



Byron Shire Council



Agenda Ordinary (Planning) Meeting

Thursday, 14 October 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.

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

Mark Arnold
General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

Committee, or

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

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

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BUSINESS OF ORDINARY (PLANNING) MEETING

- 1. PUBLIC ACCESS**
- 2. APOLOGIES**
- 3. REQUESTS FOR LEAVE OF ABSENCE**
- 4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**
- 5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)**
- 6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**
 - 6.1 Ordinary (Planning) Meeting held on 16 September 2021
- 7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS**
- 8. MAYORAL MINUTE**
 - 8.1 Use of public spaces for busking or other activity within the definition..... 6
- 9. NOTICES OF MOTION**

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

Sustainable Environment and Economy

 - 13.1 PLANNING - Report of the 2 September 2021 Planning Review Committee 8
 - 13.2 PLANNING - Development Application 10.2020.47.1 Alterations and additions to existing tourist facility in two (2) stages at 1 Cavvanbah Street Byron Bay 11
 - 13.3 PLANNING - DA 10.2019.343.1 (Deferred) Tourist and Visitor Accommodation Comprising Four (4) Cabins at 150 Tandys Lane, Brunswick Heads 30
 - 13.4 PLANNING - Development Application 10.2020.574.1 Farmstay Accommodation comprising Six (6) Cabins and a Central Facility at 219 The Saddle Road Brunswick Heads 74
 - 13.5 PLANNING - Development Application 10.2020.109.1 Stage 9 Tallowood Ridge Estate Subdivision to Create Forty-Seven (47) Residential Lots 81
 - 13.6 PLANNING - Update to Council resolution 21-284 - Letter of Offer and Draft Voluntary Planning Agreement for Affordable Housing - 68 Rankin Drive, Bangalow 107

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14. QUESTIONS WITH NOTICE

Nil

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

Mayoral Minute No. 8.1 Use of public spaces for busking or other activity within the definition

5 **File No:** I2021/1572

10 I move that Council in relation to a response to COVID-19, reinstate a suspension on the use of public spaces for busking or other activity within the definition, including tarot cards and palm readers, fortune readers, or the display or demonstration of items, particularly multiples of items, with an implication that they are available for sale or otherwise in exchange for money until 31 October 2021 or until the Public Health Order outdoor gathering restriction is increased to at least 50 persons.

15 **Background Notes:**

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

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

25 This suspension was due to expire 30 July 2020.

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

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

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

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

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MAYORAL MINUTE

8.1

By Mayoral Minute 20 November 2020, Council resolved 20-615:

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

Busking and other activities have since resumed under Public Health Order restrictions.

10 A formal request has now been received from NSW Police (Byron Bay) by also Police through the Tweed / Byron EOC (COVID) to again suspend busking permits and activities in the definition in Byron Shire.

15 The catalyst for this request being: *'A number of buskers were operating over the weekend. I believe there was some TV news footage of a crowd about 50 close together watching a busker in Jonson St. The current PHO maximum for outdoor gathering is 20 which we can enforce. Being that busking is mainly on foot paths, I believe covid safe physical distancing cannot be maintained if buskers were allowed to operate there, especially at night with intoxicated persons in the crowd.'*

20 **Current Situation**

There are currently 177 active busking permits (many of which were extended due to the initial prohibition period). Staff have no way of knowing which if any or all of the permits is active at any one time.

25 There are heightened community concerns about potential spread of COVID into the Byron community as more people begin to travel to the region. The Public Health Order outdoor gathering restriction remains at 20 persons.

30 It is the end of the September school holiday period and October Labour Day Long Weekend in NSW, this on the back of the lifting of recent lockdowns is expected to see more people in the Byron area.

35 The NSW Police Service have again requested that Busking in public spaces be suspended due to concerns regarding potential breaches the Public Health Order outdoor gathering restriction of 20 persons, especially in regard to the October Long Weekend, until the number under the Public Health Order outdoor gathering restriction is increased to at least 50 persons or 31 October 2021. The Mayor has under his delegations of authority from Council resolved to implement this request and the NSW Police Service has been advised in advance of the Long Weekend.

40 In accordance with the limitations placed upon the Mayoral delegations of authority, this matter is now reported to Council to confirm this decision. Should Council not endorse the decision the suspension will be lifted immediately, and the NSW Police Service advised accordingly.

45

Signed: Cr Michael Lyon

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.1 PLANNING - Report of the 2 September 2021
Planning Review Committee**

- 5 **Directorate:** Sustainable Environment and Economy
- Report Author:** Chris Larkin, Manager Sustainable Development
Noreen Scott, EA Sustainable Environment and Economy
- File No:** I2021/1441

Summary:

- 10 This report provides the outcome of the Planning Review Committee (PRC) held on 2 September 2021.

NOTE TO COUNCILLORS:

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

20 **RECOMMENDATION:**

That Council endorses the outcomes of the Planning Review Committee meeting held on 2 September 2021.

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Report

The Planning Review Committee meeting was held on 2 September 2021. The meeting commenced at 3:45pm and concluded at 4:45pm.

Councillors: Cameron, Lyon, Ndiaye, Hackett, Martin

5 Apologies: None

Staff: Chris Larkin (Manager Sustainable Development)

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

DA No.	Applicant	Property Address	Proposal	Exhibition /submissions	Reason/s Outcome
10.2021.411.1	PF Morrison	139 Broken Head Reserve Rd BROKEN HEAD	Community Title Subdivision consisting of Three (3) Community Title Lots and One (1) Neighbourhood Property	Level 2 2/8/21 to 15/8/21 2 submissions	Staff Delegation

10 Council determined the following original development applications. The S.4.55 applications to modify those consents are referred to the Planning Review Committee to decide if the modification applications can be determined under delegated authority.

DA No.	Applicant	Property Address	Proposal	Exhibition /submissions	Reason/s Outcome
10.2013.587.9	Mercato	10-110 Jonson Street BYRON BAY	S4.55 to Modify Condition 23 relating to Vehicular Access and Taxi Zone	Level 2 22/6/21 – 5/7/21 No submissions	Staff Delegation
10.2019.630.3	Kaisa Pty Ltd	7-9 Brownell Drive BYRON BAY	S4.55 to Modify Plans	Level 2 21/7/21 – 3/8/21 No submissions	Staff Delegation

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.1

10.2015.412.2	SB Stewart	27 Marine Parade BYRON BAY	S4.55 to Modify the Design of Dwelling House	Level 1 28/7/21 – 10/8/21 1 submission	Staff Delegation
10.2016.716.2	SB Stewart	27 Marine Parade BYRON BAY	S4.55 to Modify the Design of Dwelling House	Level 1 28/7/21 – 10/8/21 1 submission	Staff Delegation
10.2020.215.2	Ardill Payne & Partners	6 Keats Street BYRON BAY	S4.55 to remove staging	Level 2 8/7/21 – 21/7/21 1 submission	Staff Delegation
10.2018.552.2	The North Point Advisory	9 Bain Court 11 Warrambool Rd OCEAN SHORES	S4.55 to Change Staging of Development	Level 2 14/7/21 – 27/7/21 2 submissions	Staff Delegation
10.2020.59.1	Planners North	109 Jonson St BYRON BAY	Alterations and Additions to Existing Commercial Premises including Demolition, New street-front awning, Additional Commercial Areas on Ground and Level1 and addition of Level 2 comprising Commercial Areas, and an Automated, Stacking Car Park	Level 2 12/3/20 – 25/3/20 No submissions	Staff Delegation

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**Report No. 13.2 PLANNING - Development Application
10.2020.47.1 Alterations and additions to
existing tourist facility in two (2) stages at 1
Cavvanbah Street Byron Bay**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Patricia Docherty, Planner
File No: I2021/755

Proposal:

Proposal description:	Alterations and additions to existing tourist facility in two (2) stages.		
Property description:	LOT: 11 DP: 1138310, LOT: 10 DP: 1153734		
	1 Cavvanbah Street BYRON BAY		
Parcel No/s:	240701, 241120		
Applicant:	Ardill Payne & Partners		
Owner:	Mr T Nabi		
Byron LEP 1988	Urban Coastal Lands (7F2) zone		
Date received:	28 January 2020		
Integrated / Designated Development:	<input checked="" type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input type="checkbox"/> Not applicable
Concurrence required	Yes –CNR No 4395.		
Public notification or exhibition:	<ul style="list-style-type: none"> • Level 2 advertising under Byron Community Participation Plan • Exhibition period: 13/2/20 to 26/2/20 and amended plans exhibited 30/07/2020 to 12/08/2020 • Submissions received: three (3) objectors • Submissions acknowledged: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A 		

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.2

Planning Review Committee:	9 April 2020 Refer Doc#1 6188. Planning Review Committee decided DA is to be determined by Council.
Delegation to determine	Council
Issues:	<ul style="list-style-type: none">• Car Parking• Amended plans re-exhibited. Plans have been amended to elevate one building above ground to accommodate at grade parking.• Coastal Erosion Precinct (Precinct 2)• Lots must be consolidated to ensure Lot 11 has lawful access from street.• Previous development consent to be surrendered.

Summary:

The DA proposes alterations and additions to existing tourist facility in two (2) stages on land that has been excised off from the North Coast Railway corridor and purchased by the developer. The proposal comprises the following:

- 5 Stage 1: Relocation of buildings, construction of new carpark, construction of three (3) new pavilions 5, 6, 7 & pool cabana, including paths, fences, landscaping, and infrastructure.

Stage 2. Two (2) bedroom pavilion to be reinstalled, elevated above new car park.

- 10 The proposed development has a floor space ratio 0.267:1 less than the permissible 1.2:1 for tourist facilities under Byron Development Control Plan 2010 and meets the height of building requirements under Byron Local Environmental Plan 1988.

The proposed development is not inconsistent with the objectives of the zone (7f2) Urban Coastal Lands and will not contravene a development standard.

- 15 The application appropriately addresses the relevant constraints applying to the site and is recommended for approval subject to the conditions listed in the recommendation of this report below.

NOTE TO COUNCILLORS:

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

RECOMMENDATION:

- 25 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.47.1 for Alterations and additions to**





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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.2

existing tourist facility in two (2) stages, be granted consent subject to the conditions of approval shown at Attachment 3 (E2021/115692).

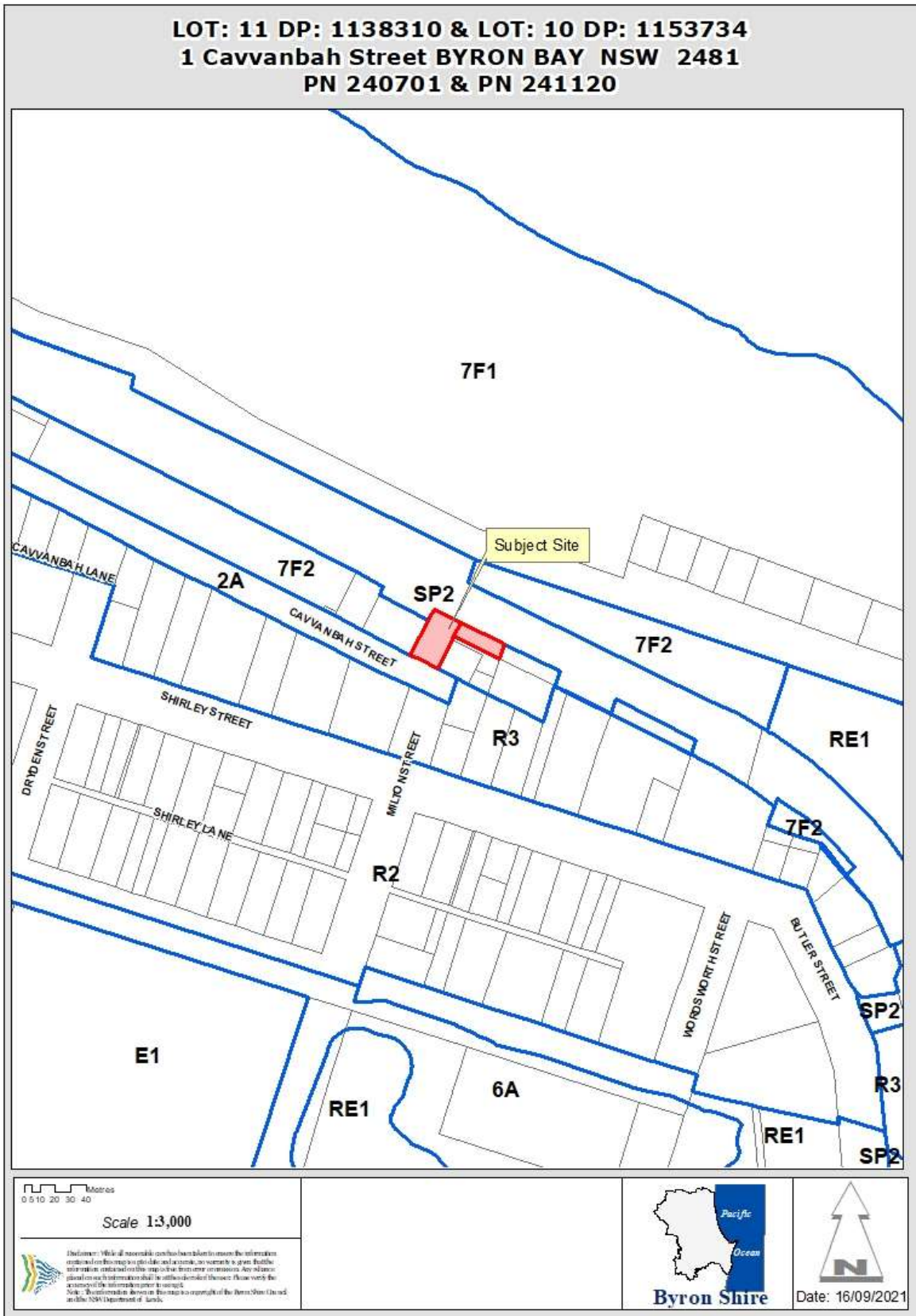
Attachments:

- 5 1 DA10.2020.47.1 Plans, E2021/115635 
- 2 DA10.2020.47.1 Site Photos, E2021/113315 
- 3 DA10.2020.47.1 Recommended Conditions of Consent, E2021/115692 
- 4 DA10.2020.47.1 Redacted submissions, E2021/119373 

10

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Report



Assessment:

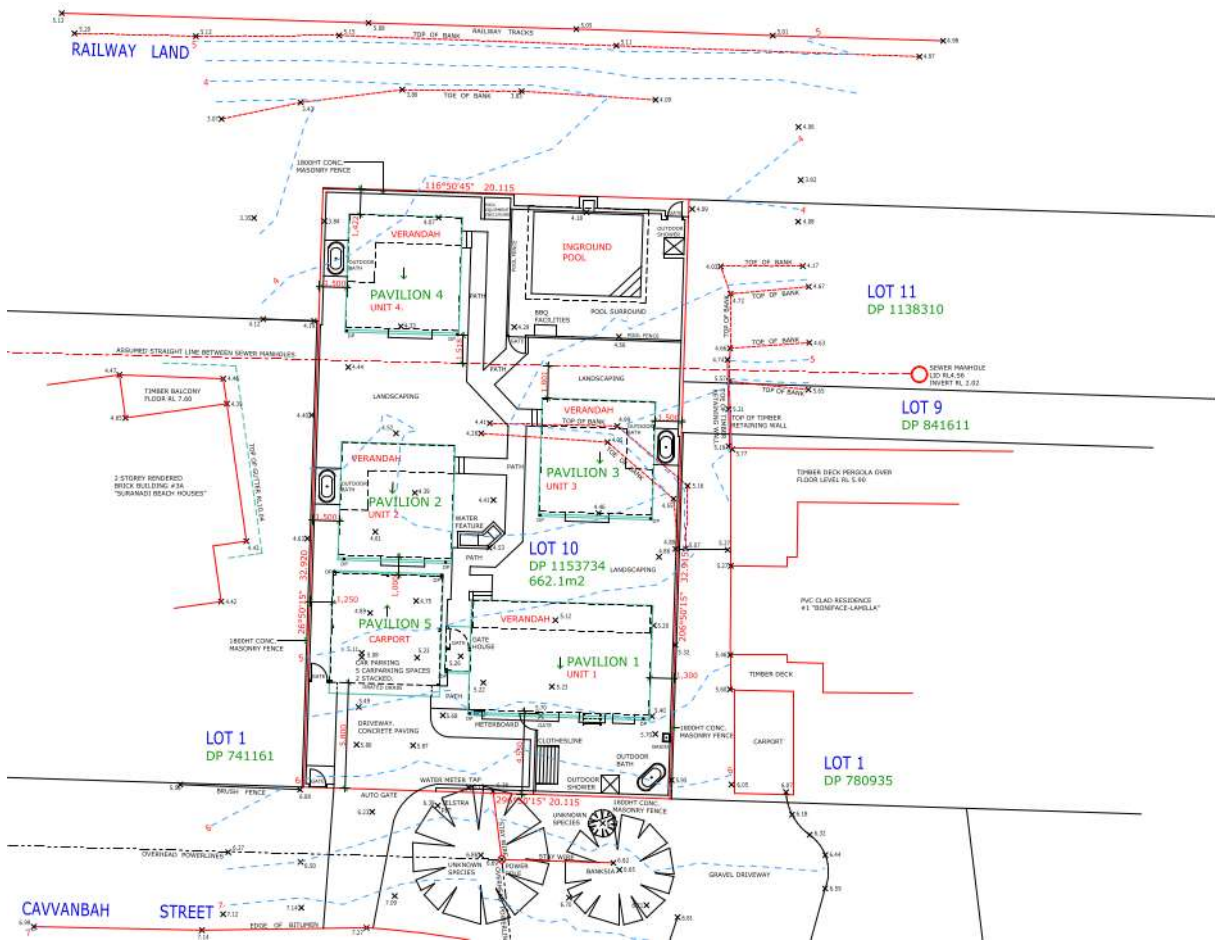
1. INTRODUCTION

History/Background

5 Lot 11 was historically owned by the NSW Department of Transport as part of the Byron – Casino Railway corridor and is currently vacant.

Council records for Lot 10:

010.2010.0000096.001	Development Application	Construction of a double storey dwelling-house and swimming pool	28/05/2010	Approved
010.2011.00000312.001	Development Application	Expanded dwelling, swimming pool and masonry boundary fence	20/09/2011	Approved
010.2011.00000441.001	Development Application	Change of use of approved expanded dwelling to	02/03/2012	Approved
010.2011.00000441.002	Development Application	S96 to amend contributions and levies and delete requirement for	27/07/2012	Approved
010.2011.00000441.003	Development Application	S96-Add a guest bedroom to approved bed & breakfast establishment	30/01/2013	Approved
010.2015.0000065.001	Development Application	Change of use to Tourist Facility (Four (4) holiday cabins)	09/06/2015	Approved
010.2015.0000065.002	Development Application	S96 to correct minor error	26/06/2015	Approved
010.2015.0000065.003	Development Application	S96 Modification of Condition No 2 in relation to accommodation to	15/01/2016	Approved
010.2015.0000065.004	Development Application	To Modify Condition No 2 to increase the maximum number adults and	10/03/2016	Refused



Current approved development on Lot 10

Description of the proposed development

This application seeks approval for alterations and additions to existing tourist facility in two (2) stages:

5 Stage 1: Relocation of buildings, construction of new carpark, construction of three (3) new pavilions 5, 6, 7 & pool cabana, including paths, fences, landscaping, and infrastructure.

Stage 2. Two (2) bedroom pavilion to be reinstalled, elevated above new car park.

The proposed development has a floor space ratio 0.267:1 less than the permissible 1.2:1 for tourist facilities under Byron Development Control Plan 2010 and meets the height of building requirements under Byron Local Environmental Plan 1988.

10 A full set of plans is available to view at Attachment 1.



Proposed development

Description of the site

15 A site inspection was carried out on 11 February 2020.

Land is legally described	LOT: 11 DP: 1138310, LOT: 10 DP: 1153734
Property address	1 Cavanbah Street BYRON BAY

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Land is zoned:	Urban Coastal Lands (7F2) zone Byron LEP 1988	
Land area is:	985.8 m ² (662.1 m ² + 323.7m ²)	
Property is constrained by:	Bushfire prone land, Acid Sulfate Soils Class 5, High Environmental Value, Coastal Erosion Precinct 2	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Lot 11 was historically owned by the NSW Department of Transport as part of the Byron – Casino Railway corridor, is currently vacant has been cleared of all vegetation. Lot 11 is geographically constrained without direct street access. Site photos are available to view in Attachment 2.



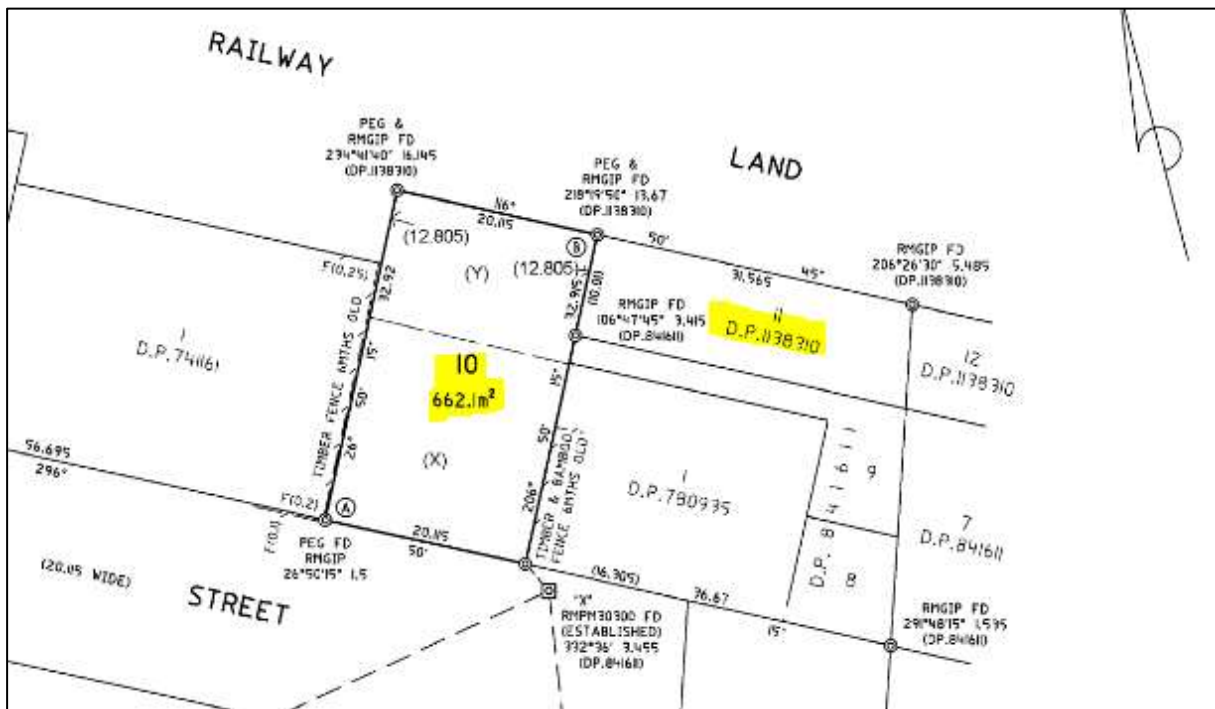
5

Site boundary showing two lots

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Zoning map



Extract of Deposited Plan

5 **2. SUMMARY OF REFERRALS**

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

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Referral	Issue
Development Engineer	No objections subject to conditions.
Building Surveyor	No objections subject to conditions. The proposed additional cabins will result in a change of Classification for the BCA assessment from a class 1b to a class 3, the cl 93 upgrade is appropriate for the existing works and the new works will require a Construction Certificate to meet the standard for class 3 construction.
Waste Management and Resource Recovery	No objections subject to conditions of consent

3. SECTION 4.14 – BUSH FIRE PRONE LAND

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document 'Planning for Bush Fire Protection 2019'. The site is bush fire prone land. The development application was referred to the NSW Rural Fire Service, which provided conditions in accordance with Section 100B and a Bush Fire Safety Authority was provided and is reflected in the Recommendation of this Report below.

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

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

State Environmental Planning Instruments (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><i>SEPP No 55—Remediation of Land</i></p> <p>Consideration: Preliminary Contaminated Land Assessment prepared by Byron Environmental Consulting dated 1 October 2019 provides that soil sampling results for parameters tested (heavy metals and organochlorines and organophosphorus) were below the Health Investigation Levels (HIL) in accordance with NEPM (2013) Table 1 A (1) Column A – 'Standard' Residential with garden/accessible soil (home grown produce <10% fruit and vegetable intake (no poultry), also includes childcare centres, preschools and primary schools. Reporting was conducted in accordance NSW EPA Guidelines for <i>Consultants</i></p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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Considerations	Satisfactory	Unsatisfactory
<p><i>Reporting on Contaminated Sites (2000).</i></p> <p>Notwithstanding, the subject land is immediately adjacent to the Murwillumbah Casino railway corridor. Contaminants of concern associated with this past land use include asbestos and hydrocarbons and these were not accounted for in soil sampling and analysis. To ensure that health of the end user is protected it is recommended that prior to issue of a construction certificate the applicant be required to submit a detailed contaminated land assessment. A remediation action plan must be also prepared should contamination be detected. Investigations and reporting must be undertaken by a suitable qualified consultant in accordance with NSW EPA <i>Consultants Reporting on Contaminated Land – Contaminated Land Guidelines (2020)</i>. Conditions have been recommended to be imposed upon the development.</p>		
<p><i>SEPP (Coastal Management) 2018</i></p> <p>Consideration: The proposed development is in the Coastal Use area, mapped under the Coastal Management SEPP.</p> <p>Council can be satisfied that the development has been considered in accordance with Clause 14 of the Coastal Management SEPP. The proposed development is not likely to cause an adverse impact on the relevant matters for consideration, including:</p> <ul style="list-style-type: none"> • overshadowing, wind funnelling, • the visual amenity and scenic qualities of the coast, • Aboriginal cultural heritage, practices and places, • cultural and built environment heritage, • the development is designed, sited and will be managed to avoid any adverse impact, and • has considered the surrounding coastal and built environment, and the bulk, scale and size of the proposed development. 	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>SEPP (Infrastructure) 2007</i></p> <p>Consideration:</p> <p>In accordance with Subdivision 2 Development in or</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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Considerations	Satisfactory	Unsatisfactory
<p>adjacent to rail corridors and interim rail corridors— notification and other requirements, the DA was referred to Transport for New South Wales and the County Rail Authority-John Holland Rail advised that the development be assessed with reference to the RMS guide to infrastructure – development near rail corridors and busy roads.</p> <p>The adjoining section of rail corridor is operated by the Byron Solar Train Service, which is not a passenger commuter public train service but the potential for operational noise and vibration is still relevant to the proposal. The conditions recommended at Attachment 3 of this report address the requirements of John Holland Rail in accordance with the Infrastructure SEPP as applicable to this development.</p>		

4.2 Byron Local Environmental Plan 1988 (LEP 1988)

Notes: The subject site is located within the Urban Coastal Lands (7F2) Zone under the Byron Local Environmental Plan 1988.

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

Part 1	<input checked="" type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input checked="" type="checkbox"/> 2A <input checked="" type="checkbox"/> 3 <input checked="" type="checkbox"/> 4 <input checked="" type="checkbox"/> 5 <input checked="" type="checkbox"/> LEP 1988 Dictionary <input checked="" type="checkbox"/> 7
Part 2	<input checked="" type="checkbox"/> 8 <input checked="" type="checkbox"/> 9
Part 3	<input type="checkbox"/> 10 <input type="checkbox"/> 11 <input type="checkbox"/> 11A <input type="checkbox"/> 11B <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17 <input type="checkbox"/> 17A <input type="checkbox"/> 17B <input type="checkbox"/> 18 <input type="checkbox"/> 19 <input type="checkbox"/> 22 <input type="checkbox"/> 23 <input type="checkbox"/> 24 <input type="checkbox"/> 25 <input type="checkbox"/> 27 <input type="checkbox"/> 29 <input type="checkbox"/> 29AA <input type="checkbox"/> 29A <input type="checkbox"/> 30 <input type="checkbox"/> 31 <input checked="" type="checkbox"/> 32 <input type="checkbox"/> 33 <input type="checkbox"/> 34 <input type="checkbox"/> 35 <input type="checkbox"/> 36 <input type="checkbox"/> 37 <input type="checkbox"/> 38 <input type="checkbox"/> 38A <input type="checkbox"/> 38B <input type="checkbox"/> 39 <input type="checkbox"/> 39A <input type="checkbox"/> 39B <input type="checkbox"/> 39C <input checked="" type="checkbox"/> 40 <input type="checkbox"/> 41 <input type="checkbox"/> 42 <input type="checkbox"/> 43 <input type="checkbox"/> 44 <input checked="" type="checkbox"/> 45 <input type="checkbox"/> 46 <input type="checkbox"/> 47 <input type="checkbox"/> 47AA <input type="checkbox"/> 47A <input type="checkbox"/> 48 <input type="checkbox"/> 49 <input type="checkbox"/> 51 <input type="checkbox"/> 52 <input type="checkbox"/> 53 <input type="checkbox"/> 54 <input type="checkbox"/> 55 <input type="checkbox"/> 56 <input type="checkbox"/> 57 <input type="checkbox"/> 58 <input type="checkbox"/> 59 <input type="checkbox"/> 60 <input type="checkbox"/> 61 <input type="checkbox"/> 62 <input checked="" type="checkbox"/> 63 <input type="checkbox"/> 64A <input type="checkbox"/> 64B <input type="checkbox"/> 64C

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

- 10 (a) The proposed development is defined in the LEP 1988 Dictionary as Tourist Facility;
- (b) The land is within the LEP1988 Zone No 7 (f2) (Urban Coastal Land Zone) according to the map under LEP 1988;

BYRON SHIRE COUNCIL

- (c) The proposed development is permissible with consent; and
- (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

Zone Objective	Consideration
(a) to identify urban land likely to be influenced by coastal processes,	The proposed development is not inconsistent with the objectives of the zone, subject to recommended conditions of development consent and does not contravene a development standard.
(b) to permit urban development within the zone subject to the council having due consideration to the intensity of that development and the likelihood of such development being adversely affected by, or adversely affecting, coastal processes,	
(c) to permit urban development within the zone subject to the council having due consideration to— <ul style="list-style-type: none"> (i) the need to relocate buildings in the long term, (ii) the need for development consent to be limited to a particular period, (iii) the form, bulk, intensity and nature of the development, and (iv) continued safe public access to the site, and 	
(d) to allow detailed provisions to be made, by means of a development control plan, to set aside specific areas within the zone for different land uses and intensities of development.	

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

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

- 10 The proposed additions to a tourist facility are considered to be satisfactory with regard to coastal processes, the need to relocate buildings in the long term, the need for the development consent to be limited to a particular period, the form, bulk, intensity and nature of the development, and the continued safe public access to the site. The site is not located within an area restricted by LEP 1988 Amendment No.66 (affecting Belongil, South

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Golden Beach/ New Brighton, and Suffolk Park) that would otherwise prohibit a tourist facility. Conditions of consent to apply

Clause 63 – Acid Sulfate Soils

5 The site is identified by Council's GIS as being contained in Class 5 Acid Sulfate Zone. Works within 500 meters of adjacent Class 1, 2, 3 and 4 land that is below 5 metres AHD and by which the watertable is likely to be lowered below 1 metre AHD on adjacent Class 1, 2, 3 and 4 land. Works for the development are unlikely to disturb ASS no further assessment of action is considered warranted

10 4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

No draft Planning Instruments affect the proposal.

4.4 Byron Shire Development Control Plan 2010 (DCP 2010)

15 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 DCP 2010 Chapters/Parts that are checked below are of relevance to the proposed development:

Chapter 1 Parts:	<input checked="" type="checkbox"/> A <input type="checkbox"/> B <input checked="" type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input checked="" type="checkbox"/> F <input checked="" type="checkbox"/> G <input checked="" type="checkbox"/> H <input checked="" type="checkbox"/> J <input type="checkbox"/> K <input type="checkbox"/> L <input checked="" type="checkbox"/> N
Chapters:	<input type="checkbox"/> 4 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/> 11 <input type="checkbox"/> 12 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17 <input type="checkbox"/> 18 <input type="checkbox"/> 19 <input type="checkbox"/> 20 <input type="checkbox"/> 21 <input type="checkbox"/> 22

20 These checked Chapters/Parts have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development is demonstrated to meet the relevant Objectives of DCP 2010 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

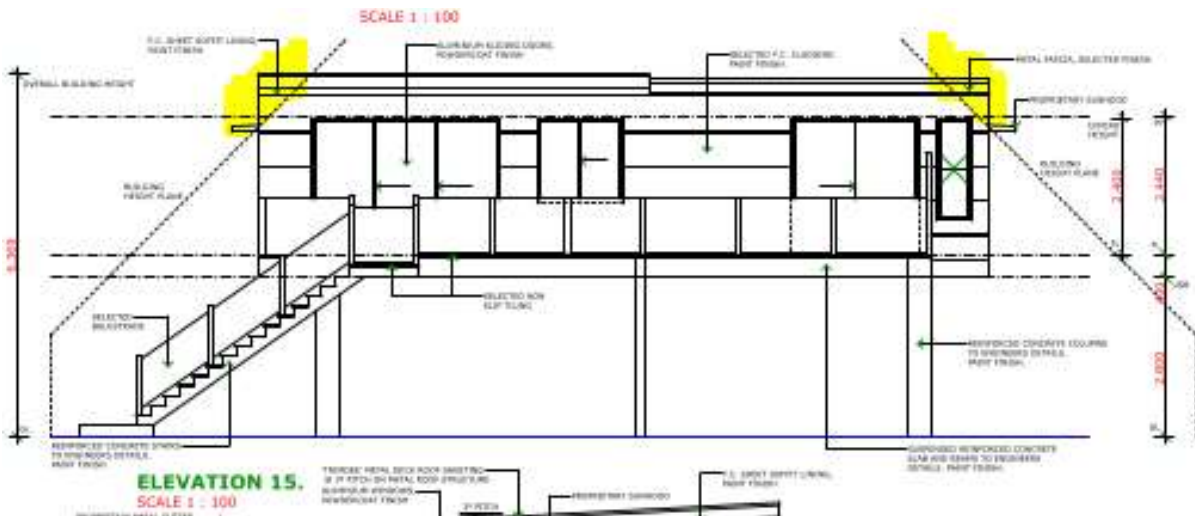
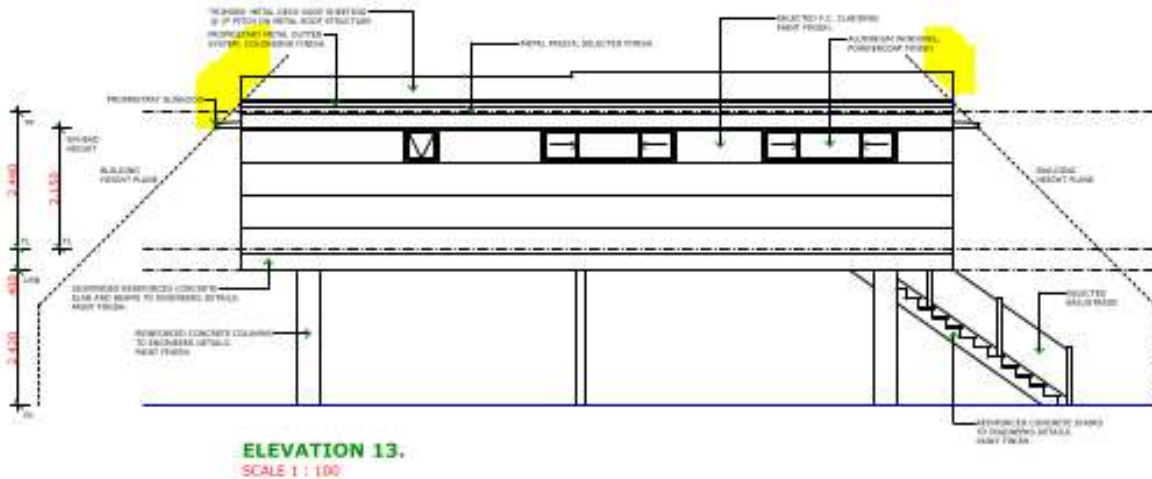
Chapter 1 Part J Coastal Erosion Lands

25 The subject site located within Erosion Precinct 2 as identified within Part J of DCP 2010. Council's Development Engineer has raised no objection to the proposal with regard to the requirements of Part J. Conditions to apply requiring a Section 88 instrument for the development to cease and the buildings be removed when the erosion escarpment comes within 50 metres of the development as per the DCP provisions. Conditions also recommended requiring the lots to be consolidated'

C2.5 Element – Building Height Plane

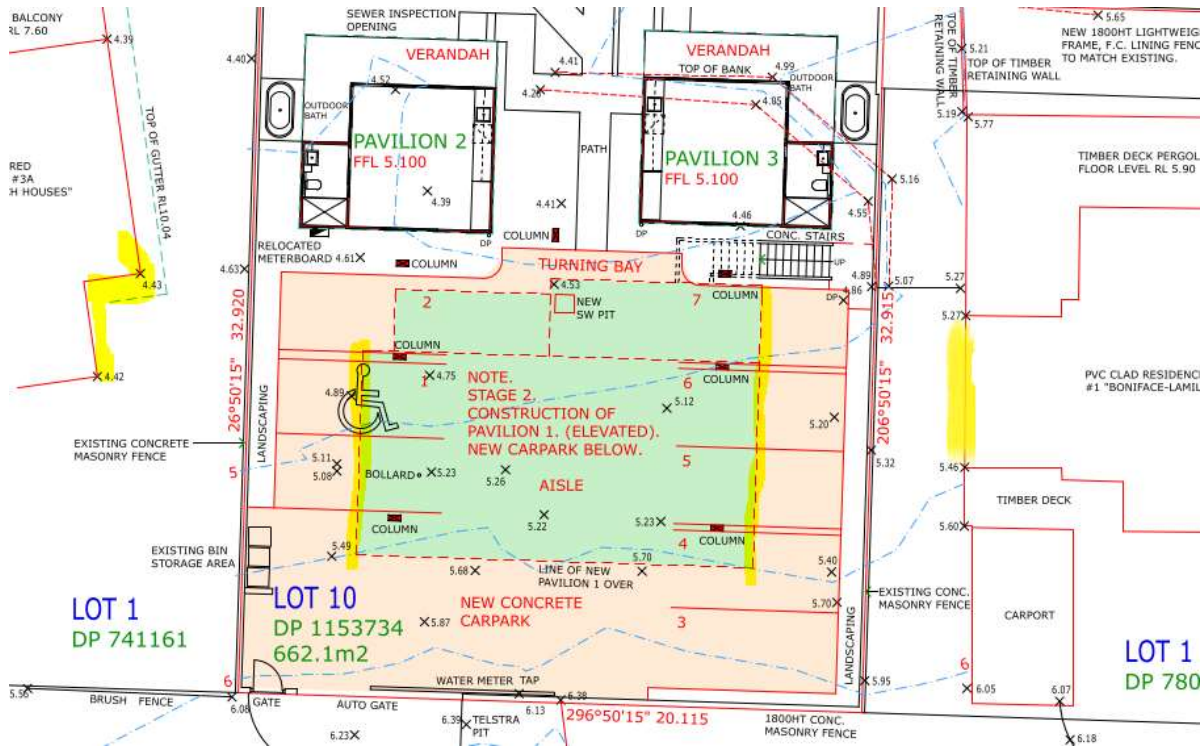
30 The existing cabin to be elevated above the expanded car parking area results in a minor breach of the building height plane at the upper wall, eaves and part of the roof and sun hoods. The breach will not significantly increase overshadowing of adjoining properties or

5 obstruct views due the siting and orientation of the lot and no buildings being located to the south of the elevated cabin. All side windows are located within the building height plane and side and front windows are high set at 1.5 metres above floor level. And north facing windows and covered areas not located within the building height plane will ensure the optimum use of winter sunlight and summer shade The building is set back over 3.6 metres from side boundaries and 4.5 metres from the front boundary.



BHP breach shaded yellow

10 Due to the location of the proposed building and adjoining property to the west, the window of living areas (decks, living rooms, bedrooms, kitchens, etc.) of development on adjoining properties will as a minimum, retain full solar access between the hours of 9.00am to 3.00pm on any day.



Location of building height plane breach and location and orientation of adjoining buildings

C3.5 Element – Minimum Lot Sizes and Street Frontages

5 **Assessment:** The existing tourist facility was approved with a subject site has an area of 662.1m² and a frontage of 20.12m to Cavvanbah Street which are significantly below the minimums specified by the Prescriptive Measure in Element C3.5 - minimum area 1200 m² and minimum frontage 25 metres. With the addition of the excised rail land the subject property has a total area of 985m². Although still less than the prescriptive measures, the site is considered suitable for the low scale cabins as proposed, whilst the development

10 The proposed development is consistent with the objectives and performance criteria underpinning this design element as expansion of the existing development will not change the existing character of the area (residential and tourist accommodation) and provides for additional on-site car parking.

15 **C9 Motels, Hostels and tourist Cabins**

The proposed development complies with the relevant provisions pertaining to tourist cabins with a complaint floor space ration, suitable access for people with a disability, adequate amenity and facilities and suitable car parking from Canvvanbah Street. A concept landscape plan was submitted but a more detailed plan for the entire property is

20 required. Conditions to apply.

Part G Vehicle Circulation and Parking

The development provides for 7 compliant car parking spaces for the seven units.

4.5 Environmental Planning & Assessment Regulation 2000 Considerations

Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
92	No	N/A	N/A
93	Yes	Yes	Yes – Building Inspector recommends conditions.
94	No	N/A	N/A
94A	No	N/A	N/A

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

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

5

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

4.7 The suitability of the site for the development

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

4.8 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited from 13/2/20 to 26/2/20 and amended plans exhibited 30/07/2020 to 12/08/2020. There were 3 individuals who made a submission. One of the objectors made a submission in response to both periods of exhibition.

Issues and consideration:

Issue 1: Traffic and parking - Insufficient car parking

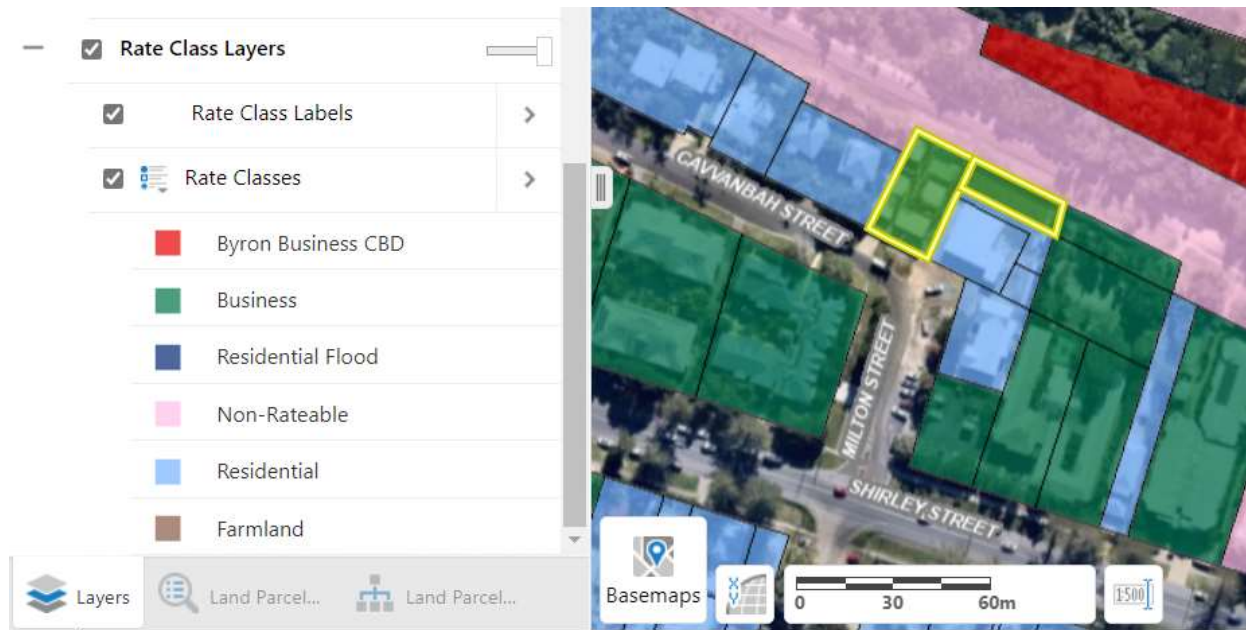
- Dryden St and Cavvanbah St corner is always a problem with traffic especially at the weekend starting from Friday night being the first street out of the paid parking town area.
- Parking should be restricted around that corner to maintain clear vision when driving further down Cavvanbah St.
- Cars park on both sides of the road, making it extremely dangerous. Often have difficulty entering/exiting property because of cars parked right up to/over our driveway on both sides and on occasion delivery trucks (especially the linen trucks) cannot fit through because of cars parked on both sides
- Cars cannot park out the front of property along nature strip because owner planted trees to prevent this happening.
- The owners should really concern themselves with ensuring that all of their current occupants can park on their property, as well as visitors.

Plans originally submitted by the applicant did not provide sufficient on-site car parking. The applicant amended the plans by proposing the elevation of an existing pavilion building and construction of a larger car parking area at ground level below. The plans were re-exhibited.

Council's Development Engineer has assessed the proposal with regard to the parking requirements of Byron DCP 201 Chapter 1 Part G Vehicle Circulation and Parking, at 7 parking spaces in total are required. The proposed parking supply meets the DCP requirement. Recommended conditions to limit the number of guests as detailed above and require the provision of Seven (7) parking on-site spaces, one of which is accessible are included in Attachment 3.

Issue 2: Property should be paying business rates

Although not a specific planning matter, the property as are a number of others in the locality due to their inherent tourist operations are paying business rates.



Geocortex Rate Class Layer

4.9 Public interest

5 The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent subject to the development operating in accordance with recommended conditions of consent.

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

Section 64 levies will be payable.

10 **5.2 Developer Contributions**

Section 7.12 Levy will be payable.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

7. CONCLUSION

The DA proposes Alterations and additions to existing tourist facility in two (2) stages.

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13.2

Stage 1: Relocation of buildings, construction of new carpark, construction of three (3) new pavilions 5, 6, 7 & pool cabana, including paths, fences, landscaping, and infrastructure.

Stage 2. Two (2) bedroom pavilion to be reinstalled, elevated above new car park.

- 5 The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed, and the site is considered suitable for the development. The application appropriately addresses the relevant constraints applying to the site and is recommended for approval subject to the conditions listed in Attachment 3 of this Report.

10 **8. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED**

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

Statement of Reasons
The proposed development complies with the provisions of Byron Local Environmental Plan 1988.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2010
The proposed development complies with Environmental Planning & Assessment Regulation 2000 considerations.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The development application was notified/advertised in accordance with the Community Participation Plan. Issues raised in the submissions have been addressed during assessment of the application.
The proposed development is unlikely to prejudice or compromise the public interest.
How community views were addressed
The DA was advertised in accordance with Byron Shire Council Community Participation Plan (CPP). The submissions received were considered on merit and addressed during assessment of the application.
To view the considerations, please contact Council to view a copy of the assessment report relating to this DA.

15

**Report No. 13.3 PLANNING - DA 10.2019.343.1 (Deferred)
Tourist and Visitor Accommodation
Comprising Four (4) Cabins at 150 Tandys
Lane, Brunswick Heads**

5 **Directorate:** Sustainable Environment and Economy

Report Author: Ben Grant, Planner

File No: I2021/1434

Proposal:

DA No: 10.2019.343.1

Proposal description: Tourist and Visitor Accommodation comprising Four (4) One Bedroom Cabins

LOT: 5 DP: 863320

Property description:

150 Tandys Lane BRUNSWICK HEADS

Parcel No/s: 213810

Applicant: Planners North

Owner: Mr S L Eakin & Ms K Amos

Zoning: RU1 Primary Production / PART RU2 Rural Landscape / PART 1 (d) Investigation / PART 1 (a) General Rural / PART 7 (a) Wetlands / PART 7 (b) Coastal Habitat

Date received: 27 June 2019

Integrated / Designated Development: Integrated Designated Not applicable

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Concurrence required No

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 11/7/19 - 24/7/19
- Submissions received: twenty-eight (28) in opposition

Planning Review Committee: Not applicable

Concurrent approvals (S68/138): Not applicable

Variation request Clause 4.6 SEPP 1 Not applicable

Delegation to determine Council

Issues:

- A Vegetation Management Plan is required.
- Decentralised rather than centralised carparking.
- Unauthorised development.

Summary:

5 At the planning meeting of 5 August 2021 Council considered DA 10.2019.343.1 for tourist and visitor accommodation comprising four holiday cabins at 150 Tandys Lane, Brunswick Heads. Twenty-six submissions were received objecting to the proposal, with a focus of concern being alleged unauthorised development including the erection of structures near Simpsons Creek and use of the property for tourist and visitor accommodation.

[Agenda of Ordinary \(Planning\) Meeting - Thursday, 5 August 2021 \(infocouncil.biz\)](http://infocouncil.biz)

Council resolved **(21-280)** to defer the matter pending a review of outstanding compliance issues at the property.

10 Community enforcement officers visited the site on the morning of Monday 13 September 2021 and carried out a compliance audit of all buildings and structures on the property.

Five significant non-compliances were identified:

(1) Conversion of an art studio to a dwelling/holiday cabin.

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.3

- (2) Conversion of a farm shed to a habitable building that was being used as an art studio at the time of inspection.
- (3) Construction of a boat shed ~50m from the bank of Simpsons Creek.
- (4) Construction of two wooden decks ~3m from the bank of Simpsons Creek
- 5 (5) Construction of a composting toilet ~10m from the bank of Simpsons Creek.

10 It is recommended by way of conditions of consent that the boat shed, wooden decks and composting toilet be demolished prior to the issue of the construction certificate. It is also recommended similarly that the art studio and farm shed be returned to the condition in which they were approved which will necessitate amongst other things the removal of kitchen facilities and the like. (For details see condition 4)

Council has also commenced separate compliance action in relation to these five matters as well.

15 Further assessment of the application has also been undertaken including consideration of two new objections received in the intervening period relating to permissibility, cumulative impacts, fire safety and environmental issues.

The revised assessment concludes that the proposal is an acceptable response to the constraints of the site and complies with the relevant environmental planning instrument and development controls applying to the land. The application is recommended for approval subject to conditions of consent.




20 NOTE TO COUNCILLORS:

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

RECOMMENDATION:

30 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.343.1 for tourist and visitor accommodation comprising four (4) one-bedroom cabins, be granted consent subject to the conditions shown at Attachment 1 (E2021/118364).**




Attachments:

- 35 1 Attachment 1 - 10.2019.343.1 Revised conditions of consent (22-09-2021), E2021/118364 
- 2 Attachment 2 - 10.2019.343.1 - Plans, E2021/63960 
- 3 Attachment 3 - 10.2019.343.1 - Submissions Redacted, E2021/64844 

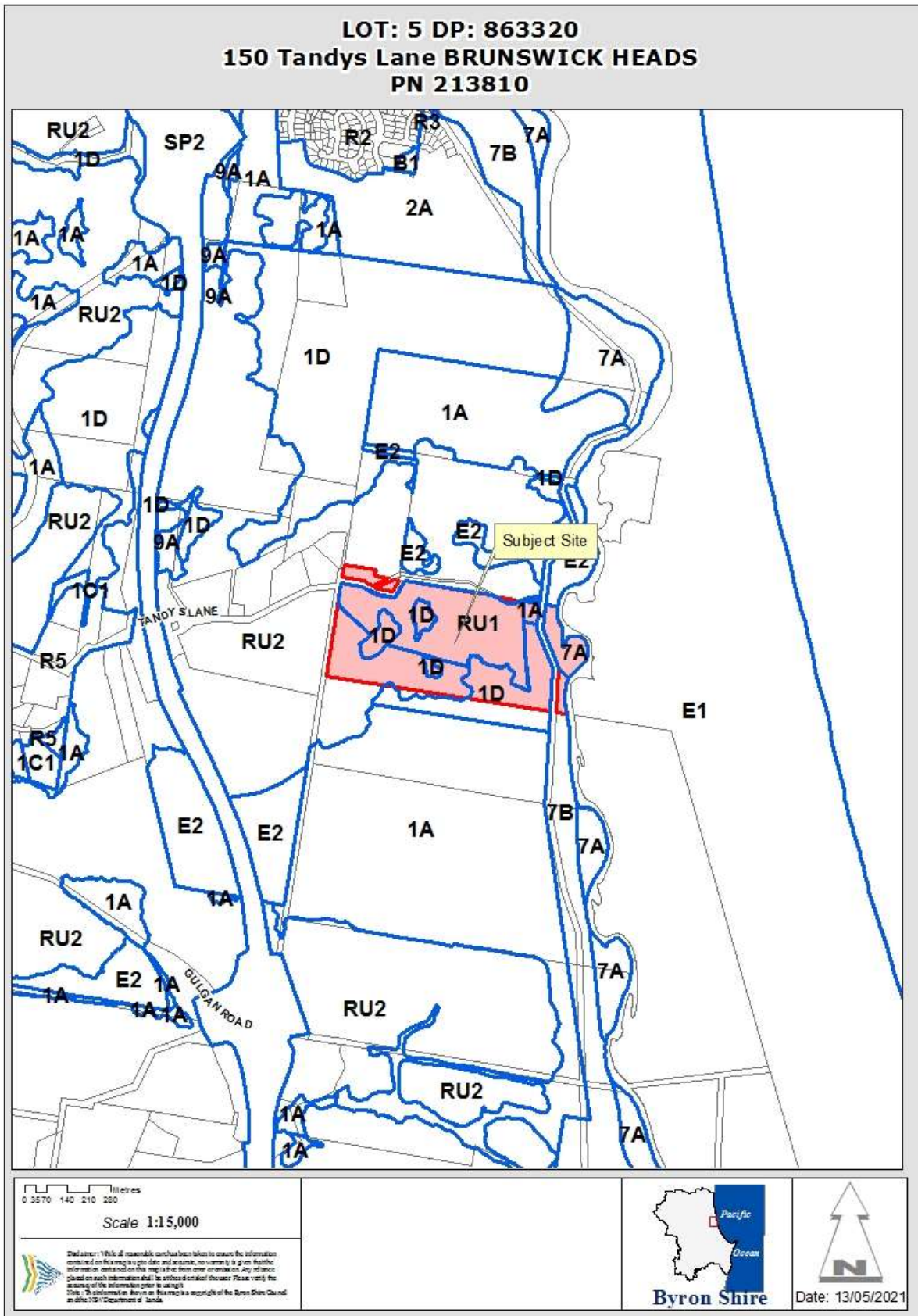
BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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- 4 Attachment 4 - 10.2019.343.1 - Amended Bush Fire Safety Authority - Determination Letter, E2021/90236 
 - 5 Attachment 5 - 10.2019.343.1 - Timber Plantation Licence, E2021/90231 
 - 6 Attachment 6 - 10.2019.343.1 - Submissions after 5 August 2021 (redacted), E2021/118376 
- 5

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Report

5 At the planning meeting of 5 August 2021 Council considered DA 10.2019.343.1 for tourist and visitor accommodation comprising four holiday cabins at 150 Tandys Lane, Brunswick Heads. Twenty-six submissions were received objecting to the proposal, with a focus of concern being alleged unauthorised development including the erection of structures near Simpsons Creek and use of the property for tourist and visitor accommodation.

10 The Council assessment report recommended approval subject to conditions requiring the structures near Simpsons Creek to be investigated and removed prior to the issue of a construction certificate. An amended set of conditions were also provided to Councillors on the day of the meeting to address these issues.

[Agenda of Ordinary \(Planning\) Meeting - Thursday, 5 August 2021 \(infocouncil.biz\)](https://www.infocouncil.biz)

Council resolved (21-280) to defer the matter pending a review of outstanding compliance issues at the property, as follows:

15 **21-280 Resolved** that this matter be deferred to review existing compliance issues and to ensure that conditions of consent that have been outlined below are considered and complete:

Amend Condition 4, as follows

4. Removal of unauthorised structures

20 *Prior to the issue of a construction certificate, the following structures/works are to be demolished and removed from the land to the satisfaction of Council:*

- *any timber platforms and composting toilet, and any other buildings located near Simpsons Creek at the eastern end of the property;*
- *Any kitchen or cooking facilities installed in the approved studio near Tandys Lane that would enable the building to be used for habitable purposes.*
- 25 • *The shed structure recently erected on the land near Simpsons Creek (approximately 35 metres from northern boundary and 40 metres from the eastern boundary, unless separately approved by way of a development consent or Complying Development certificate or is exempt development under SEPP 2008 (Exempt and Complying Development))*

30 *The Principal Certifying Authority must not issue any construction certificate unless written correspondence has been issued by Council confirming that these structures/works have been removed (or are not required to be removed).*

Amend Condition 21 to insert point I) as follows

21. Vegetation Management Plan

- 35 I) *A four (4) strand post and wire fence with a height of 1.2m to be erected along the western edge of the mapped Coastal Wetlands under State Environmental Planning Policy (Coastal Management) 2018.*

Amend condition 53 to read as follows

53. Maximum number of guests / patrons

No more than a total of 2 guests/patrons in each cabin, equating to a total number of 8 guests / patrons at any time for the development.

5 Insert the following additional conditions

55. Manager of the tourist and visitor accommodation Cabins

The tourist and visitor accommodation must be managed and operated by the principal owner living on the property at all times.

10 56. Use of Simpsons Creek foreshore

The Coastal Wetlands area near Simpsons Creek must not be accessed or used by guests of the tourist accommodation for recreational activities including canoeing, kayaking, boating, water-skiing, wakeboarding or the like, unless development consent has been obtained for any such use.

15 This report provides details of a compliance investigation undertaken by Council officers on Monday 13 September 2021 and recommends a set of amended conditions to address non-compliances identified during the inspection.

20 The report also provides further assessment of the development application and responds to new objections received in the intervening period relating to permissibility, cumulative impacts, fire safety and environmental issues.

Additional submissions

In addition to the twenty-six objections received during the original assessment period, a further two submissions were received following deferral of the application on 5 August 2021.

25 Submissions include:

(1) A community petition containing 33 signatures, with a request that names and addresses be kept confidential, along with an attached collection of images and videos of alleged unauthorised development.

30 (2) A written submission from a law firm on behalf of residents in the locality to further support the community petition.

These additional submissions are addressed in Section 4.10 of the updated assessment report.

Compliance investigation

Community enforcement officers visited the site on the morning of Monday 13 September 2021 and carried out a compliance audit of all buildings and structures on the property.


Five significant non-compliances were identified:




- 5 (1) Conversion of an art studio to a dwelling/holiday cabin.
- (2) Conversion of a farm shed to a habitable building that was being used as an art studio at the time of inspection.
- (3) Construction of a boat shed ~50m from the bank of Simpsons Creek.
- (4) Construction of two wooden decks ~3m from the bank of Simpsons Creek
- 10 (5) Construction of a composting toilet ~10m from the bank of Simpsons Creek.

There was no evidence of the site being recently used for tourist and visitor accommodation although it is acknowledged that objectors provided photos and on-line screen shots indicating the property may have been used for such purposes in recent years.

- 15 Details of the compliance investigation are provided in **Table 1**.

Table 1: Summary of compliance investigation

<p>Art studio conversion</p> <p><u>Description</u></p> <p>An approved art studio in the NW corner of the site has been converted to a habitable dwelling or holiday cabin. The building contains a kitchen with sink, island bench and bench along southern wall. The remainder of the building appears to be in accordance with the approval (refer development consent 10.2016.818.3).</p> <p><u>Recommendation</u></p> <p>Conditions are recommended requiring the building to be restored to its approved condition and not used for tourist and visitor accommodation purposes. Kitchen facilities and benches are to be</p>	
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<p>demolished and removed.</p>	
<p>Carport</p> <p><u>Description</u></p> <p>A 3-bay carport was identified next to the converted art studio. The structure appears to comply with the requirements for exempt development in subdivision 16 of the Codes SEPP.</p> <p><u>Recommendation</u></p> <p>No action required.</p>	
<p>Farm shed conversion</p> <p><u>Description</u></p> <p>A farm shed located south of the main dwelling has been converted to an art studio and contains a loft with bedding, a kitchen with a sink, gas hot water, water filtration unit, a bathroom containing a shower, toilet, and wash facility. The kitchen did not have a stove or oven.</p> <p>Additional works comprise a roof extension off the southern side of the building and a covered verandah to the east.</p> <p>The building is approved as a 'farm shed' in accordance with Building Permit 94/388, however, the current renovations</p>	

and use are inconsistent with this approval and do not meet the requirements for exempt development.

Recommendation

A condition is recommended requiring the building to be decommissioned and brought into compliance with Building Permit 94/388.



Dual occupancy dwelling

Description

This dwelling is an approved dual occupancy as per consent 10.2016.818.3 subject to a condition that it is not used for tourist and visitor accommodation.

Recommendation

Condition recommended stating that both dwellings are not to be used for tourist and visitor accommodation.



Air Stream Caravan

Description

An Airstream caravan is located to the south of the main dwelling house. An undercover deck area is installed adjacent to the caravan measuring roughly 3x5m. The caravan has utilities (water, gas and electricity) provided. It appears these utilities run underground to the caravan. Caravan did not appear to be used at the time of inspection.

The installation of a single caravan generally does not require approval if it is used in connection with the owners dwelling house by members of the owner's household and maintained in a safe and healthy condition.

Recommendation

A condition is recommended that prevents any caravans or moveable dwellings on the property from being used for tourist and visitor accommodation purposes without prior approval from Council.



Boat Shed

Description

A boat shed has been constructed at the eastern end of the property adjacent to Simpsons Creek. The boat shed was being used to store kayaks at the time of inspection and had a ramp and sliding door capable of storing a boat. No evidence of utilities. A small rainwater tank with a tap for drinking water had been installed. The property owner advised the boat shed was built 50m from Simpsons Creek and this distance appears to be fairly accurate.

The boat shed does not meet the criteria



for exempt development and is a prohibited use in the 7(b) (Coastal Habitat Zone).

Recommendation

A condition is recommended requiring the boat shed to be demolished and removed from the land prior to the issue of a construction certificate.



Toilet and elevated decks

Description

A composting toilet, two deck structures and a boat ramp were identified near the bank of Simpsons Creek.

The composting toilet is located roughly 10 metres from Simpsons Creek. The two deck structures, one roughly 20m², the other roughly 30m² in area, are located three metres from Simpsons Creek but do not overhang the bank of the Creek. A boat ramp/access is also evident however no concrete or bank stabilisation present.



The toilet and deck structures are located within a mapped coastal wetland and do not meet the criteria for exempt development.

Recommendation

A condition is recommended requiring the toilet and decking to be demolished and removed from the land prior to the issue of a construction certificate.

Council’s Environmental Health Officer provided guidance notes for the proper decommissioning of the toilet to reduce the risk of pollution during the demolition



<p>process.</p>	
<p>Camping area</p> <p><u>Description</u></p> <p>A camping area located south of the boat shed was evident during the site inspection, however, there was no conclusive evidence of commercial camping or caravanning activities occurring in this area.</p> <p><u>Recommendation</u></p> <p>A note is recommended to clarify that use of the property as a camping ground or caravan park requires separate approval from Council.</p>	 

In the event this consent is not enacted upon, Council has also commenced separate compliance action to ensure the property and building activities upon it are brought into compliance.

Updated Planning Report

1. INTRODUCTION

1.1. History relevant to the development application

5 Background

The eastern end of the property near Simpsons Creek (formerly 'Wiltons Quarry') was mined for Rutile in the 1960's. A piggery was later established in the early 1970's which operated until sometime in the mid 1990's. Following closure of the piggery, the property was used for rural living in the 2000's and more recently appears to have been adapted to a mixture of residential and tourist accommodation uses.

Development Applications

Previous determinations relevant to the subject application are listed below:

- 15 • DA 95/147 for a dwelling, approved 1 March 2005.
- DA 95/249 for sand quarry, withdrawn 24 July 2006.
- DA 10.2004.544.1 for dwelling, approved 1 March 2005.
- DA 10.2016.818.1 for use of an existing building as a dual occupancy (detached), approved on 9 August 2017.
- 20 • DA 10.2016.818.2 for partial retention of movie room, approved 19 July 2019.
- DA 10.2018.366.1 for a change of use of dwelling house to a bed and breakfast accommodation, withdrawn on 7 May 2019.

Compliance Actions

25 The NSW Environment Protection Authority notified Council in relation to alleged illegal sand extraction from the abandoned quarry in November 2017. It is understood the sand was later stockpiled at a rural property in Myocum.

Council records also show that an investigation was undertaken in relation to unauthorised structures adjacent to Simpsons Creek within the 7 (a) (Wetlands Zone).

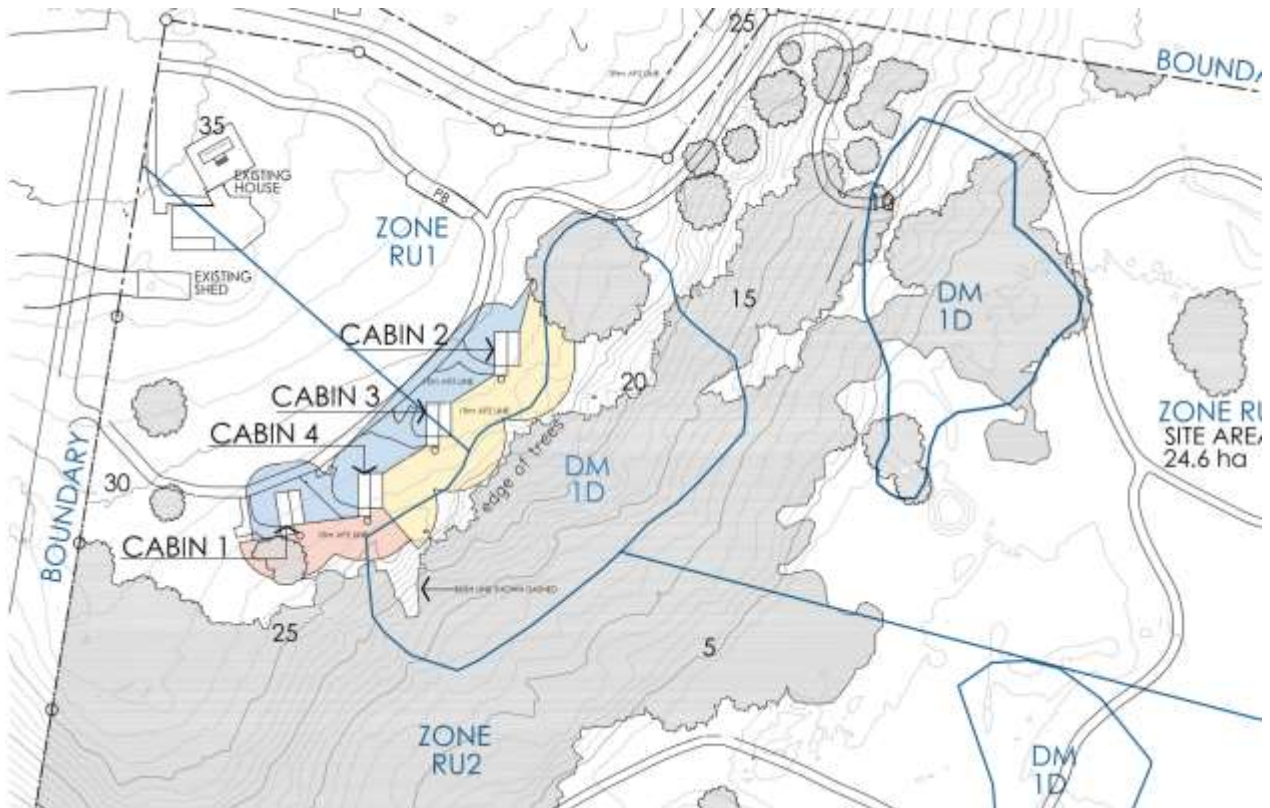
30 Community enforcement officers visited the site on Monday 13 September 2021 and carried out a compliance audit of the property. Several issues were identified in relation to the existence of buildings and structures near Simpsons Creek and the unauthorised use of certain building for habitable purposes (refer to **Table 1**).

1.2. Description of the proposed development

35 The proposed development comprises four (4) one-bedroom tourist accommodation cabins plus a new internal driveway, infrastructure, and landscaping.

The four cabins are clustered in a single group approximately 60m east of the primary dwelling house near Tandy's Lane. The cabin sites have an elevation of 30m AHD and provide easterly views over the Tyagarah Nature Reserve towards Cape Byron.

Each of the cabins will be single storey, have a maximum floor area of 60m² and comprise one bedroom, bathroom, kitchen, living room that opens onto a deck and single carport. Neither a communal laundry nor individual laundries in the cabins will be provided.



5 **Figure 1:** Extract from the site plan illustrating cabin locations.

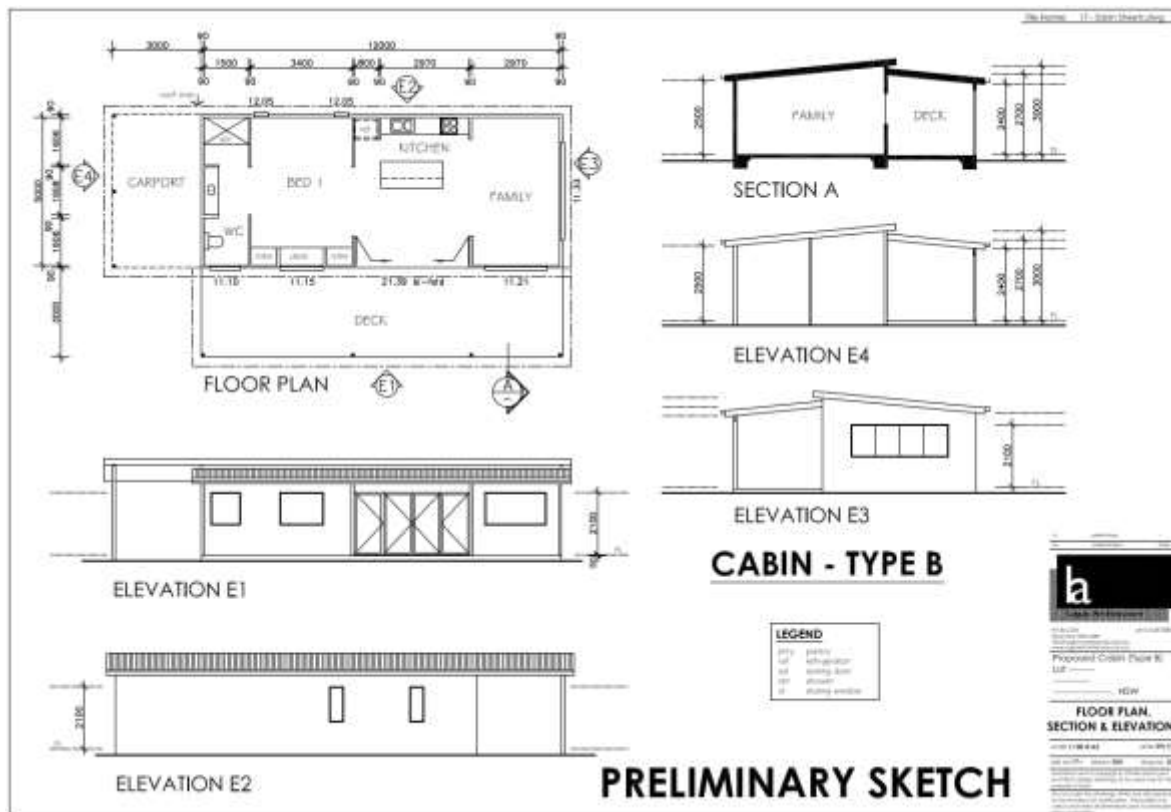


Figure 2: Floor plan and elevations of the proposed cabin design.

1.3. Description of the site

- 5 The subject site is a 24.5-hectare property located at the end of Tandys Lane on the eastern side of the Pacific Highway. The property is bisected by Anderson Lane which splits the lot into a small northern portion containing a recently approved dual occupancy and studio and a larger southern portion containing the original dwelling house and the balance of remaining land. The land slopes down from the road over undulating terrain for ~1.5km until it meets Simpsons Creek at the eastern boundary.
- 10 Historically, the property has been used for farming and sand mining which has left the landscaped disturbed and mostly cleared of vegetation apart from a patch of subtropical rainforest on the western slopes and a corridor of forest along the bank of Simpsons Creek.
- 15 Land to the north and west of the site near Tandys Lane is characterised by small to medium sized lots used for rural living and small-scale agriculture while land to the south comprises a larger property that is undeveloped and covered by vegetation. Tyagarah Nature Reserve is located on the eastern side of Simpsons Creek.



Figure 3: Aerial image of the site.



Figure 4: View south-east from driveway to proposed location of the cabins.



Figure 5: Proposed location of cabin 2 (orange flag).



Figure 6: Proposed location of cabin 3 (orange flag).



Figure 7: Proposed location of cabin 4 (orange flag).



Figure 8: Northern access to proposed cabins from Tandys Lane.



Figure 9: Southern access to proposed cabins (note: “existing shed” in left foreground).

2. SUMMARY OF REFERRALS

External Referrals	Comment
Rural Fire Service (s. 100B <i>Rural Fires Act 1997</i>)	<p>The RFS initially refused to issue a Bush Fire Safety Authority on the basis that the development did not meet the 10kW/m² requirement for tourist accommodation as required by Planning for Bushfire Protection 2019.</p> <p>Following representations from the application over a period of months, the RFS changed their policy position and issued a BFSA on 26 April 2021.</p> <p>The BFSA was re-issued on 9 July 2021 following modifications to the development layout.</p>
Essential Energy	<p>Essential Energy have endorsed the proposal but commented that the cabins must maintain a minimum of 10 metres clearance from the centreline of overhead powerlines. The amended plans comply with this requirement.</p>
Rous County Council	<p>The site is connected to Rous County Council (RCC) reticulated water supply. RCC recommended that Council</p>

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External Referrals	Comment
	should include a consent condition for the Applicant to obtain a Certificate of Compliance from Rous prior to a construction certificate being issued.

Internal Referrals	Comment
Environmental Health Officer	Council's Environmental Health Officer commented that wastewater generated by the development can be managed by an on-site sewage management facility. In terms of land contamination, a preliminary site investigation report has been provided demonstrating that the land is uncontaminated and suitable for the proposed development.
Development Engineer	Council's Development Engineer commented that the property has three unapproved driveways which is a safety concern. Two of the driveways south of Tandys Lane are required to be consolidated and upgraded in accordance with Council and RMS standards. Traffic generation was deemed 'low impact' as per DCP 2014, Part B4.2.1. Other development engineering issues such as car parking and stormwater were deemed acceptable.
Contributions Officer	Council's Development Planning Officer commented that the development is non-residential and therefore a Section 7.12 levy is applicable.
Ecologist	Council's ecologist commented that conditions of consent can be imposed requiring a vegetation management plan to be submitted to Council for approval prior to the issue of a construction certificate.

3. SECTION 4.46 INTEGRATED DEVELOPMENT

5 Tourist and visitor accommodation is defined as a type of "special fire protection purpose" and requires a Bush Fire Safety Authority (BFSA) under s. 100B of the *Rural Fires Act 1997*.

The development application seeks approval for the BFSA concurrently and is therefore classified as integrated development as per s. 4.46 of the *Environmental Planning and Assessment Act 1979*.

10 General Terms of Approval were issued by the RFS on 26 April 2021 and then re-issued on 9 July 2021 following an amendment to the site plan.

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

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

4.1 State Environmental Planning Instruments

State Environmental Planning Policy (Koala Habitat Protection) 2021

10 The application was lodged prior to the introduction of the Koala SEPP 2021 on 17 March 2021. In accordance with the savings and transitional arrangements under clause 18, the application is to be determined as if the SEPP had not commenced.

State Environmental Planning Policy (Koala Habitat Protection) 2020

As the site has an area of more than 1 hectare and is zoned RU1 Primary Production and RU2 Rural Landscape, the proposal must be considered under the Koala SEPP 2020.

15 Clause 8(1) of the Koala SEPP 2020 provides that *“before a Council may grant consent to a development application for consent to carry out development on land to which this part applies, the council must be satisfied as to whether or not the land is a potential koala habitat”*.

20 It is considered that the subject land is not a potential koala habitat as defined by the Koala SEPP 2020 because it does not contain an area of native vegetation where Schedule 2 Feed Tree Species constitute at least 15% of the total number of trees in the upper or lower strata of the tree component. It is therefore considered that the proposal is subject to Clause 8(3)(a) which states *“if the Council is satisfied that the land is not a potential koala habitat, it is not prevented, because of this Policy, from granting consent to the development application”*.

25 The proposed development does not involve any clearing of native vegetation and results in development being clustered near the existing dwelling and road access on the western half of the property. The proposal is unlikely to have a significant impact on koalas or koala habitat and satisfies the provisions of Koala SEPP 2020.

State Environmental Planning Policy No 55—Remediation of Land

30 The site has historically been used for animal agriculture and sand mining which are both potentially contaminating activities.

A preliminary investigation report was provided which analysed soil samples taken around the development footprint. The report concluded that the site was not contaminated and is suitable for the proposed use in its current state.

35 Council’s Environmental Health Officer endorsed the report conclusions, noting that the site is suitable for the proposed use in its current state and does not require remediation.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A multi-dwelling BASIX certificate has been provided which specifies commitments for insulation, rainwater tanks, 1.5kW solar photovoltaic cells and high efficiency hot water systems.

- 5 Some of the BASIX commitments were not shown on the DA plans as required. A condition is therefore recommended requiring these items to be shown on the construction certificate plans.

State Environmental Planning Policy (Coastal Management) 2018

- 10 The far east of the property near Simpson Creek is mapped as a coastal wetland under the Coastal Management SEPP. The closest part of the mapped wetland and buffer area is ~450m from the proposed development and consequently does not trigger the relevant provisions of the policy (clauses 10 and 11). The eastern area of the property is also mapped as coastal use area and coastal environment area; however, no part of the proposed development is within the mapped areas (clauses 13 and 14).

- 15 The proposal does not include any associated use of the coastal wetlands area and conditions are recommended requiring unauthorised structures in this location to be removed. The proposal will not have a significant impact on the coastal environment and is satisfactory having regard to the relevant matters for consideration under the SEPP.

State Environmental Planning Policy (Infrastructure) 2007

- 20 In accordance with Clause 45 of the Infrastructure SEPP, the DA was referred to Essential Energy for comment due to the proximity of the development to overhead powerlines.

- 25 Following the submission of additional information, Essential Energy raised no objection to the proposal subject to the cabins being located more than 10m from overhead powerlines. The amended site layout complies with this requirement.

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

The LEP 2014 clauses that are checked below are of relevance to the proposed development:

Part 1	<input checked="" type="checkbox"/> 1.1 <input checked="" type="checkbox"/> 1.1AA <input checked="" type="checkbox"/> 1.2 <input checked="" type="checkbox"/> 1.3 <input checked="" type="checkbox"/> 1.4 <input checked="" type="checkbox"/> Dictionary <input checked="" type="checkbox"/> 1.5 <input checked="" type="checkbox"/> 1.6 <input checked="" type="checkbox"/> 1.7 <input checked="" type="checkbox"/> 1.8 <input checked="" type="checkbox"/> 1.9 <input checked="" type="checkbox"/> 1.9A
Part 2	<input checked="" type="checkbox"/> 2.1 <input checked="" type="checkbox"/> 2.2 <input checked="" type="checkbox"/> 2.3 <input checked="" type="checkbox"/> Land Use Table <input checked="" type="checkbox"/> 2.4 <input checked="" type="checkbox"/> 2.5 <input checked="" type="checkbox"/> 2.6 <input checked="" type="checkbox"/> 2.7 <input checked="" type="checkbox"/> 2.8

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Part 4	☒4.3
Part 6	☒6.2 ☒6.6 ☒6.8

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

- 5
- (a) The proposed development is defined in the LEP 2014 Dictionary as *Tourist and Visitor Accommodation*;
 - (b) The subject site is within the RU1 Primary Production and RU2 Rural Landscape according to the Land Zoning Map;
 - (c) The proposed development is permitted with consent; and
 - (d) Regard is had for the Zone Objectives as follows:

Zone Objective RU1 Primary Production	Consideration
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	The proposal is not expected to hinder or promote sustainable primary industries in the area. Minimal impact on the natural resource base is expected.
To encourage diversity in primary industry enterprises and systems appropriate for the area.	The proposal will neither encourage nor discourage diversity in primary industry enterprises.
To minimise the fragmentation and alienation of resource lands.	The proposal is not expected to result in fragmentation and alienation of resource lands.
To minimise conflict between land uses within this zone and land uses within adjoining zones.	No potential land use conflicts were identified by Council's Environmental Health Officer.
To encourage consolidation of lots for the purposes of primary industry production.	Not applicable.
To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with	The proposal is for tourist accommodation that can be considered "small-scale". Further environmental conservation and

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primary production and environmental conservation consistent with the rural character of the locality.	enhancement works are required through conditions of consent.
To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.	The proposed tourism development is not expected to adversely impact on the scenic quality due to the low scale of the development and the provision of landscaping as a visual screen.

Zone Objective RU2 Rural Landscape	Consideration
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	The proposal is not expected to hinder or promote sustainable primary industries in the area. Minimal impact on the natural resource base is expected.
To maintain the rural landscape character of the land.	The proposed tourism development is not expected to adversely impact on the rural landscape character due to the relatively small scale of the proposal and screening of the development with vegetation.
To provide for a range of compatible land uses, including extensive agriculture.	The property has space for a range of small-scale agricultural pursuits, having an area of approximately 25ha. The cabins will be located to the west of the property and will leave room for other compatible rural land uses.
To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.	The proposal is for tourist accommodation that can be considered "small-scale". Further environmental conservation and enhancement works are required through conditions of consent.
To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.	The proposed tourism development is not expected to adversely impact on the scenic quality of the locality as it will or can be screened by vegetation.

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Part 2 – Permitted or prohibited development	Compliance	Comment
2.3 Zone objectives and land use table	Yes	<p>The proposal is considered to be a form of <i>tourist and visitor accommodation</i> which is permitted with consent in the RU Primary Production zone and RU2 Rural Landscape zone.</p> <p>The proposal is not considered to meet the definition of an eco-tourist facility because the cabins are located on the far western side of the property in an area without any special ecological or cultural features. The proposed development does not have a demonstrated connection with any ecological, environmental or cultural values of the site.</p>

Part 4 – Principal Development Standards	Compliance	Comment
4.3 Height of Buildings	Yes	<p>A maximum height of 9m is permitted.</p> <p>A maximum height of 3.5m is proposed.</p>

Part 6 – Local Provisions	Compliance	Comment
6.2 Earthworks	Yes	The proposal will involve minor soil disturbance for the foundations of the proposed cabins and the internal access road. Excavation and fill will not exceed 1m in depth and is unlikely to have a significant impact on drainage patterns or soil stability.
Clause 6.6 Essential services	Yes	Essential services are available or capable of being made available to the development. Council's Environmental Health Officer is satisfied with the proposed on-site wastewater system. Council's Engineer has

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		reviewed the vehicular access and stormwater management and found them to be adequate or capable of being made adequate via conditions of approval.
Clause 6.8 Rural and nature-based tourism development	Yes	The proposed tourism development is small scale and is not expected to adversely impact on the agricultural production, scenic or environmental values of the land. As noted above, adequate vehicular access can be provided to the development. The proposal is for four cabins, should be able to be managed by the owner living on the property and is therefore considered to meet the definition of "small scale". The proposed location of the cabins is on cleared ground and should not have a significant adverse impact on agriculture or the natural environment. There is an approved dwelling located on the property and the proposal does not include a caretaker's residence.

4.2B Byron Local Environmental Plan 1988 (LEP 1988)

5 The proposed cabins and all associated infrastructure are located entirely on RU1 or RU2 zoned land. LEP 1988 is therefore not an applicable matter for consideration in the assessment of the application.

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

10 There are no draft environmental planning instruments with relevance to the subject application.

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

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

Part A	<input checked="" type="checkbox"/> Preliminary
Part B Chapters:	<input checked="" type="checkbox"/> B3 <input checked="" type="checkbox"/> B3 <input checked="" type="checkbox"/> B4 <input checked="" type="checkbox"/> B6 <input checked="" type="checkbox"/> B8 <input checked="" type="checkbox"/> B9 <input checked="" type="checkbox"/> B14

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Part D Chapters	<input checked="" type="checkbox"/> D2 <input checked="" type="checkbox"/> D3
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Chapter B1 Biodiversity	Compliance	Comment
B1.1.5 Biodiversity Planning Principles	Yes	The proposal does not result in any net loss of vegetation or affect habitat connectivity.
B1.2.1 Development Envelope Controls	Yes, subject to conditions	<p>A 20m buffer from high ecological value (HEV) vegetation is required.</p> <p>The cabins have a separation distance of approximately 10m-15m from HEV (subtropical rainforest) on the western slopes of the property.</p> <p>There is potential for a minor conflict between the required 19m asset protection zones and the HEV.</p> <p>A condition is recommended that requires the cabins to be setback from the HEV by at least 20m, thus ensuring no loss of native vegetation when establishing the asset protection zones.</p>
B1.2.2 Development infrastructure and other controls	Yes	The internal access road, plus water and sewer infrastructure does not require any clearing of vegetation and will not adversely impact biodiversity.
B1.2.3 Koala Habitat	Yes	The site is not considered to be a potential koala habitat.

Chapter B3 Services	Compliance	Comment
B3.2.1 Provision of Services: Water supply	Yes	The site is serviced by Rous County Council. The Applicant has confirmed that the cabins are intended to be connected to town water.

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B3.2.1 Provision of Services: Road Access - Council controlled roads	Yes	Council's Development Engineer did not recommend any upgrades to Tandys Lane as part of the development.
B3.2.2 On-site Sewage Management	Yes	<p>A concept wastewater proposal has been submitted with the application and endorsed by Council's Environmental Health Officer.</p> <p>A condition is recommended for Section 68 approval to be obtained for the OSMS prior to the issue of a construction certificate.</p>

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access	Compliance	Comment
B4.2.1 Traffic Impact	Yes	<p>The application is supported by a traffic impact assessment that estimates the development will generate an additional 10 car trips per day.</p> <p>The report anticipates an increase in incremental demand of 3.5% over current traffic levels on Tandys Lane, based on the theoretical traffic volume generated by 43 existing dwellings.</p> <p>Council's development engineer endorsed the findings of the report and classified the development as low impact in terms of traffic generation.</p>
B4.2.3 Vehicle Access and Manoeuvring Areas	Yes, subject to conditions	<p>There are two driveways near Tandys Lane and a third driveway off the Crown Road which connects from the south.</p> <p>Council's Development Engineer concluded that the current situation is not in accordance with the NRLG Guidelines and recommended the driveways be consolidated and sealed as part of the development. A condition is recommended.</p>

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B4.2.5 Car Parking Requirements	Yes	<p>Four (4) car parking spaces are required.</p> <p>The development provides a carport for each cabin, resulting in a total of four car parking spaces for the development.</p>
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Chapter B6 Buffers and Minimising Land Use Conflict	Compliance	Comment
B6.2.4 Buffers	Yes	<p>There are no significant primary industries near the subject site. Surrounding land is primarily used for rural living and small-scale agricultural pursuits. It is understood that a landscaping or horticulture business is potentially being developed on the property to the north, approximately 120m from the nearest cabin.</p> <p>Proximity to residential properties is addressed under Chapter D3 and Section 4.8 of this report.</p>

Chapter B8 Waste Minimisation and Management	Compliance	Comment
B8.3 General Development Criteria	Yes, subject to conditions	<p>A site waste minimisation and management plan was not provided with the application.</p> <p>The site has access to Council garbage collection services at the Tandys Lane frontage and adequate room for bin storage and collection in the road reserve is available.</p> <p>A condition is recommended for an SWMMP to be provided for approval with the construction certificate application.</p>

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Chapter B9 Landscaping	Compliance	Comment
B9.6.1 Landscaping of Tourist and Visitor Accommodation	Yes, subject to conditions	<p>The applicant submitted a landscape plan in their further information. The plan proposes screening between the cabins and along the northern boundary.</p> <p>However, the plan does not include screening of the development along the western road boundary which is considered necessary to improve privacy and reduce the visual impact of the development when viewed from Tandys Lane to the west.</p> <p>A condition is recommended requiring an amended landscape plan that includes landscaping/screening vegetation along the western boundary of the property, particularly either side of the new driveway.</p>

Chapter B13 Access and Mobility	Compliance	Comment
B13.2 Development Controls	Yes	The application proposes one of the cabins as being an accessible cabin and plans have been provided for this cabin.

Chapter B14 Excavation and Fill	Compliance	Comment
B14.2 Excavation and Fill in all Zones	Yes	Only a minor amount of excavation is required to place the slabs for the proposed cabins. This is not expected to have a significant visual impact or affect drainage or soil stability.

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Chapter C3 Visually Prominent Sites, Visually Prominent Development and View Sharing	Compliance	Comment
C3.2.1 Visual Impact Assessment	Not Applicable	<p>Development applications for visually prominent development must be accompanied by Visual Impact Statement in accordance with Part C3.2.</p> <p>The cabins are located on land outside the coastal zone with an elevation of ~30m AHD. The proposal does not meet the definition of Visually Prominent Development and Part C3.2.1 is therefore not applicable.</p>

Chapter D3 Tourist Accommodation	Compliance	Comment
D3.2.1 Location and Siting	Yes	The proposed cabins are generally in accordance with the Objectives and Performance Criteria of Part D3.2.1. The siting, design and operation of the tourist accommodation will not adversely affect any important conservation values, ecological systems or characteristics of the site.
D3.2.3 Character and Design in Rural Zones	No, but assessed as being acceptable.	<p>The applicant addressed the Byron Rural Settlement Strategy 1998 through submission of further information and amended plans. The proposal is generally consistent with the relevant sections of the Strategy, apart from the following:</p> <ul style="list-style-type: none"> • Performance Criteria 3(a)(iii): The development is not directly linked to the repair, enhancement, and protection of the natural environment – there is no environmental enhancement concept or VMP provided with the application. • Performance Criteria 3(c), Section 7.2 (5) of the 1998 Strategy: The site layout does not incorporate centralised car parking. <p>Refer to the further discussion and assessment</p>

		provided under the DCP Issues Section.
D3.3.4 Rural Tourist Accommodation and Farm Stay Accommodation	Yes, subject to condition	<p>The proposed development does not comply with the following Prescriptive Measures of Part D3.3.4:</p> <ul style="list-style-type: none"> • Prescriptive Measure 3: A Vegetation Management Plan (VMP) outlining an ecological restoration concept has not been submitted with the application. <p>The application does not include a VMP, however, a condition is recommended that requires one to be provided prior to the issue of a construction certificate.</p> <p>The proposal is deemed to comply with the development control subject to this condition.</p> <p>Refer to the further discussion and assessment provided under the DCP Issues Section.</p>

4.5 Byron Development Control Plan 2014 – Issues

D3.2.3 Character and Design in Rural Zones

The relevant objectives and performance criteria of Part D3.2.3 are reproduced below–

5 Objectives

1. *To ensure that tourist accommodation in Rural Zones is compatible with the surrounding landscape and with the character and amenity of development in the locality.*

10 2. *To implement the relevant Aims, Guiding Principles and provisions of the Byron Rural Settlement Strategy 1998.*

Performance Criteria

15 ...

3. *All development to which this Chapter applies in Rural Zones must be low scale consistent with the relevant Aims, Guiding Principles, Best Practice Guidelines and Performance Standards contained in the Byron Rural Settlement Strategy 1998 (‘the Strategy’) as follows:*

20

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a) *The Strategy's relevant aims are:*

i) *To ensure future rural settlement is directly linked to the repair, enhancement and protection of the natural environment, thereby increasing the Shire's natural capital.*

5 ...

d) *The relevant Performance Standards are contained in Chapter 8 of the Strategy. 1998 Strategy Section 7.2: Holiday Cabins – Guidelines:*

10 ...

5. *All weather 'centralised' car parking must be provided on-site at the rate of at least 1 car space per holiday cabin. The paving of car-parking areas is not encouraged (except where roads need to be on more steeply sloping lands), rather these areas should be either grass-covered or topped with gravel to an all-weather standard to ameliorate stormwater runoff.*

15

...

20 7. *The siting of holiday cabins must be such that:*

...

25 f. *vehicle access to cabins is for loading and collecting baggage only, while guest car parking instead must be confined to a single centralised area on the site. This requirement does not apply to accessways set aside for disabled persons, emergency purposes (including accident or fire) and other services such as sewerage disposal system, water supply and electricity.*

30 8. *Environmental repair and enhancement:*

1. *Planting of 900 native plants per dwelling-house or holiday cabin. (Thus a development comprising six (6) dwelling-houses or holiday cabins would require no fewer than 5400 plantings).*

35

Assessment:

40 Section 7.2 (5) of the Byron Rural Settlement Strategy 1998 provides that holiday cabin development should be provided with all-weather "centralised" car parking at a rate of at least 1 car space per holiday cabin. This is further explained in Section 7.2(7)(f) which states "vehicle access to cabins is for loading and collecting baggage only, while guest car parking instead must be confined to a single centralised area on the site".

45 The intent of this measure is related to the overall objective of facilitating holiday cabin development that is "in harmony with rural and natural environments" (s 7.2). Centralised car parking can contribute to that aim by minimising disturbance on the landscape from internal roads and car parking areas.

The proposal does not strictly comply with the DCP requirement because it provides individual (decentralised) carparking for each cabin rather than centralised carparking.

5 This design choice is partly related to bushfire planning controls, which require suitable access to be provided to the cabins for fire fighting vehicles. Access is achieved by providing an internal road that loops around the main dwelling and past the cabins, connecting to the Crown Road on the western boundary. A secondary driveway for each cabin branches off the internal road, leading to a covered car parking space for guests
10 arriving by vehicle.

By comparison, a centralised car parking design would require the creation of a separate carpark in addition to the internal access road (which is required for firefighting access). The result would be similar, in terms of visual impact and character, and is unlikely to
15 provide any significant benefits compared to the proposed decentralised design.

On balance, the proposed decentralised car parking design is considered to be acceptable having regard to the DCP aims and objectives and a variation to the control is supported in
20 this instance.

D3.3.4 Rural Tourist Accommodation and Farm Stay Accommodation

The relevant objectives and performance criteria of D3.3.4 are shown below–

25 Objectives

1. *To ensure that rural tourist accommodation does not detract from the rural and natural character of its locality.*
- 30 2. *To ensure that rural tourist accommodation does not adversely affect the conduct and productivity of agricultural operations on the site or nearby lands.*
3. *To facilitate and support the establishment of low scale farm tourism as a secondary business to primary production, where farm stay accommodation is proposed.*

35 Performance Criteria

...

8. *Environmental reparations are required as a part of any Rural Tourist Development. Such repairs are to be focused on the expansion of wildlife corridors, repairing and
40 reconnecting vegetation remnants and enhancing riparian areas and habitat for threatened species and endangered plant communities.*

Assessment:

45 Part D3.3.4 of the DCP and Section 8.2 of the Byron Rural Settlement Strategy 1998 requires a Vegetation Management Plan to be provided detailing an environmental restoration concept including 900 native trees per cabin.

Part D3.3.4 also specifies equivalent ecological restoration criteria where existing native vegetation occurs on site.

- 5 The application states that “existing environmental enhancement projects undertaken on the land will continue” but does not provide any detail on these projects. The applicant’s further information confirms that existing native vegetation on the property is “largely self-maintaining” and that no additional planting of native vegetation is proposed other than screening vegetation between the cabins under the landscape plan. The applicant has argued that a VMP should not be required as the application was lodged (June 2019) prior to this requirement being incorporated into DCP 2014 (September 2019). The subject amendment was publicly exhibited by Council from 1 May to 16 June 2019 (i.e., prior to lodgement of the subject DA).
- 10
- 15 While it is acknowledged that the application was lodged prior to the VMP requirements being introduced into DCP 2014, the relevant planning controls are the ones that apply at the time of determination. Further, a fundamental planning principle for rural tourism is that new development should be directly linked to the repair and enhancement of the natural environment. It is therefore appropriate that a VMP be developed for the site to provide improved biodiversity outcomes in accordance with the DCP.
- 20

A condition is recommended that requires a VMP to be submitted to Council for approval prior to the issue of a construction certificate and substantially implemented prior to the occupation phase of the development.

25

4.6 Any Planning Agreement or Draft Planning Agreement?

There are no proposed planning agreements or draft planning agreements.

4.7 Environmental Planning & Assessment Regulation 2000 Considerations

30

Clause 92 Additional matters that consent authority must consider

A condition is recommended that requires any demolition to be carried out in accordance with *AS 2601 – the demolition of structures*.

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

Impact on:	Likely significant impact/s?
Natural environment	<p><u>Impacts on vegetation and biodiversity</u></p> <p>The proposal will not have a significant impact on the environment, subject to conditions requiring the site to be enhanced through a vegetation management plan including an additional 3600 native trees plus weeding and ongoing vegetation management. The overall outcome is likely to positive subject to the</p>

	<p>implementation of the VMP.</p> <p><u>Timber plantation</u></p> <p>A timber plantation has been approved for the property under the <i>Plantations and Reafforestation Act 1999</i> (ref. AV0752P). The plantation will be in the central portion of the site approximately 200m from the proposed cabins (refer to Attachment 4).</p> <p>The proposed development is not incompatible with the future use of the land for forestry, although care will need to be taken to ensure environmental restoration works are kept clear from the timber plantation to prevent unintended clearing of restored areas in the future.</p> <p>Details of the timber plantation will need to be provided with the VMP along with further formation detailing how the restoration areas are to be managed separately from the timber plantation.</p> <p><u>Buildings and structures near Simpsons Creek</u></p> <p>A composting toilet, two timber decks and a boat shed were identified near the banks of Simpsons Creek during a compliance investigation carried out on 13 September 2021.</p> <p>The boat shed is located in the 7(b) Coastal Habitat Zone while the two decks and composting toilet is located in the 7(a) Wetlands Zone.</p> <p>Due to the environmental sensitivity of this area, a condition is recommended requiring these structures to be removed from the land prior to the issue of a construction certificate.</p> <p><u>Use of the foreshore area</u></p> <p>The application does not propose use of the foreshore area or Simpsons Creek for recreation activities such as boating or kayaking. Conditions are recommended to clarify that use of the foreshore area for recreational activities is not permitted without prior approval.</p>
<p>Built environment</p>	<p><u>Natural hazards</u></p> <p>In relation to bush fire hazard, the proposal is an adequate response to the constraints of the site and is unlikely pose a significant safety risk to guests or the public. Conditions of approval have been provided by the RFS specifying bushfire protection measures for access, water supply, utilities, asset protections zones, construction, and emergency evacuation.</p>

	<p><u>Cumulative impacts</u></p> <p>One of the key issues raised by objectors was a perceived failure by Council staff to consider the cumulative impacts of the proposed development in conjunction with existing tourism uses occurring on the site. Allegations were made that both dwellings on the property were used primarily for tourist and visitor accommodation.</p> <p>Currently, there are no approvals in place to use the site for tourism purposes (including holiday letting) and therefore any such activities would be considered unauthorised development.</p> <p>Whilst the presence of unauthorised development is sometimes noted in assessment reports, it is typically not considered as a cumulative impact because there is an assumption the activity will be dealt with by future compliance action or through conditions of consent. In this case, conditions are recommended to prevent the use of the dwellings for tourist and visitor accommodation and orders will likely be issued to remove the buildings and structures near Simpsons Creek.</p> <p><u>Character, locating, siting, scale and external appearance</u></p> <p>The design, siting and character of the development is considered to be low scale and generally compatible with the characteristics of the surrounding environment. Additional landscaping closer to the road frontage is recommended to reduce the visual impact of the development from Tandys Lane to the west.</p> <p><u>Impacts on the existing and likely future amenity of the locality</u></p> <p>Subject to conditions, the proposed cabins will have sufficient buffers to neighbouring dwellings and properties such that there is unlikely to be any significant impact on existing and likely future amenity of the area.</p> <p>Conditions are recommended preventing the use of lighting in the evening aside from that needed for reasonable safety and use of the development.</p> <p><u>Use of land for events and functions</u></p> <p>The site is not approved for functions or events and any future occurrence of these activities should be treated as a compliance issue.</p>
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	<p><u>Traffic generation and road access</u></p> <p>The development will generate an additional 10 vehicle trips per day which represents an increase in traffic volumes of ~3.5% over current levels.</p> <p>Tandys Lane is a sealed two-way road in reasonable condition and is deemed suitable for the proposed development.</p>
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	The development is likely to provide a minor economic benefit to the construction sector in the short term and will contribute to the local tourism industry in the longer term.

Council Policies that are applicable to the proposed development are considered below:

Council Policy	Consideration
Management of Contaminated Land Policy	Council's Environmental Health Officer considered land contamination as part of their assessment of the proposal.
Provision of Driveways Policy	Council's Engineer has recommended a condition requiring approval for works within the road reserve.
Enforcement Policy	It is recommended that any unauthorised structures near Simpsons Creek be removed prior to the issue of a construction certificate.

Council resolution – rural tourist accommodation

5 It is noted that a recent resolution of Council supported the preparation of planning controls that will affect rural tourist accommodation.

Council Resolution 20-691 is as follows:

20-691 Resolved that Council:

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

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4. *Receives a report outlining the public exhibition outcomes.*
5. *Supports the use of the amendments in point 1 as drafted by staff as guiding principles for assessment of Rural Tourist Accommodation until such time as the amendments are finalised.*
- 5 6. *Requests staff to complete a review of the current developer contributions regime as it applies to Rural Tourist Accommodation and receive a report on the outcomes.*

Point 2 of the resolution requires Council planning staff to use to the recommendations report as a guideline in the assessment of development applications for rural tourist accommodation.

- 10 The proposed development is consistent with the recommendations of the report as follows:

Recommendation	Proposal
Maximum 4 accommodation buildings and 8 bedrooms.	Complies. 4 single bedroom cabins are proposed.
Minimum lot size 20 hectares	Complies. Lot size is ~25 hectares.
Clearer controls for clustering of cabins	Complies. Cabins clustered near primary dwelling
Traffic Impact Statement for >3 cabins.	Complies. Traffic Impact Statement provided.
Improved requirements for water supply and rainwater storage.	Complies. Cabins will be connected to reticulated water supply.
Single driveway per development	Complies. Condition recommended for existing driveways to be consolidated.
Implement aesthetic guidelines from Chapter 8 of Byron Rural Settlement Strategy 1998.	Complies. Development is low scale, not visually prominent. Conditions recommended for sympathetic colours and landscaping.

4.9 The suitability of the site for the development

- 15 The site is a serviced property (with respect to access and water), has manageable constraints and is suitable for the proposed development.

4.10 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited and advertised for a period of 14 days in accordance with DCP 2014. There were **26** submissions made on the development

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application during the initial assessment period. A further **2** submissions including a community petition were received after the Council meeting of 5 August 2021.

- 0 For,
- 28 Against.

5 Consideration of the key issues raised in submissions is included below:

Submissions received after 5 August 2021.

Key issues raised in submissions	Consideration
Prohibited development (eco-tourist facility)	<p>Characterisation and permissibility of the proposal is addressed in Section 4.2A of this report.</p> <p>In summary, the proposal does not meet the definition of an eco-tourist facility because it is not located in or adjacent to an area with special ecological or cultural features.</p> <p>The proposal meets the parent definition of tourist and visitor accommodation and is permitted with consent in the RU1 and RU2 zones.</p>
Bushfire Risk	<p>The issue of bushfire risk as addressed in Section 4.8 of the report.</p> <p>The proposal is considered to be satisfactory from a bushfire planning perspective and does not create unreasonable safety issues for guests or the public.</p> <p>Conditions of approval were issued by the RFS on 9 July 2021.</p>
Cumulative impacts not considered	<p>Cumulative impacts are addressed in section 4.8 of this report. In summary, it is generally inappropriate to consider unauthorised development as cumulative impact. Use of the existing dwellings for tourism purposes is not approved or permitted without prior approval and may be subject to future compliance action.</p>
Not small scale (LEP Clause 6.8)	<p>The proposed four cabins are capable of being managed by an owner living on the property and thus meets the definition of small scale in LEP clause 6.8.</p>
Increased traffic movement and poor condition of Tandys Lane.	<p>The potential increase in traffic is considered to be acceptable and within the capacity of Tandys Lane.</p> <p>The condition of Tandys Lane has been assessed as acceptable by Council's Development Engineer.</p>

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Two dwellings and studio already exist – no further tourist accommodation can be permitted	The existing dwellings are not approved for tourist and visitor accommodation purposes.
Environmental impacts	The net environmental impact is likely to be positive subject to conditions requiring a VMP with 3600 native trees plus weeding and ongoing vegetation management.
150 metre hedge is blocking area views of Cape Byron	Vegetation disputes are a civil issue to be dealt with under the Trees (Disputes Between Neighbours) Act 2006.

Submissions received during the initial assessment period.

Key issues raised in submissions	Consideration
Non-compliance with planning regulations	<p>The applicant has provided further information and amended plans and the proposal is now considered to be generally consistent with the relevant planning controls subject to conditions.</p> <p>Consideration of the proposed development in light of applicable planning instruments is included above (see sections 4.2A-4.7).</p>
Loss of amenity/ Impact on scenic values	<p>The proposed cabins can be adequately screened by vegetation to minimise the impact on scenic values. Such screening has been required by a recommended condition of approval. Cabins are suitably located away from neighbouring properties to have detrimental impact on amenity.</p>
Traffic, vehicular access and safety	<p>Council's Engineer concurs with the applicants engineering report that the likely increase in traffic on Tandys Lane from the development being approximately 3.5%. The potential impact of the development on traffic and road safety is considered to be acceptable subject to conditions requiring the consolidation and upgrade of vehicular access to the property/development.</p>
Environmental impact on Simpsons Creek	<p>Information was provided indicating that unauthorised development has occurred on the property adjacent to Simpsons Creek and within the Wetlands (7(a)) zone.</p> <p>Further investigation by Council staff on 13-09-2021 confirmed the existence of a boat shed, two decks and a composting toilet in this area.</p>

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	A condition is recommended requiring these structures to be removed prior to the issue of a construction certificate.
Condition of Tandys Lane	Submissions argue that the increased traffic from this development will exacerbate the already poor condition of Tandys Lane. Council's Development Engineer has recommended a condition requiring the payment of contributions for the development. Ultimately the maintenance and upgrade of Tandys Lane is a matter for Council's Infrastructure Services team.
Lack of primary production	It is acknowledged that the proposal is not directly associated with primary production however this is not required as the proposal is defined as 'tourist and visitor accommodation' rather than 'farm stay accommodation'. The proposal is unlikely to prejudice future primary production on the land (a timber plantation has been approved) and is therefore not considered to be offensive to or incompatible with the RU1 and RU2 zone objectives.
Scale of development	The proposed development is considered to adequately meet the definition of "small-scale". A condition is recommended stating that both dwellings on the property are not to be used for tourist accommodation or short-term rental accommodation.
Unauthorised functions and events	Information was provided that indicates that unauthorised events may have occurred on the property. However, this application does not seek approval for events and any such concerns should be referred to Council's community enforcement team. A condition has been recommended that clearly states that commercial functions/events are not approved.
Lack of consultation with the community	The proposed development does not fall under the definition of " <i>community significant development</i> " and as such, pre-lodgement consultation is not required.
Unauthorised development and use of the property	The site was investigated by Council staff on 13-09-2021 and a number of issues were identified in relation to unauthorised development. Conditions are recommended to have these matters rectified prior to the issue of a construction certificate.

4.11 Public interest

The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent subject to appropriate conditions of consent.

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

The development will be serviced by reticulated water from a Rous Water connection. Section 64 levies will be payable to Rous County Council prior to issue of construction certificate.

5.2 Developer Contributions

A Section 7.12 levy is applicable as the development is non-residential and has an estimated cost of more than \$100,000.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

7. CONCLUSION

The proposed development is a satisfactory response to the site's constraints and the applicable planning controls that apply to the land. Potential environmental, visual and amenity impacts have been addressed through conditions of consent requiring additional landscaping and environmental enhancement works through a vegetation management plan.

Several compliance issues were identified during an inspection of the property on 13 September 2021. Conditions are recommended for these issues to be rectified prior to the issue of a construction certificate.

Overall, the proposal is a low-scale, low-impact development that is compatible with the character of the surrounding environment and is generally consistent with the planning controls for rural tourism in Byron LEP 2014 and Byron DCP 2014. The application is recommended for approval subject to the conditions of consent in Attachment 1.

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**Report No. 13.4 PLANNING - Development Application
10.2020.574.1 Farmstay Accommodation
comprising Six (6) Cabins and a Central
Facility at 219 The Saddle Road Brunswick
Heads**

5

Directorate: Sustainable Environment and Economy
Report Author: Chris Larkin, Manager Sustainable Development
File No: I2021/1514

Proposal:

DA No:	10.2020.574.1			
Proposal description:	Farm Stay Accommodation comprising Six (6) Cabins and a Central Facility			
Property description:	LOT: 4 DP: 810118			
	219 The Saddle Road BRUNSWICK HEADS			
Parcel No/s:	137160			
Applicant:	Koresoft Pty Ltd			
Owner:	Koresoft Pty Ltd			
Zoning:	RU2 Rural Landscape			
Date received:	2 December 2020			
Integrated / Designated Development:	<input checked="" type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input type="checkbox"/> Not applicable	
Concurrence required	No			
Public notification or exhibition:	– Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications – Exhibition period: 16/12/20 – 20/01/21 and from 24/2/21 – 9/3/21 – Submissions received: Three – Submissions acknowledged: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			
Other approvals	<input type="checkbox"/> N/R	<input type="checkbox"/> W & S (68)	<input checked="" type="checkbox"/> OSMS (68)	<input type="checkbox"/> ST (68) <input type="checkbox"/> RA (138)
	Other:			
Delegation to determine	Council			

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Summary:

5 The DA proposes Farm Stay Accommodation comprising Six (6) Cabins and a Central Facility. The application was reported to Council on 5 August 2021 with a recommendation for approval subject to Conditions of Consent. Council resolved to defer the matter to investigate traffic and access issues on the site.

10 It is considered that the matters relating to access and egress from the site can be appropriately managed. The driveway entrance is to be designed and constructed to direct traffic northwards towards the Gulgan Road Interchange, and for traffic to approach the site for this development from the same direction. Signage and direction will be required from the operators of this tourist and visitor accommodation facility to manage guests driving behaviour as they enter and leave the site.

15 The remainder of the development remains as originally reported on 5 August 2021 and reference is made to Report No.13.7 Planning DA10.2020.574.1 – Farmstay Accommodation comprising 6 cabins and a Central Facility at 219 the Saddle Road, Brunswick Heads in that agenda (See [Agenda of Ordinary \(Planning\) Meeting - Thursday, 5 August 2021 \(infocouncil.biz\)](#) for details).

20 The application appropriately addresses the relevant planning controls and constraints applying to the site. The applicant raised an issue with Council questioning conditions of consent relating to the length of stay and wanting an extended period for guests of up to 6 months. However, and as discussed within the body of the report, a maximum of three months duration is considered reasonable for tourist and visitor accommodation when considered against other legislation including the Residential Tenancies Act 2010 and the Fair-Trading Act 1987

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


25 NOTE TO COUNCILLORS:

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

RECOMMENDATION:

35 That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.574.1 for Farm Stay Accommodation comprising Six (6) Cabins and a Central Facility, be granted consent subject to the conditions of approval listed in Attachment 2 (E2021/120195).



Attachments:

40 1 DA10.2020.574.1 Plans, E2021/120232 

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- 2 DA10.2020.574.1 Conditions of Consent, E2021/120195 
- 3 DA10.2020.574.1 Redacted Submission, E2021/86572 
- 4 Confidential - DA10.2020.574.1 Legal advice from Applicant, E2021/120513
- 5 Confidential - Memorandum setting out external legal advice, E2021/121234

5

Report

5 This application seeks approval for Farm Stay Accommodation comprising Six (6) Cabins and a Central Facility. Each of the accommodation cabins will consist of features including: one bedroom, kitchen, living room, bathroom and toilet, disabled access, verandah and deck area, rainwater collection and solar panels. The cabins will have a drop-off and pick-up area and shared central car parking.

10 Vehicle access was proposed from The Saddle Road, however due to concerns of the nature of the intersection of The Saddle Road with Mullumbimby Road, conditions of consent have been recommended to direct traffic to and from the site using the more safer intersection with Gulgan Road to the north.

15 The application was reported to Council with a recommendation for approval on the 5 August 2021, however Council deferred the matter as follows:

21-279 Resolved that this matter be deferred to investigate traffic and access issues on the site. (Lyon/Martin)

20 The remainder of the development remains as originally reported on 5 August 2021 and reference is made to Report No.13.7 Planning DA10.2020.574.1 – Farmstay Accommodation comprising 6 cabins and a Central Facility at 219 the Saddle Road, Brunswick Heads in that agenda (See [Agenda of Ordinary \(Planning\) Meeting - Thursday, 5 August 2021 \(infocouncil.biz\)](#) for details).

25 Traffic and Access Issues

30 It is noted the property has a legal access to Gulgan Road which is identified as a Classified Road. However, use of this entrance for tourist and visitor accommodation is prohibited pursuant to Clause 6.8(3)(a) of Byron LEP 2014. Specifically, the relevant provisions state:

35 3) *Development consent **must not be granted** to tourism development on land to which this clause applies unless the consent authority is satisfied that—*
*(a) there is, or will be, adequate vehicular access to and from a road, **other than a classified road**, taking into account the scale of the development proposed,*

40 It is considered the interpretation of the clause as such prevents Council from granting consent for the development to rely upon the access to and from a Classified Road. It is also considered that this is not a development standard that can be varied under Clause 4.6 of the LEP, as such standards are defined by numerical values such as heights, lot area, floor space ratios and the like.

45 The applicant has provided additional information which indicates that Gulgan Road entrance has capacity to cater for the development. This is not in question; it is a

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matter of permissibility having regards to the provisions of clause 6.8(3) as highlighted above. The applicant also submitted legal advice that the construct of the Clause 6.8(3)(a) enabled Council to consent to the development. A copy of that advice is attached.

5

In summary it was put to Council, having regards to the objectives of the clause to ensure the development is small scale, access to a non-classified road for a large-scale tourism development would be inadequate and therefore:

10 “In light of the objective the subclause should be understood as not prohibiting the use of a classified road for access, Rather, notwithstanding, there must be adequate non-classified road access as a minimum”.

15 That is, as the development has access from a non-classified road being The Saddle Road, it satisfies the requirements of the clause.

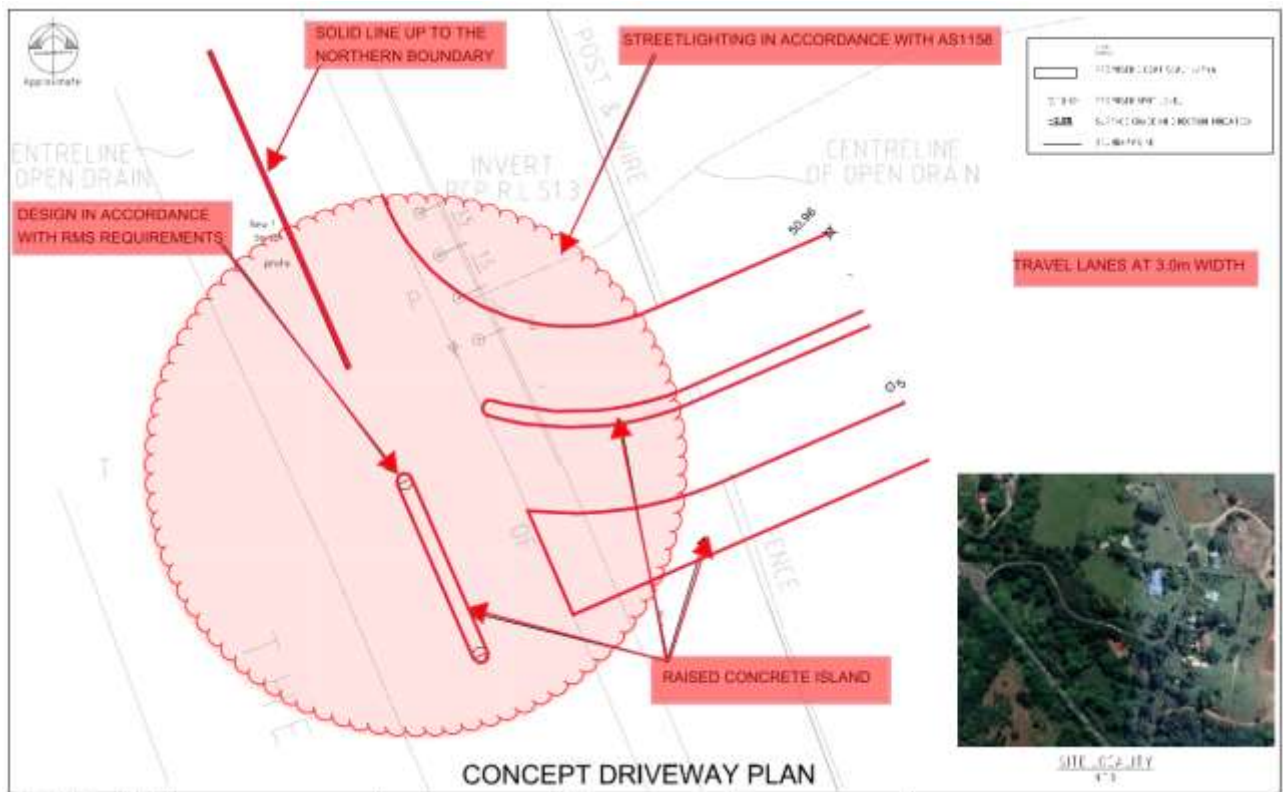
20 The second part of the applicant’s legal advice is that the clause is a development standard that can be varied as opposed to a requirement that must be met. The advice relies upon the words in subclause (a) in relation to Council “taking into account the scale of the development proposed”.

25 Without saying so the legal advice appears to be indicating the reference to a scale of a development is a numerical standard that could be varied. The example in caselaw provided in the advice referred to matter before the Land Environment Court where a variation was pursued to what is clearly a numerical standard. In that particular matter a variation was being sought to a provision relating to 60% of the total gross floor area of a building being used for no residential purposes (Australian Villages No.12 – Gladstone St Pty Ltd v Inner West Council [2021] NSW LEC 1080).

30 No such number or percentage is mentioned in the Byron LEP Clause 6.8 in relation to access and as such the clause needs to be read that access to the development needs to come from a non-classified road, being in this instance, The Saddle Road.

35 Council’s Legal Services team sought external advice on the issues generally and on the Applicant’s legal advice. Council’s legal advice is set out in the Memorandum which is confidential attachment 5.

40 Conditions of consent have been drafted to ensure traffic is directed to and from the Gulgan Road interchange. In particular the driveway entrance will need to be shaped with raised concrete islands to limit the potential for vehicles to exit the site towards Mullumbimby Road. The applicant’s plans have been marked up for approval to reflect this and the following extract is provided.



Further conditions are proposed in terms of managing guests to advise of the need to use The Saddle Road entrance as follows:

5 **5) Internal Road signage**

A sign is to be erected along the main internal road and at the central car park advising that cabin users must enter and exit via The Saddle Road Driveway and use the Gulgan Road Interchange. Information to be provided to guests upon check in and details to be provided to guest when booking accommodation including on any web site or other accommodation social media platforms.

66) Vehicles Access

- a. All vehicles must enter and leave the development via The Saddle Road with traffic directed to the north and east towards Gulgan Road and not Mullumbimby Road. Detail to be provided to guests staying at the Farm Stay Accommodation Facility;
- 15 b. Guests are to not to use the Gulgan Road Driveway;
- c. All vehicles must enter and leave in a forward direction;
- d. All driveways and turning areas must be kept clear of obstructions that prevent compliance with this condition.

Such internal signage is non regulatory and is a matter for the operators of this tourist and accommodation facility to manage/enforce in terms of guest driving behaviour as they enter and leave the site.

Other matters

- 5 The applicant also submitted detail arguing that the development should not be hindered by a condition which limits stays to a maximum of three months. The condition states:

6) Use of Cabins and Central Facility

- 10 No cabin is to be occupied for a period longer than 3 months as they are not approved as residential accommodation of any type. The central facility is not to be occupied as residential accommodation of any type or as an additional cabin.

- 15 Section 8 of the *Residential Tenancies Act 2010* provides that the Act does not apply to agreements that are short –term rental accommodation arrangements within the meaning of section 54A of the *Fair-Trading Act 1987*, under which the person given the right to occupy the residential premises to which the arrangement relates does not occupy the premises as the persons principal place of residence. Section 54A of the *Fair-Trading Act 1987* defines short-term rental accommodation as a commercial arrangement giving a person a right to occupy residential premises for a period of **not more than 3 months at any one time**.

- 20 The definition of “tourist and visitor accommodation” is a place providing “short-term accommodation on a commercial basis”, and it *includes* farm stay accommodation. By that definition, farm stay accommodation must be on a short-term basis. By its definition, farm stay accommodation cannot provide accommodation for a person as their principal place of residence – it is only for tourist or visitors. Therefore, to satisfy the definition under section 54A of the *Fair-Trading Act 1987*, the accommodation can only be provided for up to 3 months and the condition is reasonable.

Conclusion

- 30 It is recommended that the matters relating to access and egress from the site can be appropriately managed. The driveway entrance is to be designed and constructed to direct traffic northwards towards the Gulgan Road Interchange, and for traffic to approach the site from the same direction. Signage and direction will be required from the operators of this tourist and visitor accommodation facility to manage/enforce guests driving behaviour as they are entering and leaving the site.

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

**Report No. 13.5 PLANNING - Development Application
10.2020.109.1 Stage 9 Tallwood Ridge
Estate Subdivision to Create Forty-Seven
(47) Residential Lots**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Ivan Holland, Planner
File No: I2021/1523

Proposal:

Proposal description (as advertised): Stage 9 Tallwood Ridge Estate Subdivision to Create Forty-Seven (47) Residential Lots

Property description: LOT: 148 DP: 1265934
89 Tuckeroo Avenue MULLUMBIMBY

Parcel No/s: 270324

Applicant: Bayview Land Development Pty Ltd

Owner: Gainsplay Pty Ltd

Zoning: R2 Low Density Residential / PART RU1 Primary Production / PART RU2 Rural Landscape / PART 1(a) General Rural

Date received: 28 February 2020

Integrated / Designated Development: Integrated Designated Not applicable

Concurrence required: No

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 19/3/20 to 15/4/20
- Submissions received: Eight (8)

Delegation to determine: Council

Summary:

10 The application seeks approval for Stage 9 of Tallwood Ridge Estate Subdivision to
Create Forty-Eight (48) Residential Lots. The amended layout (Issue E, 26/9/21) proposes
41 Torrens title lots ranging in area from 470m² to 2070m². The seven western lots (C1 to
C7) are to be a community title subdivision with lot C8 (2.32ha) as the common property.
Residual land to the south (Lot 282 – 5.96ha) is to be dedicated to Council. Lot 281, being
15 11.59ha, will comprise the residue land to the east.

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Vehicular access to the subdivision will be provided from the current terminus of Tuckeroo Avenue adjacent to the Plover Parkway intersection. Emergency and service vehicle only access will be provided from Clays Road. This access will have bollards installed to prevent use by general traffic.

- 5 The proposed sewerage will drain via gravity to a proposed sewer pump station located to the eastern extent of Stage 7 from where wastewater will be pumped to the Council wastewater treatment plant.

10 Stormwater treatment and detention for Stage 9 of the Tallowood Ridge Estate subdivision will be provided by two retention basins (Basin1 – Part of Stage 7 and Basin 2 – part of stage 9, adjacent to Clays Road). Nine individual bioswales will be constructed on lots falling away from the main basins (north-western lots and lots near Clays Road with access handle).

15 Stage 9 will involve earthworks being approximately 12,000 m³ of cut and 12,000 m³ of fill. Fill material will be sourced from the stockpile of material surplus from construction of Stages 7 and 8 of the subdivision.

The application states that no native trees will need to be removed to enable construction of the subdivision.

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




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.

RECOMMENDATION:

30 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.109.1 for Stage 9 Tallowood Ridge Estate Subdivision to Create Forty-Eight (48) Residential Lots, of which Seven (7) of these Lots are a Community Title subdivision, and a Community Title Common Property Lot, be granted consent subject to the conditions in Attachment 2**
35 **(E2021/118644).**



Attachments:

- 40 1 DA10.2020.109.1 Stage 9 Subdivision Layout, E2021/120710 
2 DA10.2020.109.1 Recommended conditions of consent, E2021/118644 
3 DA10.2020.109.1 Redacted submissions received, E2021/119351 

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- 4 DA10.2020.109.1 Site visit photos, E2021/118647 
- 5 DA10.2020.109.1 NSW RFS General Terms of Approval, E2021/120735 

Assessment:

1. INTRODUCTION

1.1. History/Background

5 The assessment report for the Tallowood Stage 8 subdivision included the following history/background:

10 *Development Application No. 10.2009.314.1 (Tallowood Ridge) was approved by the NSW Land & Environment Court which included the 29 residential allotments as Stage 1 and a concept approval for a total of seven stages comprising approximately 240 residential lots, roads, open space, rehabilitation areas and associated infrastructure over seven stages.*

Since that initial approval Stages 1 to 6 have been approved by Council; with bulk earthworks and civil works for Stage 7 currently under construction.

15 *On 22 September 2017, an amendment to Byron Local Environmental Plan 2014 was gazetted that rezoned an additional 12 hectares of rural land to the west of Tallowood Ridge to R2 Low Density Residential. It also back-zoned existing R2 land into the RU2 Rural Landscape zone to protect forested areas near the southern ridgeline and a riparian corridor that traverses the site. Other changes included rezoning the sports fields to RE1 Public Recreation zone and the introduction of a*
20 *400m² minimum subdivision lot size for the western part of the estate.*

25 Stage 8 of Tallowood (DA 10.2020.97.1) comprises 47 residential lots to the northwest of Stage 7 (see Figure 1). Stage 8 also included an area of land to serve as a corridor linking a vegetated gully and the ridgeline vegetation to the south to be dedicated to Council as a public reserve and a residue lot of 24.79 hectares comprising the balance of remaining rural and residential zoned lands in the existing parcel.

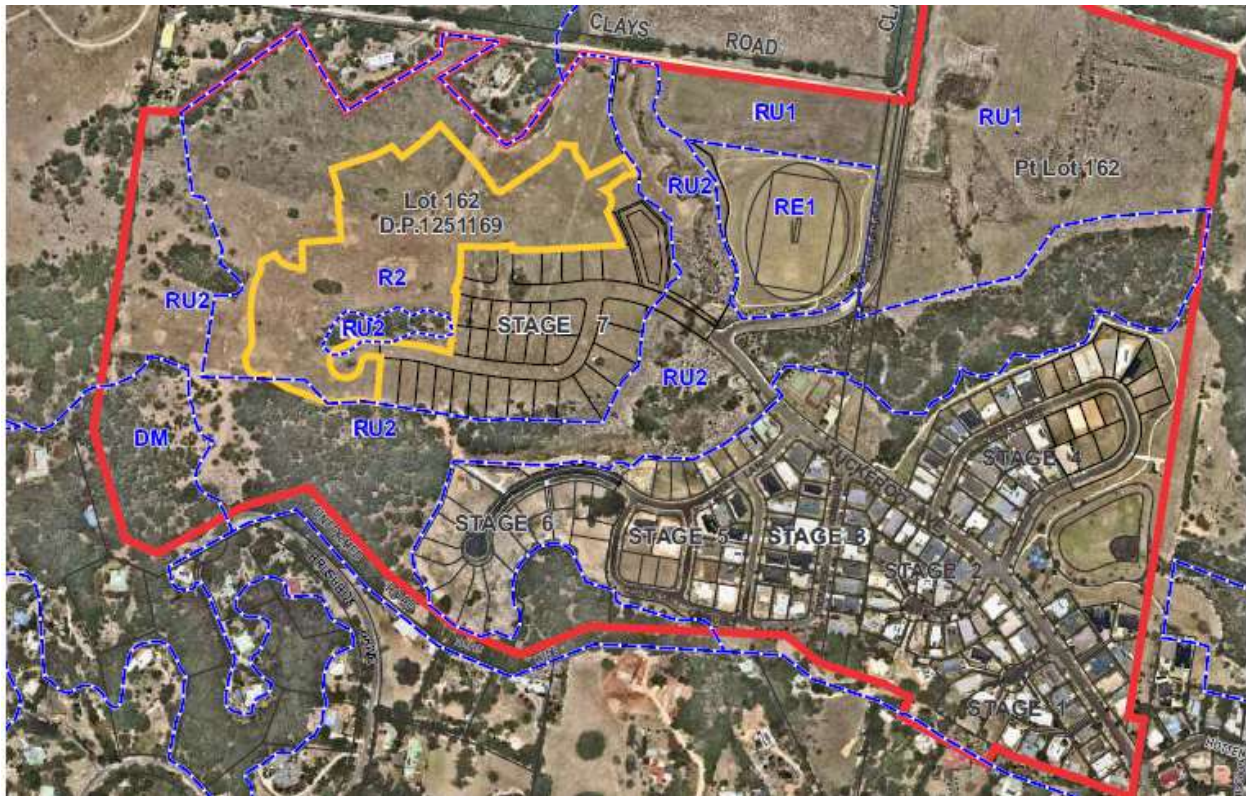


Figure 1: Site Plan (Stage 8 highlighted in Yellow)

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

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

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10.2016.161.1

Development Application
10.2017.402.1

Stage 6 Tallowood Ridge Estate for subdivision to create eighteen (18) residential Lots – Approved 26 July 2017.

Development Application
10.2018.305.1

Stage 7 Tallowood Ridge Estate for subdivision to create thirty-two (32) residential lots – Approved 11 April 2019.

Development Application
10.2020.97.1

Stage 8 Tallowood Ridge Estate for subdivision to create forty-six (46) residential lots – Approved 18 December 2020.

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

- 5 The Rural Fire Service (RFS) requested additional information to support the bush fire safety authority application on 27/5/21 and provided a bush fire safety authority for the subdivision on 30 November 2020. The amended proposal was provided to the RFS on 4/5/21 who issued an updated bush fire safety authority on 13/7/21.

1.2. Description of the proposed development

- 10 The application seeks approval for Stage 9 of Tallowood Ridge Estate Subdivision to Create Forty-Eight (48) Residential Lots. The amended layout (Issue E, 26/9/21) proposes 41 Torrens title lots ranging in area from 470m² to 2070m². The seven western lots (C1 to C7) are to be a community title subdivision with lot C8 (2.32ha) as the common property. Residual land to the south (Lot 282 – 5.96ha) is to be dedicated to Council. Lot 281, being
15 11.59ha, will comprise the residue land to the east.

Vehicular access to the subdivision will be provided from the current terminus of Tuckeroo Avenue adjacent to the Plover Parkway intersection. Emergency and service vehicle only access will be provided from Clays Road. This access will have bollards installed to prevent use by general traffic.

- 20 The proposed sewerage will drain via gravity to a proposed sewer pump station located to the eastern extent of Stage 7 from where wastewater will be pumped to the Council wastewater treatment plant.

- 25 Stormwater treatment and detention for Stage 9 of the Tallowood Ridge Estate subdivision will be provided by two retention basins (Basin1 – Part of Stage 7 and Basin 2 – part of stage 9, adjacent to Clays Road). Nine individual bioswales will be constructed on lots falling away from the main basins (north western lots and lots near Clays Road with access handle).

Stage 9 will involve earthworks being approximately 12,000 m³ of cut and 12,000 m³ of fill. Fill material will be sourced from the stockpile of material surplus from construction of Stages 7 and 8 of the subdivision.

5 The application states that no native trees will need to be removed to enable construction of the subdivision.



Figure 2: Proposed subdivision layout for Tallwood Ridge - Stage 9.

10 Note: As part of the consideration of Stage 8 of the subdivision application, proposed lot 280 and the area of Lot A235 north of access track (previously referred to as Lot 205 or Lot 813) were deferred for consideration under the Stage 9 subdivision application. On this matter, the following discussion from the Stage 8 assessment report is included below:

15 *Under the present proposal, the treed gully known as Management Zone 9 is part of proposed Lot 813 (Numbered Lot 205 on the plans to be approved) . This would mean that the future owner of the lot would acquire the responsibility for the ongoing management and protection of MZ9 with an area of approximately half a hectare. No other Management Zone is presently incorporated into a private residential lot.*

It is noted that a Notice of Motion is to be considered by Council at the December Ordinary Meeting to investigate how these vegetated residual areas of Tallwood Estate can be incorporated into a public reserve.

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Should an agreement be reached between the land owner and Council, the long term future and ownership of this portion of Tallowood Estate can be resolved with the Stage 9 DA, and as such does not need to form part of this application.

- 5 It is recommended that Lot 813 not be approved as part of this subdivision, and it be incorporated into the residual lot which includes the vegetated ridgelines to the south. The future of this parcel can be resolved as part of the DA for Stage 9.

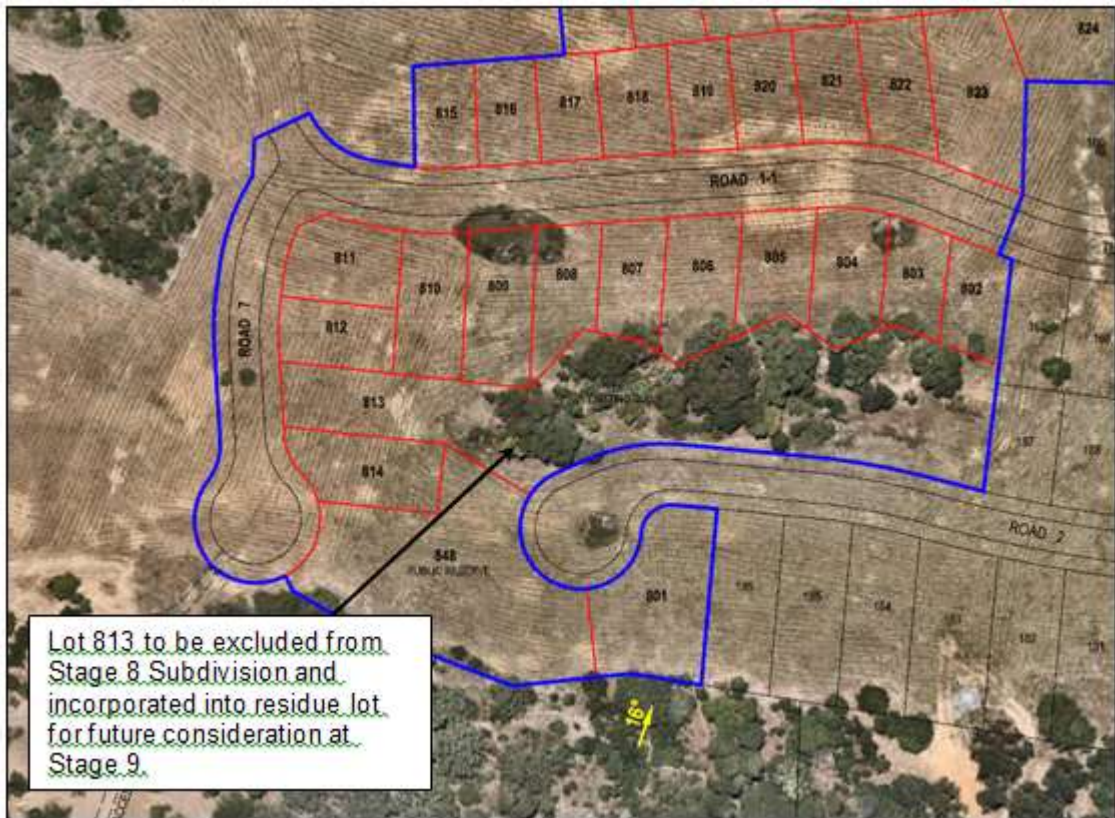


Figure 6: Lot 813 to be incorporated into residual lot.

- 10 The inclusion of lot 280 results in the creation of 48 rather than 47 lots and the dedication of additional land to Council.

1.3. Description of the site	
Land is legally described	LOT: 148 DP: 1265934
Property address	89 Tuckerroo Avenue MULLUMBIMBY
Land is zoned:	R2 Low Density Residential / PART RU1 Primary Production / PART RU2 Rural Landscape / PART 1(a) General Rural

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Land area is:	34.45 ha	
Property is constrained by:	<ul style="list-style-type: none"> • Bushfire prone land • Flood Liable Land • High Environmental Value vegetation (North coast wet sclerophyll) • Koala habitat 	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

A site inspection was carried out on 22 September 2021 during which photos of the development site were taken (See **Attachment 3**).

2. SUMMARY OF REFERRALS

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

Referral	Issue
Rural Fire Service (100B/4.46)	Final bushfire safety authority and general terms of approval issued for integrated development on 13/7/21.

3. SECTION 4.46 – Integrated Development

Rural Fire Act 1997

5 The site is identified as bush fire prone land. The proposed residential subdivision requires a Bush Fire Safety Authority under s100B of the *Rural Fires Act 1997* and constitutes integrated development pursuant to s4.46 of the *Environmental Planning and assessment Act 1979* (the Act).

10 The application was referred to the NSW Rural Fire Service seeking General Terms of Approval (GTAs) for the integrated development application. GTAs and a Bush Fire Safety Authority have been issued and are included as part of the recommended conditions at the end of this report.

Low-intensity burning

15 A Notice of motion was presented to Council on 24 June 2021 (Item 9.1) recommending investigation into low intensity burning be considered as part of the assessment of the stage 9 Tallwood Ridge subdivision development application. At this meeting it was resolved [**Resolution 21-220**] that Council:

1. *Investigates the options for low intensity burning to be made as a condition of consent in developments with open forest vegetation and/or bushfire hazard prone land to be considered as part of the assessment of stage 9.*
- 20 2. *Consults with Fire and Rescue NSW - Mullumbimby, Captain Josh Ruston, NSW Rural Fire Service, the owner of the property, and other appropriate bodies.*

25 Council staff consulted with NSW Rural Fire Service Staff and the applicant. A site inspection was carried out with Zophie Lahondry from the NSW RFS and Wayde Fletcher for the Applicant. It was indicated that the NSW Rural Fire Service do not support the use of burning in this instance as it is not required for bush fire safety purposes for the purposes of the subdivision.

Further the areas of remnant bushland onsite from an ecological point of view are to be weeded in accordance with the approved Bio-Diversity Management Plan.

30 It is noted though ‘ecological/cultural burning’ could be a useful tool to manage remnant bushland in the Shire. A section of this remnant bushland is to be dedicated to Council as part of this development application. Council once in control of this parcel and if appropriate could apply to carry out such a burn in the future, subject to the appropriate approvals from NSW RFS and weather and ground conditions. Such burning would also

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require supervision from the NSW RFS and consultation with surrounding landowners including the existing residents to the south of the site in Brushbox Drive.

As such it is not recommended that a condition be imposed for a back burn of these remnant bushland areas in Stage 9.

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

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

10 4.1 State Environmental Planning Instruments

	Satisfactory	Unsatisfactory
State Environmental Planning Policy (Koala Habitat Protection) 2021	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Stage 9 is within the “West Mullumbimby” precinct of the Byron Coast Comprehensive Koala Plan of Management (BCCKPoM). The Stage 9 residential lots do not encroach on any mapped koala habitat under the BCCKPoM. It is noted that the area is unlikely to be regarded as core koala habitat but is known to be used for movement and dispersal. No native vegetation removal is proposed for the construction of Stage 9 of the subdivision. No adverse impacts on local koala populations are expected		
State Environmental Planning Policy No 55— Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
It is considered the subject site is suitable for residential development.		
State Environmental Planning Policy (Coastal Management) 2018	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Part of the residue land to the east is mapped as coastal use area and coastal environment area due to its proximity to the Brunswick River. No development is proposed in, or near, (>100M from nearest mapped area) the mapped areas and as such adverse impacts on these areas from the subdivision will be avoided or minimised (clauses 13 and 14).		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

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- (a) The proposed development is defined in clause 6.2 of the Act as subdivision of land;
- (b) Part of the land is within the R2 Low Density Residential / PART RU1 Primary Production / PART RU2 Rural Landscape / PART 1(a) General Rural according to the Land Zoning Map;
- 5 (c) The proposed development is permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective – R2	Consideration
<p><i>To provide for the housing needs of the community within a low density residential environment.</i></p> <p><i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></p>	<p>The subdivision will provide additional land for housing in the Mullumbimby area. There are a reasonable number of large lots that will allow for low density housing development.</p>
Zone Objective – RU2	Consideration
<p><i>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</i></p> <p><i>To maintain the rural landscape character of the land.</i></p> <p><i>To provide for a range of compatible land uses, including extensive agriculture.</i></p> <p><i>To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.</i></p> <p><i>To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.</i></p>	<p>No subdivision works are proposed in the RU2 zoned land. Grassed swales are shown on the stormwater plan in the community title common property lot (and therefore on RU2 zoned land) however these minor works are not inconsistent with the zone objectives.</p>
Zone Objective – RU1	Consideration
<p><i>To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.</i></p> <p><i>To encourage diversity in primary industry enterprises and systems appropriate for the area.</i></p> <p><i>To minimise the fragmentation and alienation of resource lands.</i></p> <p><i>To minimise conflict between land uses within this zone and land uses within adjoining</i></p>	<p>No subdivision works are proposed in the RU1 zoned land.</p>

<p><i>zones.</i> <i>To encourage consolidation of lots for the purposes of primary industry production.</i> <i>To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.</i> <i>To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.</i></p>	
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Clause 4.1 Minimum subdivision lot size

5 The minimum lot size in the R2 Low Density Residential zone on the subject land is predominantly 400m² with an area of 1000m² to the northwest of the property. The remainder of the site is zoned RU1 Primary Production, RU2 Rural Landscape and 1(a) (General Rural) zone. A 40-hectare minimum lot size applies to these areas.

As illustrated in the table below, the proposed lots in the R2 zone vary in size from 470m² to 1,040m² and comply with the minimum lot size standard. Minimum lot size requirements do not apply to the community title or public reserve lots. The residue lot does not comply with the minimum lot size, an issue which is discussed further below.

10 **Compliance with the Lot Size Map:**

Lot type	Zone	Min Lot Size	Proposed Lot Size	Compliance
34 Torrens lots	R2	400m ²	470–1040m ²	Yes
7 Torrens lots	R2	1000m ²	1230-2070m ²	Yes
7 community title lots	R2	400m ² and 1000m ²	600-1600m ²	Exempt (clause 4.1(4)(b))
1 community title common property lot	RU2	40ha	2.32ha	Exempt (clause 4.1(4)(b))
1 public reserve lot	1(a), RU2	40ha	5.96ha	Exempt
1 residue lot	RU1, RU2, 1(a)	40ha	11.59ha	No – permissible under Clause 4.1D

Clause 4.1D Exceptions to minimum subdivision lot sizes for certain split zones

Special provisions in relation to minimum lot sizes are afforded to subdivisions of land within more than one zone. This subdivision is of a lot that contains land zoned residential and RU1 and RU2 and thus falls under this provision (c.4.1D(2)).

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Consent may be granted for subdivisions under c.4.1D(3) if:

(a) one of the resulting lots will contain—

(i) land in a residential, business or industrial zone that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land, and

5 (ii) all of the land in Zone RU1 Primary Production, Zone RU2 Rural Landscape or Zone SP3 Tourist that was in the original lot, and

(b) all other resulting lots will contain land that has an area that is not less than the minimum size shown on the Lot Size Map in relation to that land.

10 As noted in the table above, all lots proposed for the R2 zoned land meet the minimum lot size requirement for that zone (as noted above, minimum lot size requirements do not apply to community title subdivisions). The residue lot comprises all RU1 and RU2 zoned land but for those areas to be dedicated to Council as public reserve. As such, the proposal is considered to comply with the exceptions to minimum lot sizes in relation to the residual land and development consent may be granted under this provision.

15 Council's Development Engineer is satisfied with the proposal in relation to flood planning (c.5.21), earthworks (c.6.2) and provision of essential services (c.6.6) subject to recommended conditions.

4.2B Byron Local Environmental Plan 1988 (LEP 1988)

20 The property contains one small area of 1(a) General Rural zoned land which will be entirely within the area of land to be dedicated to Council as a public reserve. Minimum lot size requirements (c.11) do not apply to subdivision of land to create a public reserve as this is exempt development. Subdivision works for Stage 9 are not proposed on the area of land zoned 1(a) General Rural and consequently the development does not raise any specific issues in terms of LEP 1988.

25 4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

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

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

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

Part A	<input checked="" type="checkbox"/>
Part B	<input type="checkbox"/> B1 <input checked="" type="checkbox"/> B3 <input checked="" type="checkbox"/> B4 <input checked="" type="checkbox"/> B5 <input checked="" type="checkbox"/> B6 <input type="checkbox"/> B7 <input checked="" type="checkbox"/> B8 <input checked="" type="checkbox"/> B9 <input type="checkbox"/> B10 <input checked="" type="checkbox"/> B11 <input type="checkbox"/>

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

Chapter B1 Biodiversity

A Biodiversity Conservation Management Plan (BCMP) has been prepared and adopted for the entire Tallowood Ridge subdivision including Stage 9. The current BCMP (Update 4) has Management zones 7a, 7b, 8, 9, 10 and 11 falling within the area covered by Stage 9. Management zones 7a, 7b 10 and 11 are within land that is to be dedicated to Council. Management zone 8 is within the common property of the community title subdivision. Conditions have been recommended to require any outstanding works to be either completed prior to the issue of a subdivision certificate (for Management zones within land to be dedicated to Council) or incorporated into the community management statement for the community title subdivision (Management zone 8).

Chapter B3 and B4 Services and Traffic Planning, Vehicle parking, Circulation and Access

Council's Development Engineer is satisfied that the subdivision has adequate servicing including vehicular access subject to recommended conditions (Chapters B3 and B4) including but not limited to updated plans that provide details of the required footpath that continues from Road 1-1 in stage 8 along the inside of Roads 1-2 and 1-3 to the junction with Tuckeroo Avenue.

Chapter B5 Providing for Cycleways

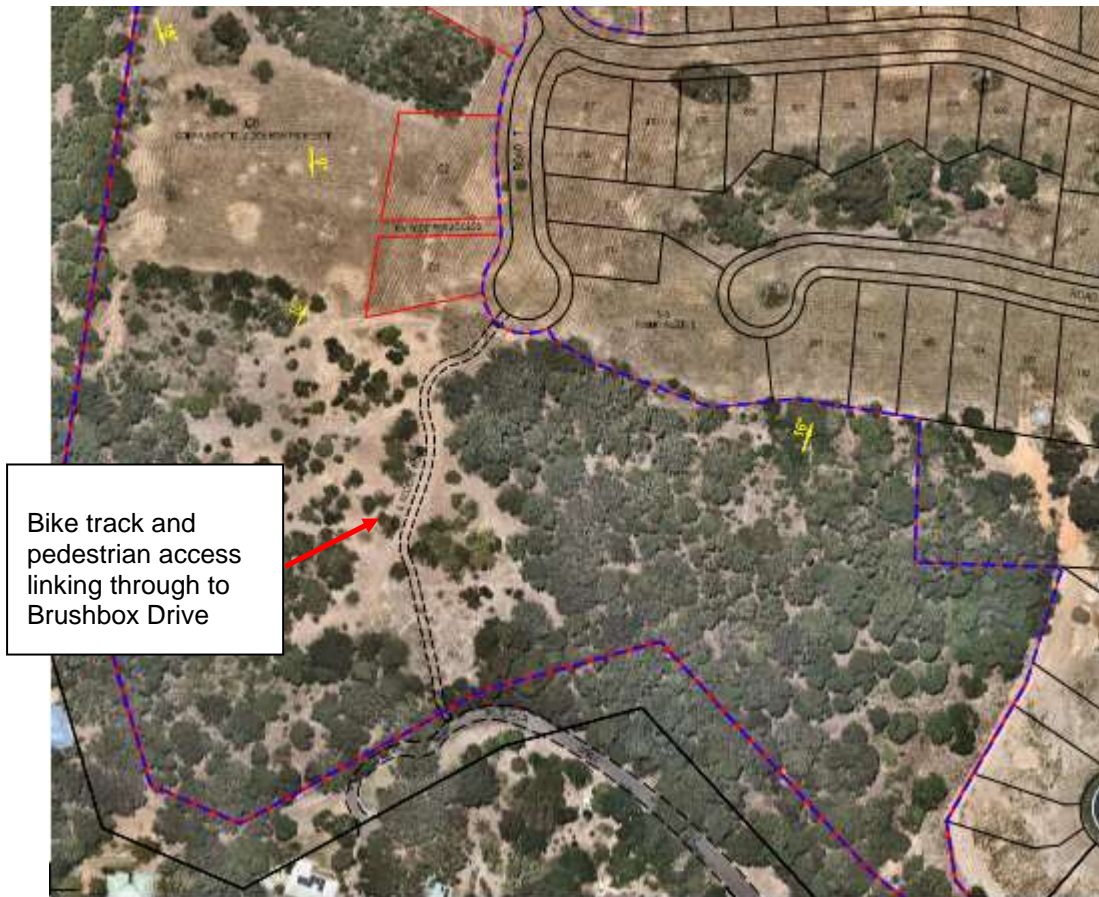
A footpath/ cycleway is proposed linking the development with Brushbox Drive, providing in effect a short cut for pedestrians and cyclist from the development through to Left bank road and vice versa. It is considered this link in infrastructure will enable people to utilise other means of transport other than driving between these two aras of Mullumbimby.

Chapter B9 Landscaping

A concept landscaping plan was provided with the application which indicates the proposed landscaping being limited to the planting of street trees at ~20m spacing (B9.11). Conditions of consent to apply

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15 **Chapter C2 Areas Affected by Flood**

Only a small section of the land to be subdivided near Clays Road is mapped as flood prone. The area is to be filled to provide for lots above the flood height. Council's Development Engineer is satisfied that the subdivision is compatible with flooding risk and will not result in flooding impacts subject to recommended conditions.

20 **Chapter D6 Subdivisions**

Consideration of the proposed subdivision against the relevant requirements of Chapter D6 Subdivision is detailed below:

D6.2.1 Subdivision Design Guidelines	Comment
1. Site Design	The application included a site context and analysis plan.

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D6.2.1 Subdivision Design Guidelines	Comment
2. Climate Control and Aspect	<p>Due to the topography of the site and surrounds, the subdivision will receive protection from southerly winds but will be open to northerly breezes.</p> <p>The application included a lot orientation plan. In general terms, Stage 9 slopes from an elevated ridge in the west to lower ground in the east. Many of the proposed lots do not have the preferred north-south axis however the majority of the lots with less favourable orientation have sufficient width to allow flexibility for the siting and design of future dwellings without causing shading impacts beyond the lot boundary.</p> <p><u>However, lots 240, 243, 254 and 263 are particularly constrained with respect to orientation and aspect.</u></p>
3. Hazards	<p>The application has suitably addressed environmental hazards including flooding and bushfire. The application was referred to the RFS who have provided 7 GTA's which identify lots to be burdened with asset protection zones.</p>
4. Vegetation removal	<p>No vegetation removal is proposed.</p>
5. Riparian Buffers and land fronting watercourses	<p>But for the drainage line that is to be crossed by Road 5, a buffer of ~20m is to be provided to the only other drainage line in the land to be subdivided.</p> <p>Bush regeneration works are being undertaken within this riparian area under the previously approved BCMP for the subdivision (identified as Management Zone 6, within Stage 7 – January 2020).</p>
6. Landscaping	<p>A landscaping plan was provided and a condition is recommended requiring an updated plan to address omitted matters.</p>
7. Roads	<p>The subdivision will maintain the existing road hierarchy by extending Tuckeroo Avenue from Stage 8 as the main thoroughfare throughout the estate.</p>
8. Street Lighting	<p>Conditions are recommended for street lighting to be provided in accordance with the provisions of DCP 2014. New lighting is to match the existing infrastructure design throughout the estate.</p>
9. Public open space and public reserves	<p>A pedestrian pathway is proposed for Roads 1-2 and 1-3 that will provide a loop for the stage 8 terminus of Tuckeroo Avenue back onto Tuckeroo Avenue further to the east.</p> <p>Residual land at the south of Stage 9, and extending</p>

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D6.2.1 Subdivision Design Guidelines	Comment
	below Stages 5-8 is to be dedicated to Council as public reserve.
10. Stormwater Management	Council's Development Engineer is satisfied stormwater can be adequately managed subject to recommended conditions.
11. Utility Services	Electricity and telephone services, including NBN, can be supplied to each lot.
12. Provision of Potable Water Supply	Reticulated water and sewer services are able to be provided to each lot.
13. Sewer	
14. Geotechnical Report	Council's Development Engineer has recommended a condition that requires geotechnical certification of created residential lots prior to the issue of a subdivision certificate.

D6.4 Urban Residential Subdivision Design	
D6.4.1 Lot Size and shape	Comment
1. Lot sizes must not be less than the minimum area specified in Byron LEP 2014 on the lot size map.	All proposed allotments exceed the 400m ² minimum lot size.
2. Proposed lots containing existing dwellings must not result in that lot having a floor space ratio lower than that specified on the floor space ratio map.	Not applicable.
3. Lots must provide an appropriate shape and area to accommodate an unconstrained building envelope with minimum dimensions of 12 metres by 15 metres.	All proposed allotments have building envelopes with minimum dimensions of 12m by 15m
4. Each Torrens title lot must have a minimum road frontage of 6 metres (i.e. 3 metre driveway and provision for services, landscaping etc). This may translate as 3 metres frontage each if reciprocal	All proposed allotments have a minimum road frontage of 6 metres except lots 254 and 255 which have a 3m frontage for a shared driveway and services.

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<p>rights of carriageway provide shared access to 2 or more adjoining lots. Consideration will be given to a further reduction in lot width for four or more lots where the pavement widths comply with the Northern Rivers Development and Design Manual. Lots relying on rights of carriageway with no road frontage will not be supported</p>	
<p>4. The access handle of hatchet-shaped lots must be landscaped in accordance with the requirements of Chapter B9 Landscaping. A landscaping plan must be submitted with the development application for subdivision. Such details could incorporate, for example a meandering driveway with landscaping elements, passing bays, different pavement treatments and kerb blisters incorporating landscaping beds.</p>	<p>A condition that requires an amended landscaping plan that includes landscaping of the access handle of lots 254 and 255 has been recommended.</p>
<p>5. Hatchet shaped lots (excluding the access handle) should meet the minimum lot sizes as set out in lot size map (BLEP 2014). The area of battle-axe handles is not to be included in determining minimum lot sizes</p>	<p>The only two hatchet shaped lots are Lot 254 and Lot 255 which are 680m² and 1010m² respectively and are therefore meet the minimum lot size of 400m² excluding the handle area.</p>
<p>6. Splays of 4m X 4m should generally be provided on corner lots, except in site specific circumstances where increased sight lines are required.</p>	<p>Council's Development Engineer is satisfied the required splays have been provided on all corner lots.</p>
<p>D6.4.2 Access Design</p>	<p>Comment</p>
<p>1. Applications must demonstrate that vehicle access can be provided to each lot created by the subdivision in accordance with Chapter B3 Services. In</p>	<p>Vehicular access is able to be appropriately provided for each individual lot.</p>

<p>certain circumstances, due to topography and other constraints, the driveway will need to be designed and constructed at the subdivision stage.</p>	
<p>2. Additional standards may apply in bushfire prone areas as per the requirements of the NSW Rural Fire Service.</p>	<p>NSW RFS specified requirements for driveway/internal access for the hatchet lots 254 and 255.</p>

B14 Excavation and Fill

A cut and fill plan was provided with the application that indicates earthworks are proposed in the northern section of the proposed subdivision. A balanced cut and fill approach is proposed to limit the need for fill to be transported to the site. Some areas will have cuts approximately 2 metres deep and fill depths of up to 1.6 m. Retaining walls are limited to a dry stone wall for a length of 70 metres. The earthworks will have minor impact on the character of the locality as they are restricted to the R2 zoned portion of the site and will be generally unrecognisable on the completion of the development. Impacts on drainage are manageable, and there are no inherent geotechnical issues associated with the works. It is considered the proposal satisfies the performance criteria and objectives underpinning this design element.

Chapter E3 Mullumbimby

Stage 9 of the Tallowood Ridge subdivision falls outside of the Mullumbimby Urban Area and precinct boundaries. However, the proposal is not inconsistent with the provisions contained within the DCP

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

DCP 2010 applies only to the area of land to the southwest of the property that is part of the land to be dedicated to Council as a public reserve. No residential lots or subdivision works are proposed in this area. Subdivision works for Stage 9 are not proposed on the area of land zoned 1(a) General Rural and consequently the development does not raise any specific issues in terms of DCP 2010.

4.5 Any Planning Agreement or Draft Planning Agreement?

There are no applicable planning agreement or draft planning agreements for the site.

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

The proposal raises no issues under the applicable EPA Regulations.

4.7 Any Coastal Zone Management Plan?

There is no applicable coastal zone management plan.

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

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality. The site to be developed for residential purposes is predominantly clear of vegetation, with the remnant areas of significance to be dedicated to Council
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	The proposal will not have a significant social impact on the locality. The development will result in an additional supply of vacant land to be utilised for residential purposes
Economic impact	The proposal will have economic impacts through the construction sector with the building of the subdivision and ongoing impacts once the lots are released with the construction of dwellings upon them.

4.9 The suitability of the site for the development

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

4.10 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited

Eight submissions were received raising the following issues

Key issues raised in submissions	Consideration
<p>Traffic/pedestrian safety:</p> <ul style="list-style-type: none"> Clays Road – currently in poor condition. Should be sealed and include a walk/bike path to Main Arm Road. Left Bank Road/Tuckeroo Avenue intersection - poor lighting at night. 	<p>The upgrade of part of Clays Road is required by the stage 8 development consent (condition 19 of DA 10.2020.97.1). The Stage 9 subdivision will only have emergency vehicular access to Clays Road and as such Council’s Development Engineer has not required the developer to further upgrade</p>

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	<p>Clays Road.</p> <p>Conditions to apply for the street light to be installed.</p>
<p>Lack of community facilities. Could the developer make provision/land available for a community hub/general store?</p>	<p>The Stage 9 subdivision application does not propose any specific community facilities however community facilities have been provided in previous stages of the Tallowood Ridge subdivision and will be available to residents of Stage 9. This includes dedication of land for open space, sports fields, environmental lots and the like. ,</p> <p>Neighbourhood Shops are permitted with consent on R2 zoned land. Should a developer wish to purchase lots for such a land use and make application then that could be considered at that time.</p>
<p>The ridgeline and remaining bushland should be protected by the highest environmental protection and have a community walkway with public access.</p>	<p>The ridgeline and remaining bushland will be protected either through the community title management statement (for the community title common property) or by dedication of residual land to Council. The rezoning of these areas to environmental protection is being carried out by a sperate process</p>
<p>Return street lights to the original green ones that are along Tuckeroo Ave.</p>	<p>The current silver lighting is consistent with the relevant Australian Standards and has been assessed by Council's Development Engineer during the construction of the relevant subdivision stages.</p>
<p>Potential impact of street lighting on livestock health.</p>	<p>The existing vegetation surrounding adjoining RU2 zoned properties, the separation of most roads from these boundaries and the lack of livestock identified at the site inspection will minimise any impacts of street lighting on livestock.</p>
<p>Impact on Biodiversity Conservation</p>	<p>Proposed lots C2 and C3 have been</p>

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<p>Management Plan Management zone 8. Encroachment of development into this area should be removed and management zone 8 be provided a buffer from development.</p>	<p>separated to avoid overlap with Management zone 8.</p>
<p>Biodiversity Conservation Management Plan Management zones 7a and 7b must be given the highest level of protection with an E2 zoning and must be restored.</p>	<p>The land comprising management zones 7a and 7b is to be dedicated to Council. The rezoning to environmental protection is subject to a separate process</p>
<p>A master plan must be generated to show what compensatory works will be undertaken for stages 8 and 9.</p>	<p>The BCMP (update 4) for the Tallowood Ridge subdivision details the compensatory works to be undertaken. Conditions have been recommended to require proposed works for Stage 9 to be carried out.</p>
<p>Concern about dwellings being located near to existing agricultural uses without sufficient buffers (particularly proposed lots surrounding Lot 2 DP 608876)</p>	<p>The proposed residential lots have suitable setbacks to the RU2 properties to enable future dwellings to be located to minimise potential land use conflicts.</p>
<p>Concern about noise impacts (particularly from the road) on surrounding agricultural land (particularly proposed lots surrounding Lot 2 DP 608876).</p> <p>An acoustic barrier has been requested (see image below):</p>	<p>A condition has been recommended requiring the north western side of the access road to Lots 254 and 255 to be fenced to minimise any noise impacts from this access on the neighbouring property.</p>

<p>Impact of stormwater/potential flooding impacts on downstream properties (particularly those between the development and the Brunswick River).</p>	<p>Stormwater from the development is to be conveyed to stormwater detention basins before flowing into surrounding waterways. The proposal will not impact on downstream properties.</p>

4.11 Public interest

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

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

Section 64 levies will be payable.

5.2 Section 7.11 Contributions

10 Section 7.11 Contributions will be payable.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

<p>Has a Disclosure Statement been received in relation to this application</p>	<p align="center">No</p>
<p>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.</p>	<p align="center">No</p>

Provide Disclosure Statement register details here: Not applicable

7. CONCLUSION

5 The DA proposes Stage 9 Tallowood Ridge Estate Subdivision to Create Forty-Eight (48) Residential Lots. The amended layout proposes 41 Torrens title lots, 7 community title lots with a common property lot, with residual land to the south to be dedicated to Council and a residue lot. The proposed subdivision of land is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application appropriately addresses the relevant constraints applying to the site and is recommended for approval subject to the conditions listed in the Recommendation of this Report.

10

Report No. 13.6 PLANNING - Update to Council resolution 21-284 - Letter of Offer and Draft Voluntary Planning Agreement for Affordable Housing - 68 Rankin Drive, Bangalow

5 **Directorate:** Sustainable Environment and Economy
Report Author: Natalie Hancock, Senior Planner
Alex Caras, Land Use Planning Coordinator
File No: I2021/1465

Summary:

10 A Letter of Offer to enter into a Voluntary Planning Agreement (VPA) and draft VPA were both considered at the 5 August 2021 Planning Meeting. Council resolved (**21-284**) to exhibit the draft VPA as a precursor to deciding whether to accept a corresponding planning proposal lodged in May this year.

15 The planning proposal seeks to rezone Lot 261 DP 1262316 and Lot 11 DP 807867 (known as 68 Rankin Drive Bangalow) to R2 Low Density Residential. The subject land is identified as Area 11 in the Byron Residential Strategy, which is yet to be endorsed by the Department of Planning, Industry and Environment.

20 This purpose of this report is advise Council of the applicant's subsequent decision (and reasons given) to withdraw the draft VPA letter of offer and lodge a new planning proposal on the Planning Portal website. The report also discusses the next steps forward as a result of the applicant's decision.

NOTE TO COUNCILLORS:

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

30 **RECOMMENDATION:**



That Council notes the information contained in this report and receives a further report on the new planning proposal lodged for Lot 261 DP 1262316 and Lot 11 DP 807867 in Bangalow.

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Attachments:

- 1 Flowchart - Affordable Housing (early implementation sites) - presented at meeting with landowners on 11 May 2018, E2021/117706 
- 5 2 Emails from applicant dated 6 & 16 September 2021 - advising withdrawal of draft Voluntary Planning Agreement - 68 Rankin Dr Bangalow, E2021/117726 

Report

Council at its 5 August Planning Meeting considered a Letter of Offer to enter into a Voluntary Planning Agreement (VPA) and the corresponding draft VPA, where it resolved the following:

- 5 **(Res 21-284) ... that Council:**
1. Acknowledges the complex interaction between the offer of a draft Voluntary Planning Agreement -(VPA) for 68 Rankin Drive, Bangalow (Attachment 2 E2021/90306) with the Residential Strategy and draft Affordable Housing Contribution Scheme (AHCS).
 - 10 2. In acknowledging the process to date and implications of point 1, supports public exhibition only of the draft VPA (Attachment 2 E2021/90306) for a period of four (4) weeks for public comment;
 - 15 3. Requests that the applicant, prior to public exhibition, make further amendments to the draft VPA to address the inconsistencies in Table 1 and legal matters identified in this Report;
 - 20 4. Considers a submissions report post-exhibition that includes any recommended changes to the draft VPA.
 - 25 5. Understands that should Council choose to proceed with finalising the attached draft VPA ahead of a statutory AHCS being in place, there is no guarantee that 20% of the rezoned land (or any %) will be dedicated for affordable housing purposes.
 - 30 6. Due to 5, does not accept any ‘urban residential’ planning proposals pertaining to a non-Council owned and or managed investigation area (as identified in the Residential Strategy), until a statutory AHCS is in place for Byron Shire, noting that the timeframe for this may be at least 6 months away.
 - 35 7. Requests the Department of Planning, Industry and Environment to finalise its approval of the Byron Residential Strategy and corresponding Affordable Housing Contribution Scheme without further delay.

35 The applicant has since advised Council of their decision to withdraw the draft VPA letter of offer and lodge a new planning proposal (Planning Portal ref: PP-2021-5540). In doing so the applicant has cited concerns that the current process they are being asked to follow bears no similarity to the steps originally set out in the Flowchart (Attachment 1) presented at the ‘early implementation’ Affordable Housing meetings that he and other landowners attended in May 2018. Concerns were also expressed about Council resolving not to

40 accept any Planning Proposal until the Affordable Housing Contribution Scheme (AHCS) is in place, as per item 6 above.

45 As a result, the applicant is not willing to await until completion of the process set out in items 2 – 4 above, or for an AHCS to be adopted (item 6 above), before Council can consider a planning proposal for this land. As such it is not possible to implement items 2 – 4 of the above resolution.

A full copy of the applicant’s advice is contained in Attachment 2.

Next Steps

5 Staff acknowledge that the applicant has followed the steps outlined in the 2018 Flowchart (Attachment 1) and has acted in good faith in trying to get this affordable housing concept to a developable stage. While staff fully support the applicant’s intentions to date, the applicant has been consistently advised that any residential planning proposal must be considered in the context of Council’s Affordable Housing Contribution Policy and Procedure, Byron Residential Strategy, and draft Affordable Housing Contribution Scheme.

10 To provide a pathway forward *Res 21-284* was focused on securing an endorsed and executed VPA on the subject land prior to accepting a planning proposal. This outcome would have overcome the planning risks identified in the 5 August Planning Report (by delivering the same outcome as an AHCS) as well as any perceived impediments with item ‘6’ of the above resolution to progressing the applicant’s planning proposal. The latter
 15 could have simply been addressed via an updated resolution in the ‘post-exhibition’ VPA report to Council (i.e.. recommending that the planning proposal be accepted for gateway assessment).

20 **Considering the applicant’s decision to withdraw the draft VPA letter of offer and lodge a new planning proposal (with no VPA), there is no legally binding requirement for them to provide any Affordable Rental Housing on the subject land.** Even if such housing is ultimately provided over part of the site, there is no guarantee that any of this will remain secured in perpetuity. This will be a key consideration when the latest planning proposal is assessed and tabled in a future report to Council.

Strategic Considerations

25 **Community Strategic Plan and Operational Plan**

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 4: We manage growth and change responsibly	4.2: Support housing diversity in appropriate locations across the Shire	4.2.1: Establish planning mechanisms to support housing that meets the needs of our community	4.2.1.1	Prepare an Affordable Housing contribution scheme under SEPP 70 to be incorporated in the local planning framework controls (Action in Residential Strategy)

Recent Resolutions

- Res 19-152 (11 April 2019 Planning Meeting)
- Res 20-686 (10 December 2020 Planning Meeting)

- Res 21-284 (5 August 2021 Planning Meeting)

Legal/Statutory/Policy Considerations

5 The new planning proposal lodged by the applicant earlier this month will be assessed in accordance with the relevant legislative planning framework.

Financial Considerations

Assessment and reporting of all landowner initiated planning proposals are at the proponent's expense. If Council chooses to proceed with the planning proposal, full cost recovery of the remaining stages will be required by Council.