



# Byron Shire Council



## Agenda Ordinary (Planning) Meeting

Thursday, 16 September 2021  
held at Council Chambers, Station Street, Mullumbimby  
commencing at 11:00am

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

Mark Arnold  
General Manager

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## CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

### Disclosure and participation in meetings

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

Committee, or

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

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

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

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

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

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## RECORDING OF VOTING ON PLANNING MATTERS

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

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

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

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**3. REQUESTS FOR LEAVE OF ABSENCE**

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

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

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

6.1 Ordinary (Planning) Meeting held on 5 August 2021

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

**8. MAYORAL MINUTE**

**9. NOTICES OF MOTION**

Nil

**10. PETITIONS**

**11. SUBMISSIONS AND GRANTS**

**12. DELEGATES' REPORTS**

**13. STAFF REPORTS**

**Sustainable Environment and Economy**

- 13.1 PLANNING - Development Application 10.2020.370.1  
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## BYRON SHIRE COUNCIL

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### Infrastructure Services

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## 15. QUESTIONS WITH NOTICE

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

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

**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.1 PLANNING - Development Application  
10.2020.370.1**

5 **Change of Use of Existing Building from Residential (Dwelling House) to Offices including Alterations and Additions to Existing Building and Provision of Car Parking at 68 Byron Street BANGALOW**

10 **Directorate:** Sustainable Environment and Economy

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

**File No:** I2021/1228

**Proposal:**

<b>DA No:</b>	10.2020.370.1
<b>Proposal description:</b>	Change of Use of Existing Building from Residential (Dwelling House) to Offices including Alterations and Additions to Existing Building and Provision of Car Parking
<b>Property description:</b>	LOT: 12 SEC: 6 DP: 4358, LOT: 13 SEC: 6 DP: 4358, LOT: 14 SEC: 6 DP: 4358 68 Byron Street BANGALOW
<b>Parcel No/s:</b>	67430, 44380, 44390
<b>Applicant:</b>	Ardill Payne & Partners
<b>Owner:</b>	Mr N D Keevers
<b>Zoning:</b>	R2 Low Density Residential
<b>Date received:</b>	3 August 2020
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"> <li>– Level 2 advertising under the Community Participation Plan</li> <li>– Exhibition period: 20/8/20 to 2/9/20</li> <li>– Submissions received – Petition with 103 signatures, Nineteen Objections, Three in support:</li> </ul> <p><b>Re- exhibited</b></p> <ul style="list-style-type: none"> <li>– Period 28/6/2021 – 11/7/2021</li> <li>– Two submissions received in support.</li> </ul>

## **Summary**

Development consent is sought to carry out alterations and additions to an existing heritage building known as the Grey's House at 68 Byron Street, Bangalow and for it to be used for commercial purposes. The house is believed to have been constructed in 1910 and is in reasonable condition for its age. The original proposal as submitted to Council included not only additions to the house but also a separate building for additional commercial uses. The concept generated a number of objections, in that the proposal was primarily an overdevelopment of the site, inconsistent with the heritage characteristics of the dwelling whilst its use for commercial purposes was somewhat open ended and potentially could have led to the building being used for a wide gambit of commercial and retail activities including food shops.

Following discussions with staff the applicant amended the proposal to ensure it was more in keeping with the heritage and residential characteristics of the property by:

- deleting the additional building;
- retention of an interwar garage, original entry door and kitchen pantry;
- providing further detail as to the management and upgrade of this heritage building by way of a Heritage Conservation Strategy and Dilapidation Report;
- and
- confirming that the use proposed is to be limited for professional offices (office premises as defined under Byron LEP 2014).

The amended proposal was re-exhibited with Council receiving two submissions in support and no objections. Although the proposed use of the house for professional offices is prohibited in the R2 Low Density Residential zone, the development is permitted with development consent subject to Clause 5.10 of Byron LEP 2014 in terms of the heritage incentive provisions. In this regard the applicant Heritage Conservation Strategy and associated Dilapidation Report includes numerous actions for the restoration of the building and are supported by staff as discussed within the body of the report.

The property although zoned R2 sits immediately adjacent to the B2 Local Centre Zone in Bangalow and opposite the Bangalow School in Byron Street. The property to the east is used for residential purposes, whilst opposite the site in Deacon Street is parkland. In terms of the buildings use as offices this is unlikely to have an adverse impact on the amenity of the area. It is noted that the site has good pedestrian access to Byron Street and conditions of consent are recommended in relation to providing a cycle rack for four bikes at the entrance to the property to encourage bike riding as an alternative to driving. The development does not provide sufficient car parking onsite to enable the garden setting round the dwelling house being retained, and the applicant is proposing to enter into a voluntary planning agreement to make up for a shortfall of 10.6 spaces.

It is considered the proposed development is a suitable response to the heritage characteristics of the property. The application is recommended for approval subject to conditions of consent.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.1

### NOTE TO COUNCILLORS:







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

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### 10 RECOMMENDATION:

- 15 **That Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.370.1 for Change of Use of Existing Building from Residential (Dwelling House) to Offices including Alterations and Additions to Existing Building and Provision of Car Parking at 68 Byron Street, Bangalow be approved subject to the attached Conditions of Consent (Attachment 4 # E2021/103475)**

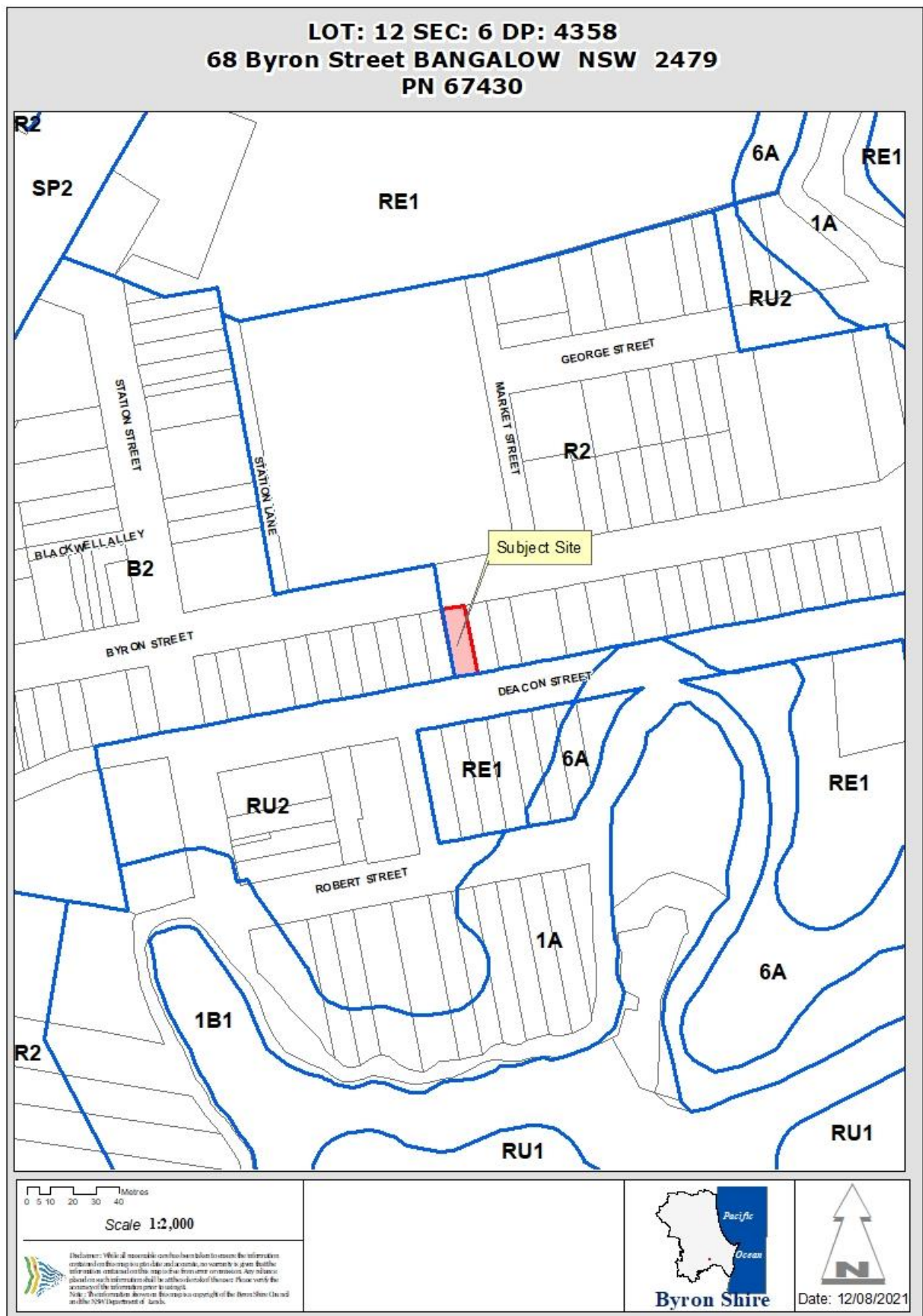
### Attachments:

- 20 1 DA10.2020.370.1 Plans, E2021/102028 
- 2 DA 10.2020.370.1 Heritage Conservation Strategy prepared by Extent Heritage Advisors dated June 2021, E2021/102028 
- 3 DA10.2020.370.1 Dilipation Report, E2021/106720 
- 4 DA10.2020.370.1 Conditions of Consent, E2021/103475 
- 25 5 Confidential - DA10.2020.370.1 - Petition 1st exhibition 20/8/20 to 2/9/20, E2021/102130
- 6 DA10.2020.370.1 1st exhibition period 20/8/20 to 2/9/20 redacted submissions, E2021/102243 
- 7 DA10.2020.370.1 2nd exhibition 28/6/21 to 11/7/21 redacted submissions, E2021/102022 

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.1



## Report

### 1. INTRODUCTION

#### 1.1. History/Background

The subject dwelling is best described as a Federation Bungalow and is believed to have been constructed in 1910 by local builder AE Beckinsale who also constructed a number of other properties in Bangalow including Clover Hill. The house was designed by local architects F.J Board and A.E Jolly from Lismore. The house is best known as the Greys House as it was occupied by Sheila Grey, a midwife, and her husband Dr Grey from 1935. It is understood Sheila Gray lived in the dwelling till 2015.

Council has no electronic records of approvals for the house including alterations and or additions since its construction over 100 years ago. Although part of the verandah has been enclosed it presents mainly today to the street as it was originally constructed.



**Greys House – Circa 1940**



Greys House, 12 August, 2021

5 **1.2. Description of the proposed development**

This application originally sought to demolish a small detached garage on the property believed to be constructed between the world wars and construct an additional commercial premise on the property. The proposal was somewhat open ended as to what the house was to be used with a wide range of undefined commercial retail uses nominated.

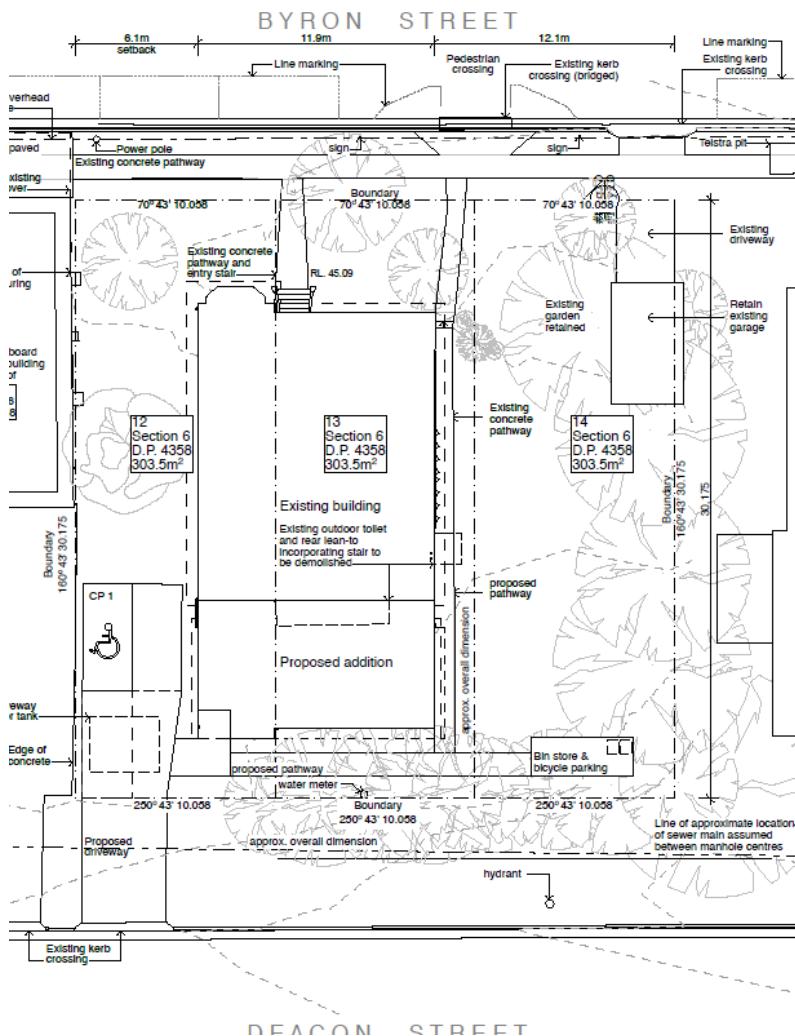
10 Potentially if approved this could include restaurants and cafes. The proposal also sought changes to the fabric of the dwelling including the front stained-glass door, replacement of the post and wire fence, and a loss of garden vegetation which is an element of this heritage item.

15 Following exhibition, where there were a number of objections received, the application was further amended and refined in scale with greater detail on managing the dwelling in terms of a heritage conservation strategy and some 75 actions contained within a dilapidation report. The garage is to be retained and the detached commercial premises has been abandoned whilst heritage elements of the property will be retained including the fence and front gate and the front stained-glass door. The development in summary is limited to the following:

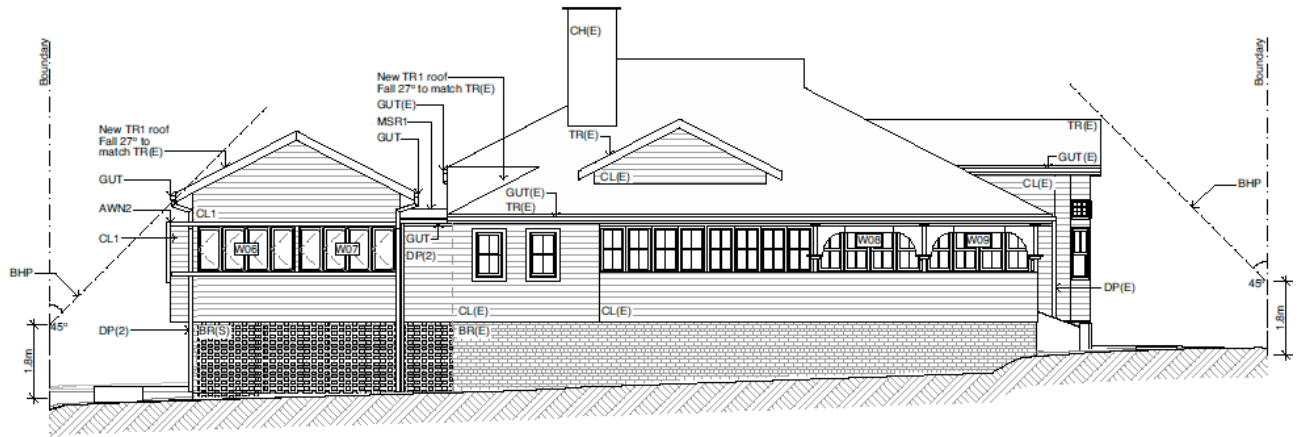
- Refurbishment, cleaning, and painting of the dwelling
- Repointing mortar and other repairs to the brick work
- Undertaking structural repairs to the underfloor of the dwelling

- Construction of a disabled access car parking space of Deacon street, wheelchair access into the building from this car spaces, toilet facilities and an extension to the building for office purposes of approximately 52 m2
- Use of the dwelling as professional office suites (office premises as defined under Byron LEP 2014)

It is noted the applicant's to retain the garden setting around the dwelling, are only proposing to construct one car parking space for the development and have offered to enter into a voluntary planning agreement for the short fall in parking spaces. Copies of the plans, Heritage Conservation Strategy and Dilapidation Reports are attached.

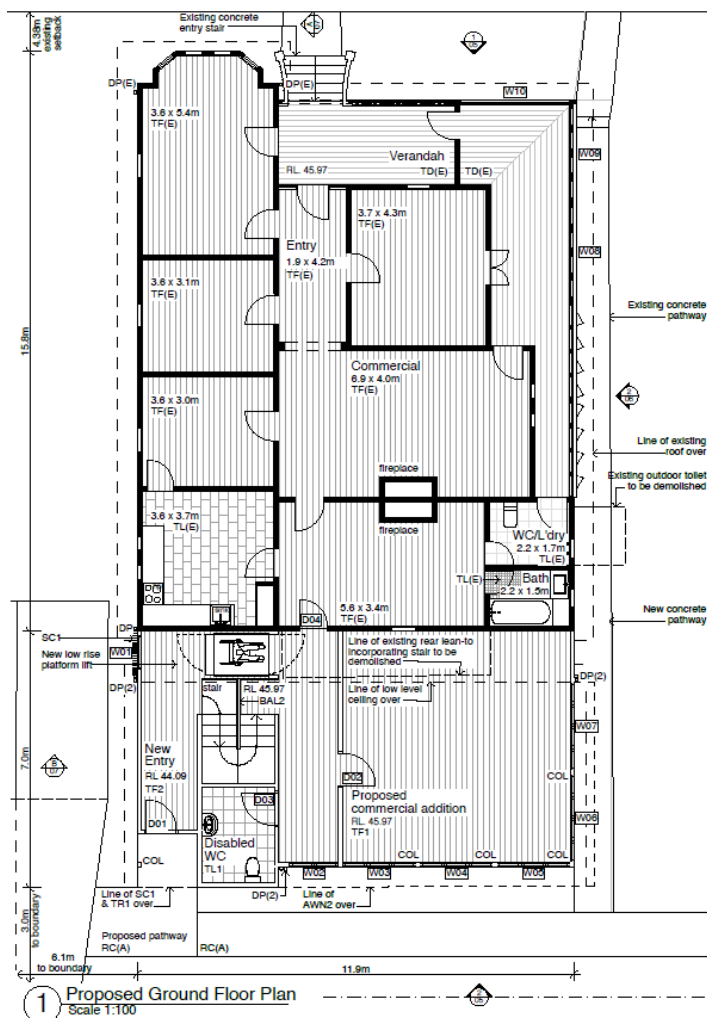


## Site Plan



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## Eastern Elevation



**Proposed Floor Plan**

**5 1.3. Description of the site**

Land is legally described	LOT: 12 SEC: 6 DP: 4358, LOT: 13 SEC: 6 DP: 4358, LOT: 14 SEC: 6 DP: 4358
Property address	68 Byron Street BANGALOW
Land is zoned:	R2 Low Density Residential
Land area is:	910.8 m <sup>2</sup>
Constraints	Property is partly identified as being flood prone and sits within a buffer to a decommissioned/ demolished dip site located near heritage house.
Heritage	The property is identified under Byron LEP 2014 as heritage Item I013 – The Greys House.

10 The property although zoned R2 sits immediately adjacent to the B2 Local Centre Zone in Bangalow and opposite the Bangalow School in Byron Street. The property to the east is used for yoga and Pilates. Opposite the site in Deacon Street is parkland managed by Council.

**2. SUMMARY OF REFERRALS**

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Referral	Issue
Environmental Health Officer*	No objections subject to conditions..
Development Engineer	No objections subject to conditions..
Building Surveyor	No objections subject to conditions..
Heritage Consultant	No objections subject to conditions.

The proposal was referred to Councils heritage adviser for comment on the amended proposal. The following conclusions and recommendations were made:

20

**Conclusion**

25 *The submitted Heritage Conservation Strategy provides a sound assessment and policy for the future conservation of the significance, fabric and setting of this notable dwelling. The proposed change of use is potentially reversible under the terms of the Burra Charter, as it maintains the dwelling in its setting with its original floor plan and form, and the rear extension could be adapted in the future if a residential use was to be returned. As such it is considered that the proposal change of use would not have an adverse impact on the assessed heritage significance or setting of the item.*

**30 Recommendations**

*1. A requirement for consolidation of the three lots which form the heritage listing of the property and its statutory heritage curtilage would be desirable to provide protection of the*

*landholding as one entity. This is standard practice in relation to developments approved on multiple lots.*

*2. The schedule of works outlined in the CMS by Extent dated June 2021 and the marked up Dilapidation Report are to be combined and included in the documentation, as the required conservation works to be carried out prior to occupation of the building for commercial purposes with the following additional notes:*

*i. Details of installation of services such as communication wiring and security between individual rooms and impacts on the historic fabric of the building.*

*ii. Mortar - The mortar for repointing of the historic brickwork is to match the colour and composition of the original. (Note- This is likely to be a traditional lime based mortar which is hardened by air drying. Traditional mixes were generally 1 part Lime to 3 parts Sand. Traditional composition mortars generally 1 part cement, 2/3 parts Lime and 9/12 parts Sand. Samples can be sent to specialist firms such as Westox for matching).*

*3. Colour scheme - Exterior repainting should reinstate a heritage colour scheme authentic to the period, based on physical evidence of paint scrapes matched to the historic photos. (The Dilapidation Report page 5 states paint 'to match existing' which is essentially a white exterior).*

*4. Fencing - If the front is replaced in the future, it should match the original diamond top post and rail fence with wire inserts. (The current fence is a flat topped post and rail.)*

*5. Future Signage - Details of signage for professional suites is to be combined on one sign and are not to clutter the garden setting. No signs should be affixed to the building. Details are to be supplied to Council for prior approval prior to occupation certificate being released.*

The heritage recommendations have been incorporated into Conditions of Consent.

### **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**

##### **SEPP 55 Remediation of Contaminated Lands**

Works are to occur on and within the property that has been used as a residence for over 100 years. The development will convert from residential to commercial use. Given the age of the premises and its use for residential purposes it is considered the site is suitable for the use as proposed.

The proposal raises no other issues under the other SEPP's.

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

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

- (a) The proposed development is defined in the LEP 2014 Dictionary as officer premises;

- (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
- (c) The proposed development is permissible with consent subject to the Provisions of Clause 5.10 of the Byron LEP as discussed below.

5 **Clause 4.3 Height of Building**

The proposed extension has a height of only 6.5 metres to the roof pitch and substantially lower than the roof of the existing dwelling and are subservient to the main part of the building. Proposal complies with the 9-metre height limit

10 **Clause 4.4 Floor space ratio**

The total area of the property of 910 m<sup>2</sup> and the building with the additions will have a total floor area of approximately 232m<sup>2</sup> or a floor space ratio of 0.255:1.0. the proposal complies with the 0.5:1.0 controls, with the size and scale of the building not inconsistent with the character of the residential properties to the east.

15

**Clause 5.10 Heritage Conservation**

20 The subject site is identified as heritage Item I013 under Byron LEP 2014 and is known as the Greys House as discussed above. The proposal is permissible with consent under the incentive provisions contained within subclause 10. Comments are provided below against each of the provisions contained within the clause:

**10. Conservation incentives**

25 *The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that—*

- (a) *the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent,*

30

**Comment:** The applicant's submission states that;

35 *'The Heritage Conservation Strategy (HCS) prepared by Extent Heritage Advisors in conjunction with a Dilapidation Report undertaken on the existing dwelling (Appendix D) form the basis to the future care and adaptive reuse of the subject residence. These detailed and extensive works will have significant positive conservation outcomes for the heritage site.*

40 *The extent of works to restore the building as recommended by the 25 strategies within the HCS and Dilapidation report are not considered to be general or anticipated regular maintenance items for a heritage building. The works are extensive to restore the existing building that requires significant works to prevent potential catastrophic events such as water leaks or fire'. The works are significant and will require significant financial outlay. These works have been costed within a Cost Estimate within Appendix E. The funding of these works for significant positive conservation outcomes will be generated by the*

45 *proposed change of use for professional office suites.*

*Any development consent for this change of use would be subject to the undertaking of the 25 strategies within the HCS and works identified by the Dilapidation Report. These works would be funded by the commercial operation and ensure the complete restoration of the building occurs in a timely and appropriate manner.*

The HCS concludes

*'The exterior condition presents as very weathered: the exterior paint is peeling, the roof contains sags, and organic growths extend over the roof tiles. Window sills are weathered and exposed joinery timbers are showing signs of decay. The brickwork shows the effects of dampness, although minimal movement cracking was observed. The stormwater drainage is poorly directed in some locations and delivers point loads of storm water to the base of the building. The concrete path extending along the eastern elevation is cracked.'*

The HCS includes 25 Management Strategies based on the assessed significance of the fabric of the house and grounds and states:

*'It is imperative that the recommendations in the dilapidation report are formalised and included in documentation for future works. The dilapidation report has been reviewed by a heritage architect and minor annotations provide further specific detail regarding the scope of some items identified for repair have been included. This marked up review is provided as an attachment (see Appendix B) to this Conservation Strategy'.*

The proposal was considered by Council's heritage advisor who supported the proposed findings and recommendations contained within the Heritage Conservation Strategy and the Dilapidation Report. It is considered the carrying out of the proposed work would deliver a substantial conservation gain to the built fabric of the building, with the costing beyond normal wear and tear maintenance, as the re-roofing to original details in itself to be a major cost.

It is also recommended to avoid confusion between referring to two documents, the HCS by Extent Heritage dated June 2021, and the marked-up copy of the Dilapidation Report with the adopted schedule of works should be combined and included in one document and is to be submitted with the construction certificate for approval.

*(b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority,*

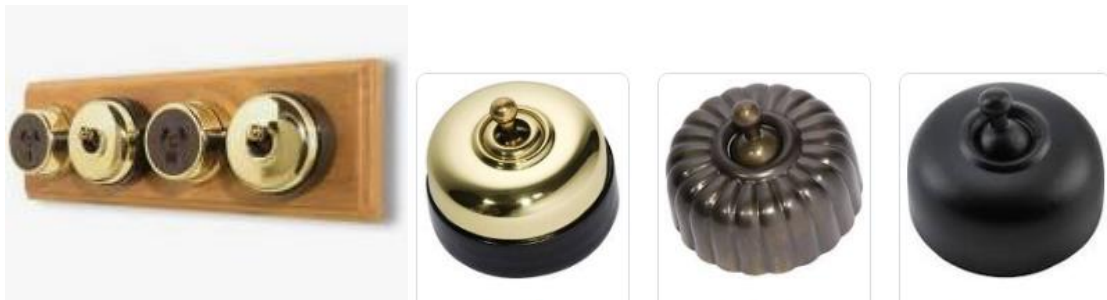
**Comment:** The HCS by Extent Heritage dated June 2021, including the marked up copy of the Dilapidation Report is supported and must be combined and included in documentation for future works as the adopted schedule of works.

*(c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out,*

**Comment:** A condition of consent recommended requiring the work to be completed prior to the Issue of the Occupation Certificate or commercial occupancy of the building.

*(d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance,*

**Comment:** It is considered that the Amended Plans dated June 2021 supported by the HCS dated June 2021 recommends the retention of all historic existing significant fabric, and the spatial setting and landscaping of the heritage item. The proposed rear extension does not involve any loss of historic fabric or elements from the building. It provides facilities and equitable access in a purpose-built structure which will enable conservation of the fabric of the original building. Issues such as car parking and impacts on the garden setting have been removed from the DA and addresses previous concerns. Conditions of consent are also recommended in relation to using heritage style fitting for power points, light switches and the like and any future business signage. Such fittings and switches are available from reputable electrical wholesalers and can be sourced with limited difficulties.



(e) *the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

**Comment:** Proposed professional office suites are not likely to have an adverse impact on the amenity of the adjoining residential zone and Council can condition the hours of operation to ensure that this is appropriate.

It is considered the proposed development if approved will provide a substantial incentive for the building to be refurbished with a high degree of maintenance in terms of preserving the Greys Dwelling. Further the use of it as a professional office suite is not out of character with adjacent land uses whilst not rendering the building incapable of being used for residential purposes again in the future.

It is also recommended that an Interpretive Sign be installed within the front curtilage of the property providing heritage detail on the Greys House. Such signage would be similar to the example provided below from towns in NSW with a height of approximately 1.2 metres, or attached to the front fence and be durable and weatherproof. The information for such a sign can be taken from the Applicants Heritage Conservation Strategy report and include a summary of when the house was built, the architect and builder and how it became known as the Greys House with an historic photo of the house, similar to the examples below.



Interpretative Sign – Grenfell, NSW



Interpretative Sign – Tenterfield NSW

### Clause 5.21 Flood Planning

The subject land is identified as prone to flooding with a minimum floor level of 45.51 m AHD required. The proposed floor level of the additions is 45.97 m AHD and complies

### Clause 6.6 Services

The subject land and proposed development is serviced with all necessary infrastructure.

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

No draft environmental planning Instruments affect the proposal.

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

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

The proposed development generates a need for 11.6 parking spaces and three bike spaces. The applicants have proposed one disabled vehicle space and two bike spaces at the rear of the site. To make up for the shortfall in parking the applicants have proposed to enter into a voluntary planning agreement for 10.6 spaces which has been considered by Councils Developer Contributions Officer as acceptable. It is noted that there is room on the subject land for more parking however this would be at the expense of the garden setting around this heritage house. Council is able to utilise the funds to provide for further parking within the public domain around the Bangalow Town Centre.

The two bike spaces proposed are suitable for staff purposes, but it is recommended that four spaces be provided within the front of the property facing Byron Street for customer usages, noting that there is footpath on this street frontage and this will be the main entrance to the property for business purposes. This could be provided by way of a portable bike rack. Conditions to apply.

**Chapter C1 Non indigenous Heritage**

The proposed additions to the rear of the house facing Deacon Street are subservient to the main part of the dwelling, being lower in height in terms of roof pitch and through the use of materials consistent with the remainder of the house. Significant treatment and refurbishment of the dwelling is proposed and conditions of consent are recommended to ensure the works are carried out prior to the dwelling becoming operational as professional offices. It is considered the proposal is consistent with the heritage provisions contained within the DCP.

**Chapter E2 Bangalow**

The provisions primarily under E2.4.3 apply to the proposal. The proposed extensions to the dwelling are at a form, bulk and scale consistent with the requirements under the DCP. The building extensions are to be clad in similar materials to match the existing dwelling, whilst conditions of consent are recommended requiring the front fence to revert back to its original diamond rail design.

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

The proposal raises no issues under the EPA Regulations 2000. Conditions to apply in relation to demolition and compliance with the Building Code of Australia.

**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**

<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.

The proposed development will not have an adverse impact on the natural environment. Some impacts are anticipated during the construction phase, and conditions of consent are recommended to control hours of work, builders waste, construction noise and the like. Hours of operation are also recommended for the offices such as Monday to Friday 8am to 6 pm and Saturday 8am to 1 pm.

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

The site is not affected by any hazards and is fully serviced with all necessary infrastructure. Having regards to the property's location between a Pilates Yoga Studio to the east and health food retailer to the west and opposite a school to the north and parkland to the south, it is considered the site is suitable for use as offices.

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

The DA was originally advertised for two weeks from 20/8/20 to 2/9/20 and Council received a Petition of objection with 103 signatures, nineteen individual objections and three in support. Issues raised included the overdevelopment of the site with the additional commercial premises proposed, undefined commercial uses proposed, loss of heritage elements of the property, demolition of the exiting garage, the visual impact of the proposal in terms of its frontage to both Byron Street and Deacon Street, general loss of heritage to the town centre.

The application following discussions with staff was amended and a more refined proposal was submitted back to Council with additional detail in terms of a Heritage Conservation Strategy and an action plan as to how to maintain and manage the existing dwelling

The DA was re-exhibited for two weeks between 28/6/21 and 11/7/21. Council only received two submissions in support of the proposed DA including the Bangalow Progress Association. The following comments have been made:

- The Complete Heritage context of the greys House will be maintained
- The rear extension compliments the heritage item and has minimal adverse impact

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- The heritage conservation will be governed by the 25 strategies shown in the Heritage Conservation Strategy report from Extent Heritage
- The Dilapidation report from Tecton provides a clear statement of restoration and maintenance work required
- Adaptive reuse is limited to professional office suites is consistent with other commercial use in the R2 Zone
- Use of a voluntary planning agreement for parking ensures retention of garden setting
- The overall development will provide a positive heritage outcome

There was one area of concern raised though regarding the diamond shaped ventilation openings being removed from the brickwork. In this regard the Dilapidation Report indicates subfloor vents where damaged to be replaced with like for like and repoint with mortar to match existing.

### 4.9 Public interest

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

## 5. DEVELOPER CONTRIBUTIONS

### 5.1 Water & Sewer Levies

### 5.2 Section 7.12 Contributions

Developer contributions applicable to the proposal under Section 7.12 of the EPA Act 1979. Conditions to apply including the need for the applicant to formally enter into a planning agreement for the shortfall in car parking spaces of 10.6 spaces at \$6174.00 space.

## 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 proposed development is an appropriate response to the site and the heritage characteristics of the land incorporating the “Greys House” which is over 100 years old.

- 5 The proposed refurbishment will ensure the longevity of the building, and it is considered reasonable that Council grant approval for its use as offices under the Heritage Incentive provisions contained within Clause 5.10 of Byron LEP 2014. The site being adjacent to the business zone and next door to a Yoga/ Pilates Studio is suitable for the development, while the development itself will not prevent the building from reverting to residential use in
- 10 the future. The application is recommended for approval subject to conditions of consent.

**Report No. 13.2 PLANNING - 26.2019.1.1 - Submissions  
report: Planning Proposal to permit  
Community Title subdivision and dwellings  
at Lot 38 DP 1059938, 31 Alidenes Road,  
Wilsons Creek**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Alex Caras, Land Use Planning Coordinator

**File No:** I2021/1296

**Summary:**

10 This report presents the exhibition outcomes for the above planning proposal (as contained in Attachment 1).

15 The planning proposal seeks to permit the creation of a neighbourhood Community Title scheme comprising up to 15 neighbourhood lots/dwellings, and one lot for association property that includes the Yankee Creek waterway and suitable riparian buffers on the subject land. No more than one dwelling will be permitted on each lot.

The planning proposal was exhibited from 11 June to 9 July 2021. Forty-two (42) public submissions and three agency responses were received, as well as a submission from Tweed Byron Local Aboriginal Land Council.

20 Key issues raised in relation to traffic impacts/safety, flooding, character/amenity, environment and cultural heritage are addressed in this report, noting that a more detailed assessment of these matters will be undertaken at the subdivision DA stage.

It is recommended that a revised planning proposal (in accordance with the report recommendation) be sent to the Department of Planning, Industry and Environment for finalisation.

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:**

**That Council:**

- 5 1. amends the 'Executive Summary' in [Appendix F – Flooding Assessment and Mitigation Report](#) of the planning proposal to clarify that “*the site is flood prone and that no dwellings can be located on flood affected land or within identified riparian buffers*”;
2. forwards the planning proposal to amend Byron LEP 2014, as contained in Attachment 1 (E2021/47677) to NSW Parliamentary Counsel's Office (PCO) requesting that a draft LEP instrument be prepared;
- 10 3. pending receipt of PCO opinion that the plan can be made, forwards the plan to the NSW Department of Planning, Industry and Environment for notification on the NSW Government legislation website.

**Attachments:**

- |    |   |  |
|----|---|--|
| 15 | 1 | 26.2019.1.1 Planning Proposal 31 Alidenes Rd Wilsons Creek v4 NEW Gateway Submission Mar 2021 and PUBLIC EXHIBITION VERSION, E2021/47677  |
|    | 2 | Public submissions, E2021/102308   |
|    | 3 | Agency submissions, E2021/102990    |
|    | 4 | Confidential - Tweed-Byron Aboriginal Land Council submission, E2021/101834  |
| 20 | 5 | Special Disclosure of Pecuniary Interest, E2012/2815    |

## Report

### Background

The planning proposal has been the subject of several reports to Council, with the most recent on 11 March 2021. At that meeting Council resolved to proceed with a revised planning proposal as follows:

**21-059 Resolved** that Council:

*That Council:*

1. *Proceeds with a revised planning proposal (as contained in Attachment 1 – E2021/29384) to permit the creation of a neighbourhood Community Title scheme comprising up to 15 neighbourhood lots/dwellings, and one lot for association property that includes the Yankee Creek waterway and suitable riparian buffers on the subject land. No more than one dwelling will be permitted on each lot.*
2. *Forwards the revised planning proposal to the NSW Department of Planning, Industry and Environment for a Gateway determination.*
3. *Pending a positive Gateway determination, undertake public exhibition of the planning proposal in accordance with the determination requirements.*
4. *Considers a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.*

The planning proposal was subsequently forwarded to the NSW Department of Planning, Industry and Environment for a Gateway determination.

### Public Exhibition

The planning proposal (Attachment 1) was placed on exhibition from 11 June to 9 July 2021. In accordance with the Gateway determination the planning proposal was sent to NSW Rural Fire Service, NSW Biodiversity and Conservation Division, Department of Primary Industries – Fisheries, NSW Natural Resources Access Regulator and Tweed Byron Local Aboriginal Land Council. Adjoining landowners were also notified.

Forty-two (42) public submissions and three agency responses were received, as well as a submission from Tweed Byron Local Aboriginal Land Council.

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

**Table 1: Public Submissions summary (Attachment 2)**

<b>Ref Number</b>	<b>Submission key themes</b>	<b>Comment</b>
<b>1</b>	<p><b>Traffic safety/risk</b></p> <ul style="list-style-type: none"> <li>– There is a blind curve on Wilsons Creek Road as you approach the Alidenes Rd turn-off which is an area of many near accidents. Alidenes Road is not safe for increased traffic movement.</li> <li>– Turning right at the intersection of Alidenes and Wilsons Creek Roads, the visibility is less than 45m viewing west. The proposed car movements will significantly increase this dangerous turn for cars on Wilsons Creek Road and especially Alidenes Road where 90% of the car movements will take place. This cannot be corrected unless the bend is removed from Wilsons Creek Road.</li> <li>– There is no signage, mirror or stop at the intersection. The road merging should be tarred for safety with increased visibility at the intersection. the road needs adequate street lighting, reflectors on the intersection, road markings and safety signs west and east are required for safety.</li> </ul> <p>The road is unsuitable for more development especially in emergency situations including flooding and the recent bushfires.</p>	<p>A Road Safety Audit (RSA) and Traffic Impact Assessment (TSA) were undertaken for this planning proposal. An internal review of these documents and the proposed intersection treatments found these to be satisfactory and within acceptable performance standards.</p> <p>Any upgrading of Alidenes Road to address flood access will be determined at the DA stage and if required, must be funded by the applicant.</p>
<b>2</b>	<p><b>Public and active transport/access</b></p> <ul style="list-style-type: none"> <li>– There is zero public transport. A cycleway or footpaths have not been included in the planning to support a proposed growing neighbourhood. Many of the residents have children who have to walk to the corner of Alidenes and Wilsons Creek Roads to catch the bus in the mornings and back again in the afternoons.</li> </ul>	<p>While the proposed development will increase the demand for public transport, the assessment found that existing services are adequate and that no additional public transport infrastructure is proposed. More detailed assessment of transport/ access will be</p>

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Ref Number	Submission key themes	Comment
	<ul style="list-style-type: none"> <li>Alidenes Rd has no dedicated pedestrian access to the school buses which are the only available public transport. Alidenes Road has three causeways without pedestrian footpaths. Cars entering causeways from either direction leave no space for school children to walk.</li> <li>A foot and cycle path should be mandated in the development, or reduce the number of lots and reduce the speed limit.</li> </ul>	<p>undertaken at the DA stage.</p> <p>These matters can be more appropriately addressed at the DA subdivision stage, where a more detailed assessment of pedestrian/ cycleway access will be undertaken.</p>
3	<p><b>Flooding</b></p> <p>The land is flood prone and should not be used for housing. It is immoral of Council to allow people to build on Flood-Prone land and has legal implications. What does it mean when stated "This flooding mitigation works can be undertaken in future development stages?"</p> <p>Wilson's Creek's annual rainfall is 1483mm and flooding is a real issue. The creek has overflowed its banks and temporarily closed access to Alidenes Rd several times in the past 8 years. The exit culvert gets blocked almost after every storm.</p> <p>The additional development will cause increased flooding impacting neighbouring properties.</p> <p>Their conclusion (in <a href="#">Appendix F - Flooding Assessment and Mitigation Report</a>) that 'The majority of the site is not flood prone and will be</p>	<p>The flood and stormwater assessment supplied with the planning proposal identifies those parts of the land affected in 1% AEP storm events when modelled for the 2100 climate change scenario (Figure 6 in Attachment 1). Any proposed flood mitigation works would need to be approved at the subdivision DA stage.</p> <p>Within Yankee Creek drainage catchment, the sub catchments feeding the waterways are small, so floods rise fast but also disappear quickly.</p> <p>The flood modelling has confirmed that there will be no significant change to flood impacts on other properties.</p> <p>The main planning proposal specifically states that the site <u>is</u> flood prone and that no dwellings can</p>

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Ref Number	Submission key themes	Comment
	<p>suitable for development with no flooding issues' is patently wrong.</p>	<p>be located on flood affected land or within identified riparian buffers, with Figure 6 showing the extent of land that is flood prone. It also states that sufficient flood free land is available on the site to enable some rural residential subdivision/development.</p> <p>Notwithstanding this, <b>the statement that “the majority of the site is not flood prone” (as per applicant’s flood assessment in Appendix F), is incorrect and should be amended accordingly to reflect the main planning proposal wording above.</b></p>
4	<p><b>Environment</b></p> <ul style="list-style-type: none"> <li>– It’s quite possible much of the development and dwellings and infrastructure including sewerage would be affected by major flooding and possibly more frequently than anticipated. Sewage leaking will have detrimental impacts on Yankee Creek.</li> <li>– Yankee creek needs to be managed and protected. The creek and woodland act as wildlife corridor.</li> <li>– A number of threatened species have been recorded in the area as well as koalas. To protect the threatened species recorded the creek lines need to be revegetated with riparian rainforest species and reed beds. The property boundaries should also be revegetated with subtropical rainforest species. Koala food trees should be revegetated adjacent the western boundary. The revegetation will be beneficial for wildlife and acts as a visual screen.</li> </ul>	<p>The planning proposal requires the waterway (and corresponding riparian buffers) to remain in one lot with common ownership and management. This is consistent with the environmental Policy Direction 2.4 of <i>Byron Shire Rural Land Use Strategy 2017</i>.</p> <p>In accordance with DCP 2014 chapter <a href="#">B1 – Biodiversity</a>, a vegetation management plan also will be required at the subdivision DA stage. The VMP will incorporate planned management and restoration activities for the Yankee Creek waterway and suitable riparian</p>

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Ref Number	Submission key themes	Comment
	<ul style="list-style-type: none"> <li>– Despite the ecology report suggesting there is no evidence of koalas in this area, we have sighted echidnas and koalas.</li> <li>– To ensure protection of the wildlife Dogs and cats should be banned from the proposed development.</li> <li>– The increase in traffic will also impact wildlife.</li> </ul>	<p>buffers, as well as be reinforced in the Community Management Statement.</p> <p>Noted. Council's current vegetation mapping shows there are no koala feed trees or potential habitat on the site.</p> <p>Wildlife impacts of dogs/cats/ traffic are DA assessment matters that cannot be addressed in a planning proposal.</p>
5	<p><b>Character and amenity</b></p> <ul style="list-style-type: none"> <li>– The proposed 15 lots earmarked for the development are a very large number of dwellings.</li> <li>– Bulk scale and character of the development are not consistent with the existing development in this area and will impact on the peaceful nature of the area.</li> <li>– This is especially the case once creek path and flood zones, riparian buffers, sewerage, driveways, power and other facilities are factored in. The development will resemble a residential estate, which is not in keeping with the existing area.</li> </ul> <p>A covenant should be imposed to ensure the type of housing built in relation to imprint on the area and is keeping within character of a rural environment.</p>	<p>It's important to understand that the proposed 15 lots/ dwellings represent the maximum carrying capacity of the site, based on Council's developable land assessment and allowance for utilities and wastewater disposal. However, achieving this with acceptable environmental impacts will need to be demonstrated at the DA stage, with the resulting yield possibly being less than 15 dwellings.</p> <p>Housing design controls can only be included in a DCP (not LEP). However, <a href="#">SEPP (Exempt &amp; Complying Development)</a> will override any housing design controls in the RU2 zone.</p>

Ref Number	Submission key themes	Comment
6	<p><b>Bulk and scale</b></p> <ul style="list-style-type: none"> <li>– There is no guarantee that these lots won't be further subdivided and we end up with 30 dwellings on the development.</li> <li>– The possibility of 2nd dwellings being allowed in the future would add to the overdevelopment. Light pollution will also be an unforeseen impact of this development.</li> <li>– The allotments should be reduced to minimum 4 acres, keeping within the existing rural environment. Sealed driveways should be required. Considering the bulk of housing.</li> <li>– The infrastructure cannot handle this increase in houses.</li> <li>– This density of dwellings is more suited to be located where sewerage is connected.</li> </ul>	<p>The planning proposal seeks to identify the site on the <a href="#">Multiple Occupancy and Community Title</a> map of LEP 2014, where the maximum number of dwellings (15) will be specified and governed by <a href="#">clause 4.1B(3)(c)</a>, which specifically states that: <i>"there is no more than one dwelling erected on each neighbourhood lot"</i>.</p> <p>The proposed 15 lots/ dwellings represent the maximum carrying capacity of the site, based on Council's constraints assessment and allowance for utilities and wastewater disposal. The ability to achieve this yield with acceptable environmental impacts will be assessed in more detail at the DA stage.</p>
7	<p><b>Power station</b></p> <p>Council has recently undertaken a feasibility study on the possibility of opening the hydro-electric power station.</p> <p>This would be an inappropriate location for residential development should the power station be recommissioned in the future.</p>	<p>The power station is listed on the State Heritage Register. Any future development would need to satisfy the provisions of <a href="#">cl 5.10 Heritage conservation</a> in LEP 2014</p>
8	<p><b>Consultation</b></p> <p>Neighbours and nearby residents have not previously been advised nor consulted, for such a significant development, even though the original proposal has been with Council in some</p>	<p>The site is identified in Council's adopted Rural Land Use Strategy, which was the product of multiple public exhibitions and</p>

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Ref Number	Submission key themes	Comment
	form for a number of years.	community engagement.  At the planning proposal stage, consultation with adjoining residents only occurs once Council: (i) formally resolves to proceed with the rezoning proposal and (ii) receives subsequent authorisation by the State government (ie. Gateway determination).
9	<b>Need for this kind of housing</b>  There is a great need for more land of this type and council have been lacking in opening supply of this type of land for a long time. The site itself is well located and will be a great use of otherwise underutilised land.	Noted. The subject land is identified in, and consistent with, Council's adopted Rural Land Use Strategy.

**Table 2: Government Agency Submissions summary (Attachment 3)**

Agency	Key issues	Comment
<i>Biodiversity Conservation Division of Department of Planning, Industry &amp; Environment</i>	<p>Recommends the following in relation to the <a href="#">Ecological Assessment</a> report:</p> <ol style="list-style-type: none"> <li>1) Update ecological assessment to reflect intention of PP to facilitate community title subdivision, rather than a rezoning to R5 – Large Lot Residential.</li> <li>2) PP should rezone known areas of High Environmental Value (HEV)</li> </ol>	<p>The assessment was prepared prior to lodgement of the PP and was based on a R5 zoning and 3,000m<sup>2</sup> lots. As the current PP seeks to facilitate a lower impact scenario, the ecological assessment findings are still valid; therefore no change required.</p> <p>The site does not contain any HEV vegetation that meets the</p>

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## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Agency	Key issues	Comment
	<p>vegetation to an appropriate environmental protection zone.</p> <p>3) Any e zone/s applied should be in accordance with the <a href="#">Northern Councils E Zone Review Recommendations Report</a>.</p> <p>4) If Council determines that E zones are not an available (or suitable) option, suggests a suitable planning mechanism such as a planning agreement as part of the PP to ensure that the association lot:</p> <ul style="list-style-type: none"> <li>a. includes the highest biodiversity values present within the planning areas, such as Yankee Creek and 30m either side of the waterway, etc. and</li> <li>b. is subject to ongoing</li> </ul>	<p>State governments E zone criteria. The presence of Yankee Creek and associated 2nd order streams are the most valuable biodiversity features present, albeit currently in a degraded state.</p> <p>The PP seeks to broaden LEP <a href="#">Clause 4.1B</a> (3)(b) to include <i>environmental protection works</i> to reflect the intended use and management of the 'association lot' containing the Yankee Creek waterway and suitable riparian buffers.</p> <p>Furthermore, in accordance with DCP 2014 chapter <a href="#">B1 – Biodiversity</a> a vegetation management plan also will be required at the subdivision DA stage. The VMP will incorporate planned management and restoration activities for the Yankee Creek waterway and suitable riparian buffers, as well as be reinforced in the Community Management Statement.</p> <p>Noted. As stated above, the site does not contain any HEV vegetation that meets the criteria for an E zone.</p> <p>See comments above regarding requirement for a vegetation management plan at the subdivision DA stage, in accordance with DCP 2014 chapter <a href="#">B1 – Biodiversity</a>.</p> <p>The VMP will detail planned management and restoration activities for the Yankee Creek waterway and suitable riparian buffers, as well as any degraded rainforest. The area</p>

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Agency	Key issues	Comment
	management, including the restoration and rehabilitation of degraded parts of the site, which should be formalised through a vegetation restoration and management plan.	subject to the vegetation management plan must then be protected from further impacts in perpetuity.  Compared to a planning agreement, the VMP represents an equally practical and timely pathway for delivering the outcomes specified at left.
<i>Biodiversity Conservation Division (BCD)</i> of Department of Planning, Industry & Environment	<p>Comments regarding Flooding Assessment and Mitigation report:</p> <ul style="list-style-type: none"> <li>Notes that the planning area contains land above the 100-year ARI flood extents suitable for residential development; issues such as location of building envelopes, access to the overall site and individual building envelopes can be addressed at the development application stage.</li> <li>Therefore no objection to the PP from a flood perspective.</li> </ul>	Noted. A more detailed flood/drainage management strategy will be submitted and assessed at the subdivision DA stage. This will include referral to BCD.
Department of Primary Industries (Fisheries)	<p>Outlines the following policy positions on buffers zones between development and riparian and freshwater vegetation (in accordance with in DPI's <a href="#">Policy and guidelines for fish habitat conservation and management (Update 2013)</a>):</p> <ul style="list-style-type: none"> <li>generally requires riparian buffer zones to be established and maintained for developments or activities in or adjacent to TYPE 1 or 2 habitats or CLASS 1-3 waterways (see guidelines below). Riparian buffer zones shall be measured from the top of the bank/drainage depression along CLASS 1 to 3 waterways (see Table 2).</li> <li>requires the design of riparian buffer zones to incorporate the maintenance of lateral connectivity between aquatic and riparian habitat.</li> </ul>	Noted. These matters were considered in the assessment of this planning proposal.

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### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Agency	Key issues	Comment
	<ul style="list-style-type: none"><li>• Installation of infrastructure, terraces, retaining walls, cycle ways, pathways and grass verges within the riparian buffer zone shall be avoided or minimised</li></ul> <p>DPI Fisheries has no objection to the proposed amendment provided that the riparian buffers to Yankee Creek within the lot for association property that includes the Yankee Creek waterway are consistent with the buffer requirements outlined in the above <a href="#">policy and guidelines</a>.</p>	<p>Noted. The buffer requirements outlined in the above <a href="#">policy and guidelines</a> will be assessed and applied at the subdivision DA stage.</p>

**Table 3: Submission from Tweed Byron Local Aboriginal Land Council – Cultural Heritage Unit (Attachment 4)**

Key issues in relation to applicant's <a href="#">Heritage Assessment report</a> dated February 2019	Comment
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## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Key issues in relation to applicant's <a href="#">Heritage Assessment report</a> dated February 2019	Comment
<p><u>In relation to report findings:</u></p> <p>1. Recommendation 1:</p> <ul style="list-style-type: none"><li>a. Cultural Heritage Induction should be provided by the Cultural Heritage Unit of TBLALC, not by an archaeologist. Only the appropriate Aboriginal people should speak for Country.</li><li>b. If ACH is found to be present on the site the appropriate mitigation measures are required. There is a continuum of degrees of caution. Given that the report seeks to apply to subsequent DA applications, an induction of staff may not be sufficient</li></ul> <p>2. Recommendation 2:</p> <ul style="list-style-type: none"><li>a. This is not merely a recommendation; it is legally mandatory.</li><li>b. Suspected or known ACH Objects should be identified by the Cultural Heritage Unit of TBLALC and the DPIE EnviroLine should be contacted if necessary. TBLALC will notify archaeological consultants if necessary.</li></ul> <p>3. Recommendations 3, 4 and 5:</p> <ul style="list-style-type: none"><li>a. These are not merely a recommendation; they are legally mandatory.</li></ul>	<p>The comments at left are expected to be addressed at the DA subdivision stage. Staff have advised TBALC that they will be formally consulted for any future DA s on the subject land, and that their submission been appended to Ardill Payne's heritage assessment report to inform the DA assessment process.</p>

# BYRON SHIRE COUNCIL

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Key issues in relation to applicant's <a href="#">Heritage Assessment report</a> dated February 2019	Comment
<p><u>Report findings .....cont'd</u></p> <p>TBALC <u>does not agree</u> that:</p> <ul style="list-style-type: none"> <li>○ “no indigenous cultural heritage sites or relics were identified within the Project Area”, or that</li> <li>○ “it is considered unlikely that the Projects Area will contain significant ‘insitu’ Aboriginal Heritage of a nature which would be a constraint to the proposed rezoning”, or that</li> <li>○ “Consultation with the Tweed Byron LALC did not identify any known historic Aboriginal campsites or intangible cultural heritage values within the Project Area”</li> </ul> <p>because:</p> <ol style="list-style-type: none"> <li>1. We intrinsically disagree with some of the wording used (as detailed in Attachment 4),</li> <li>2. insufficient analysis has been conducted in order to make such statements, and</li> <li>3. The third point is factually false.</li> </ol> <p>Despite these concerns we do not have any concerns with the proposed subdivision – because, as long as it doesn't involve any ground disturbance, it will not cause harm to ACH.</p> <p>However, we do not accept this report as a basis for consideration of potential impacts on ACH as a result of <u>any subsequent Development Applications</u>. In fact, we would expect to be formally engaged to consult to the proponents of any future DA s in the Project Area.</p>	

### Conclusion

- 5 Based on the information presented above, the only change to the exhibited planning proposal is as recommended (in **bold**) in issue ‘3’ of Table 1. Concerns regarding traffic /access, flooding, environment, character, and amenity impacts have been sufficiently addressed in the planning proposal and or will be subject to a more detailed assessment at the subdivision DA stage.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	OP Activity
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 and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

### Recent Resolutions

- 17 September 2020 Council (Planning) Meeting, ([Res 20-466](#))
- 5 • 11 March 2021 Council (Planning) Meeting, ([Res 21-059](#))

### Legal/Statutory/Policy Considerations

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

### 10 Financial Implications

This is an applicant-initiated planning proposal with all costs borne by the applicant/landowner.

**Report No. 13.3 PLANNING - 26.2021.3.1 Planning proposal to rezone 150 Lismore Road, Bangalow to IN1 General Industrial**

**Directorate:** Sustainable Environment and Economy

5 **Report Author:** Sam Tarrant, Planner

**File No:** I2021/1301

**Summary:**

Council has received a planning proposal applying to land at 150 Lismore Road, Bangalow.

- 10 The planning proposal seeks to rezone part of the lot from RU1 Primary Production to IN1 General Industrial and E3 Environmental Management.

The site is located directly adjacent to the existing industrial estate in Bangalow and is identified as an investigation area in Byron Shire Business and Industrial Lands Strategy.

- 15 The proposal is supported by a flood study, stormwater management plan, traffic impact assessment, road safety audit, preliminary contaminated land assessment and cultural heritage assessment.

The rezoning will enable additional employment land in Bangalow, without significant impacts on surrounding land uses, the environment or infrastructure.

- 20 The E3 Environmental Management buffer will allow for revegetation and protection of Maori Creek.

It is recommended that the planning proposal be sent to the Department of Planning, Industry and Environment for a gateway determination and then placed on public exhibition.

**NOTE TO COUNCILLORS:**

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

30

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY



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#### **RECOMMENDATION:**

**That Council**

- 5 1. proceed with the planning proposal, as attached to this report (Attachment 1 – E2021/84328), to amend LEP 2014 to rezone part of Lot 4 DP 635505, 150 Lismore Road, Bangalow from RU1 Primary Production to IN1 General Industrial and E3 Environmental Management;
2. forward the planning proposal to the NSW Department of Planning, Industry and Environment for a Gateway determination;
- 10 3. pending a positive Gateway determination, undertake public exhibition of the planning proposal in accordance with the determination requirements; and
4. consider a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.

#### **Attachments:**

- 15 1 26.2021.3.1 Planning Proposal 150 Lismore Road Bangalow, E2021/84328 
- 2 Template - Form of Special Disclosure of Pecuniary Interest, E2012/2815 

## Report

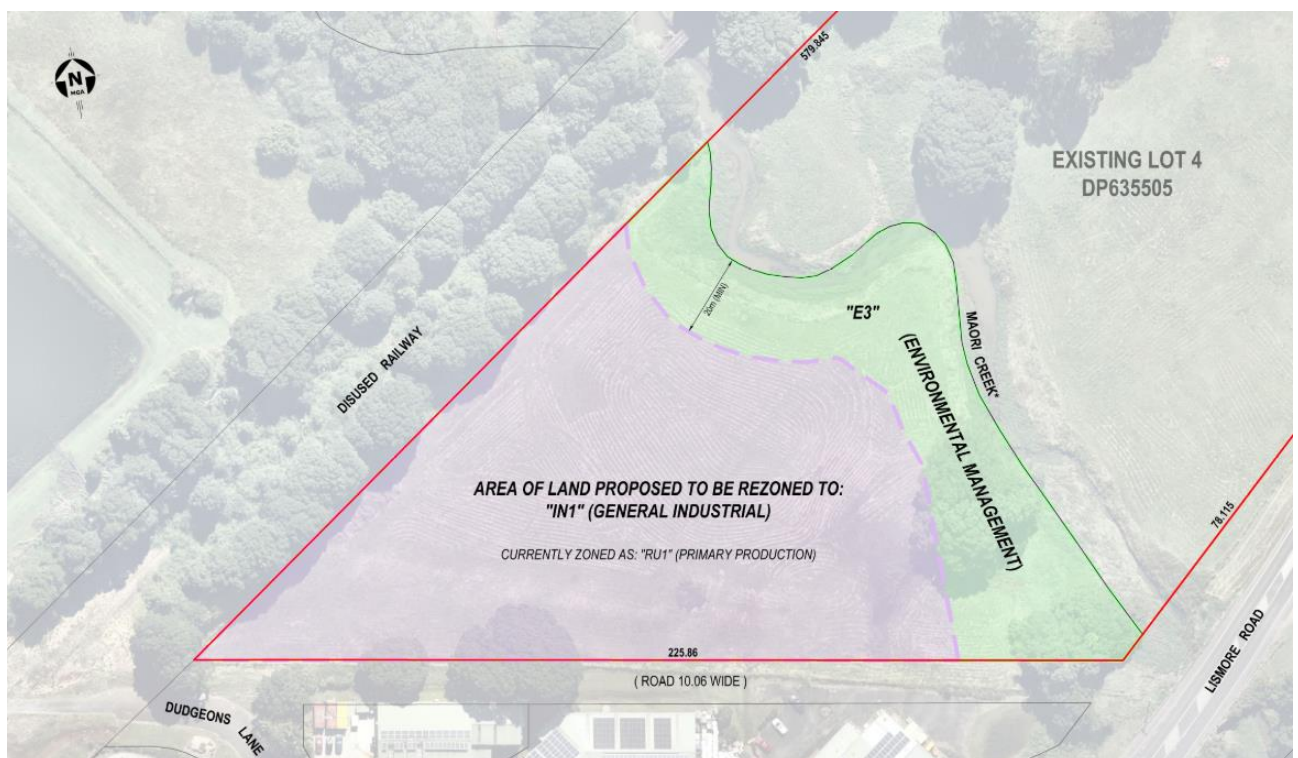
This report presents a planning proposal that seeks to rezone part of Lot 4 DP 635505, 150 Lismore Road, Bangalow from RU1 Primary Production to IN1 General Industrial and E3 Environmental management.

- 5 A proposed floor space ratio of 0.75 and Minimum lot size of 1000m<sup>2</sup> will apply to the industrial zoned part of the site, which is the same as the neighbouring Bangalow industrial estate.

- 10 The site is identified as investigation area 7 in Byron Business and Industrial Lands Strategy as an area potentially suitable for future industrial uses. The strategy was adopted by Council and subsequently endorsed by the Department of Planning, Industry and Environment in October 2020.

The site is not suitable for long term sustainable farming due to its size and isolation being separated from Maori Creek as well as Lismore Road, the rail corridor and the existing Industrial estate.

- 15 The site is located directly adjacent to the existing industrial area in Bangalow and separated from the rest of the lot by Maori Creek. The area proposed to be zoned general industrial is approximately 1 hectare.



- 20 Access to the site is via Dudgeons Lane, with a traffic impact assessment and road safety audit accompanying the planning proposal. These studies concluded that the existing road network and Lismore Road intersection can accommodate the additional traffic resulting from the rezoning. All necessary services and infrastructure are available to the site.

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The site is not mapped as bushfire prone land, and does not contain acid sulfate soils or high environmental value vegetation.

Part of the site is mapped as flood prone land. This is generally in relation to Maori Creek. The creek is mapped as key fish habitat.

- 5 The area proposed to be rezoned IN1 General Industrial is reflective of the accompanying flood study. A minimum 20m E3 Environmental Management buffer has been applied to protect Maori Creek and enable revegetation within this area. This buffer is extended further, particularly in the southern part of the lot to minimise impacts from flooding.
- 10 The zoning map is indicative of the development scenarios contained within the flood study. The maps may be further refined as a result of community consultation prior to being reported back to Council.
- The stormwater management plan submitted notes that stormwater quality targets can be met with the provision of stormwater detention system to not adversely impact Maori Creek.
- 15 The IN1 rezoning will enable additional employment opportunities and services for Bangalow. The E3 zoning will provide opportunity for revegetation of Maori Creek as part of a future subdivision. This section of Maori Creek is currently a grassed field which will benefit from the riparian revegetation required as per DCP 2014 Chapter B1 Biodiversity.
- 20 It is considered that there is sufficient information to support the planning proposal for a Gateway determination and proceed to public exhibition.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	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	<b>4.1.3.11</b>	Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

## Recent Resolutions

Not applicable

**Legal/Statutory/Policy Considerations**

Not applicable

**Financial Considerations**

This is an applicant funded planning proposal with all costs borne by the applicant.

**5 Consultation and Engagement**

Should Council proceed with the planning proposal, upon receipt of a Gateway determination it will be placed on public exhibition for 28 days in accordance with Byron Community Participation Plan.

**Report No. 13.4 PLANNING - S4.55 application to modify consent 10.2014.742.1 to include 8 additional motel units, remove the ground and third floor swimming pools, add of roof-top swimming pool and recreation area at 33 Lawson Street Byron Bay**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Ivan Holland, Planner

**File No:** I2021/1347

**Proposal:**

**Proposed modification (as notified):** S4.55 to Modify Consent to include Eight (8) Additional Motel Units, Remove the Ground and Third Floor Swimming Pools, Add a Roof Top Recreation Area comprising a Swimming Pool, Roof Top Bar and Cafe

**Proposed modification (as amended):** Modify Consent to include Eight (8) Additional Motel Rooms, Remove the Ground and Third Floor Swimming Pools, Add a Roof Top Swimming Pool and Recreation Area

**Original Development :** Demolition of existing single-storey motel building. Erection of a three (3) storey motel accommodation building plus two (2) levels of basement parking - 33 Lawson Street, Byron Bay

**Type of modification sought:**

**Property description:** LOT: 8 SEC: 8 DP: 758207  
33 Lawson Street BYRON BAY

**Parcel No/s:** 41820

**Applicant:** Northpoint Advisory

**Owner:** 33 Lawson Street Pty Ltd

**Zoning:** B2 Local Centre

**S96 Date received:** 11 November 2020

**Original DA determination date:** 29/10/15

**Integrated Development :** No

**Public notification or exhibition:**

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 24/11/20 to 7/12/20

– Submissions received: five (5) in opposition  
Planning Review Committee: Not applicable

Committee:

Delegation to determination:  
Council

Issues:

- Modified building exceeds LEP 2014 building height limit – variation sought
- Variation sought to DCP 2014 car parking requirements, on the basis of share cars
- Variation sought to DCP 2014 height for roof top recreation area

## Summary:

5 An application has been received to modify aspects of an approved three (3) storey motel accommodation building at 33 Lawson Street, Byron Bay. As approved, the development involves motel accommodation (46 rooms in total) on the ground, first and second floors and two levels of basement car parking.

This application has been referred to Council as the original consent was determined by Council and the current application seeks changes to the previously approved variation to the building height development standard.

The modifications proposed to development consent 10.2014.742.1 include:

- 10
- An additional eight (8) motel rooms;
  - Remove the ground and third floor swimming pools; and
  - Add a roof-top swimming pool and recreation area that includes a bathroom and a roof top bar.

15 As originally approved, the maximum building height was 9.9m (excluding the lift overrun) equating to a 10% height variation. The original approval also granted a 1.6% variation to the floor space ratio (FSR).

The current proposal introduces new roof top elements that would breach the maximum height including:

- 20
- two (2) stairwell overruns (~20.6m<sup>2</sup>);
  - a new bathroom/ change room combined with lift overrun (~15m<sup>2</sup>) (lift overrun was previously approved but is now higher to allow access/egress); and
  - the parapet and pool fencing.

25 In response to advertising of the modification application, 5 objections were received, primarily concerned about the increased height of the building and amenity impacts from the use of the roof top pool and bar area. It should be noted that the application exhibited included a roof top bar which was subsequently deleted from the proposal.

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Objectors were also of the view that the original approval for this building allowed a generous height variation and that this should not be increased incrementally by way of modifications to that approval.

- 5 A variation to the height provisions is supported in this instance as the staircase, lift and amenities on the roof top generate minimal visual impacts, do not generate significant privacy or overlooking issues, or noticeably change the bulk and scale of the approved building having regards to the character of the town centre.

- 10 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. Conditions of consent are proposed in terms of limiting hours of operation for the roof top pool area to 7am to 8pm daily and numbers to no more than thirty patrons. The additional 8 guest rooms as proposed is a result of reconfiguring the internal floor layout of the development as generally already approved. This however does create a shortfall in car parking based on the general car parking requirements under Byron DCP 2014. However, the DCP controls have been amended to enable car sharing arrangements to be proposed in Byron Bay. Three car share spaces are proposed and conditions of consent are recommended accordingly.

- 20 The application to modify the consent is satisfactory having regard to relevant matters for consideration and is recommended for approval subject to conditions listed in the Recommendation of this Report below.

#### 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.

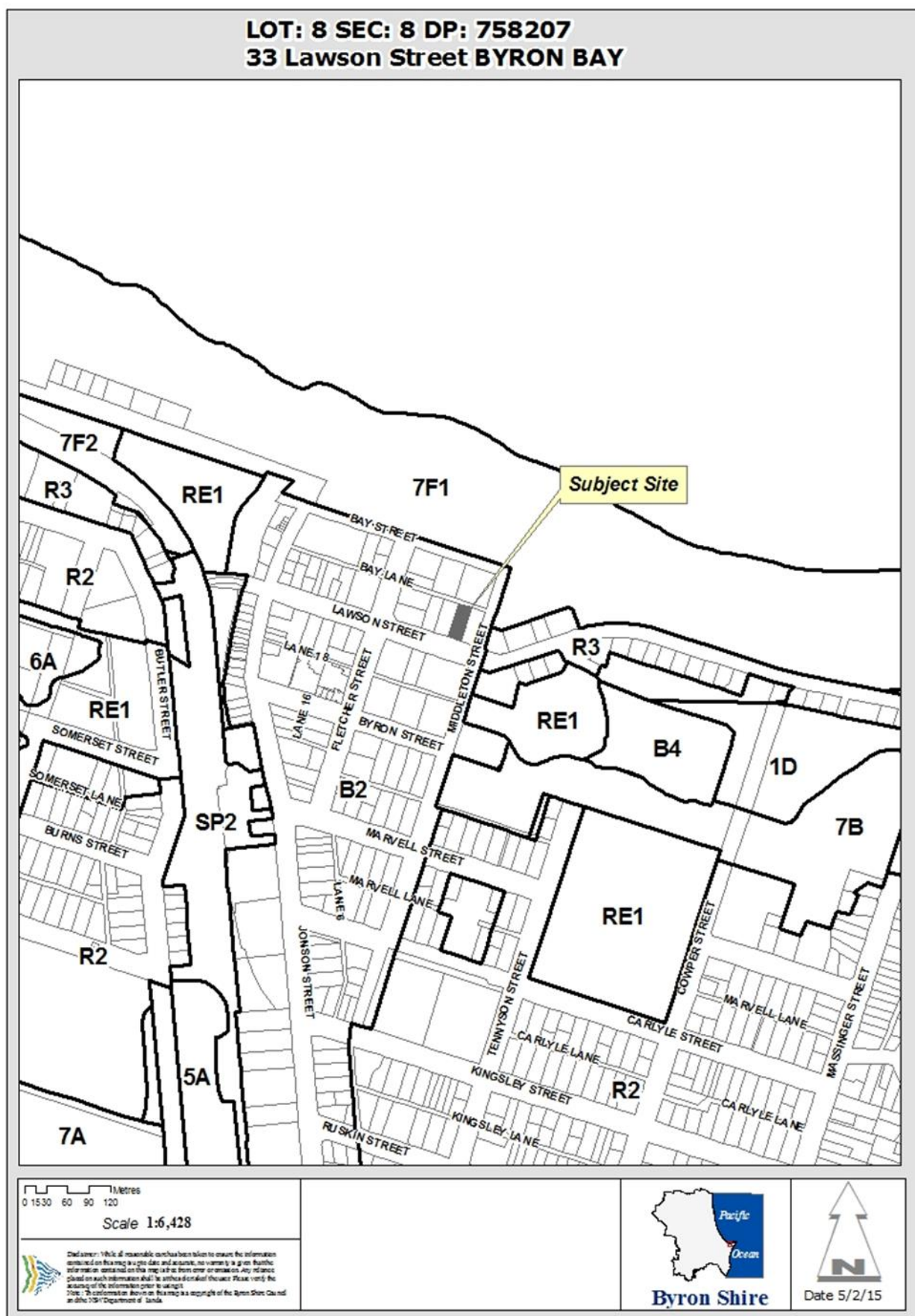
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#### RECOMMENDATION:

- 30 **That pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2014.742.2, to Modify Consent to include Eight (8) Additional Motel Rooms, Remove the Ground and Third Floor Swimming Pools, Add a Roof Top Swimming Pool and Recreation Area, be approved by modifying Development consent number 10.2014.742.1 as indicated in Attachment 2 of this**  
35 **report.**

#### Attachments:

- 40 1 DA10.2014.742.2 Proposed plans, E2021/106696   
2 DA10.2014.742.2 Recommended conditions, E2021/106706   
3 DA10.2014.742.2 Combined submissions, E2021/106710 



## Assessment:

### INTRODUCTION

#### 1.1. History/Background

- 5 The assessment report for the original DA detailed the following development approval history for the property:

*Past applications over the subject site:*

- 10 **BA 78/2308** *Building application for Motel Additions determined 9 October 1978.*
- BA 82/2700** *Building Application for Unit additions determined 13 December 1982.*
- 15 **BA 86/2051** *Building application for Minor alterations determined 25 February 1986.*

- 20 The current DA (10.2014.742.1) was considered at the 21 May 2015 Council meeting at which time it was refused (Resolution 15-215). A request for review of the determination under s.82A was lodged on 30 July 2015. The review of the determination was considered at the 29 October 2015 Council meeting at which time it was approved as a deferred commencement consent subject to conditions (Resolution 15-565).

- 25 The current DA (10.2014.742.1) approved demolition of the existing single-storey motel building, erection of a three (3) storey motel accommodation building plus two (2) levels of basement parking.

#### 1.2. Consultation with applicant

- 30 Following a preliminary review of the application, a request for further information was made relating to engineering matters (car parking and associated matters) on 1 February 2021 and environmental health matters (noise impacts) on 8 March 2021.

Further information on the engineering matters was received on 11 March 2021.

- 35 The applicant was advised on 12 May 2015 that the proposal was not supported for the following key reasons:
1. Roof Top Bar – concern regarding noise, number of people and related amenity impacts associated with a bar serving alcohol.
  2. Insufficient car parking provided.
  - 40 3. Proposed car parking space size and manoeuvring areas within the basement.

- 45 Ongoing discussions were held with the applicant in relation to the car parking and associated matters with amended plans submitted removing the roof top bar and providing accurate plans for the car parking with the car share arrangement. These plans are the subject of this assessment.

**1.3. Description of the proposed development**

The amended application seeks approval to modify development consent 10.2014.742.1 to:

- 5
- Include eight (8) additional motel rooms;
  - Remove the ground and third floor swimming pools; and
  - Add a roof-top swimming pool and recreation area.

10 Amendments to the basement car parking and ground floor layout are also proposed. The plans submitted with the current application are contained in **Attachment 1**. The following is a summary of key changes proposed:

Item	Current	Proposed
Total number of motel rooms	43	51
Total car parking	forty-six (46) parking spaces including three (3) accessible parking spaces and a separate bicycle parking area	forty-six (46) car parking spaces (including four (4) accessible parking spaces, three (3) share car spaces), four (4) motorcycle spaces and two bicycle parking areas
Basement Level 2	twenty-seven (28) car parking spaces, service area, and one-way signal control vehicular access ramp.	twenty-seven (27) car parking spaces (including two accessible parking spaces), storeroom, and one-way signal control vehicular access ramp.
Basement Level 1	Eighteen (18) car parking spaces (including three accessible parking spaces and four stacked parking spaces), bicycle parking area, garbage bin storage room, four store/service rooms, two-way vehicle access ramp to ground level and one-way signal control vehicular access ramp to Basement Level 2	Nineteen (19) car parking spaces (including two accessible parking spaces and four stacked parking spaces), three share car spaces), four (4) motorcycle parking spaces, two bicycle parking areas, garbage bin storage room, two store/service rooms, two-way vehicle access ramp to ground level and one-way signal control vehicular access ramp to Basement Level 2
Level1 (ground floor)	reception and office, access chair lift, swimming pool and thirteen (13) motel rooms	reception and office, access chair lift, bar/cafe and thirteen (15) motel rooms including one wheelchair accessible room

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Level 2 (first floor)	fifteen (15) motel rooms including two wheelchair accessible rooms	eighteen (18) motel rooms including one wheelchair accessible room
Level 3 (second floor)	fifteen (15) motel rooms including one wheelchair accessible room, swimming pool	eighteen (18) motel rooms including one wheelchair accessible room
Level 4 (roof top)	Lift overrun	Swimming pool, lift overrun, bathroom, two stairwell overruns

Vehicular access to the proposed basement parking levels will remain from Lawson Street.

- 5 The proposed building finishes incorporate rendered and painted masonry wall construction, with elements of timber look cladding and sliding louvre screens.

#### 1.4. Description of the site

- 10 The assessment report for the original DA detailed the following description of the site:

*The subject site is located at 33 Lawson Street, Byron Bay and is legally described as Lot 8 Section 8 DP758207. The site is located on the northern side of Lawson Street between Middleton Street and Fletcher Street. The rear of the site adjoins Bay Lane.*

- 15 *The site is a regular shaped allotment with a frontage of 20.12 metres to Lawson Street (front) and Bay Lane at the rear and a length of 50.37 metres. The applicant has advised the site has a total area of 1013m<sup>2</sup>.*

- 20 *The site contains an existing single-storey motel development (Hibiscus Motel) with vehicular access from Lawson Street and on-site parking area.*

#### **Surrounding development**

- 25 *Existing development on the site at 31 Lawson Street comprises a two-storey (plus upper level mezzanine) building with commercial development at ground level and 2 x 2 bedroom dwelling units on the first floor and upper level mezzanine.*

- 30 *Existing development on the adjoining land at No.35 Lawson Street comprises a two storey plus attic level building known as 'Waves' Motel.*



Photo 1 – current street front façade of development site



Google Street View image of 33 Lawson Street (Jul 2019)

## 1. SECTION 4.55(2)

The Applicant is a person entitled to act on the consent. The development to which the consent as modified relates is substantially the same as the originally approved development. Consultation was not required with the Minister, public authority or an integrated development approval body in relation to the original development application. Public notification of the application, including consideration of any submissions received is discussed elsewhere in this report.

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### 2. ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

The proposal raises no issues under the Regulations that have not been previously considered.

### 3. SUMMARY OF REFERRALS

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

### 4. 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 not bush fire prone land.

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

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

#### 5.1. State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 55— Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The review of the original application noted that the property was suitable for the development as proposed.		

#### 5.2. Byron Local Environmental Plan 2014 (LEP 2014)

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

- The proposal is defined in the LEP 2014 Dictionary as hotel or motel accommodation (a category of tourist and visitor accommodation);
- The land is within the B2 Local Centre Zone according to the Land Zoning Map;
- The proposal is permitted with consent; and
- Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
• To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.	The proposed modifications are not expected to cause the development to be inconsistent with the relevant zone objectives.

- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To encourage vibrant centres by allowing residential and tourist and visitor accommodation above commercial premises.

#### 4.4 Floor space ratio

The floor space ratio applying to the site is 1.3:1 (c.4.4). The floor space ratio approved by the original DA was 1.32:1. The proposed modifications will result in a gross floor area of 1309m<sup>2</sup> with the resulting floor space ratio being reduced to 1.29:1 and thus compliant with the development standard.

Note: The applicant has excluded the ground floor café seating area from the gross floor area calculation on the basis that it is open and unfenced.

Acid sulfate soils (6.1), earthworks (6.2) and flood planning (6.3) were considered in the original assessment and review and the current DA has conditions to manage these matters. Some changes to these conditions have been recommended to reflect the amended plans.

#### 4.3 Height of buildings

The building height limit applying to the site is 9m (c.4.3). The building height approved by the original DA was 9.9 metres (excluding the lift overrun ~10.7m). It is noted that building height is defined to include “plant and lift overruns”. The proposed modifications (particularly the addition of structures associated with the roof top swimming pool, lift extension, stairwells and toilet) result in a maximum building height of ~12.5m.

Note: Building heights were measured from the drawings provided as building heights in metres were not annotated on the elevations or sections.

#### Exceptions to development standards Clause 4.6 Assessment

Clause 4.6(3) and (4) specify:

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

(4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Planning Secretary has been obtained.

Assessment: A written request was submitted by the applicant (within the Statement of Environmental Effects) seeking to justify a variation of the building height standard on the following grounds:

- a) The proposed bar and amenities structure provide for a maximum height of 14.670m which is only slightly higher than the approved height of the existing 'Waves' building at 35 Lawson Street (which is 14.14m in height);
- b) A recent approval (development application 10.2014.361.1) for alterations and additions to the 'Waves' building allowed for a new building height of 13.03m, which is still higher than the predominant parapet forming the perimeter height of the proposed building;
- c) The proposed building is not out of context in the streetscape in terms of height and bulk and scale, and not expected to adversely impact on the character or amenity of the locality. In fact, the proposed bar and amenities area have been located centrally and behind proposed perimeter planters, such that it will remain predominantly unable to be seen from Lawson Street and Bay Lane;
- d) The addition of the proposed planters, in a layered approach with the proposed glass balustrading (set off the perimeter), will add significant articulation and aesthetic appeal to surrounding areas;
- e) The proposed area of variation will have no adverse impact in respect of view loss and or privacy concerns (particularly given the centralisation of the structure on the roof and the addition of generous perimeter planter boxes);
- f) The proposed bar and amenities structure represent an area of 29.9m<sup>2</sup> only. This represents approximately 3% only of the overall site area – demonstrating the minor nature of the variation sought;
- g) The non-compliance in building height is partially a result of the flood prone nature of the land and required ground floor levels required to achieve compliance;
- h) All feasible avenues have been explored by the client to reduce building height without resulting in an unviable and or unappealing building;
- i) The proposal is in the public interest as it will seek to deliver upon the adopted strategic intent of the Byron Bay Town Centre Masterplan as it relates to its clear strategic direction on increasing building heights in the subject area and also (most importantly) as it relates to the promotion of building height and form variation in order to properly reference the town centre perimeter and also improve building aesthetics;
- j) The proposal complies with all other relevant provisions and standards, with the exception of a very minor non-compliance with the Floor Space Ratio (although it is noted that the FSR has reduced from that previously approved as part of this application); and
- k) As detailed in the responses above, the proposal is considered to be in the public interest and meet the objectives of the standard and the objectives of Zone B2 Local Centre.

The maximum height of the proposed building is ~12.5m above existing ground level, being 3.5m higher than the 9.0m height control (a non-compliance of ~39%).

In terms of height above existing ground level, the additional elements proposed in the current modification application are:

Building Element	Height above Existing Ground (m)*	Compliance with 9.0m Height Limit
Parapet / pool fence	10.3 – 10.6m	14-18% exceedance
Stairwell overrun	11.2-11.8m	24-31% exceedance
Lift overrun and bathroom	12.2-12.5m	33-39% exceedance

*\* Building heights were measured from the drawings provided as building heights in metres were not annotated on the elevations or sections.*

- 5 A lift overrun was approved by the original application, with a maximum height of ~10.7m above existing ground (a ~19% exceedance), and an area of 16.2m<sup>2</sup>. Other than the lift overrun, the building height as originally approved is 9.9m and this remains the same similar (~9.4-9.6m) under this application for the majority of the roof area.
- 10 The new elements that exceed the building height limit have a combined area of ~25.3m<sup>2</sup> and are setback at least 2.7m from the nearest property boundary.

It is accepted that:

- 15 a. The adjoining development to the east has a height that is significantly greater than the 9.0 metre building height limit;
- b. The new/additional areas that will exceed the building height limit are relatively small in area and setback from Lawson Street (~6m for parapet and ~6.8m for stairwell overrun; and
- 20 c. Landscaping is proposed around the perimeter of the roof top recreation area.

On this basis, the proposed development would not be out of context in the streetscape and character in terms of height and should not cause adverse visual impacts, loss of privacy and/or solar access to existing development

- 25 The proposed variation to the building height standard is considered acceptable and strict compliance with the standard is unreasonable or unnecessary in the circumstances of the case.

**5.3. 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 relevant to this application.

**5.4. Byron Shire Development Control Plan 2014 (DCP 2014)**

Key issues raised by the proposed modification in relation to DCP 2014 are:

- Vehicle parking, circulation and access (Chapters B4 and E10); and
- Noise and amenity impacts from the roof top recreation area (Chapter B6).

Council's Development Engineer has carried out a detailed review of the amended vehicle parking, circulation and access proposed by the modification and has found it to be

acceptable subject to recommended conditions. It should be noted that the amended car parking for the development is supported on the basis that the three share cars proposed (in accordance with the relevant provisions of E10.2.6 of the newly adopted Chapter E10: Byron Bay Town Centre) allow a variation to the car parking required under Chapter B4.

5 The deletion of the roof top café/bar, in conjunction with recommended conditions, has addressed the noise and amenity impacts identified with the original modification proposed (Chapter B6).

10 Chapter D3: Tourist Accommodation

But for the roof top features, the modifications will have a minimal impact on proposed building in relation to general provisions for tourist accommodation (D3.2) and specific provisions for hotel or motel accommodation (D3.3.6).

15 The scale of the roof top development has been reduced from the initially proposed bar building however the amended proposal still includes a lift overrun (that incorporates a bathroom), two stairwell overruns and parapets/fencing associated with the swimming pool/recreation area. But for the southern Stairwell overrun and parapets, these features are set back from the edge of the building reducing visual impact. On the basis that  
20 Council is satisfied with the proposed variation to the maximum building height and proposed management of potential amenity impacts from use of the roof top recreation area (see discussion above), the modified development is compatible with character and amenity of current and approved development in the locality being otherwise not vastly different from that already approved.

25 Chapter E10: Byron Bay Town Centre  
There are some inconsistencies between the proposed development and design provisions of this chapter however they largely relate to aspects of the already approved development that this application does not seek to modify (e.g., vehicle access should not  
30 be provided from active street frontage, ground floor should not be used for tourist accommodation but for access and reception).

The following provisions apply to development in the Byron Bay Town Centre in relation to building height (E10.2.3):

35 ***Prescriptive Measures***

1. *Where the Byron LEP 2014 Height of Buildings Map specifies a maximum height of 11.5m, buildings must not contain more than three storeys.*
2. *Where the Byron LEP 2014 Height of Buildings Map specifies a maximum height of 9m, buildings must not contain more than two storeys.*

40 ***Definition:*** *A storey is a space between one floor level and the floor level next above (or the ceiling where there is no floor level above). It does not include an attic, a mezzanine or a space that contains only a lift shaft, stairway or meter room.*

3. *Roof-top recreation or commercial facilities must not contravene the maximum building height development standard.*

The previously approved building does not meet the building height and exceeds the maximum number of storeys however these aspects of the development were approved under the original DA. However, the proposed roof top recreation area is a new component of the development and contravenes prescriptive measure 3. However, the roof top recreation area otherwise complies with the specific prescriptive measures for such spaces (E10.2.9).

As noted above, on the basis that Council is satisfied with the proposed variation to the maximum building height and proposed management of potential amenity impacts from use of the roof top recreation area (see discussion above), the modified development is consistent with relevant objectives relating to compatible scale and character of buildings and managing adverse impacts of roof top recreation areas on surrounding properties.

#### **5.5. Any Planning Agreement or Draft Planning Agreement?**

There are no applicable planning agreement or draft planning agreement applying to this development.

#### **5.6. Environmental Planning & Assessment Regulation 2000 Considerations**

The proposal raises no new issues under the EPA regulations that have not been previously considered.

#### **5.7. Any coastal zone management plan?**

There is no applicable coastal zone management plan.

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

Use of the proposed roof-top recreation area 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 proposed mitigation measures in the acoustic assessment include:

- restriction on the use of the roof top recreation facilities to motel guests, with access controlled via 'swipe card' in the internal lift (it is also noted that the ground floor reception has been located closer to the lift);
- acoustic fencing around the entire perimeter of the swimming pool;
- use of the roof top recreation facilities be limited to day and evening hours – 7.00am to 10.00pm.

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Further conditions are recommended for management of amenity impacts from the roof top recreation area, including limits on patron numbers to 30 at any one time, no amplified music and hours further limited to 7 am to 8pm daily .

- 5 The roof-top facilities will be used by guests of the motel accommodation and will not be open to the general public.

- 10 As discussed 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 result in minor visual impacts and will not significantly alter the character of the building as approved.

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

- 15 The proposed modifications do not affect the site's suitability.

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

- 20 The application was publicly exhibited with 5 objections received

Key issues raised in submission	Consideration
Amenity impacts on neighbours (noise, privacy, light) particularly from roof top bar/recreation area	As noted above, the roof top bar has been deleted from the proposal. A noise impact assessment has been provided that demonstrates noise from the roof top area can be managed to avoid or minimise impacts on neighbouring properties. Conditions have been recommended to avoid, manage and minimise potential amenity impacts on neighbours.
Bulk and scale (not compliant with planning rules)	The key change in relation to bulk and scale of the development is the roof top recreation area. This is discussed in detail in the planning assessment above.
Should have been considered as a fresh application not a modification	It is considered the proposal can be assessed as a modification to the original DA.

#### 5.11. Public interest

- 25 The proposal is unlikely to prejudice or compromise the public interest or create an undesirable precedent. The facilities have been designed, and can be managed, to minimise impacts on the amenity of the neighbourhood.

### 6. DEVELOPER CONTRIBUTIONS

30

#### 6.1. Water & Sewer Levies

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Section 64 levies will be payable.

#### **6.2. Section 7.12 Contributions**

Contributions to apply as per conditions of consent

#### **7. 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

#### **8. CONCLUSION**

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 and the car share arrangements for the development.

**Report No. 13.5 PLANNING - Development Application  
10.2020.346.1 for Subdivision of Two (2)  
Lots into Two (2) Lots at 806 and 874  
Coolamon Scenic Drive, Coorabell**

5 **Directorate:** Sustainable Environment and Economy  
**Report Author:** Greg Smith, Team Leader Planning Services  
**File No:** I2021/1413

**Proposal:**

**DA No:** 10.2020.346.1

**Proposal description:** Subdivision of Two (2) Lots into Two (2) Lots

LOT: 3 DP: 577281, LOT: 1 DP: 557721

**Property description:** 806 Coolamon Scenic Drive COORABELL, 874 Coolamon Scenic Drive COORABELL

**Parcel No/s:** 113070, 113060

**Applicant:** Matt Walker Town Planning

**Owner:** Mr J D Scarrabelotti

**Byron LEP 1988 Zoning:** 7(d) (Scenic / Escarpment Zone)

**Date received:** 16 July 2020

**Integrated /  
Designated**

☒ Integrated ☐ Designated ☐ Not applicable

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#### **Development:**

**Concurrence required** Yes – Department of Planning, Industry and Environment

**Public notification or exhibition:**

- Level 0 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: N/A
- Submissions received: N/A
- Submissions acknowledged: ☐ Yes ☐ No ☒ N/A

**Planning Review Committee:** Not applicable

**Variation request** Clause 64A of Byron Local Environmental Plan 1988

**Issues:**

- 40 hectare minimum lot size development standard, Request for variation submitted, Department of Planning, Industry & Environment concurrence granted to variation
- Subdivision of bush fire prone land, Integrated development, Bush fire safety authority and General Terms of Approval issued by Rural Fire Service

#### **Summary:**

5 The DA proposes a boundary adjustment subdivision between two (2) lots at Coorabell, transferring 2,698m<sup>2</sup> from the larger parcel known as Lot 3 DP 577281 with an area of 64.91 ha to the adjacent Lot 1 DP 557721 which has an area of 0.4046 Ha. Both lots are entirely within the 7(d) (Scenic / Escarpment Zone) under Byron LEP 1988. As the minimum lot size requirements under clause 11 of Byron LEP 1988 are 40 hectares, the DA is supported by an objection pursuant to section 64A of LEP 1988 seeking a variation to the development standard. The proposal will result in the two lots having the following areas

- 10
- Proposed Lot 10 - 0.6744 hectares; and
  - Proposed Lot 11 - 64.64 hectares.

The boundary adjustment subdivision will result in a more useable smaller parcel (proposed Lot 10) of rural land.

15 Both Lot 10 and 11 have a dwelling entitlement which does not change the result of the proposal.

The Department of Planning, Industry and Environment has granted concurrence to the variation to the lot size requirements and strict compliance with the development standard

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is unreasonable and unnecessary in the circumstances of the case. The requested variation is recommended for approval.

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

5 NOTE TO COUNCILLORS:

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



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### RECOMMENDATION:

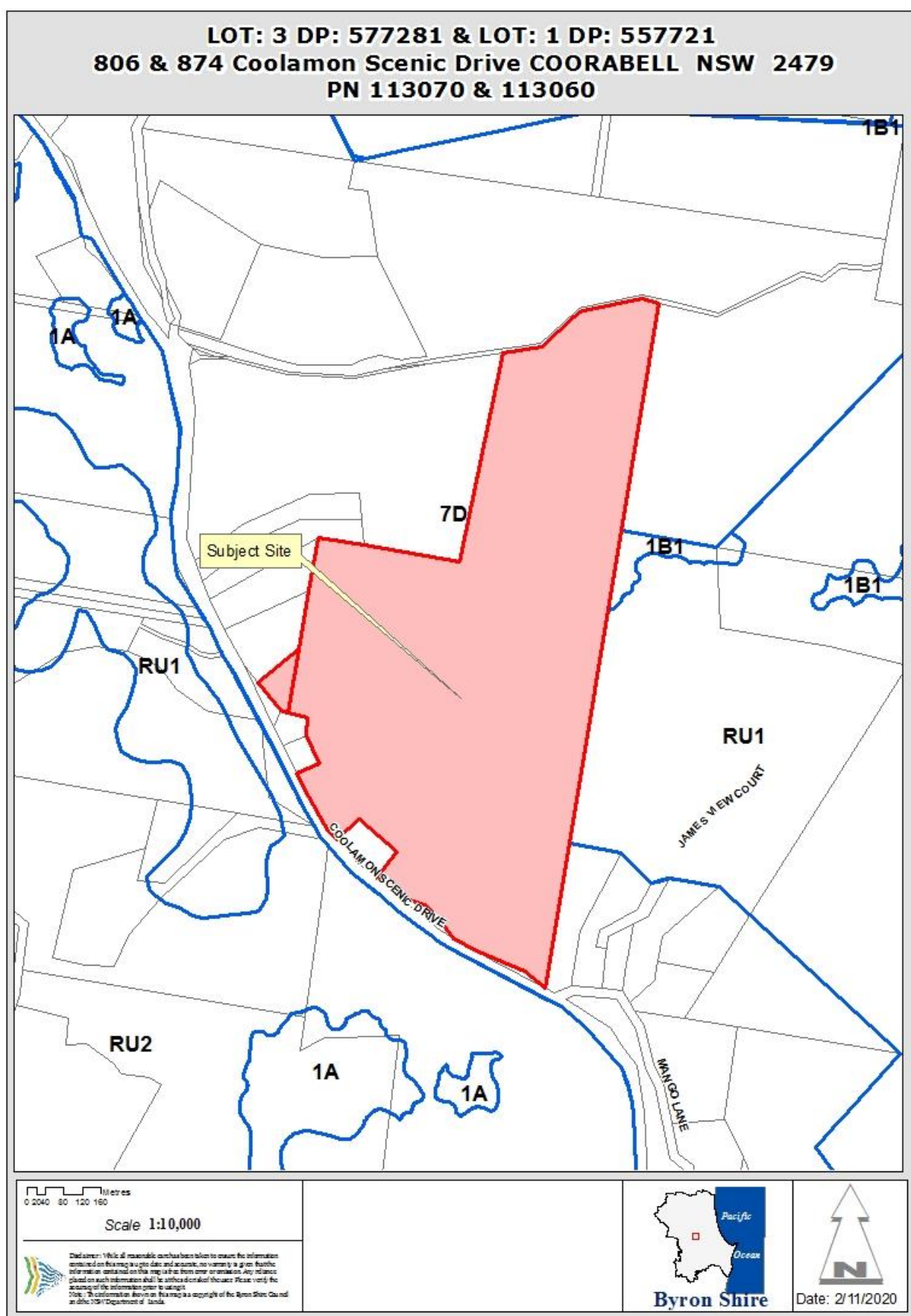
15 **That, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.346.1 for Subdivision of Two (2) Lots into Two (2) Lots, be granted consent subject to the conditions of approval in Attachment 2 (E2021/107855).**

### Attachments:

20

- 1 DA10.2020.346.1 - Existing and proposed lot layout plans, E2021/107857 
- 2 DA10.2020.346.1 - Recommended conditions of consent, E2021/107855 

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### Assessment

#### History/Background

##### 806 Coolamon Scenic Drive, Coorabell (Lot 3 DP 577281)

Deposited Plan 577281 was registered on 16/7/1975.

BA 6.1992.2133.1 for rural dwelling additions was approved on 23/4/1992.

DA 5.1992.90.1 for addition/alteration to an existing dwelling was approved on 10/4/1992.

BA 6.1993.2454.1 for outbuilding – addition to a stable was approved on 12/8/1993.

##### 874 Coolamon Scenic Drive, Coorabell

BA 79/2018 for a garage was approved on 22/2/1979.

DA 10.2015.468.1 for alterations and additions to an existing dwelling was approved on 21/9/2015.

DA 10.2020.53.1 for a swimming pool was approved on 10/3/2020. The approved pool was not installed as at the date of the site inspection.

#### Description of the proposed development

This application seeks approval for a boundary adjustment subdivision of two lots into two lots. The proposal is to transfer approximately 2,698m<sup>2</sup> of land from No. 806 Coolamon Scenic Drive to the adjoining and significantly smaller No. 874 Coolamon Scenic Drive. Attachment 1 to this Report provides the existing and proposed lot layout plans.

According to the submitted plans, the areas of existing and related proposed lots after subdivision are as follows:

Existing		Proposed	
Lot 1 (No. 874)	(4,046m <sup>2</sup> ) 0.4046ha	Lot 10	(6,744m <sup>2</sup> ) 0.6744ha
Lot 3 (No. 806)	64.91ha	Lot 11	64.64ha
TOTAL	65.3146ha		65.3144ha

#### Description of the site

A site inspection was carried out on 27 July 2020.

Land is legally described	LOT: 3 DP: 577281, LOT: 1 DP: 557721
Property address	806 Coolamon Scenic Drive COORABELL, 874 Coolamon Scenic Drive COORABELL
Land is zoned:	7(d) (Scenic / Escarpment Zone)

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Land area is:	64.91 hectares
Property is constrained by:	Bush fire prone land High Environmental Value Vegetation Cattle Dip Buffer

#### SUMMARY OF REFERRALS

Referral	Issue
Development Engineer	No objections subject to conditions.
Natural Resource Planner	No objections subject to conditions.
Rural Fire Service (100B)	No objections subject to conditions.
Department of Planning, Industry & Environment	The Department granted concurrence, which is discussed further by this Report below.

5

#### SECTION 4.14 – BUSH FIRE PRONE LAND

10 Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document 'Planning for Bush Fire Protection 2006'. The site is bush fire prone land. The development application was referred to the NSW Rural Fire Service, which provided conditions which are reflected in the Schedule 3 of the list of recommended consent conditions.

#### 15 SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

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

#### State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy (Koala Habitat Protection) 2019	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Council's Natural Resource Planner noted that the submitted plan specifies that no vegetation removal is required to establish the APZ and that these measures will not result in ecological impacts beyond those that have already occurred on the site.		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: It is considered the site is suitable for the boundary adjustment.		
State Environmental Planning Policy (Infrastructure) 2007	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposal is satisfactory having regard to the provisions of the Infrastructure SEPP.		

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<b>Satisfactory</b>	<b>Unsatisfactory</b>
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### Byron Local Environmental Plan 1988 (LEP 1988)

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

- 5 (a) The proposed development is defined in the Environmental Planning and Assessment Act 1979 as subdivision of land;
- (b) The land is within the 7(d) (Scenic / Escarpment Zone) according to the map under LEP 1988;
- 10 (c) The proposed development is permitted with consent clause 10 of LEP 1988; and
- (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

Zone Objective	Consideration
<i>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.</i>	The proposal will not have a significant effect on the scenic qualities of the Shire including in relation to visual amenity and proposes no buildings (which would have required the control of choice and colour of materials, position and bulk of buildings, access roads and landscaping).
<i>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.</i>	The proposed development is not likely to have a visually disruptive effect on the scenic quality or visual amenity of the Shire.
<i>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.</i>	The proposed development is not likely to have a detrimental effect on the scenic quality or visual amenity of the Shire.
<i>To minimise soil erosion from escarpment areas and prevent development in geologically hazardous zones.</i>	The proposal will have no impacts in terms of soil erosion from escarpment areas or with respect to geologically hazardous zones.
<i>To enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.</i>	The proposal does not warrant conditions requiring the control of noxious plants and weeds.

- 15 **Clause 10 Subdivision generally**  
Development consent is required to subdivide land.

### Clause 11 Subdivision in rural areas for agriculture etc

- 20 The larger proposed lot complies with the applicable 40 hectare minimum lot area development standard and is only proposed to be reduced by 0.4%. The smaller proposed lot does not comply with the 40 hectare standard, however it's size is proposed to be significantly increased (66.7% larger) compared to it's existing area.

**Clause 15 Dwelling-houses**

Both existing lots have a dwelling entitlement according to Council's mapping. The outcome of the proposed subdivision does not change.

5 **Clause 27 Building lines along arterial roads**

The site has frontage to Coolamon Scenic Drive which is an arterial road designed on the LEP 1988 map. However, the development application proposes no building which would have to comply with the 55m front setback development standard at this location.

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

The development application does not propose any building work which would have to take in account materials of construction, landscaping and siting.

**Clause 31 Development on ridgetops**

15 No buildings are proposed. As such landscaping and building materials are not required to be considered in the assessment of this application.

**Clause 45 Provision of services**

Not a requirement of this application.

20

**Clause 64A Exceptions to Development Standards**

A variation to the 40 hectare minimum allotment area development standard for the 7(d) Zone under clause 11 of Byron LEP 1988 by proposing a 6,744m<sup>2</sup> lot is sought. This represents a variation to the development standard of 98%.

25

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

- 30
- The objectives of the 7(d) Zone and the development standard are achieved.
  - The proposed boundary adjustment is at a minor scale and character that maintains or enhances the natural, scenic amenity of the environment and facilitates effective management of bush fire prone land to reduce risk to property and persons.
  - The proposal will not detract from the amenity of adjoining residents, impact on the scenic amenity of the locality, create any conflict in land uses and will not generate inappropriate traffic.
  - Each of the proposed allotments are of a satisfactory shape and retain a satisfactory frontage to Coolamon Scenic Drive, in accordance with the objectives of the development standard whilst enabling effective management of the required APZ.
  - One of the existing lots (Lot 1) along with several other lots along this section of Coolamon Scenic Drive are well below the 40 Hectare standard and highlight the potential inappropriateness of the 40 Hectare minimum lot size.
  - The subject site and adjoining 7(d) Zone is to be rezoned at some stage in the near future to fit in with the Standard Instrument LEP 2014 which may even see a reduction on Minimum Lot Size in this locality. Council should not enforce strict compliance to the standard given existing lot sizes and 7(d) zoning and Lot size dating back to the 1988 Byron LEP.
- 35
- 40
- 45

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- The development standard has been virtually abandoned or destroyed by Council's own actions in granting consents departing from the standard.
- The underlying objective or purpose of the development standard is not relevant to the development.
- 5 • The proposed development proffers an alternative means of achieving the objectives via a land swap which ends up with 2 lots of similar sizes than presently exist.
- Strict compliance with the standard would be unnecessary as it is achieved anyway and unreasonable with no purpose being served.
- 10 • Granting consent to the development application is consistent with the aims of this clause and would hinder the attainment of the objects of the Act, one of which is the promotion and coordination of the orderly and economic use and development of land. This makes it relevant to consider whether consent to the development application encourages what may be summarised as considered and planned development or conversely may hinder a strategic approach to planning and development.
- 15 • The zoning of the land 7(d) Scenic/ Escarpment Zone is inappropriate as it was created as part of the LEP 1988 and should have been rezoned in 2014 when the rest of the State was required to adopt the Standard Instrument LEP. The land will be rezoned at some stage soon under the Byron LEP 2014 with the consequence that the development standard would no longer apply to that land.
- 20 • The proposed boundary adjustment will not create any additional dwelling entitlements, will not detract from the scenic amenity of the locality nor conflict with the surrounding land uses and subsequently meets all the objectives of the Zone and requirements under this clause.
- 25 • The clause 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 case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in the Act.
- 30 Strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, there are sufficient environmental grounds to vary the development standard and the proposal serves the public interest for the following reasons:
- 35 • The proposal increases the area of the smaller lot whilst not reducing the area of the larger lot below the 40 hectare minimum lot area development standard. This is an improvement upon the existing lot areas.
- The proposal allows for the maintenance of the asset protection zone for the house on the smaller lot, as indicated by the Applicant. The following photograph demonstrates that the land that is to be transferred is effectively being maintained as an asset protection zone at present:
- 40 • The proposed lot sizes are more compatible with local environmental values than the existing lot sizes, and the proposal facilitates even greater efficiency of use of existing land resources for residential and other human purposes, in accordance with the objectives of clause 4.1 of LEP 2014.
- 45 • The proposal represents appropriate flexibility in applying the minimum lot area development standard to this particular development and the proposal achieves a

better outcome for and from the development by allowing flexibility in the particular circumstances of this case, in accordance with clause 4.6 of LEP 2014.

- The proposal is satisfactory when considered with respect to relevant Departmental Circulars and caselaw.
- The land is appropriately zoned, and this is not an error as suggested by the Applicant, however the application demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and that approving the subdivision is in the public interest given the improvements to the lot sizes without significant environmental impacts.
- The proposal is a better planning outcome given that the smaller lot is increased in size to accommodate the existing dwelling and curtilage areas without reducing the larger allotment to a non-compliant size.
- These grounds of the request are particular to the proposed development on this site justify the request for variation.

The concurrence of the Planning Secretary has been granted (refer to E2020/70933). The Department advised as follows in this regard:

“Following consideration of the application, concurrence has been granted to vary the 40ha minimum lot size development standard for land in the 7(d) (Scenic/Escarpment) zone under the Byron LEP 1988 to enable the boundary adjustment between Lot 1 DP 557721 and Lot 3 DP 577281, 874 Coolamon Scenic Drive, Coorabell.

Concurrence was granted in this instance for the following reasons:

- the proposal will not result in additional lots or opportunities for additional dwellings in the 7(d) zone in which the development standard is being varied and will provide increased opportunities for the improved management of bushfire asset protection zones of the lands;
- Lot 1, DP 557721 is already significantly less than the 40ha minimum lot size; and
- there is no public benefit in maintaining the development standard in this instance.”

It is recommended that the development standard be varied in this instance.

The proposed development complies with all clauses of LEP 1988 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

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

There are no imminent and certain proposed instruments of significant relevance to the proposed development.

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

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DCP 2010 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 its purpose is to provide planning strategies and controls for various types of development permissible in accordance with LEP 1988.

The proposed subdivision is satisfactory having regard to the provisions of Chapter 1 Part B: Subdivision. No significant change is proposed to the overall lot layout, design and servicing. The proposal makes the smaller lot more useable whilst not affecting the useability or compliance of the larger lot nor causing significant environmental impacts.

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).

### Environmental Planning & Assessment Regulation 2000 Considerations

Proposal raises no issues under the Regulations

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

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

### The suitability of the site for the development

The site is serviced, and generally unconstrained in terms of the proposal as submitted and is suitable for the proposed development.

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

No submissions were received

### Public interest

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

### DEVELOPER CONTRIBUTIONS

There is no nexus to levy contributions for the boundary adjustment.

**DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

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

Provide Disclosure Statement register details here: Not applicable

5

**CONCLUSION**

10 The application proposes a boundary adjustment subdivision of 2 lots into 2 lots resulting in the transfer of 2,698m<sup>2</sup> from a large farm holding to a smaller rural residential style lot. Both lots have a dwelling entitlement.

15 The DA addresses the relevant constraints applying to the site as they relate to the proposal, and it is considered the boundary adjustment subdivision has merit. The application is recommended for approval subject to conditions of consent.

STAFF REPORTS - INFRASTRUCTURE SERVICES

**Report No. 13.6 Mullumbimby Heritage Park Masterplan**

**Directorate:** Infrastructure Services

5 **Report Author:** Malcolm Robertson, Team Leader Open Space

**File No:** I2021/1423

**Summary:**

10 Council has allocated budget for planned upgrades to Heritage Park, Mullumbimby. Prior to progressing with these upgrades there is a need for an overall Masterplan for the reserve to be developed.

The Report is seeking Council's support for the reallocation of funds to enable the preparation of Masterplan for Mullumbimby Heritage Park.


15 The Mullumbimby Resident Association (MRA) have in recent correspondence reinforced the community support for the development of an overall Landscape Masterplan for Heritage Park.

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**RECOMMENDATION:**

20 **That Council allocates \$20,000 from the existing \$87,300 budget allocated to Heritage Park Infrastructure Works to fund development of a Masterplan for Mullumbimby Heritage Park.**

**Attachments:**

25 1 Letter to GM re Heritage park 2 Sept 2021, E2021/111037 

## Report

5 Both Council's adopted Open Space and Recreation Needs Assessment and Action Plan and the adopted Mullumbimby Masterplan identify the need for a Landscape Masterplan for Heritage Park.

The Recreation Needs Assessment identifies need for a Master Plan for Heritage Park to ensure a quality recreation park with the following considerations:

- 10
- connections to Palm Park along the Brunswick River
  - access to the Brunswick River for canoe and kayak launching and fishing
  - picnic facilities that support social gatherings
  - internal walking paths

The Mullumbimby Masterplan action plan identifies the need to upgrade Heritage Park through development of a landscape Masterplan that includes consideration of;

- 15
- BBQ facilities
  - Picnic facilities
  - Public toilets
  - Pedestrian and cycle connections
  - Upgrades to play equipment

20

  - Exercise equipment
  - Recycling and dog waste bins

The Mullumbimby Masterplan also identifies the need to partner with community groups to improve the condition of the riparian zone adjacent to the river

Currently there are budgeted works within Heritage Park as follows;

- 25
1. Heritage Park Playground upgrade.

30 This funding arose from decision not to replace the Pool Park playground when it reached the end of its usable life. The Pool Park location had safety issues and as a result it was determined that it was preferable to consolidate the play equipment in one location and to utilise any available funding to improve the existing Heritage Park playground.

2. Upgrade of the eastern section of Heritage Park, with consideration of potential improvement to drainage, car parking and access to water for small craft.

5 Works in this area are seen as a priority because of ongoing negative environmental impacts from uncontrolled vehicle access and poorly formed drainage. As an initial stage to the planning process Council have initiated a detailed survey for the area currently used for casual car parking to assist with development of drainage concept design work. A core focus for this area is management of stormwater flows through Water Sensitive Urban Design.

10 Recent input from the Mullumbimby Residents Association (MRA) has highlighted the need for the planning works to be completed in as transparent and inclusive manner as possible. Completion of a Landscape Masterplan for Heritage Park is a critical first step before any additions or upgrades to the park are undertaken. Completion of a Masterplan will also place Council in a better position to explore future potential grant funding opportunities.

### Key issues

15 One of the Mullumbimby Masterplan core principles is to protect and enhance Mullumbimby's green and leafy character and to reconnect with the river, with specific actions to restore riparian vegetation and 'bringing back the Bruns' and to upgrade Heritage Park to include better facilities.

20 Heritage Park offers solace and a connection to the natural environment, but these could be enhanced and elevated to create more space for passive recreation. It is critical that any upgrades are planned appropriately to ensure that the look and feel of the park is retained and core natural elements are protected and enhanced.

## Next steps

Should Council resolve to allocate funding for the Masterplan, an external consultant will be engaged to undertake this body of work.

## 5 Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	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	1.2.4: Provide active and passive recreational Community space that is accessible and inclusive for all (SP)	<b>1.2.4.2</b>	Deliver accessibility outcomes within Capital works and infrastructure renewal programs
<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	<b>4.1.1.5</b>	Deliver one way traffic trial for Centennial Circuit (Byron Arts and Industry Estate Precinct Plan action)

## Recent Resolutions

Resolution 19-685, 12 December 2019

- 10
1. That Council adopt Our Mullumbimby Masterplan
  2. That Council commence work on the priority actions and consider the required budget in the 2020/2021 budget process.

Resolution 18-843, 13 December 2018

To adopt the Open Space and Recreation Needs Assessment and Action Plan

**Financial Considerations**

Current adopted budget includes allocation of \$87,300 within GL 4835.267 for infrastructure works within Heritage Park, Mullumbimby. It is proposed that \$20,000 of this is assigned to development of a Masterplan.

**5 Consultation and Engagement**

Recent communications with the Mullumbimby Resident Association (MRA) have reinforced the community desire for development of an overall Landscape Masterplan for Heritage Park. The Masterplan process will ensure that both key stakeholders and wider community are given opportunity to provide input and guidance to the Masterplan process.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

**Report No. 14.1      Report of the Local Traffic Committee  
Meeting held on 17 August 2021**

5    **Directorate:**                      Infrastructure Services

**Report Author:**                Dominika Tomanek, Executive Assistant Infrastructure Services

**File No:**                         I2021/1419

**Summary:**

- 10    The attachment to this report provides the minutes of the Local Traffic Committee Meeting of 17 August 2021 for determination by Council.

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**RECOMMENDATION:**

- 15    1.    **That Council notes the minutes of the Local Traffic Committee Meeting held on 17 August 2021.**

2.    **That Council adopt the following Committee Recommendation(s):**

**Report No. 6.1 Lilium Love Cafe, Huonbrook Rd (No Stopping)**

File No: I2021/1001

**Committee Recommendation 6.1.1**

- a) **That Council supports the installation of No Stopping signs along the inside curve of Hounbrook Road / Wilson Creek Rd intersection for approximately 50m either side of the intersection.**
- b) **That Council considers advisory signs for bus stop/routes ahead to improve safety for bus passenger along Hinterland roads.**

- 3. That Council adopt the following Committee Recommendation(s):**  
**Report No. 6.2 Car share - request from provider Popcar for four additional designated parking bays.**  
File No: I2021/726

**Committee Recommendation 6.2.1**

**1. That LTC support the car share service 'Popcar', to lease four additional designated parking bays in Byron Bay at the following locations:**

- a) 24 Shirley Street**
- b) 122 Jonson Street**
- c) 39 Lawson Street**
- d) 1 Massinger Street**

**2. That Council includes installation of regulatory signage in accordance with TfNSW Guidance for on street fixed space car share parking.**

- 4. That Council adopt the following Recommendation(s):**

**Report No. 6.3 No Parking 1am-5am - Massinger St, Byron Bay**  
File No: I2021/1130

**Committee Recommendation 6.3.1**

**This report has been deferred to the next meeting.**

- 5. That Council adopt the following Committee Recommendation(s):**

**Report No. 6.4 Event application - Compass Club East Marathon - Byron Bay**  
File No: I2021/1168

**Committee Recommendation 6.4.1**

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**This report to be deferred to the next extraordinary meeting of LTC in October after receiving detailed plans from organisers.**

**6. That Council adopt the following Committee Recommendation(s):**

**Report No. 7.1 Speed Zone Reviews**

File No: I2021/1002

**Committee Recommendation 7.1.1**

- a) That Council notes the speed zone reviews raised with TfNSW as listed in the report.
  
- b) That Council requests speed zone review for a consistent 40kph speed zone for Tincogan Street between Main Arm Road and Station Street (res 21-295, 4c) be completed in conjunction speed zone review request.

**7. That Council adopt the following Recommendation(s):**

**Report No. 8.1 5 Lot sub-division - 84-92 Broken Head Road**

File No: I2021/1131

**Committee Recommendation 8.1.1**

That regulatory signage, delineation and devices be placed at the crossover requiring vehicles to give way to pedestrians and cyclist using the shared path and details be provided to LTC prior to installation.

**8. That Council adopt the following Committee Recommendation(s):**

**Report No. 8.2 Mercato on Byron - Amendment to Development Consent  
Conditions of Approval**

File No: I2021/1186

**Committee Recommendation 8.2.1**

- a) That Local Traffic Committee supports in principle the removal of the Roundabout Treatment at the intersection of Jonson St & Carlyle St

# BYRON SHIRE COUNCIL

## REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

14.1

intersection from condition 23e) of DA10.2013.587.1 (as amended).

- b) That LTC be provided with updated plans and details including pedestrian facility in original approved location, bus stop, taxi rank, motorcycle parking with relation to regulatory signage for consideration and recommendations for approval at the next LTC meeting.**
- c) That a priority with supporting signage is established to the crossover to pedestrians and cyclists.**

### **Attachments:**

- 1 Minutes 17/08/2021 Local Traffic Committee, I2021/1294 

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## Report

The attachment to this report provides the minutes of the Local Traffic Committee Meeting of 17 August 2021 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [https://byron.infocouncil.biz/Open/2021/08/LTC\\_17082021\\_AGN\\_1346\\_AT\\_EMBEDDED.PDF](https://byron.infocouncil.biz/Open/2021/08/LTC_17082021_AGN_1346_AT_EMBEDDED.PDF)

This report contains the recommendations of the Local Traffic Committee (LTC) meeting held on 17 August 2021.

Council's action on the LTC advice will be:

- 10 a) If Council is in agreement with the LTC unanimous support then the proposal may be approved. In these cases there is no conflict between Council and the advice of the LTC, consequently there is no need for Council to inform the RMS or the NSW Police representatives of the decision.
- b) If Council is in agreement with the LTC unanimous support, but no longer wants to proceed, the proposal may still be rejected.
- 15 c) If Council is in agreement with the LTC unanimous decline then the proposal may be rejected. Again there is no conflict between Council and the advice of the LTC. Consequently there is no need for Council to inform the RMS or the NSW Police representatives of the decision.
- 20 d) If Council decides to proceed with a proposal where the advice of the LTC is not unanimous support, then the Council must first advise the RMS and the NSW Police representatives in writing of their intention to approve the proposal. The RMS or the NSW Police may then lodge an appeal to the Regional Traffic Committee (RTC).
- 25 e) If Council decides to proceed with a proposal where the advice of the LTC is a unanimous decline, then the Council must first advise the RMS and NSW Police representatives in writing of their intention to approve the proposal. The RMS or the NSW Police may then lodge an appeal to the RTC.

Due to the fact that the RMS and the NSW Police have the power to appeal certain decisions of the Council, the LTC cannot provide its advice to Council until both the RMS and the NSW Police have provided their vote on the issue.

## 30 Financial Implications

As per the Reports listed within the Local Traffic Committee Meeting of 17 August 2021.

## Statutory and Policy Compliance Implications

As per the Reports listed within the Local Traffic Committee Meeting of 17 August 2021.