for unique needs such as housing for people with	Delivery effected by planning system under SEPP
	<ul style="list-style-type: none"> <li>- disability (including group homes)</li> <li>- older people (such as residential care units)</li> </ul>	
	<ul style="list-style-type: none"> <li>- Vanlife (emerging new form not listed but suggest could fit this category)</li> </ul>	Delivery effected by planning system under SEPP

## **Strategic Considerations**

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

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
Community Objective 4: We manage growth and change responsibly	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.1	Prepare an Affordable Housing contribution scheme under SEPP 70 to be incorporated in the local planning framework controls (Action in Residential Strategy)
Community Objective 4: We manage growth and change responsibly	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.2	Prepare a report on deliberative development models to facilitate the delivery of accessible housing
Community Objective 4: We manage growth and change responsibly	4.2	Support housing diversity in appropriate locations across the Shire	4.2.1	Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.3	Progress future use of Lot 22, Mullumbimby Planning Proposal and Plan of Management
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.10	Prepare a Planning Proposal to enable precinct based Short Term Rental Accommodation.

## Recent Resolutions

- 19-152 SEPP 70
- 20-016 *Tiny Homes*
- 5 • 20-021 *STRA*
- 20-365 *AHC scheme*
- 20-069 *EOI Carparks*
- 20-611 *Lot 22*
- 20-686 *Residential Strategy*
- 10 • 21-062 *Role in Housing Delivery*
- 21-066 *Key Workers*
- 21-112 *Housing Crisis*
- 21-123 *Land Trust*

## Legal/Statutory/Policy Considerations

- 15 Various statutory controls at state and local levels apply.

## Financial Considerations

Current and proposed work funded within existing operations budget.

## Consultation and Engagement

- 20 The report is provided to Council and the community to aid understanding of the housing affordability challenges in the Byron Shire.



## **Report No. 13.25 Prohibition on Compliance Levy Changes**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Shannon Burt, Director Sustainable Environment and Economy

**File No:** I2021/1177

### **5 Summary:**

For more than a decade, 29 NSW Councils, including Byron Shire, have imposed a levy charged under Section 608 of the Local Government Act 1993 to correspond with all DA lodgements to provide for adequate resources and staffing for compliance and enforcement duties relating to new and historical developments.

10 On 29 March DPIE updated its web site and notified councils, without any prior consultation or detailed explanation, that it was conducting a review of all compliance levies and fees, having 3 main effects for NSW councils:

- From 1 July 2021, councils will not be able to charge compliance levies, such as those under Section 608 of the LG Act;
- 15 • From 1 July 2021 the EP&A Reg. will be updated to include a new levy structure to recoup some costs of councils having to undertake compliance on Complying Development Breaches, where councils were not the certifying authority; and
- Introduction of new cost notices, and investigation of Orders.

20 In response to this announcement, Byron Shire along with Tweed, Ballina and Lismore councils took immediate advocacy action, through the Northern Rivers Joint Organisation, LGNSW, DPIE policy division, and elected local members of Parliament.

25 As a result, the State Government agreed to defer the cessation of these existing compliance levies until the end of 2021 to enable further discussion with affected councils and their representatives about concerns, and impacts on resources that underpin the council land use building and environmental compliance services, as a result of not being able to levy development.

30 Council was then directly contacted 11 June by the DPIE *“to assist with investigating the design of an equitable mechanism to recover costs associated with compliance investigation under the Environmental Planning and Assessment Act.”*

35 The information sought was to inform *“a future solution that would both address the needs of councils to recover the costs associated with investigation and support the economic productivity of the planning system.”*

40 However, once again, and without further notice or prior consultation, the Environmental Planning and Assessment Amendment (Compliance Fees) Regulation was made on 16 July 2021, with the effect of prohibiting councils from collecting compliance levies after 31 December 2021.



## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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This new Regulation is considered to show a complete disregard for the legitimate concerns expressed by Byron Shire and other councils about ensuring that their compliance services can be adequately resourced now and into the future to meet community needs and expectations.

- 5 It is considered vital that Council joins with other affected councils and LG NSW to drive a campaign of advocacy for change.
- 

#### 10 **RECOMMENDATION:**

**That Council as a matter of urgency:**

- 15 1. Writes to the Minister for Planning and Public Spaces to express Council's extreme disappointment at the lack of genuine consultation with affected councils and their representatives in its recent decision to make the Environmental Planning and Assessment Amendment (Compliance Fees) Regulation 2021, with the effect of prohibiting councils from collecting existing compliance levies after 31 December 2021, noting that Byron Shire Council will now be forced to revise the extent of its current compliance services, much to the detriment of our community and environment, and that this will also restrict Council's capacity to assist State Government compliance agencies in their investigations and enforcement within the Byron Shire;
- 20
- 25 2. Writes to the Chair of the Northern Rivers Joint Organisation seeking urgent collective action among its members to advocate against the latest State Government Regulation on compliance levies; and

Writes to both its State and Federal Members seeking their urgent support and assistance for an immediate review and further pausing of recent State legislation to provide affected councils with additional time to investigate alternative funding services to continue current compliance services.

30

## Report

### Background to Council Compliance Levies

5 For more than a decade, 29 NSW councils, including Byron Shire, have imposed a levy charged under Section 608 of the Local Government Act 1993 to correspond with all DA lodgements to provide for adequate resources and staffing for compliance and enforcement duties relating to new and historical developments.

10 Byron Shire introduced an Environmental Enforcement Levy (EEL) under Section 608 of the Local Government Act 1993 in 2009/10. The charge has consistently been set at 0.1% of the total cost of a DA.

This has generated sufficient income to fund:

- two full time permanent staff (and the occasional specialist consultant/s),
- assist with specialist technical reports for court and associated legal fees associated with enforcement, and
- 15 • services related to the monitoring and management of holiday letting related land-use complaints.

20 In 2020, Council received approximately 1,000 complaints related to building and development works all varying in complexity and severity, supported by a risk-based Compliance Policy. See Report No. 13.14 Compliance Priorities Program Report 2020 in link below.

[Agenda of Ordinary Meeting - Thursday, 25 February 2021 \(infocouncil.biz\)](https://infocouncil.biz)

25 As such the need to continue resourcing the enforcement team at its current FTE is critical considering growing community expectations for Council to act in respect of illegal activity and the expertise needed to do this work. This is unlikely to be possible with this Regulation change.

### DPIE Advice on Compliance Levies and Funding Review

On 29 March DPIE updated its web site and notified councils, without any prior consultation or detailed explanation, that it was conducting a review of all compliance levies and fees, having 3 main effects for NSW councils:

- 30 • From 1 July 2021, councils will not be able to charge compliance levies, such as those under Section 608 of the LG Act;
- From 1 July 2021 the EP&A Reg. will be updated to include a new levy structure to recoup some costs of councils having to undertake compliance on Complying Development Breaches, where Councils were not the certifying authority; and
- 35 • Introduction of new cost notices, and investigation of Orders.

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.25

In response to this announcement, Byron Shire along with Tweed, Ballina and Lismore councils took immediate advocacy action, through the Northern Rivers Joint Organisation, LGNSW, DPIE policy division and elected local members of Parliament.

- 5 As a result, the State Government agreed to defer the cessation of these existing compliance levies until the end of 2021 to enable further discussion with affected councils and their representatives about concerns, and impacts on resources that underpin the council land use building and environmental compliance services, as a result of not being able to levy development.
- 10 Council was then directly contacted 11 June by the DPIE *“to assist with investigating the design of an equitable mechanism to recover costs associated with compliance investigation under the Environmental Planning and Assessment Act.”*
- 15 The information sought was to inform *“a future solution that would both address the needs of councils to recover the costs associated with investigation and support the economic productivity of the planning system.”*

- 20 However, once again and without further notice or prior consultation, the Environmental Planning and Assessment Amendment (Compliance Fees) Regulation was made on 16 July 2021, with the effect of prohibiting councils from collecting compliance levies after 31 December 2021.

- 25 [Environmental Planning and Assessment Amendment \(Compliance Fees\) Regulation 2021](#)

- Of note, this regulation was made in the same month the Government moved its own legislation to introduce ‘compliance levies’ for the NSW Building Commissioners Office. Further, and compounding this loss, councils will be required to collect the new compliance levies for the Building Commissioner’s Office and remit the funds.
- 30

- This new Regulation is considered to show a complete disregard for the legitimate concerns expressed by Byron Shire and other councils about ensuring that compliance services can be adequately resourced now and into the future to meet community needs and expectations.
- 35

Consequently, and should no other alternate funding be made available by DPIE, Council will be forced to review its current enforcement service delivery levels, and compliance priority program to the detriment of our community and environment.

### Key issues

- 40 The removal of the ability to use compliance levies will be a major blow to Council’s compliance resourcing. Effectively, Council would have to decide whether to cease the employment of 2 very good, well trained enforcement Officers, which would result in a major reduction on Council’s capacity to service community requests or to fund the roles to the detriment of other areas of Council which may not be feasible. This in turn is likely to
- 45 result in more referrals of matters to State Agencies such as DPIE, EPA, Crown Land, DPI (Ag), Fisheries, LLS, or the local State Members of Parliament.

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.25

The demand for such services is likely to increase further because of the State Government's new emerging planning legislation and policy, relating to Short Term Rental Accommodation, Agritourism and increased Exempt and Complying Development provisions for Commercial and Industrial Development. New building certification  
5 legislation will also generate increased community expectations for Council oversight.

This notice also comes at a time of the year where most councils have finalised their budgets for the upcoming financial year, with little ability to reconcile such a funding impact when it takes effect mid - financial year.

10 It also highlighted a much broader concern about the DPIE's apparent lack of understanding and appreciation of the huge resource burden that all councils face in servicing both development assessment and compliance activities, without any legislative means for cost recovery.

15 For example, in terms of development assessment, the statutory lodgement fees under the EP&A Act have not increased since 2000, not even allowing any CPI rate increases, even though the NSW Planning system has become more complex and litigious. This deficit in cost recovery is further hampered by the State Government's longstanding rate and developer contribution capping.

20 The DPIE also has no clear and legislated process for councils dealing with illegal land use and building activity, and councils consistently bear the cost of assisting offending persons in achieving some form of verifying the legitimacy of completed works through various Building Certificates and other tacit forms of approval, creating significant uncertainty and delays in property transactions.

25 The proposed new Compliance Cost Notices also demonstrate the DPIE's lack of understanding of the much broader demands on councils in dealing with a wide range of illegal activity, as these costs notices are based on situations where development proponents have achieved some form of prior approval with capping of costs and provides no cost recovery mechanism for those people who have not bothered to seek any form of prior approvals for new uses and developments.

30 The new State fees along with the further recently announced ePlanning Digital Services fees, are highly inequitable for councils, who are restricted in their cost recovery, yet the State continues to increase its own cost recovery fees. The Plan First charge on DAs is another State imposed cost on the planning system, with a lack of transparent explanation on what it is based on, and how the collected funds are spent.

### **Next steps**

35 It is considered vital that Council join with other affected councils and LG NSW to activate a campaign of advocacy for change.

## **Strategic Considerations**

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

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.4	Enhance community safety and amenity while respecting our shared values	2.4.3	Enhance public safety, health and liveability through the use of council's regulatory controls and services	2.4.3.1	Monitor, investigate and respond to unauthorised land use, development and environment complaints

### **Recent Resolutions**

- N/A

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

It is crucial that compliance work is adequately funded to meet our legal / statutory and policy obligations under various Act and Regulations.

- 10 The Regulation will diminish Council's ability to handle the large volume of compliance matters with a reduced team of enforcement officers. Add to this the introduction of regulations relating to short-term holiday accommodation, and Council's ability to manage enforcement in the Byron Shire will be severely compromised.

### **Financial Considerations**

- 15 If the NSW Government removes the Council's ability to recoup fees under the Local Government Act 1993 for compliance, Council's budget will be affected by a minimum of \$230,000 annually / ongoing.

### **Consultation and Engagement**

Not applicable.

STAFF REPORTS - INFRASTRUCTURE SERVICES

**Report No. 13.26 Additional Flow Path Project - Budget Adjustment & Purchase of Easement Area on Lot 12**

**Directorate:** Infrastructure Services

**Report Author:** Joshua Winter, Civil Engineer

**File No:** I2021/1027

**Summary:**

The Additional Flow Path project has commenced construction and is nearing completion of the works around the depot, being the downstream open swale that the water is intended to be discharged to from the Byron Sewage Treatment Plant (STP). The works will then commence on the pipeline itself from the STP site, through Lot 12 Bayshore Drive and the discharge point into the swale.

As the works have advanced, it has become apparent that the current budget of \$1.5M will be insufficient for completion of the works, so staff are recommending that Council resolve to increase the budget so the works can be completed as planned.

Furthermore, the project requires a part of Lot 12, Bayshore Drive to construct the pipeline through. This land would otherwise be developable land that Council could use in the future, therefore the project being funded by the sewer fund, should reimburse the General Fund for the purchase and continual use of this easement area.

**RECOMMENDATION:**

1. That the 2021/2022 Budget for the Additional Flow Path project be increased by \$441,500 to \$1,441,500 and that this increase be funded from the Sewer Fund Capital Works Reserve.
2. That the 2021/2022 Budget be amended so that the Sewer Fund Capital Works Reserve also contributes to the General Fund \$1,057,500 for the purchase of the easement on Lot 12 Bayshore Drive for the Additional Flow Path project's infrastructure in accordance with the valuation.
3. That Council allocates the \$1,057,500 from the Sewerage Fund Capital Works Reserve for the purchase of the Easement to a new Reserve in the General Fund titled 'Property Development Reserve – Lot 12 Bayshore Drive'.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - INFRASTRUCTURE SERVICES

13.26

### **Attachments:**

- 1 Confidential - 24.2018.17.1 - Additional Flow Path - Valuation of Easement on Lot 12, E2021/94458

5

## Report

The Additional Flow Path project has commenced construction and is nearing completion of the initial works around Council's depot, being the downstream open swale that the water is intended to be discharged to from the Byron Sewage Treatment Plant (STP). The works will then commence on the pipeline itself from the STP site, through Lot 12 Bayshore Drive and the discharge point into the swale, at the same time as commencing construction of the footbridge and footpaths around Council's depot.

As the works have advanced, it has become apparent that the current budget of \$1.5M (\$500,000 2020/2021 and \$1,000,000 2021/2022) will be insufficient for completion of the project. The Contract to Ledonne Constructions for the works as resolved by Council was \$1.355M excluding contingency which should be allowed at 10% minimum. In addition, the landscaping works separately at a cost of \$60,000, contract administration and staff costs estimated at \$125,000 and the costs to progress the project to construction of approximately \$25,000 results in the need for an increase in budget to complete the project. This increase is estimated at \$250,000 to be funded from the Sewer Fund Capital Works Reserve.

Furthermore, the project requires a part of Lot 12, Bayshore Drive to construct the pipeline through. This land would otherwise be developable land that Council could use in the future, therefore the project being funded by the Sewerage Fund, is intending to reimburse the General Fund for the purchase and continual use of this easement area.

A valuation was undertaken by Herron Todd White and is attached. This has taken into consideration all factors available in determining the value of the easement area, which will be a 3-metre-wide easement running the full length of the southern boundary of Lot 12. The easement will ensure any development of Lot 12 does not impact on the future and sustainable use of the Additional Flow Path.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	L2	CSP Strategy	L3	DP Action	L4	OP Activity
<b>Community Objective 3: We protect and enhance our natural environment</b>	3.3	Partner to protect and enhance the health of the Shire's coastlines, estuaries, waterways and catchments	3.3.1	Implement Coastal Management Program	3.3.1.5	Construct additional flowpath from Byron STP subject to funding.



## **Recent Resolutions**

21-025 Resolved:

- 5           1. *That Council awards Tender Design and Construction of the Byron STP Additional Flow Path to the preferred contractor specified in the Tender Evaluation report (attachment E2021/25906)*
2. *That Council makes public its decision, including the name and amount of the successful tenderer, in accordance with Clause 179(b) of the Local Government (General) Regulation 2005. (Richardson/Hunter)*

## **Financial Considerations**

### 10    Comment from Manager Finance

#### Additional Flow Path Project

15    In the 2020/2021 financial year Council allocated a budget of \$500,000 towards this project of which \$308,530 has been expended. Ordinarily as the project has not been completed this would require a carryover of unexpended funds currently \$191,500 in round terms from the 2020/2021 financial year to the 2021/2022 financial year.

20    The report is suggesting a further \$250,000 in new funding is required to complete the works now estimated at \$1,750,000 in total over two financial years (\$500,000 2020/2021 and \$1,000,000 2021/2022 existing budgets). Given the budget for the 2020/2021 financial year was not fully expended, it would also be prudent for Council to increase the 2021/2022 budget for the project for the funds allocated in 2020/2021 but not expended. This requires Council to consider the following overall budget adjustment:

Original Project Budget 2021/2022	\$1,000,000
Add carryover funds 2020/2021 not expended	\$191,500
Add proposed new funding required	\$250,000
Revised Project Budget 2021/2022	\$1,441,500

Should Council approve the budget of \$1,441,500, there will be no need for Council to further consider this project in the Report to consider carryover funds from 2020/2021 financial year to 2021/2022 financial year to be presented to Council later in August 2021.

### 25    Purchase of Easement

Proposed Recommendation 2 to this Report is requiring the Sewerage Fund to purchase part of Lot 12 Bayshore Drive for \$1,057,500 to provide for an easement to cater for the

## BYRON SHIRE COUNCIL

### STAFF REPORTS - INFRASTRUCTURE SERVICES

13.26

Additional Flowpath Project Infrastructure. There is funding available in the Sewerage Fund Capital Works Reserve for this purchase. This course of action will also require Council to reduce the value of Lot 12 Bayshore Drive Property asset in the General Fund by the amount of the purchase and split this section of land off to become a Sewerage Fund Property asset.

5

This is consistent with the Report provided to Council at the 13 May 2021 Planning Meeting (Report 13.8), which highlighted the need, as per Recommendation 5, to establish a new Reserve titled 'Property Development Reserve – Lot 12 Bayshore Drive' to quarantine any revenue generated from a sale of the land. Therefore, as Council would be selling part of the land to create the Easement outlined in this report, the funds provided by the Sewerage Fund to secure the Easement should be transferred to this Reserve to provide a funding source to assist with any future development works at Lot 12 Bayshore Drive.

10

## Report No. 13.27 Linda Vidler Park Masterplan

**Directorate:** Infrastructure Services

**Report Author:** Malcolm Robertson, Team Leader Open Space

**File No:** I2021/936

### 5 Summary:

The Linda Vidler Park Draft Masterplan was placed on exhibition for community comment from Friday 4 June to Tuesday 6 July 2021. (Refer [Draft Linda Vidler Park Masterplan](#))

This report references community feedback provided to the Draft Masterplan and provides recommendation for endorsement of the Linda Vidler Park Masterplan for implementation.

10

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### RECOMMENDATION:

**That Council:**

- 15
1. **Notes the attached Linda Vidler Park Draft Masterplan Exhibition Comments Summary and Response Report (Attachment 1 - E2021/91087)**
  2. **Endorses the attached Linda Vidler Park Masterplan Final (Attachment 2 - E2021/93789)**

### Attachments:

20

- 1 Linda Vidler Park Draft Masterplan Feedback, E2021/91087 
- 2 Linda Vidler Park Masterplan Final, E2021/93789 
- 3 Linda Vidler Park Masterplan document final, E2021/93790 
- 4 Arakwal Board Comments on Draft Masterplan for Linda Vidler Park, E2021/92250 

25

## Report

Council Resolved 21-264 to endorse the exhibition of the Draft Linda Vidler Park Masterplan for 28 days, and to receive a further report at the close of the exhibition period detailing the community response received to the Plan and any recommended or necessary amendments to the Masterplan.

Council also approved advertisement for expressions of interest to establish a Community Garden within Linda Vidler Park. This has been undertaken, with applications closed on 21st July. Once staff have evaluated applications a report will go to Council with recommendations regarding granting licence.

A total of 25 responses were received. This number is relatively low, however it is believed that this reflects the effectiveness of community consultation both through the Plan of Management development and through engagement with key stakeholders Arakwal Corporation, Suffolk Park Progress Association, Suffolk Park Community Gardens and Suffolk Park Football Association (SPFC). Because of this the draft Masterplan design effectively contains “no surprises”.

22 Responses were received through Council’s “Your Say” survey and an additional three submissions were sent directly to Council. Key stakeholders were offered opportunity to discuss the draft plan.

Suffolk Park Community Gardens members took up this invitation.

Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) provided written feedback (Attachment 4 – E2021/92250).

No objections to the draft Masterplan were received with submissions generally focusing on detail of specific elements. Arakwal feedback was positive, however comment provided on the linkages with bushtucker plantings suggested that the document was not clear enough in stating that the bushtucker and community garden areas can “combine and blur”. This detail has been amended within the draft plan to allow better understanding.

Arakwal also made specific request for interpretive and educational signage which reflects discussions with Arakwal through the development of the draft. Cultural content such as art treatments to the entry, the main shelter and to selected path surfaces are intended to be coordinated with Arakwal Corporation, and Arakwal Corporation are also to be consulted regarding interpretive signage. This is confirmed within the notes on the draft Masterplan and this consultation will be undertaken at the detail design stage.

Comments relating to providing more bins, seats and bike racks have now been reflected by indicative location on the plan, subject to final placement during future stages, for example the plan had a note about seating, but to allow better clarity this has been made more explicit.

Community feedback can be found at Attachment 1, including a summation of the suggestions for desired additional elements within the space and suggested focus areas for upgrades.

There is still some community interest and desire for input into specific details within the draft Masterplan, for example regarding the design and functionality of the of the central gathering shelter, exercise equipment or the internal layout of the community gardens. The intention of the Masterplan is to allow agreement upon the general layout and core functions of Linda Vidler Park, with individual elements then to be subject to future detail design. When funding allows for construction of individual components, additional community engagement around detail design will be undertaken.

### **Next steps**

Following Council endorsement of the Linda Vidler Park Masterplan available budget will be utilised to upgrade drainage systems across the park as a priority. Existing drainage does not operate effectively and is impacting usability across all areas of the park.

Drainage upgrade concepts were prepared and shared with all stakeholders through the engagement process and were used as a base for the Draft Masterplan. All stakeholders recognised that the drainage proposed is an essential improvement to allow the park to be fit for purpose. Draft REF and drainage detail design will be finalised and drainage works initiated within 2021/22 financial year utilising identified budget.

Council also approved advertisement for expressions of interest to establish a Community Garden within Linda Vidler Park. Applications closed on 21st July, and staff are evaluating applications with a future report Council to provide with recommendations regarding granting licence.

Council staff have also been working with stakeholders including the Suffolk Park Football Club and Community Gardens around potential grant opportunities to realise desired Masterplan upgrades across the precinct. These opportunities will continue to be explored.

### **Strategic Considerations**

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

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	2.3	Provide accessible, local community spaces and facilities	2.3.7	Deliver Open Space and Recreational services in line with Community Solutions Panel values (SP)	2.3.7.8	Deliver adopted infrastructure within the Suffolk Park Recreation Ground in accordance with POM and Community consultation

# BYRON SHIRE COUNCIL

## STAFF REPORTS - INFRASTRUCTURE SERVICES

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Community Objective 3: We protect and enhance our natural environment	3.2	Strive to become a sustainable community	3.2.2	Support community environmental and sustainability projects	3.2.2.3	Support community gardens in accordance with the Policy and Guidelines
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### Recent Resolutions

Council Resolved **19-448** on 19 September 2019 to adopt the Plan of Management for the Suffolk Park Recreation Grounds.

- 5 Council subsequently resolved **19-608** on 29 November 2019 to name the parcel of land as Linda Vidler Park, recognising a prominent local citizen and Arakwal elder.

- 10 Council Resolved **21:264** to endorse the exhibition of the Draft Linda Vidler Park Masterplan, approve advertisement for expressions of interest to establish a Community Garden within Linda Vidler Park and to receive a further report at the close of the exhibition period detailing the community response received to the Plan and any recommended or necessary amendments to the Masterplan.

### Financial Considerations

There are no direct financial implications from the development and adoption of the Masterplan. Funding exists within the Suffolk Park Open Space Developer Contributions reserve.

- 15 These funds are intended to be used for initial drainage works and also leveraged for future grant funding opportunities to allow construction of Masterplan infrastructure.

### Consultation and Engagement

Information gained through the Plan of Management engagement process was used as a starting point for development of this Masterplan.

- 20 Consultation was undertaken through the development process for the draft Masterplan with key stakeholders Arakwal Corporation, Suffolk Park Progress Association, Suffolk Park Community Gardens and Suffolk Park Football Association (SPFC). During the public exhibition phase all key stakeholders were offered opportunity to meet and discuss the draft Masterplan, with Suffolk Park Community Gardens members taking up this
- 25 opportunity.

**Report No. 13.28 2021-0014 Provision of Surf Life Saving Services for Byron Shire Council**

**Directorate:** Infrastructure Services

**Report Author:** Pattie Ruck, Open Space Facilities Coordinator

5 **File No:** I2021/1093

**Summary:**

On 23 March 2021 the General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract 2021-0014 Provision of Surf Life Saving Services for Byron and Tweed Shire Council.

10 The Request for Tender was advertised from 31 May 2021 to 21 June 2021. Tenders were received from the following organisations:

- Aquagility
- Australian Lifeguard Service

15 Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulations 2005. This report summarises the background and assessment of the tenders and provides a recommendation to award the tender for 2021-0014.

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**RECOMMENDATION:**

- 20 1. That Council award Tender 2021-0014 to the tenderer recommended in the Tender Evaluation Report (Confidential Attachment 1 - E2021/83984)
2. That Council's seal be affixed to the relevant documents.
- 25 3. That Council makes public its decision, including the name and amount of the - successful tenderer, in accordance with Clause 179(b) of the Local Government (General) Regulation 2005.

**Attachments:**

- 30 1 Confidential - 2021-0014 RFT SLS - Tender Evaluation Report, E2021/83984

## Report

On 23 March 2021, the General Manager, under delegated authority, approved the use of the open tendering method to call for tenders for Contract 2021-0014 Provision of Surf Life Saving Services for Byron Shire Council.

- 5 Byron Shire Council co-ordinated and issued a Request for the Provision of Surf Life Saving Services on 31 May 2021 for both Byron and Tweed Shire Councils.

Byron Shire Beaches require Surf Life Saving Services throughout the year to ensure beach safety, service levels and ongoing life-saving services for our community and visitors.

- 10 The Request for Tender sought responses from proponents to provide professional and experienced Surf Life Saving Services for Byron Shire Beaches

The Contract is expected to commence on 24 September 2021 for a period of five years.

The Contract will be managed by Manager Open Space & Resource Recovery.

Tenders were advertised as follows:

- 15 Vendor Panel: 31 May 2021 until 21 June 2021.

Council website: 31 May 2021 until 21 June 2021.

An Evaluation Panel comprising of four Council staff members was formed, including one Tweed Council staff member.

- 20 Tenders closed on 21 June 2021 and tenders were received from the following proponents:

- Aquagility
- Australian Lifeguard Service

Tenders were evaluated by the Evaluation Panel in accordance with the following evaluation criteria:

- 25 *Mandatory compliance criteria:*

- a) Tender lodged on time, in accordance with the Conditions of Tender.
- b) Respondent has a valid Australian Business Number.
- c) Respondent substantially complies with the Statement of Requirements.
- d) Respondent substantially complies with the Conditions of Contract.

- 30 e) Respondent holds the required insurances or has the ability to obtain the insurances.



# BYRON SHIRE COUNCIL

## STAFF REPORTS - INFRASTRUCTURE SERVICES

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- 5
- f) Workers Compensation insurance for all employees
  - g) Holds, or is able to obtain, the insurances as specified in the Statement of Requirements
  - h) Respondent has satisfactory work health and safety and environmental compliance practices.
  - i) Financial capacity to undertake the contract
  - j) Commitment to ethical business practice principles.
  - k) Tenderer confirms no ties to Bravus Mining previously Adani Mining (Byron Only)

### 10 Qualitative criteria:

Criteria	Elements
Qualifications and experience profile	Tenderer profile
	Previous relevant experience
	Environmental practices
	Opportunities for disadvantaged people
Quality and availability of resources	Proposed key personnel
	Proposed staff
	Use of subcontractors
Delivery Plan	Goods/services standards and methodology
	Implementation plan
	Product sustainability
	Supporting local business, social enterprise and Indigenous business

Price	Price assessment - Total contract price
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Following the evaluation, the Evaluation Panel conducted financial checks on the preferred tenderer. The results of these checks were deemed by the Evaluation Panel to be satisfactory as detailed in the attached Evaluation Report. The Evaluation Panel did not conduct a referee check for the short-listed respondent. Byron and Tweed Council have both had a contract and many years' experience dealing with the respondent, a referee check was not deemed necessary by the evaluation panel.

### **Financial Considerations**

The price basis for the contract is a schedule of rates.

Council spends over \$530,000.00 per year on provision of Surf Life Saving Services.

There is sufficient funding for the proposed contract in the current budget.

### **Statutory and Policy Compliance Considerations**

The tendering process has been undertaken in accordance with Council's Purchasing and Procurement Policy, and the provisions of the Local Government (General) Regulation 2005.

The Local Government (General) Regulations 2005 define the options available to Council. An extract is provided below.

### **Local Government (General) Regulation 2005 - Reg 178**

#### [Acceptance of tenders](#)

#### *178 Acceptance of tenders*

- (1) *After considering the tenders submitted for a proposed contract, the council must either:*
  - (a) *accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
  - (b) *decline to accept any of the tenders.*
- (2) *A council must ensure that every contract it enters into as a result of a tender accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under clause 176). However, if the successful tender was made by the council (as provided for in [section 55](#) (2A) of [the Act](#)), the council is not required to enter into any contract in order to carry out the requirements of the proposed contract.*

## BYRON SHIRE COUNCIL

### STAFF REPORTS - INFRASTRUCTURE SERVICES

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- (3) *A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:*
- (a) *postpone or cancel the proposal for the contract,*
  - 5 (b) *invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,*
  - (c) *invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,*
  - 10 (d) *invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*
  - (e) *enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*
  - (f) *carry out the requirements of the proposed contract itself.*
- 15 (4) *If a council resolves to enter into negotiations as referred to in subclause (3) (e), the resolution must state the following:*
- (a) *the council's reasons for declining to invite fresh tenders or applications as referred to in subclause (3) (b)–(d),*
  - 20 (b) *the council's reasons for determining to enter into negotiations with the person or persons referred to in subclause (3) (e).*

Council's endorsement of the recommendation to award the tender as recommended in the attached Evaluation Report is sought.

## Report No. 13.29 Tender 2021-0002 Truck, Plant and Equipment Hire

**Directorate:** Infrastructure Services

**Report Author:** Henry Spangler, Works Coordinator

5 **File No:** I2021/1119

### Summary:

On 21 January 2021 the General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract 2021-0002, Truck, Plant and Equipment Hire.

10 The Request for Tender was advertised from 14 May 2021 to 7 June 2021. Tenders were received from the following organisations:

- Advance Sweepers Pty Ltd
- AJ Bulk Haulage Pty Ltd
- Andrew Johnston Haulage Pty Ltd
- 15 • Ballina Concrete Pumping Pty Ltd ATF Theorelle Trust
- Bitu-Mill Pty Ltd
- BJ Booth and N Bathie
- BJT Equipment Pty Ltd
- Brooks Hire Service Pty Ltd
- 20 • Byron Bay Tree Services and Landscapes Pty Ltd
- Clenbest Pty Ltd T/A 101 Haulage
- Coates Hire Operations Pty Ltd
- Compass Equipment Hire Pty Ltd
- Compass Equipment Sales Pty Ltd
- 25 • Conplant Pty Ltd
- Dashebs Pty Ltd T/A North Coast Road Sweepers

## BYRON SHIRE COUNCIL

### STAFF REPORTS - INFRASTRUCTURE SERVICES

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- DJ & JA Brooker Pty Ltd
- Durack Civil Pty Ltd
- Dynamic Hydro Excavations
- Eco-Site Pty Ltd
- 5 • ELJO Pty Ltd & The Trustee for Rico Family Trust T/A Summerland Environmental Service
- Ellis Profiling (QLD) Pty Ltd
- Flexihire Pty Ltd
- GD & TL Marshall Mini Excavator and Tipper Hire
- 10 • GR & A Arnold
- Greenstar Earthmoving
- H R & ME Wilson T/A Wilson Excavations
- Hardy's Excavations Pty Ltd
- Hazell Bros Plant Hire (QLD) Pty Ltd
- 15 • Hinterland Designs and Earthwork (HDE)
- Hydro Digga Pty Ltd
- James Anastassiadis T/A Safety Fence Australia
- Jarret Excavations Pty Ltd
- John Loughland T/A JBG Haulage Pty Ltd
- 20 • Jonday Holdings Pty Ltd T/ A Thrifty Car Rentals
- Kenlift Pty Ltd T/A Tweed Crane Hire
- Kennards Hire Pty Ltd
- Kenreach Group Pty Ltd ATF Sanderson Family Trust T/A Murwillumbah Hire
- Krangadoo Pty Ltd

## BYRON SHIRE COUNCIL

### STAFF REPORTS - INFRASTRUCTURE SERVICES

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- Kulkine Trust
- L P Pipe & Civil
- Lambert Locations Pty Ltd
- Loader Vac Solutions Pty Ltd
- 5 • Martack Pty Ltd
- Martin Tolley
- Mcgowan Earthworks Pty Ltd
- McNamara and Tierney Pty Ltd T/A Kyogle Earthworx
- Mega Waste Industries/Ballina Pumping Service
- 10 • Michael Scott Dixon T/A A1 Concrete Cutting
- Multitech Profiling Pty Ltd
- National Pump and Energy Pty Ltd
- Network Protection Specialists
- North East Cranes Pty Ltd
- 15 • Pipe Management Australia Pty Ltd
- Pipe Vision Australia Pty Ltd
- Porter Excavations Pty Ltd T/A Porter Plant
- PowerClear Pty Ltd T/A AHL Contractors
- R Hechtl & M Hunter T/A Ace Concrete Pumping Lismore
- 20 • Randa Slashing Pty Ltd
- RB Float Hire & Splish Splash Water
- Rico Enterprises Pty Ltd T/A Solo Resource Recovery
- Rollers Australia Pty Ltd

## BYRON SHIRE COUNCIL

### STAFF REPORTS - INFRASTRUCTURE SERVICES

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- Selk Industries Pty Ltd
- Sherrin Rentals Pty Ltd
- Smith Plant Hire NSW Pty Ltd
- Stabilcorp Pty Ltd
- 5 • Stabilised Pavements of Australia Pty Ltd
- Stevo's Mini Excavator and Tipper Hire
- Stewart Family Trust as Trustee for Tom Thumb Earthmoving Pty Ltd T/A Tom Thumb Earthmoving
- Subsurface Mapping Solutions
- 10 • Surf City Cranes Pty Ltd
- Tannerman Pty Ptd ATF The Trustee for Tanner Family Trust T/ A JT's Water & Tipper Hire
- Tanners Water Supplies Pty Ltd
- TFH Hire Services Pty Ltd
- 15 • The Bashforth Unit Trust T/A J & M Bashforth & Sons Pty Ltd
- The Butturini Discretionary Trust T/A East Coast Asphalt and Concrete Edging Pty Ltd
- TLTT Pty Ltd T/A Classic Concrete Pumping
- Total Drain Cleaning Services Pty Ltd
- 20 • Trustee for Trotta Family Trust T/A Tallow Tree Services Pty Ltd
- Tutt Bryant Hire Pty Ltd
- Uki Holdings Pty Ltd T/A Hardings Earthmoving
- Vortex Group of Companies Pty Ltd T/A Pumps United Pty Ltd
- WF & SL Sullivan Pty Ltd T/A Richmond Sand Gravel and Landscaping
- 25 • WW & MA Field T/A Field Directional Drilling

## BYRON SHIRE COUNCIL

### STAFF REPORTS - INFRASTRUCTURE SERVICES

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Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulations 2005. This report summarises the background and assessment of the tenders and provides a recommendation to award the tender for Contract 2021-0002.

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5

#### **RECOMMENDATION:**

- 10 1. That Council award Tender 2021-0002, Truck, Plant and Equipment Hire to the suppliers confidentially listed in Attachment 1 - Final Recommendation Report (2021/88190) and be appointed to the tender as Panel Source suppliers to Byron Shire Council for the initial period of 9 August 2021 to 30 June 2023.
2. That provision be allowed with three (3) x one (1) year option to extend the contract subject to performance, which may take this contract through to 30 June 2026.
- 15 3. That Council makes public its decision, including the name of the successful tenderer, in accordance with Clause 179(b) of the Local Government (General) Regulation 2005.

#### **Attachments:**

- 20 1 Confidential - 2021-0002 - Confidential Recommendation Report - Truck Plant and Equipment Hire Tender, E2021/88190



**Report**

On 21 January 2021 the General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract 2021-0002, Truck, Plant and Equipment Hire.

- 5 As part of Council's operational requirements Truck, Plant and Equipment hire is required from external providers. In the last two years the value of services provided for Truck, Plant and Equipment Hire for Byron Shire Council was \$4.6 million.

The Request for Tender sought responses from proponents to provide:

- Tenderer must have a valid Australian Business Number (ABN)
- 10 • Substantial conformance to Conditions of Contract and Statement of Requirements (Technical Specifications)
- Workers compensation insurance for all employees
- Holds insurances as specified in the Statement of Requirements
- Satisfactory Work Health and Safe practices
- 15 • Commitment to ethical business practice principles. Please note that Council will not contract with any organisation that gains a financial benefit from Australia's offshore detention centres or that has any involvement in contracting for the development and operation of the Carmichael mine or otherwise has ties to the Bravus Mining Company previously known as Adani Group.
- 20 • Provision of pricing (schedule of rates)

The Contract is expected to commence in August 2021 for a period of 2 years with the provision that the contract be allowed three (3) x one (1) year option to extend the contract subject to performance, which may take this contract through to 30 June 2026.

- The Contract will be managed by Hank Spangler – Works Coordinator.

- 25 Tenders were advertised as follows:

- Byron Shire Council Vendorpanel tendering portal – 14 May 2021
- Byron Shire Council website – 17 May 2021

There was no requirement for a site meeting in this Tender.

An Evaluation Panel comprising of 3 Council staff members was formed.

Name	Position	Role of Panel
Hank Spangler	Works Coordinator (BSC)	Member (subject matter expert)
Anthony Boyle	Operations Coordinator (BSC)	Member

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### STAFF REPORTS - INFRASTRUCTURE SERVICES

13.29

Luke Arnold	Resource Recovery Contracts Management Officer (BSC)	Member
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Tenders closed on 17:00 Monday 7 June and tenders were received from the following proponents:

- Advance Sweepers Pty Ltd
- AJ Bulk Haulage Pty Ltd
- 5 • Andrew Johnston Haulage Pty Ltd
- Ballina Concrete Pumping Pty Ltd ATF Theorelle Trust
- Bitu-Mill Pty Ltd
- BJ Booth and N Bathie
- BJT Equipment Pty Ltd
- 10 • Brooks Hire Service Pty Ltd
- Byron Bay Tree Services and Landscapes Pty Ltd
- Clenbest Pty Ltd T/A 101 Haulage
- Coates Hire Operations Pty Ltd
- Compass Equipment Hire Pty Ltd
- 15 • Compass Equipment Sales Pty Ltd
- Conplant Pty Ltd
- Dashebs Pty Ltd T/A North Coast Road Sweepers
- DJ & JA Brooker Pty Ltd
- Durack Civil Pty Ltd
- 20 • Dynamic Hydro Excavations
- Eco-Site Pty Ltd
- ELJO Pty Ltd & The Trustee for Rico Family Trust T/A Summerland Environmental Service
- Ellis Profiling (QLD) Pty Ltd

## BYRON SHIRE COUNCIL

### STAFF REPORTS - INFRASTRUCTURE SERVICES

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- Flexihire Pty Ltd
- GD & TL Marshall Mini Excavator and Tipper Hire
- GR & A Arnold
- Greenstar Earthmoving
- 5 • H R & ME Wilson T/A Wilson Excavations
- Hardy's Excavations Pty Ltd
- Hazell Bros Plant Hire (QLD) Pty Ltd
- Hinterland Designs and Earthwork (HDE)
- Hydro Digga Pty Ltd
- 10 • James Anastassiadis T/A Safety Fence Australia
- Jarret Excavations Pty Ltd
- John Loughland T/A JBG Haulage Pty Ltd
- Jonday Holdings Pty Ltd T/ A Thrifty Car Rentals
- Kenlift Pty Ltd T/A Tweed Crane Hire
- 15 • Kennards Hire Pty Ltd
- Kenreach Group Pty Ltd ATF Sanderson Family Trust T/A Murwillumbah Hire
- Krangadoo Pty Ltd
- Kulbine Trust
- L P Pipe & Civil
- 20 • Lambert Locations Pty Ltd
- Loader Vac Solutions Pty Ltd
- Martack Pty Ltd
- Martin Tolley
- McGowan Earthworks Pty Ltd
- 25 • McNamara and Tierney Pty Ltd T/A Kyogle Earthworx

## BYRON SHIRE COUNCIL

### STAFF REPORTS - INFRASTRUCTURE SERVICES

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- Mega Waste Industries/Ballina Pumping Service
- Michael Scott Dixon T/A A1 Concrete Cutting
- Multitech Profiling Pty Ltd
- National Pump and Energy Pty Ltd
- 5 • Network Protection Specialists
- North East Cranes Pty Ltd
- Pipe Management Australia Pty Ltd
- Pipe Vision Australia Pty Ltd
- Porter Excavations Pty Ltd T/A Porter Plant
- 10 • PowerClear Pty Ltd T/A AHL Contractors
- R Hechtl & M Hunter T/A Ace Concrete Pumping Lismore
- Randa Slashing Pty Ltd
- RB Float Hire & Splish Splash Water
- Rico Enterprises Pty Ltd T/A Solo Resource Recovery
- 15 • Rollers Australia Pty Ltd
- Selk Industries Pty Ltd
- Sherrin Rentals Pty Ltd
- Smith Plant Hire NSW Pty Ltd
- Stabilcorp Pty Ltd
- 20 • Stabilised Pavements of Australia Pty Ltd
- Stevo's Mini Excavator and Tipper Hire
- Stewart Family Trust as Trustee for Tom Thumb Earthmoving Pty Ltd T/A Tom Thumb Earthmoving
- Subsurface Mapping Solutions
- 25 • Surf City Cranes Pty Ltd

## BYRON SHIRE COUNCIL

### STAFF REPORTS - INFRASTRUCTURE SERVICES

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- Tannerman Pty Ptd ATF The Trustee for Tanner Family Trust T/ A JT's Water & Tipper Hire
- Tanners Water Supplies Pty Ltd
- TFH Hire Services Pty Ltd
- 5 • The Bashforth Unit Trust T/A J & M Bashforth & Sons Pty Ltd
- The Butturini Discretionary Trust T/A East Coast Asphalt and Concrete Edging Pty Ltd
- TLTT Pty Ltd T/A Classic Concrete Pumping
- Total Drain Cleaning Services Pty Ltd
- 10 • Trustee for Trotta Family Trust T/A Tallow Tree Services Pty Ltd
- Tutt Bryant Hire Pty Ltd
- Uki Holdings Pty Ltd T/A Hardings Earthmoving
- Vortex Group of Companies Pty Ltd T/A Pumps United Pty Ltd
- WF & SL Sullivan Pty Ltd T/A Richmond Sand Gravel and Landscaping
- 15 • WW & MA Field T/A Field Directional Drilling

Tenders were evaluated by the Evaluation Panel in accordance with the following evaluation criteria:

*Mandatory criteria:*

- a) Tenderer must have a valid Australian Business Number.
- 20 b) Substantial conformance to Conditions of Contract and Statement of Requirements.
- c) Workers compensation insurance for all employees.
- d) Holds, or is willing to obtain, the insurances as specified in the Statement of Requirements.
- e) Satisfactory Work Health and Safety practices.
- 25 f) Commitment to ethical business practice principles.

Provision of pricing (schedule of rates)

*Qualitative criteria:*

## BYRON SHIRE COUNCIL

### STAFF REPORTS - INFRASTRUCTURE SERVICES

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Criteria	Elements
Profile and Relevant Experience	Tenderer Profile  Previous Relevant Experience
Quality and Availability of Resources	Proposed Key Personnel  Proposed Staff  Use of subcontractors
Delivery Plan	Goods/services standards and methodology  Implementation Plan
Social Procurement	Opportunities for Disadvantaged People  Employment opportunities  Supporting social enterprise and Indigenous business.
Sustainable Practices	Environmental practices
Local Industry	Details of the level of company resources that are locally available (businesses whose primary location is based in the NOROC region).

### Financial Considerations

The price basis for the contract is a schedule of rates.

Council spends over \$2,200,000 per year on Truck, Plant and Equipment hire.

There is sufficient funding sources available within the current budget to manage truck, plant and equipment hire under this contract.

5

## Statutory and Policy Compliance Considerations

The tendering process has been undertaken in accordance with Council's Purchasing and Procurement Policy, and the provisions of the Local Government (General) Regulation 2005.

- 5 The Local Government (General) Regulations 2005 define the options available to Council. An extract is provided below.

### Local Government (General) Regulation 2005 - Reg 178

#### Acceptance of tenders

#### 178 Acceptance of tenders

- 10 (1) *After considering the tenders submitted for a proposed contract, the council must either:*
  - (a) *accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*
  - (b) *decline to accept any of the tenders.*
- 15 (2) *A council must ensure that every contract it enters into as a result of a tender accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under clause 176). However, if the successful tender was made by the council (as provided for in [section 55](#) (2A) of [the Act](#)), the council is not required to enter into any contract in order to carry out the requirements*  
20 *of the proposed contract.*
- (3) *A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following:*
  - (a) *postpone or cancel the proposal for the contract,*
  - 25 (b) *invite, in accordance with clause 167, 168 or 169, fresh tenders based on the same or different details,*
  - (c) *invite, in accordance with clause 168, fresh applications from persons interested in tendering for the proposed contract,*
  - 30 (d) *invite, in accordance with clause 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*
  - (e) *enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*
  - (f) *carry out the requirements of the proposed contract itself.*

## BYRON SHIRE COUNCIL

### STAFF REPORTS - INFRASTRUCTURE SERVICES

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(4) *If a council resolves to enter into negotiations as referred to in subclause (3) (e), the resolution must state the following:*

(a) *the council's reasons for declining to invite fresh tenders or applications as referred to in subclause (3) (b)–(d),*

5 (b) *the council's reasons for determining to enter into negotiations with the person or persons referred to in subclause (3) (e).*

Council's endorsement of the recommendation to award the tender as recommended in the attached Evaluation Report is sought.



CONFIDENTIAL REPORTS - GENERAL MANAGER

**Report No. 15.1      CONFIDENTIAL - Aboriginal Land Claims - Sandhills Reserve**

5    **Directorate:**                      General Manager

**Report Author:**                Shannon McKelvey, Executive Officer  
    Ralph James, Legal Counsel

**File No:**                          I2021/971

**Summary:**

- 10    Following a refusal by the Department of Planning, Industry and Environment – Crown Lands of Aboriginal Land Claims over the Sandhills Reserve in Byron Bay, NSW Aboriginal Land Council (NSWABLC) have appealed the decision to the Land and Environment Court.
- 15    Council is not a party to the Court proceedings but has interests in the Reserve with existing infrastructure, assets and services operating on the reserve as well as contractual interests in, and a number of key community projects planned and funded for, the reserve.
- 20    Council also acknowledges the interests of the Bundjalung of Byron Bay Aboriginal Corporation under an Indigenous Land Use Agreement (ILUA) applying to the land and Council has encouraged the parties to the Court proceedings to engage with Native Title Interest owners and honour the requirements of the ILUA.
- 25    Council is involved in ongoing discussions with the parties to the proceedings who are exploring potential options to reach a negotiated settlement. If a settlement can be reached there is potential that it could involve disposal or acquisition by Council of interests in land, for example Council may need to acquire easements for services and infrastructure located in the reserve. A Council resolution is required for Council to acquire or dispose of interests in land and this report seeks resolutions in anticipation of potential outcomes of the Court proceedings or agreement being reached between the parties.

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**RECOMMENDATION:**

- 30    1.    **That pursuant to Section 10A(2)(c) and (g) of the Local Government Act, 1993, Council resolve to move into Confidential Session to discuss the report Aboriginal Land Claims - Sandhills Reserve.**
2.    **That the reasons for closing the meeting to the public to consider this item be that the report contains:**

## BYRON SHIRE COUNCIL

### CONFIDENTIAL REPORTS - GENERAL MANAGER

15.1

- 5
- a) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business
  - b) advice concerning litigation, or advice as comprises a discussion of this matter, that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege

3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:

10 it could jeopardise ongoing negotiations and prejudice the Council's interests in those negotiations and because it contains information that is covered by legal professional privilege.

#### **Attachments:**

- 15 1 Confidential - Attachment, E2021/77825

CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES

**Report No. 15.2      CONFIDENTIAL - Land Acquisition Matters  
Myocum Road Widening and  
Reconstruction**

**Directorate:** Infrastructure Services

**Report Author:** Deanna Savage, Roads and Property Officer

**File No:** I2021/1129

**Summary:**

This report is being presented to Council to approve land acquisition, dedication of land as road and road closures for the purpose of facilitating road widening, realignment, and safety upgrade of a 500m section of Myocum Road.

**RECOMMENDATION:**

1. That pursuant to Section 10A(2)(a) and (c) of the Local Government Act, 1993, Council resolve to move into Confidential Session to discuss the report Land Acquisition Matters Myocum Road Widening and Reconstruction.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
  - a) personnel matters concerning particular individuals (other than councillors)
  - b) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:

**Requires the discussion of land valuations and land swap agreements under negotiation with the landowners for the acquisition of land for road purposes.**

**Attachments:**

- 1 Confidential - 24.2019.30.1 VA1203.1-CA20 Extract from Acquisition for Road - 385 Myocum Rd, Ewingsdale - Barlow, E2021/90163
- 2 Confidential - 24.2019.30.1 VA1203.4-RC20 - Extract from Valuation for Road Closure, Proposed Lot 4 Myocum Road, Ewingsdale, E2021/90165

## BYRON SHIRE COUNCIL

### CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES

15.2

- 3 Confidential - 24.2019.30.1 VA1203.6-RC20 - Extract from Valuation for Road Closure, Severed Land Myocum Road, Ewingsdale, E2021/90166
- 4 Confidential - 24.2019.30.1 - Letter from Michael and Pam Lang - 325 Myocum Road EWINGSDALE - Regarding Proposal to Purchase Adjoining Closed Road Reserve, S2021/3780
- 5