



# Byron Shire Council



## Agenda Ordinary (Planning) Meeting

Thursday, 4 November 2021

held at Council Chambers, Station Street, Mullumbimby  
commencing at 9:00am

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

Mark Arnold  
General Manager

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## CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

### Disclosure and participation in meetings

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

- (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
- (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

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

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

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

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

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## RECORDING OF VOTING ON PLANNING MATTERS

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

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

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

- 1. PUBLIC ACCESS**
- 2. APOLOGIES**
- 3. REQUESTS FOR LEAVE OF ABSENCE**
- 4. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY**
- 5. TABLING OF PECUNIARY INTEREST RETURNS (CL 4.9 CODE OF CONDUCT FOR COUNCILLORS)**
- 6. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS**
  - 6.1 Ordinary (Planning) Meeting held on 14 October 2021
- 7. RESERVATION OF ITEMS FOR DEBATE AND ORDER OF BUSINESS**
- 8. MAYORAL MINUTE**
- 9. NOTICES OF MOTION**

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

**Sustainable Environment and Economy**

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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.***

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.1 PLANNING - Report of the 7 October 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:** I2021/1617

**Summary:**

10 This report provides the outcome of the Planning Review Committee (PRC) held on 7 October 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.

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**RECOMMENDATION:**

**That Council endorses the outcomes of the Planning Review Committee meeting held on 7 October 2021.**

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# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.1

### Report

The Planning Review Committee meeting was held on 7 October 2021. The meeting commenced at 3:30pm and concluded at 4:00pm.

Councillors: Cameron, Coorey, Lyon, Ndiaye, Martin, Hunter

5 Apologies: Spooner, Hackett

Staff: Shannon Burt (Director Sustainable Environment and Economy), Chris Larkin (Manager Sustainable Development)

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

DA No.	Applicant	Property Address	Proposal	Exhibition /submissions	Reason/s Outcome
10.2021.450.1	Newton Denny Chapelle	45-71 Byron Street BANGALOW	Alterations and Additions to Existing Primary School	Level 2 3/9/21-30/9/21  4 submissions	The perceived public significance of the application  Council
10.2021.458.1	Archimages Architecture Pty Ltd	99 Alcorn Street SUFFOLK PARK	Demolition of Existing Dwelling House, Removal of Seven (7) Native Trees, Erection of a New Dwelling House and Ancillary Infrastructure		No delegation  Council

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
10.2014.743.4	Northpoint Advisory	41 Matong Drive OCEAN SHORES	S4.55 to Modify the Approved Staging and Modify Consent Conditions to reflect	Level 2 30/3/21 to 19/4/21  Nil submissions	Staff Delegation

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### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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			Modified Staging for an Approved Subdivision and Multi Dwelling Housing Development		
10.2014.743.5	Northpoint Advisory	41 Matong Drive OCEAN SHORES	S4.55 to update staging and add two (2) dwellings	Level 2 30/3/21 to 19/4/21  2 submissions	The perceived public significance of the application  Council

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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### Report No. 13.2 PLANNING - 10.2021.16.1 - Change of Use to General Store and Restaurant at 10 Huonbrook Road, Upper Wilsons Creek

**Directorate:** Sustainable Environment and Economy

5 **Report Author:** Ben Grant, Planner

**File No:** I2021/1569

#### Proposal:

<b>DA No:</b>	10.2021.16.1		
<b>Proposal description:</b>	Change of Use to General Store and Restaurant plus Ancillary Car Parking		
<b>Property description:</b>	LOT: 1 DP: 346087		
	10 Huonbrook Road UPPER WILSONS CREEK		
<b>Parcel No/s:</b>	168960		
<b>Applicant:</b>	Matt Walker Town Planning		
<b>Owner:</b>	Mr T P & Mrs A T Fitton		
<b>Zoning:</b>	DM Deferred Matter Byron LEP 1988		
<b>Date received:</b>	8 January 2021		
<b>Integrated / Designated Development:</b>	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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<b>Concurrence required</b>	No
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"><li>– Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications</li><li>– Exhibition period: 25/1/21 to 8/2/21</li><li>– Submissions received: 83</li><li>– Submissions acknowledged: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</li></ul>
<b>Planning Review Committee:</b>	PRC meeting of 11-03-2021. Called in due to number of submissions.
<b>Variation request</b>	Not applicable
<b>Delegation to determine</b>	Council

### Summary:

This development application seeks consent for a change of use from a general store to a combined general store and restaurant plus ancillary car parking at 10 Huonbrook Road, Upper Wilsons Creek.

- 5 The business, known as 'Lilium', has been operating for some time and as such there are no physical works proposed to the general store. The kitchen has already been fitted out and there is a toilet provided that was completed several years ago. The restaurant's proposed hours of operation are Sunday to Thursday, 8am to 7:30pm, with Friday and Saturdays to increase to 8am to 9:30pm.
- 10 The application was advertised and notified for a period of 14 days between 25 January and 5 February 2021. A total of 83 submissions were received comprising 28 objections and 55 in support. Objections generally focused on dangerous car parking and traffic generation while supporters noted the positive aspects of the cafe as a meeting place and community hub.
- 15 The application is referred to Council for determination due to the number of submissions received and the perceived public interest in the proposed development.

A key issue for consideration is parking congestion around the intersection of Huonbrook Road and Upper Wilsons Creek Road which is a safety concern and has been the subject of numerous objections and complaints.



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The proposal has been amended during the assessment and car parking issues are to be addressed by expanding the existing car park to provide an additional 9 spaces. In addition, consent conditions are recommended which require road upgrades at the intersection of Huonbrook Road and Upper Wilsons Creek Road including new intersection line marking.

In summary, the proposal is in keeping with the surrounding natural and built environment that provides a social hub for the Wilson's Creek and Huonbrook communities. The development satisfies the relevant planning controls applying to the land and, provided the consent conditions are implemented, will not have a significant impact on the environment or on local traffic conditions. Conditions of consent are recommended in relation to hours of operation and to limit patron numbers to 30 at any one time noting the size and scale of this small restaurant in the Byron Shire Hinterland.

The development is recommended for approval subject to the conditions in **Attachment 1**.

#### NOTE TO COUNCILLORS:





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

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#### RECOMMENDATION:

**That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2019.343.1 for change of use to general store and restaurant plus ancillary carparking, be granted consent subject to the conditions of approval shown at Attachment 1 (E2021/126746).**

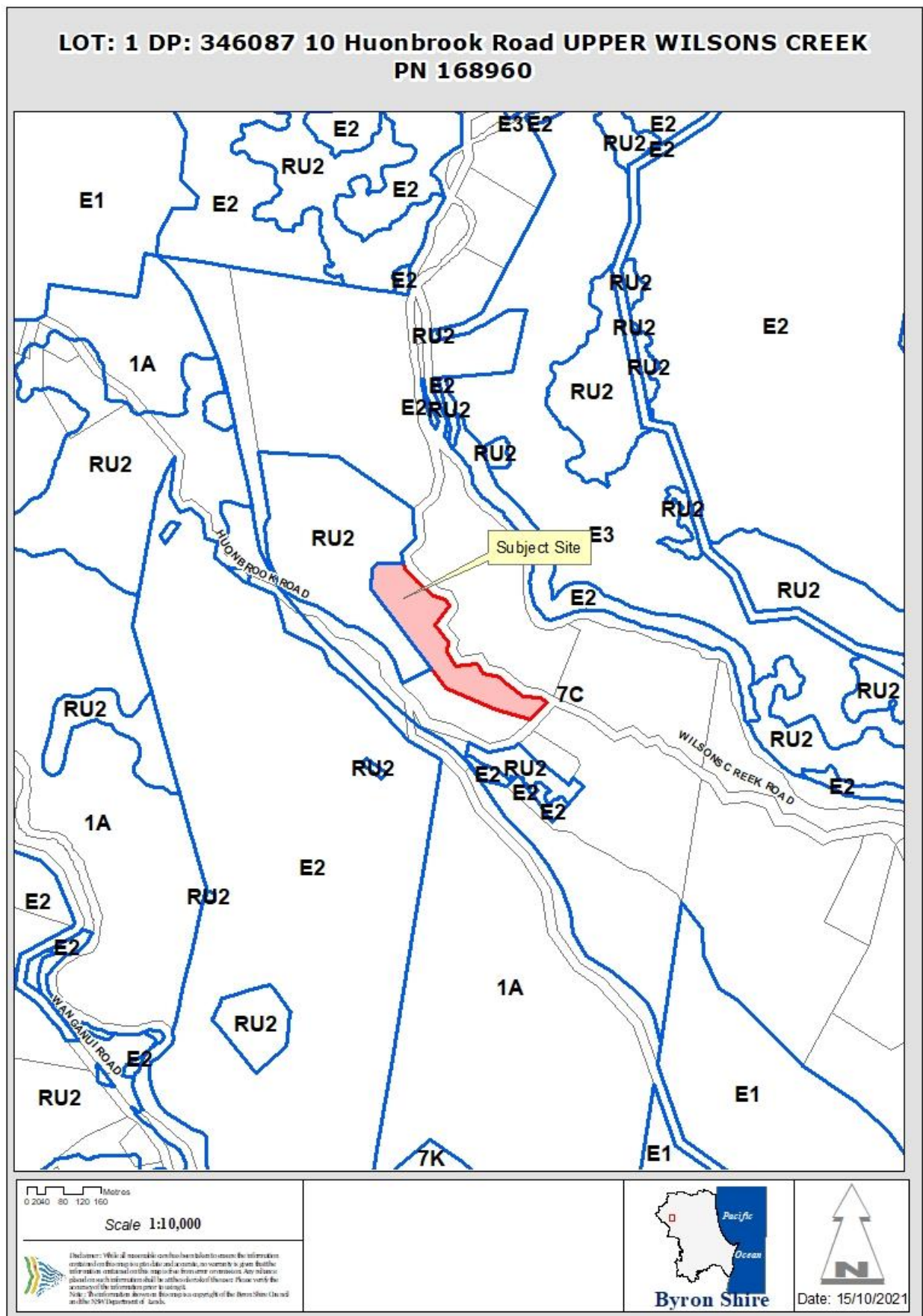
#### Attachments:

- 1 Attachment 1 - 10.2021.16.1 - Conditions, E2021/126746 
- 2 Attachment 2 - 10.2021.16.1 - Plans, E2021/126627 
- 3 Attachment 3 - 10.2021.16.1 - Amended car parking plans (marked up), E2021/127851 
- 4 Attachment 4 - Redacted submissions, E2021/37598 

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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## Report

### 1. INTRODUCTION

#### 1.1. History/Background

##### 5 Previous determinations

The following applications and development history are relevant to the current proposal:

- The subject allotment was subdivided in 1941. The 1941 survey plan identifies a “shop” on the site in the current location of the general store.
- 10 • **DA 1994/382** – Development consent was granted on 23 December 1994 for use of the premises as a general store. The conditions included details of an effluent disposal system, provision of parking and access, and fitting out and operation of food premises in accordance with the requirements of the *Food Act 1989*. The hours of operation were limited to 8.00am to 5.00pm Monday to Friday and 8.00am to noon on Saturday.
- 15 • **BA 97/2398** – Building approval was granted on 18 December 2002 for “shop renovations”.
- 20 • **DA 10.2005.212.1** – Development consent was granted on 31 August 2010 for a change of use from general store to restaurant and extended trading hours. The consent was conditioned to require upgraded car parking and on-site sewage management system. However, there is no record of this consent ever being lawfully or physically commenced and it is considered to have lapsed on 31 August 2010.
- 25 • **S96 Application 5.1994.382.2** – Granted approval to modify the operating hours of the general store on 6 October 2006. Hours of operation were increased to 8.00am to 7.30pm every day.

#### Compliance Actions

- 30 Council officers inspected the site on 11 August 2020 in response to allegations of the unauthorised use of the premises as a restaurant. A notice of proposed order was issued on 18 September 2020, notifying the landowners that Council intended to issue a stop use order and a restore works order in relation to the use of the premises as a restaurant.

35 Further, during the site inspection the following works and buildings were identified which appeared to have been constructed without consent:

- Corrugated iron fencing to a height of approximately 2m near Huonbrook Road.
- A shipping container located ~4m from Huonbrook Road.
- A concrete hardstand area near Huonbrook Road with dimensions ~150m<sup>2</sup>.

40 The above buildings and works do not meet the relevant standards for exempt development in the Codes SEPP and potentially conflict with the new car parking area that forms part of the development proposal.

As discussed further in this report, conditions of consent are recommended for the non-compliant works to be rectified prior to the issue of a construction certificate. The matter has also been referred to Council's community enforcement team for further consideration.

Amendments

- 5 A request for further information was sent to the applicant on 12 May 2021 asking for amended car parking plans, demonstrating at least 15 car parking spaces in accordance with DCP 2010.

Amended car parking plans were provided on 12 August 2021.

**1.2. Description of the proposed development**

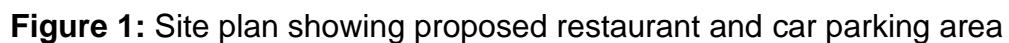
- 10 This application seeks consent to change the use of an existing general store to a combined restaurant/general store, along with ancillary works to expand the existing car parking area.

- 15 The business, known as 'Lilium', has been operating for some time and as such there are no physical works proposed to the general store. The kitchen has already been fitted out and there is a toilet provided that was completed several years ago.

There are six seats provided under the verandah plus an outdoor dining area of approximately 100m<sup>2</sup> behind the restaurant. An existing car park with six car parking spaces is located on the southern side of the building which is to be altered and expanded to accommodate 15 vehicles.

- 20 The proposed hours of operation are Sunday to Thursday, 8am to 7:30pm, with Friday and Saturdays to increase to 8am to 9:30pm.

- 25 The Statement of Environmental Effects notes that the general store is intended to remain active and will operate in accordance with a recently acquired liquor licence to enable the retail sales of alcohol with the restaurant to provide food and non-alcoholic beverages for purchase and consumption on site.



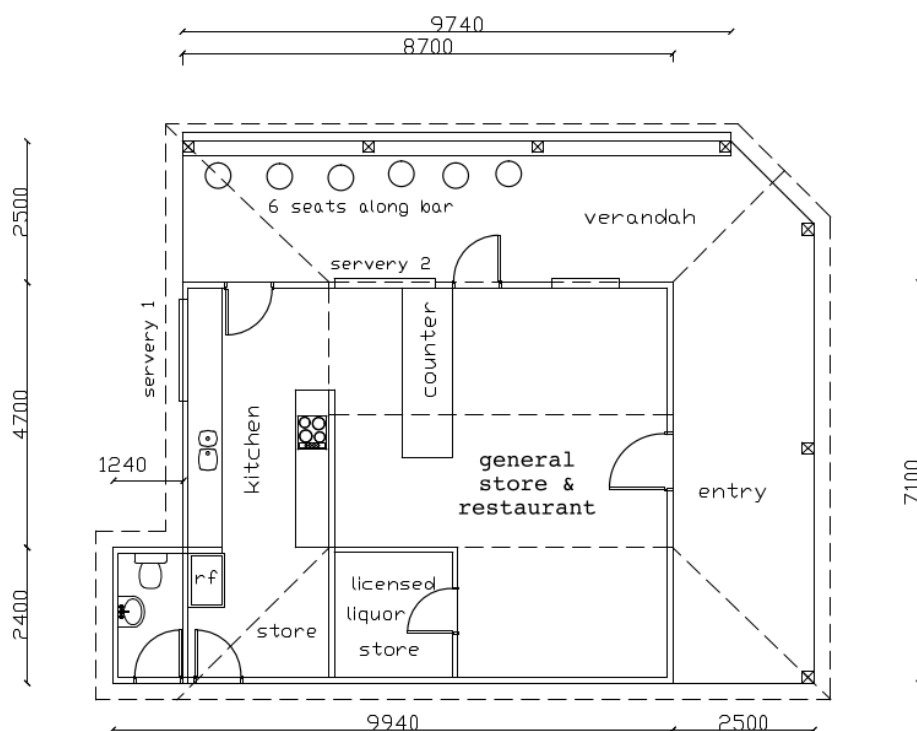


Figure 2: Proposed floor plan.

### 1.3. Description of the site

A site inspection was carried out on 12 February 2021.

Land is legally described	LOT: 1 DP: 346087	
Property address	10 Huonbrook Road UPPER WILSONS CREEK	
Land is zoned:	DM Deferred Matter Byron LEP 1988	
Land area is:	3.72 hectares	
Property is constrained by:	Bushfire prone land; Cattle Dip Buffer	
	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	<input type="checkbox"/> Yes <input checked="" type="checkbox"/>



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### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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	affecting the site?	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

The subject site is located at 10 Huonbrook Road, Upper Wilsons Creek and lies at the junction of Huonbrook Road, Wilsons Creek Road and Upper Wilsons Creek Road. The Intersection is commonly known as 'Three-ways at Malcolm's Corner'.

- 5 The lot has an area of 4.15 hectares and is an irregular shaped parcel of land which extends west up into the surrounding hills.

Existing development comprises a general store located in the eastern corner of the lot and a dwelling house located approximately 40m to the west, accessed off a separate driveway. The western portion of the site is undeveloped and heavily vegetated.



10 **Figure 3:** Aerial image of site and surrounds (yellow highlight).





**Figure 2:** View towards Lillium Café from Malcom's Corner.



**Figure 3:** Outdoor dining area





**Figure 4:** Pizza oven and outdoor seating area.



**Figure 5:** Existing gravel carpark with room for six (6) vehicles.





**Figure 6:** Vehicles parked near the Café on Huonbrook Road.



**Figure 7:** Second driveway entrance for expanded car park





**Figure 8:** Part of proposed carparking at the southern corner of the site.



**Figure 9:** Recently constructed concrete slab, fencing and shipping container.

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### 2. SUMMARY OF REFERRALS

Referral	Comment
Environmental Health Officer	<p>Council's Environmental Health Officer commented that the existing on-site sewage management system (OSMS) does not appear to have been installed with approval and has been substantially altered by the unauthorised developments at the shop, including decking over the septic tank. It is recommended that the OSMS be upgraded to include a grease trap and approval be obtained for the system under Section 68 of the Local Government Act 1993.</p> <p>In relation to noise, it was noted that an acoustic report was not provided and therefore conditions are recommended which limit the hours of operation to 8am to 730pm Sunday to Thursday and 8am to 9.30pm Friday to Saturday.</p> <p>In terms of potable water, rainwater tanks are to be upgraded to include first-flush bypass devices and shall be maintained and tested in accordance with NSW Health's Private Water Supply Guidelines.</p>
Development Engineer	<p>A revised car parking plan was provided in the applicant's further information detailing 15 spaces as required by DCP 2010.</p> <p>Council's Development Engineer concluded that the car parking plan did not strictly comply with the relevant engineering standards for car parking dimensions and manoeuvring in AS2890.1, however, there is enough room available on-site for a compliant parking plan to be prepared for the construction certificate application.</p> <p>In relation to traffic generation and road condition, it is recommended that the road formation (sealed width) of Huonbrook Road and Upper Wilsons Creek Road to be upgraded to achieve a carriageway of 6.2m for the full frontage of the development site and intersection line marking.</p>
Infrastructure Services	<p>Council's Director of Infrastructure Services acknowledged that a small part of the premises (~3m<sup>2</sup>) is in the road reserve. Planning staff were advised that no further action is required at this stage.</p> <p>A condition is recommended to clarify that minor parts of the building extending outside the lot boundaries are not included in the development consent.</p>



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

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document 'Planning for Bush Fire Protection 2019'. The site is bush fire prone land.

**5 Planning for Bushfire Protection 2019 – Section 8: Other Development**

The proposed restaurant is accessible to fire fighting vehicles and is capable of being defended in the event of a bushfire. Rainwater tanks could potentially serve as additional firefighting water supply if needed.

10 The proposed development is considered to satisfy the aims and objectives of PBP 2019 and meets the objectives for 'other development' under s. 8.3.1.

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

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

**4.1 State Environmental Planning Instruments**

	<b>Satisfactory</b>	<b>Unsatisfactory</b>
State Environmental Planning Policy No 55— Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Council's Environmental Health Officer noted that the land is considered to be suitable for the proposed restaurant in its current state and does not require remediation. The site is currently approved for use as a general store and there is no increase in the sensitivity of the land use resulting from the proposed development.		
State Environmental Planning Policy (Koala Habitat Protection) 2020	<input checked="" type="checkbox"/>	<input type="checkbox"/>
The subject site is not identified in Council's records as containing preferred or core koala habitat. The application relates to change of building use on a cleared part of the site and does not involve any development on forested parts of the land to the west of the proposed restaurant. The proposed development is unlikely to significantly affect koalas or their habitat.		

**4.2B Byron Local Environmental Plan 1988 (LEP 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 checked="" type="checkbox"/> 40  <input checked="" type="checkbox"/> 45  <input checked="" type="checkbox"/> 64

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

- 10
- (a) The proposed development is defined in the LEP 1988 Dictionary as *General Store and Restaurant*;
  - (b) The land is within the LEP1988 7(c) (Water Catchment Zone) according to the map under LEP 1988;
  - (c) The proposed development is permitted with consent; and
  - (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

<b>Zone Objective 7(c) Water Catchment Zone</b>	<b>Consideration</b>
(a) to prevent development within the catchment of existing or future water supply systems which would have a significant detrimental effect on the quality or quantity of the water supply,	The proposal can satisfy the zone objectives subject to suitable conditions of consent. The existing on-site sewage management system will need upgrading to Council's standards and erosion and sediment controls will need to be employed during any future works to upgrade the car parking and/or driveway.
(b) to ensure that development maintains the rural character of the locality and minimises disturbances to the landscape through clearing, earthworks and access roads so as to avoid erosion,	
(c) to ensure that development does not create unreasonable or uneconomic demands, or both, for provision or extension of public amenities or services,	
(d) to enable the carrying out of appropriate uses on the land within the zone in a sound manner which conserves or enhances the environmental amenity of the locality,	

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(e) to ensure land uses which use pesticides and herbicides or other pollutants are kept to a minimum to maintain the quality of run off water, and	
(f) to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.	

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).

Division 4 General provisions	Compliance	Comment
Clause 40 Height	Yes	The existing building is single storey with a maximum height of approximately 4m. No changes to the height of the building are proposed.
Clause 45 Provision of services	Yes, subject to conditions	Upgrades to the existing on-site sewage management system and rainwater harvesting system are required.  Council's Environmental Health Officer noted that the existing OSMS will need to be upgraded and a grease trap installed to deal with waste from the kitchen.  Rainwater tanks are required to have first flush devices installed and managed in accordance with a potable water management plan.

5

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

10 The site is identified for rezoning to Part RU2 Rural Landscape zone and Part E2 Environmental Conservation in Stage 3 of Council's e-zones planning proposal. At this stage the LEP amendment has not completed public exhibition and is neither imminent nor certain. In relation to the likely future zoning of the site, the proposed restaurant is a permissible use and is compatible with the zone objectives.

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

- 5 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"/> D  <input checked="" type="checkbox"/> F  <input checked="" type="checkbox"/> G  <input checked="" type="checkbox"/> H  <input checked="" type="checkbox"/> L  <input checked="" type="checkbox"/> N
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- 10 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).

DCP 2010 - Chapter 1 Part D	Complies	Comment
D2.1 Element - Location and Function	Yes	The site is not a commercial centre. However, the location of the restaurant on the corner of Huonbrook and Wilson's Creek Roads is central to the localities of Wilson's Creek, Wanganui and Huonbrook and serves as a social hub for these communities.
D2.2 Element - Scale and Appearance	Yes	The proposed restaurant is not part of a business centre, but is appropriate in size, scale and appearance for its locality.
D2.3 Element – Parking	Yes, subject to conditions	Refer to DCP Element G2.1.
D2.4 Element - Loading Docks	Yes	There is sufficient room for a small truck or van to park temporarily in the carparking area to load and unload goods if required. Council's Development Engineer has also recommended a condition for a loading bay to be provided in the amended car parking plan.
D2.5 Element - Setback from Street	Yes	The building is an old shop with a nil setback to the road reserve. No changes to the existing setbacks are proposed as part of the DA.

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D2.6 Element – Signs	Yes	A small business identification sign has been attached to the verandah of the shop. No additional signage is proposed.
D2.7 Element - Access and Facilities for People with Disabilities	Yes	Disabled access was assessed as part of the BA 97/2398 and found to be adequate.
D2.9 Element - Outdoor Dining	Yes	The proposal includes outdoor dining on a veranda and rear courtyard.  The layout of the outdoor eating area complies with the Prescriptive Measures of D2.9 in relation to private arcades and courtyards.
D2.11 Element Plumbing	Yes, subject to conditions	Council's EHO recommended that a grease trap be installed to deal with waste from the kitchen. Conditions are recommended.
D2.12 Element - Waste Management	Yes	Council garbage collection is available off Huonbrook Road.

DCP 2010 - Chapter 1 Part F	Complies	Comment
F2.2 Site Waste Minimisation and Management Plans	Yes, subject to conditions	A condition is recommended that requires a waste management plan to be prepared in accordance with DCP Chapter 1 Part F, Element F4.3. The waste management plan is to be implemented and adhered to at all times.
F4.3 Element – Commercial & Retail Development	Yes, subject to conditions	See above.

DCP 2010 - Chapter 1 Part G	Complies	Comment
G2.1 Element – Parking Schedules	Yes, subject to conditions	Part G2.1 of the DCP requires car parking for restaurants to be provided at a rate of 1 space per 7.5m <sup>2</sup> of gross floor area (GFA) or 1 space per 3 seats, whichever is the greater.  The building has a GFA of 109m <sup>2</sup> which generates demand for 15 car parking spaces.

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		<p>The applicant provided amended car parking plans in their further information detailing 15 car parking spaces as per the DCP (6 were originally proposed).</p> <p>The amended plans satisfy the DCP requirement for parking but will require revision to ensure the dimensions and manoeuvring comply with AS2890.1 and Council's design guidelines.</p> <p>Nevertheless, sufficient room exists on site to provide a carparking area which meets the relevant standards.</p> <p>Council's Development Engineer has proposed a condition requiring expansion of the car parking area to provide 9 additional car parking spaces. The proposal will satisfy the development control subject to this condition.</p>
G2.2. Element - Parking Layout	Yes, subject to conditions	<p>As noted above, the applicant's car parking plan requires revision to ensure it meets the relevant technical standards in AS2890.1.</p> <p>Revised plans are to be submitted for approval with the construction certificate.</p>
G2.3 Element - Design, Access and Construction	Yes, subject to conditions	<p>One disabled parking space shall be provided in accordance with AS2890.1.</p>
G2.4 Element - Service and Garbage Areas	Yes	<p>Council waste collection is available off Huonbrook Road. There is adequate room for bin collection in the road reserve.</p>
G2.5 Element - Monetary Provision	N/A	<p>A monetary contribution for car parking is not the preferred outcome in this case given there is adequate room to provide parking on-site.</p>



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### 4.5 Environmental Planning & Assessment Regulation 2000 Considerations

Clause	<i>This control is applicable to the proposal:</i>	<i>I have considered this control as it relates to the proposal:</i>	<i>If this control is applicable, does the proposal comply?</i>
92	Yes.	Yes.	Yes. Proposal must comply with AS2601.
93	No	N/A	N/A
94	No	N/A	N/A
94A	No	N/A	N/A

### 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	<p><u>Vegetation</u></p> <p>A minor amount of vegetation may need to be removed to facilitate construction of the car parking area. Vegetation to be removed comprises a mixture of palms, bananas and various native and non-native shrubs and trees such as banksia and Lilli pili.</p> <p>Much of the vegetation appears to have been planted at some point in the past 10 years (based on aerial photos and Google Street View images) and is not considered to have significant environmental value. Compensatory plantings are to be provided at a rate of 5:1 and incorporated into a new landscaping concept plan for the proposed car parking area.</p> <p><u>Effluent and runoff</u></p> <p>Effluent quality is to be addressed through conditions requiring the OSMS to be upgraded along with the installation of a grease trap to handle waste from the kitchen. The café is unlikely to have a significant effect on the quality or quantity of water discharged from the site subject to appropriate conditions of consent.</p>
Built environment	<p><u>Car parking</u></p>

	<p>Parking congestion was observed around Malcom's corner during the site inspection which appears to be having an impact on the safety of road users and pedestrians. The road reserve does not have adequate space to safely accommodate the number of vehicles parking around the café.</p> <p>To address this issue Council's Development Engineer has recommended that the existing carparking is to be expanded to provide an additional 9 spaces along with road upgrades along Huonbrook Road and Upper Wilsons Creek Road.</p> <p><u>Traffic generation</u></p> <p>The Annual Average Traffic Daily (AADT) volumes on Huonbrook Road and Wilsons Creek Road are currently estimated to be 278 and 169 vehicles per day respectively.</p> <p>The proposed restaurant will likely increase traffic volumes by an additional 66 AADT, which equates to a 24% increase for Huonbrook Road, and a 39% increase for Upper Wilsons Creek Road.</p> <p>Council's Development Engineer has recommended that the road formation (sealed width) of Huonbrook Road and part of Upper Wilson's Creek Road be upgraded to achieve a width of 6.2m. Further, line marking must be provided at the intersection.</p> <p><u>Nosie and amenity</u></p> <p>The nearest dwelling is approximately 90m from the proposed restaurant, however, the landscape is such that noise will likely travel if it involves amplified music or is occurring late at night.</p> <p>Council's Environmental Health Officer recommended that the restaurants hours of operation should be limited to the hours specified in the application, being Sunday to Thursday, 8am to 7:30pm, and Friday to Saturday from 8am to 9:30pm. Further, no amplified or live music is to occur.</p> <p>If the operators wish to seek permission to extend operating hours or host live music, the consent will need to be modified or reviewed and an acoustic report provided demonstrating no adverse noise impacts on the surrounding area.</p> <p><u>Fencing</u></p> <p>Corrugated iron fencing to a height of ~2m appears to have been constructed along the Huonbrook Road frontage. The fencing fails to comply with the requirements for exempt development in the Codes SEPP and partially encroaches the road reserve.</p> <p>A condition is recommended for the fencing to be removed and replaced with a compliant post-and-rail fencing and/or landscaping to rectify the encroachment and improve the appearance of the site from the public domain.</p>
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	<p><u>Shipping container and concrete hardstand</u></p> <p>In addition, a shipping container and a concrete hardstand area of ~150m<sup>2</sup> has been constructed near Huonbrook Road. As with the fence, the structure fails to comply with the standards for exempt development in the Codes SEPP and also conflicts with the proposed car parking area.</p> <p>A condition is recommended for the shipping container is to be removed. Similarly, the concrete hardstand is to be demolished, or else incorporated into the amended carparking design.</p> <p>The matter has also been referred to Council's community enforcement team for further consideration.</p>
<b>Social Environment</b>	<p><u>Community meeting place</u></p> <p>The presence of a café and general store at Malcom's corner is likely to have a positive social impact on the communities of Huonbrook, Wilsons Creek and Wanganui. Numerous submissions of support have been received from the public reflecting on the importance of the cafe/store as a valued meeting place and community hub in the area.</p> <p><u>Liquor licence</u></p> <p>It is understood that the Office of Liquor and Gaming recently granted approval for a packaged liquor licence in September 2020. The licence allows for packaged alcohol to be sold from the general store for consumption off-premises.</p> <p>Any new liquor license application (if applied for) will need to be reviewed and approved by the NSW Office of Liquor and Gaming.</p>
<b>Economic impact</b>	<p>The proposal is likely to have a minor but positive impact on the local economy. The restaurant supports local producers and contributes to the tourism industry.</p>
<b>Construction Impacts</b>	<p>Conditions of consent are recommended controlling hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.</p>

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

5 The site attributes are suitable for the ongoing use of the site as a restaurant and general store. The main issue is a lack of car parking which has resulted in traffic congestion and dangerous car parking occurring around Malcolm's corner. This is to be addressed by expanding the existing car park to provide 15 spaces along with appropriate signage and road upgrades.

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

The development application was publicly exhibited for a period of 14 days in accordance with DCP 2010. There were 83 submissions made on the development application:

- For 55.
- 5 Against 28.

Supporters of the DA mainly focused on the positive aspects of the café as a meeting place and community hub. Some people also highlighted the need to support small businesses which hire local staff and source ingredients from local farmers.

- 10 Objectors focused on the dangerous car parking and traffic situation along with unauthorised camping and trespassing on private land. The issue of unauthorised development was also raised.

#### Submissions of support

Issue	Comment
Positively contributes to local community. Café is a meeting place and hub for the local community.	The café provides social benefits as a meeting place for the local community.
Council should support small business. The business hires local staff and creatives and sources ingredients from local enterprises and farmers. Business is ethical and only uses organic produce.	Acknowledged. The proposal is likely to have a minor positive impact on the local economy and community.
Council should widen/improve the road and provide parking	Council will not be undertaking public works to facilitate a private business.
Serves needs of local community - saves 20-minute drive to Mullumbimby.	The proposal will enhance the current offerings of the general store and improve service to the local community.
Contributes to tourism in the region.	The proposed cafe will make a minor but positive contribution to tourism in the Shire.

#### Objections

Issues raised in objection	Comment
Café has been operating without approval	Agreed. The DA has been lodged following a compliance investigation by Council.

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Café has increased traffic on Wilsons Creek Road	Agreed that the café has increased traffic on Wilsons Creek Road. Conditions are recommended to increase car parking and undertake road upgrades.
Lack of car parking resulting in dangerous illegal parking on blind corner. Matter of time before a pedestrian or child is injured	See above.
Safety issue due to drivers consuming alcohol  Liquor licence needs to be reviewed	The general store has a packaged liquor licence (i.e., takeaway licence) which does not permit consumption of alcohol on-premises.  The operators of the restaurant will need to apply for a new liquor license to NSW liquor and Gaming if they wish to serve alcohol on site.  Driving under the influence of alcohol is a matter for NSW Police.
Business is a café and not a general store. Do not offer essentials to avoid a trip to Mullumbimby.	Agreed that the business is currently operating as a café, although there is an existing approval in place to operate as a general store.
Functions and café generate excessive noise	Conditions of consent have been recommended in reaction to noise. The café is not approved to operate late at night or be used as a function centre.
Increase in wild campers due to café advertising wild camping locations to customers.	Unauthorised camping is not a matter directly related to the proposed restaurant.  Should the land owners allow people to camp on the property then this should be raised with Council to investigate and take appropriate compliance action
Not following Covid safe guidelines	Compliance with Covid safe guidelines is a matter for NSW police and State Government Public Health Council's official to investigate.
Current OSMS and infrastructure is inadequate for the development. The store may have resulted in contaminants leaking	Noted - The OSMS will need to be upgraded prior to commencement of operations and installation of a trade waste device (grease trap) Conditions are

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downstream into the environment.	recommended.
More killed animals on the roads	There is insufficient evidence to demonstrate increased animal deaths due to the café.
Increase in traffic on road resulting in road safety issues.	Conditions are recommended for road upgrades at the frontage of the site along Huonbrook Road and Upper Wilsons Creek Road.
Increases in tourism, resulting in camping, fires, garbage, and excrement and noise.	The proposed café is not directly related to unauthorised camping in the area.
Trespassing resulting from promotion of local waterholes	See above. Allegations of trespassing are beyond the scope of this assessment.
Events attract huge number of people and create dangerous parking situation	Acknowledged. Additional parking is required for the restaurant.  Restaurant is only small and to have only a limited capacity of 30 patrons. Conditions to apply.

#### 4.9 Public interest

The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent. Public safety is unlikely to be compromised subject to conditions for additional car parking and road upgrades.

#### 5. DEVELOPER CONTRIBUTIONS

##### 5.1 Water & Sewer Levies

The site is not serviced by reticulated water or sewer. Section 64 levies are not applicable.

##### 5.2 Developer Contributions

The proposal is for commercial development with an estimated cost of less than \$100 000. Section 7.12 developer contributions are not applicable.

#### 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,	No

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Development and Environment Division.	
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Provide Disclosure Statement register details here: Not applicable.

#### 7. CONCLUSION

5 This development application seeks consent for a change of use from a general store to a combined general store/restaurant plus ancillary car parking works at 10 Huonbrook Road, Upper Wilsons Creek.

10 The proposal has been amended to address several issues identified by Council officers during the assessment of the application. Safety issues relating to car parking and traffic congestion are to be addressed by expanding the carpark to provide an additional 9 spaces along with consent conditions requiring road upgrades at the frontage of the site along Huonbrook Road and Upper Wilsons Creek Road.

15 In summary, the proposal is in keeping with the surrounding natural and built environment that provides a social hub for the Wilson's Creek and Huonbrook communities. The development satisfies the relevant planning controls applying to the land and, provided the consent conditions are implemented, will not have a detrimental impact on the environment or on local traffic conditions. The development is recommended for approval subject to the conditions of consent.

**Report No. 13.3 PLANNING - Development Application  
10.2021.291.1 Mixed Use Development -  
Shops and Serviced Apartments - 116-118  
Jonson Street Byron Bay**

5 **Directorate:** Sustainable Environment and Economy  
**Report Author:** Shannon Burt, Director Sustainable Environment and Economy  
**File No:** I2021/1324

**Proposal:**

**DA No:** 10.2021.291.1

**NSW PP** PAN-101826

**Proposal description:** Demolition of existing backpackers' hostel and construction of a mixed-use development comprising retail premises and serviced apartments

**Property description:** LOT: 1 DP: 258385, LOT: 2 DP: 258385  
116 Jonson Street BYRON BAY, 118 Jonson Street BYRON BAY

**Parcel No/s:** 34830, 34820

**Applicant:** Aidop No 5 Pty Ltd ATF Aidop No 5 Unit Trust and Aidop No 6 Pty Ltd ATF Aidop N

**Owner:** J E Moore & S J Walker & Mrs K H Wilson & Others

**Zoning:** B2 Local Centre

**Date received:** 27 May 2021

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

**Concurrence required** Yes

**Public notification or exhibition:** – Level 3 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications



- Exhibition period: 10/6/21 to 8/7/21
- Submissions received 21 (19 Support: 1 Resolved: 1 Objection)

**Development  
Standard  
Variation Request**

Clause 4.6 – Building Height

**Issues:**

- Clause 4.6 Submission – Building Height
- Design Excellence
- Sustainability
- Waste Collection and Parking, Loading and Unloading Bays
- Stormwater management

**Summary:**

The proposal seeks consent for Demolition of existing backpackers' hostel and construction of a mixed-use development comprising retail premises and serviced apartments.

- 5 Byron LEP 2014 was updated on 20 August 2021 by Amendment No 27 (Byron Bay Town Centre Planning Controls).

An independent design excellence expert was engaged to work alongside the Council assessment team to ensure optimum compliance was achieved by the proposal with the new Byron Bay Town Centre Planning controls.

- 10 Following a preliminary assessment of the submitted proposal by the Council assessment team, and meetings on same, requests for additional information and design amendments were sent to the applicant.

- 15 The applicant has worked proactively and collaboratively with the Council assessment team and responded to these requests. A series of plan iterations has been submitted that addressed key areas of concern with the proposal. These areas were:

- Apartment amenity
- Roof terrace amenity and shade protection
- Circulation and connectivity
- Bulk mass and façade & street wall expression
- 20 • Natural cross ventilation
- Sustainability and
- Waste collection, parking and loading bays.

The application includes a request to vary the height of buildings development standard.

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The request to vary the development standard is supported in this instance given the site context, land use mix and location in the town centre area.

The applicant however is required to provide further stormwater easement details to verify matters relating to the nominated legal points of discharge for stormwater from the site.

- 5 Given the above, the application is recommended for deferred commencement consent subject to recommended conditions in Attachment 2.

#### NOTE TO COUNCILLORS:

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




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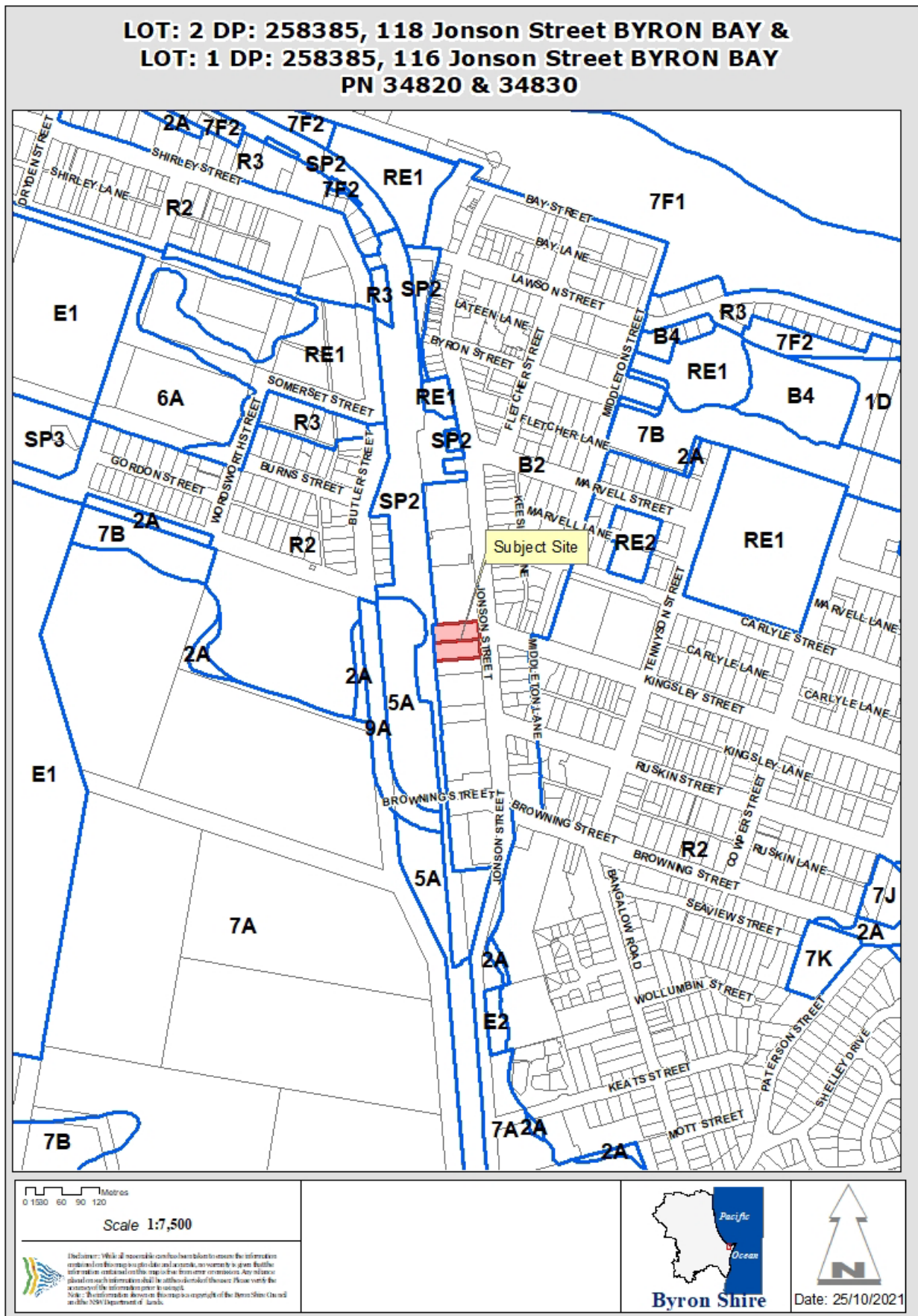
#### RECOMMENDATION:

##### That Council:

- 20 1. Approves the variation requested to clause 4.3 Height of Buildings in accordance with clause 4.6 'Exceptions to Development Standards' of the Byron Local Environmental Plan 2014; and
- 25 2. Grants Deferred Commencement Consent pursuant to Section 4.16 (3) of the Environmental Planning and Assessment Act 1979, to Development Application 10.2021.291.1 Mixed Use Development - Shops and Serviced Apartments - 116-118 Jonson Street Byron Bay subject to the conditions in Attachment 2 (#E2021/131318) to the report.

#### Attachments:

- 30 1 Proposed Plans 10.2021.291.1, E2021/129090 
- 2 Proposed Conditions 10.2021.291.1, E2021/131318 
- 3 Redacted submissions received 10.2021.291.1, E2021/128991 



## Report

# 1. INTRODUCTION

## Site History

- |    |                   |   |
|----|-------------------|---|
| 5  | 116 Jonson Street | DA 83/099 Hostel and Manager's Residence. Approved May 1993.<br>BA 86/0313 Hostel                     |
|    | 118 Jonson Street | DA 80/289 Residential flat building.<br>DA 81/002 Extensions to an existing residential flat building |
| 10 |                   | DA 10.2015.262.1 Change of use to backpackers' accommodation; approved Dec 2015                       |

## History Relevant to the Development Application

The application was submitted on 27 May 2021.

- |    |  |
|----|--|
| 15 | Byron LEP 2014 was updated on 20 August 2021 by Amendment No 27 (Byron Bay Town Centre Planning Controls). |
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The amendments are an action from the Byron Town Centre Masterplan and seek to improve the development outcomes for the town centre. Key changes included:

- |    |   |
|----|---|
| 20 | <ul style="list-style-type: none"> <li>• Introduction of a Building Height Allowance clause for development located on flood prone land and a new Building Height Allowance Map</li> <li>• Design Excellence controls in the LEP and a new Design Excellence Map</li> <li>• Active Street Frontage controls in the LEP and a new Active Street Frontages Map</li> <li>• The formation of a Design Excellence Panel</li> </ul> |
|----|---|

- |    |  |
|----|--|
| 25 | Currently there is no Design Excellence Panel. Instead, an independent design excellence expert was engaged to work alongside the Council assessment team to ensure optimum compliance was achieved by the proposal with these new controls. |
|----|--|

Following a preliminary assessment of the submitted proposal by the Council assessment team, and meetings on same, requests for additional information and design amendments were sent to the applicant on 5 August, 10 September, 21 September, 8 October, and 13 October 2021.

- |    |  |
|----|--|
| 30 | The applicant has worked proactively and collaboratively with staff and responded to these requests and submitted the following information and amendments as follows: |
|----|--|

### Round 1 – Solar Impact to 120 Jonson Street (Staff – 5 August 2021)

Reduced building envelope, bulk, mass, and scale by increasing the southern boundary setback by a further 3.3m to the east and west 4-bedroom apartments to improve solar

access, outlook, and amenity for the 120 Jonson Street neighbours, as well as improved solar access to the internal circulation corridors within the scheme.

This initiative was well received by the neighbours and resulted in the only objection from 120 Jonson Street being retracted.

## **5 Round 2 – Urban Design Review (Simpson Wilson – 10 September 2021)**

- New voids provided to corridor adjacent to the two-bedroom units to allow natural light to penetrate through the corridors on Level 3 and Level 2 to improve solar access and amenity to the adjoining apartments on Level 1 and 2.
- 10 • Additional landscaping and vertical gardens to new voids to improve microclimate and cross ventilation.
- Increase corridor widths adjacent 2 bed layouts to improve natural ventilation and solar access.
- Reduced size and reconfigured 4 x 2-bedroom layouts to accommodate voids.
- 15 • Reduced internal area from master bedroom of Unit 1.12 & 1.15 on Level 1, & 2.12 on Level 2 facing Jonson St to increase depth of the recess by an additional 1.2m.
- Primary Entry - Reduced internal area from master bedroom of Unit 2.15 on Level 2 facing Jonson St to increase depth of the recess by an additional 3.6m.
- Setback Level 3 rooftop balustrade so it's concealed from street.

## **Round 3 – Urban Design Review (Council/Simpson Wilson – 21 September 2021)**

- 20 • Void spaces have been extended from Level 3 and Level 2 on the western corridor down to Level 1 also, to improve natural light penetration down to the ground floor, including units G.07, G.06 and G.05 specifically.
- High-level glazing introduced to the western edge of the 151m2 retail tenancy (adjacent units G.07, G.06 and G.05) to provide additional light spill into the ground floor western corridor.
- 25 • Reduced internal area from master bedroom of Unit 2.12 on Level 2 facing Jonson Street to increase depth of recess by an additional 3.6m.
- Reprofiled the horizontal roof balustrade by reducing the depth, height and width of the slab edge and planter fronting Jonson Street to reduce bulk and mass.
- 30 • Reduced trafficable area of private roof terraces by approximately 420m2 and replaced with soft landscaping or other.
- Inclusion of modest permanent shading structures to roof terraces and pool area to improve habitability.

- increased size of proposed street trees along Jonson Street to a mature size of 500L pot size upon installation to create more immediate shading along the street at completion of the project.
- Materiality of Jonson Street balcony spandrel in the recessed areas amended to provide brick expression detail to improve fine grain, visual interest, and depth to the façade.

**Round 4 – Urban Design Review, Waste and Traffic (Council/Simpson Wilson – 8 October 2021 and 13 October 2021)**

- Reduced extent of trafficable area to private roof terraces by 796m<sup>2</sup> and replaced with soft landscaping or other.
- Deletion of shade structures to private roof terraces and inclusion of modest permanent shading structures to pool area to improve habitability and shade amenity.
- Extent of Level 3 roof has reduced by 68m<sup>2</sup> and been setback a further 500mm from the original DA to ensure building footprint remains wholly within the property boundary (i.e., no projection beyond the property boundary);
- Level 2 façade and balconies to Jonson Street have been setback a further 500mm from the property boundary;
- Level 1 façade and balconies to Jonson Street are now setback 1m from the original DA and property boundary to provide more articulation and relief to this elevation;
- Level 1 Unit 1.12 & Unit 1.15 have reduced in size and now become smaller 2-bedroom units Instead of 3 bedrooms;
- Level 2 Unit 2.12 & Unit 2.15 have reduced in size and now become smaller 2-bedroom units Instead of 3 bedrooms;
- An overall reduction of 140m<sup>2</sup> in Total Gross Floor Area;
- Level 3 roof landscape planters with trailing climbers are shown to provide additional vertical articulation and visual interest to soften and break up the façade; and
- Deletion of kerbside loading zone for waste collection to ensure all waste collection is carried out from within the site.

The above amendments are reflected in the revised plans attached to the report for Council determination (Attachment 1).

**Description of the proposed development**

This application seeks consent for the demolition of existing buildings on two properties and the construction of a three-storey mixed use development containing a total of 602m<sup>2</sup> of retail and 41 serviced apartments, including:

- basement parking, containing 119 car parking spaces;
- ground floor: retail / café spaces around and internal courtyard, and 7 serviced apartments at the rear;
- two levels above, each with 17 serviced apartments; and

- guest facilities on the roof, including a communal area with a swimming pool and deck.

*Fig 1. Jonson Street perspective*



## 5 Development Summary

### Ground Floor

#### Retail Spaces:

- retail/ café: 199m<sup>2</sup>
- retail: 252m<sup>2</sup>
- retail: 151m<sup>2</sup>

#### Serviced Apartments:

- 1 x 4 bedroom
- 6 x 3 bedroom (1 accessible)

Central Landscaped Courtyard 523m<sup>2</sup>

Apartments Lobby

Plant Rooms & Amenities

### Floor Space:

- Retail 660m<sup>2</sup>
- Apartments: 4,651m<sup>2</sup>
- Common areas: 115m<sup>2</sup>
- Total: 5,246m<sup>2</sup>

10

### Upper Floors

#### Each Level:

- 3 x 2 bedroom apartments
- 12 x 3 bedroom apartments
- 2 x 4 bedroom apartments

A single level of basement carparking is proposed, accessed off Jonson Street toward the southern boundary of the property. The basement contains:

- 76 spaces for the serviced apartment, including 7 accessible spaces.

- 7 bicycle parking spaces for serviced apartments.
- 33 spaces for retail component, including 1 accessible space.
- 7 bicycle spaces for retail component.
- Lift and stair access to upper floors.

- 5 • A loading/ garbage storage area.
- Plant rooms and fire exit.

At ground level, two of the three retail tenancies are located at the Jonson Street frontage, separated by a 3.6m wide walkway into the central courtyard. The third retail tenancy is located internally, off the south-west corner of the courtyard.

- 10 Vehicle access is via a ramp off Jonson Street located toward the southern end of the property. The access is proposed as left-in/ left-out.

Plant rooms, toilets, showers and change rooms are along the southern boundary.

- 15 Seven serviced apartments are proposed at the rear (western end) of the ground floor, access via a lobby at the northern end. Each of the serviced apartments include a western-facing paved balcony and a private outdoor lawn space.

The upper two levels are identical, with serviced apartment proposed around the central void. All apartments are accessed via corridors open to the central void.

Eastern and western facing apartments have external balconies, with the two-bedroom apartments to the south of the building having balconies looking toward the central void.

- 20 The eastern and western facing apartments on the top floor each have an internal stair access to the roof.

Lift access to the roof otherwise is at the northern boundary, located against the adjoining Mercato shopping complex.

- 25 Additional roof-top plant and a staircase is located at this northern edge. Hot water plant room on the southern edge.

While the height of the roof generally meets the 11.5m height limit, there are roof top elements that exceed it to a varying extent.

A request to vary the development standard pursuant to Clause 4.6 of the Byron LEP 2014 has been submitted and is discussed in detail in the report.

## 30 **Description of the site**

Land is legally described	Lots 1 & 2 DP 258385
Property address	116- 118 Jonson Street BYRON BAY
Land is zoned:	B2 Local Centre
Land area is:	4,282m <sup>2</sup>



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.3

Property is constrained by:	Acid Sulfate Soils Class 3	
	Bushfire Prone Land	
	Flood Prone Land	
	Mosquito Risk Zone	
	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? A 3m wide drainage easement exists along the western boundary of both lots.	<input checked="" type="checkbox"/> Yes <input 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

The site is made up of two lots, each containing one and two storey buildings used for holiday accommodation (backpackers).

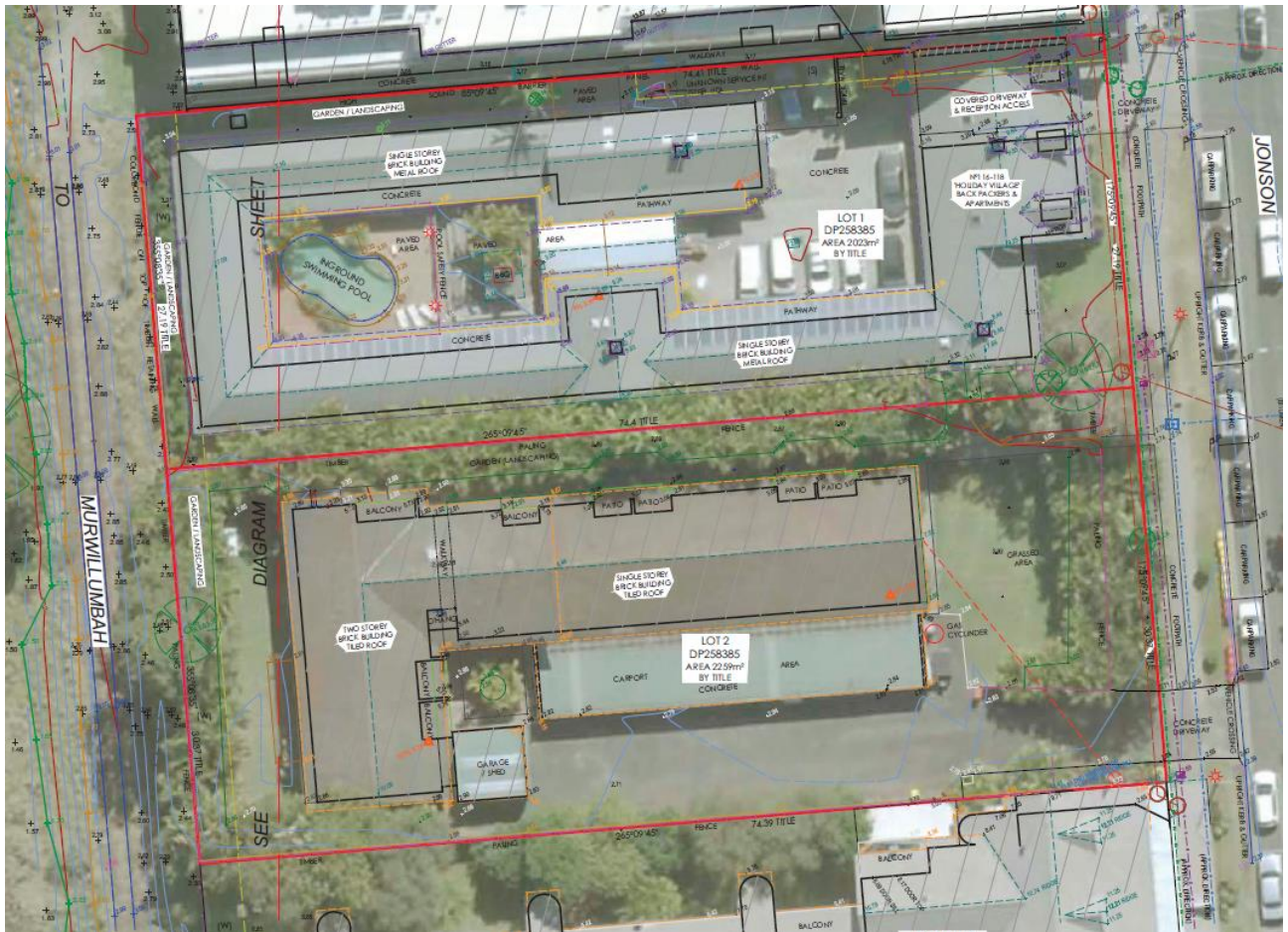


Fig 2. Existing development

The property has a total frontage of 57.56m to Jonson Street on its eastern boundary, and the same to the North Coast Rail Line on its western boundary. It has a depth of 74.4m.

- 5 It is generally flat, with a slight fall to the south-west, with elevations ranging from approx. RL 3.2m AHD to RL 2.3m AHD.

Ground level across most of the site is at approx. RL 3.0m AHD.

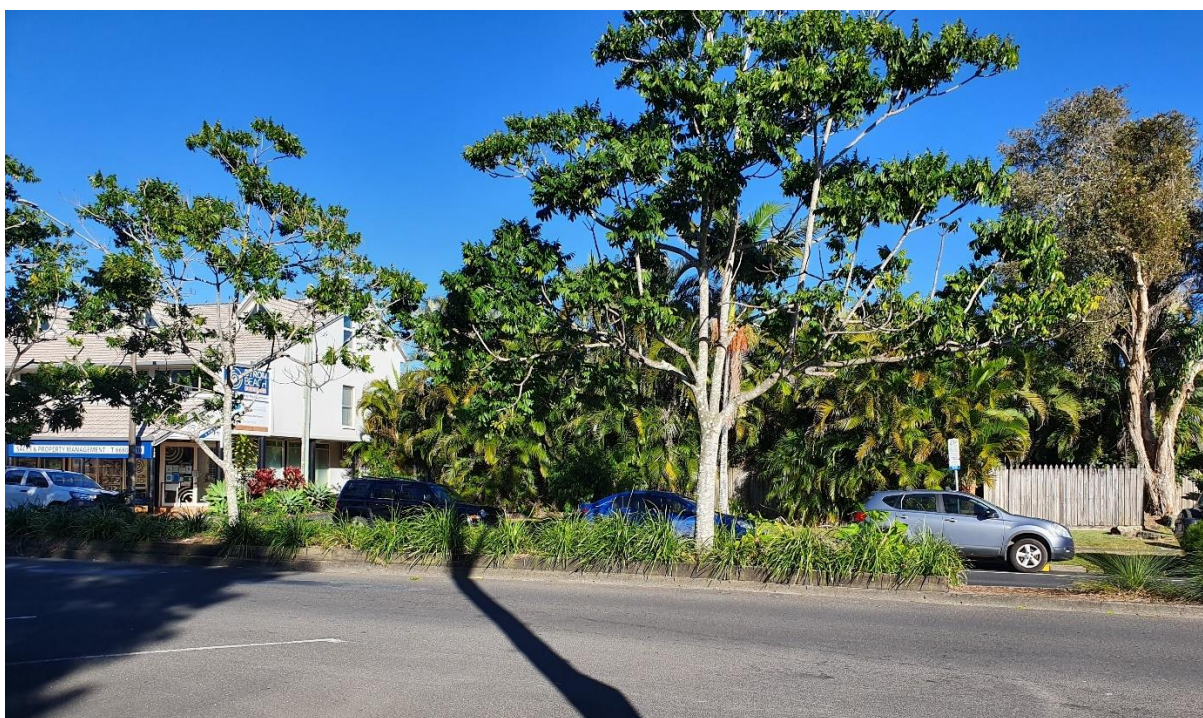
Mature vegetation is located along the Jonson Street frontage of Lot 2 (the southern lot) and along the internal adjoining boundary.

- 10 The Mercato shopping complex adjoins to the north, with a blank wall along the whole length of the adjoining boundary. A two-storey development adjoins to the south, with shops at the Jonson Street frontage and residential apartments behind, over a ground floor garage. That building has varying setbacks from the adjoining boundary, with mature vegetation planted on the boundary of the lot. Most of the apartments are holiday let.





*Photo 1. Jonson Street frontage – Mercato to right of photo*



*Photo 2. Jonson Street frontage of Lot 2*





Photo 3. Within Lot 2 showing relationship to apartments on adjoining land

## 2. SUMMARY OF REFERRALS

External Referrals	Comment
Rural Fire Service (s.100B Rural Fires Act 1997)	Bush Fire Safety Authority issued 30 July 2021. General Terms of Approval included in recommended consent.
Transport for NSW (cl 101& 104 SEPP Infrastructure 2007)	Support left in/left out access as proposed. Recommend that any consent include requirement for Construction Management Plan.
Transport for NSW (cl.86 SEPP Infrastructure 2007)	Concurrence granted subject to conditions; included in recommended consent.
Water NSW (s.90 Water Management Act 2000)	General Terms of Approval issued; included in recommended consent.

<b>Internal Referrals</b>	<b>Comment</b>
Environmental Health Officer	Conditions provided in the referral are included in the recommendation of this Report
Development Engineer	Conditions provided in the referral are included in the recommendation of this Report
Contributions Officer	Conditions provided in the referral are included in the recommendation of this Report
Water & Sewer Engineer (Local Approvals Officer)	Conditions provided in the referral are included in the recommendation of this Report
Building Surveyor	Conditions provided in the referral are included in the Recommendation of this Report

### **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 2006'.

5 The site is bush fire prone land.

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*.

10 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*.

General Terms of Approval were issued by the RFS on 30 July 2021, requiring the whole property to be managed as an inner protection area and construction to be BAL 29 for elevations other than that on Jonson Street, which can be BAL 19.

### **15 4. SECTION 4.15C – MATTERS FOR CONSIDERATION**

The following is a summary of the assessment of the application in accordance with Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act).

The application has been assessed against the relevant environmental planning instruments below:

## State Environmental Planning Instruments (SEPP)

### State Environmental Planning Policy (Koala Habitat Protection) 2021

Council's *Byron Coast Comprehensive Management Plan* is an approved koala management plan for the purposes of this SEPP. Clause 10 of the SEPP therefore applies and requires that Council's determination of the development application must be consistent with the approved koala plan of management that applies to the land.

In accordance with the approved Plan, the subject site is within the **South Byron Coast Koala Management Area**.

The site is not located within any mapped **Koala Management Precinct**. As such, there are no provisions of the Plan that are directly relevant to the subject application.

### State Environmental Planning Policy No 55 - Remediation of Land

A Preliminary Site Contamination Report has been submitted in support of the application and is assessed as acceptable.

### State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development

SEPP 65 does not apply to service apartments. The guidelines and development criteria are therefore not applicable.

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

The proposed building is not a BASIX affected building.

### SEPP (Coastal Management) 2018

The property is located within an area mapped as land in proximity to coastal wetlands. Under clause 11 of the SEPP, development consent cannot be granted to the development unless Council is satisfied that it will not significantly impact on:

(a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest,*

(b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest*

The proposal is assessed as not having adverse impacts on the adjoining area mapped as coastal wetland (See comments DCP 2014 Chapter B.1.21).

### SEPP (Infrastructure) 2007

The following clauses apply:

*86 Excavation above, below, or adjacent rail corridors:*

Because the proposal involves excavation within 25m of the rail corridor, the application was referred to Transport for NSW, the relevant rail authority, who issued their concurrence, and associated conditions, on 14 July 2021. The conditions are included in the recommendations to this report.

*101 Development with frontage to a classified road:*

The site has frontage to Jonson Street, a classified road. Under clause 101(2), the consent authority must not grant consent to development that has a frontage to a classified road unless it is satisfied that the efficiency and operation of the classified road will not be adversely affected by the development.

A detailed assessment of the traffic aspects of the development is outlined in Section 4.8 of this report. The application was referred to Transport for NSW, the relevant road authority, who issued their concurrence, and associated conditions, on 14 July 2021. The conditions are included in the recommendations to this report.

*104 Traffic generating development*

Clause 104 requires that Roads and Maritime Services (RMS) is given the opportunity to comment on development that is traffic generating development specified under Schedule 3 of the SEPP. The proposed development is traffic generating development based on the proposed number of motor vehicle trips per hour. The RMS provided written comments in a letter to Council dated 8 July 2021 to assist in making a determination. The proposed development is satisfactory with regards to traffic generating development, subject to conditions of consent.

## Byron Local Environmental Plan 2014 (LEP 2014)

The application was assessed against the relevant clauses of Byron LEP 2014:

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

(a) The proposed development is defined as ***mixed use development*** in the LEP 2014 Dictionary, which means *a building or place comprising 2 or more different land uses*. The land uses within the proposed development are defined in the dictionary as:

- *Commercial Premises*, including
  - *Retail Premises*, including:
  - *Food and Drink Premises*, being:
  - *Restaurant or café*;
- *Tourist and Visitor Accommodation*, being:
  - *Serviced Apartments* ;

(b) The land is within the B2 Local Centre according to the Land Zoning Map;

(c) The proposed development is permissible with consent; and

(d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
<i>To provide a range of retail, business, entertainment and community uses that</i>	Consistent. The development will provide retail and café businesses in the centre of

<i>serve the needs of people who live in, work in and visit the local area.</i>	town.
<i>To encourage employment opportunities in accessible locations.</i>	Consistent. The retail & café businesses and serviced apartments will generate employment opportunities.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	Consistent. The property is easily accessed from local bus stops, including the bus terminal in Butler Street.  Bicycle parking has been provided in the basement for both retail and serviced apartment components, in accordance with the requirements of DCP 2014.
<i>To encourage vibrant centres by allowing residential and tourist and visitor accommodation above commercial premises.</i>	Consistent. Serviced apartments are proposed behind and above retail premises.

**Clause 2.7 – Demolition requires consent**

- 5 Clause 2.7 requires that demolition of a building may be carried out only with development consent, except where it is demolition of development specified as exempt development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. The proposal seeks consent for the demolition of all existing structures. This type of demolition is not exempt development. It is permissible with consent under Clause 2.7.

**Clause 4.3 – Height of buildings**

- 10 Clause 4.3 provides that the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map. The clause establishes that this height is measured from existing ground level to the finished level of the roof or parapet.

The Height of Buildings Map shows a maximum allowable height of 11.5m in this part of the town centre.

As discussed further below, some building components exceed the 11.5m development standard.

- 15 The application includes a submission under clause 4.6 of the LEP, arguing that compliance with the 11.5m building height standard is unreasonable and unnecessary.

That submission is assessed below under Clause 4.6 Exceptions to Development Standards.

**Clause 4.3A – Measurement of height of buildings**

- 20 The objective of this clause is to align building height and flood planning provisions within Byron Bay town centre. It specifies that, in flood prone parts of the Byron Town Centre,



the maximum height is measured from a nominated height, being the Flood Planning Level (FPL), rather than from existing ground level.

Parts of the development site are flood prone. Most of Lot 2 (the southern lot) is mapped with a FPL of RL 3.2, with a smaller area in the western part of the lot mapped as RL 3.1.

5 The eastern part of Lot 1 (the northern lot) is mapped with a FPL of RL 3.2.

The 11.5m maximum building height is therefore measured from existing ground level (RL 3.0) for the part of the land not mapped as flood prone, and RL 3.1 and RL 3.2 for the flood prone parts of the land.

10 For the purposes of this assessment, the maximum height is discussed i.e. 11.5m above RL 3.0 – being RL 14.5.

The application includes a written request from the applicant under Clause 4.6 of the LEP, arguing that strict compliance with the 11.5m building height standard is unreasonable and unnecessary.

15 That submission is assessed below under Clause 4.6 Exceptions to Development Standards.

#### **Clause 4.4 – Floor space ratio**

The maximum floor space ratio (FSR) for a building on any land is not to exceed the FSR shown for the land on the floor space ratio map. The maximum permissible FSR on the site is 1.3:1.

20 FSR is the ratio of the total gross floor area of a building to the total area of the property.

The proposed development has a total gross floor space of 5,426m<sup>2</sup>. The site area is 4,282m<sup>2</sup>, resulting in a FSR of 1.3:1.

#### **Clause 4.6 Exceptions to Development Standards**

25 Where a DA includes a variation to a development standard, an application under Clause 4.6 Exceptions to Development Standards of the LEP is required.

30 Clause 4.6 provides that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard, by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

35 As per the planning circular *PS 18-003 - Variations to development standards*, the Secretary's concurrence can be assumed in relation to variations. Where variations are greater than 10%, the secretary's concurrence can only be assumed by a decision of the Council (i.e., not delegated to a Council officer).

**Building Height:**

**1. Summary of Height Exceedance**

The site is subject to a maximum height development standard of 11.5m. For the purposes of this assessment, the maximum height is discussed i.e. 11.5m above RL 3.0 – being RL 14.5.

The height of the proposal is generally compliant with the 11.5m except for the swimming pool fencing, roof terrace walls, solar array, pool awnings and lift overrun, staircase and plant room which have varying non-compliances with the 11.5m of up to a maximum height of 14.10m.

See table below.

**2. Clause 4.6 Exceptions to Development Standards**

A written request has been submitted to Council, in accordance with clause 4.6(3)(a) and (b) of the Byron LEP 2014 demonstrating:

- a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,
- b) That there are sufficient environmental planning grounds to justify contravening the development standard,
- c) the proposed development will be in the public interest because it is consistent with the objectives of the standard
- d) the objectives for the development within the zone in which the development is proposed to be carried out.

**3. The Development Standard to be varied**

The 11.5m building height, prescribed by the Height of Buildings Map applicable to the site under Clause 4.3 of LEP 2014.

**4. Extent of Variation to the Development Standard**

Building Component	Proposed Height (m)	Height above 11.5m	% Height Variation
Swimming pool fencing & roof terrace walls	12.65	1.15	10.0%
Solar array	13.75	2.25	19.6%
Pool awnings	14.10	2.60	22.6%
Lift overrun, fire stairs and plant room	14.10	2.60	22.6%

**5. Applicants written request under Clause 4.6(3)(a) and (b)**

The applicant seeks to justify the contravention of the maximum height development standard on the following basis:

**a)** Compliance with the development standard is unreasonable and unnecessary in the circumstances of the case:

- *The proposed encroachments are not visible from the surrounding area and will not visibly impact on the streetscape.*
- *The proposed variation sought does not add to the bulk or scale of the proposed building.*
- *Strict compliance with the development standard would likely result in the removal of access to amenities on the rooftop for guests but would not alter the overall design of the building.*
- *The proposed variation will not adversely impact on adjoining properties in terms of views, solar access or privacy.*
- *The proposed development has a maximum FSR of 1.3:1 compliant with Byron LEP 2014, demonstrating that the proposed development is not excessive in terms of proposed intensity.*
- *The design of the proposed building by locating amenities on the roof top provides for substantial ground floor open space with the site which will be accessible to the general public and guests of the hotel. This is considered to be a superior outcome to the provision of private guest only facilities on the ground floor.*

**b)** There are sufficient environmental planning grounds to justify contravening the standard:

*The proposed variation to the building height will not result in adverse impacts on adjoining properties in terms of solar access or views. The proposed elements in relation to which variations are sought are sited as such as to not disrupt views from surrounding properties or the public street. The provision of rooftop amenities for serviced apartment guests provides the opportunity to incorporate significant open space on the ground floor and make it publicly accessible. The area is some 650m<sup>2</sup> and will provide an 'oasis' within the existing town centre. It is submitted that given the lack of environmental impact and arguable positive impact on the built environment there are sufficient planning grounds to justify the proposed contravention.*

**c)** The proposed development will be consistent with the objectives of the zone as follows:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.

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

5

*The proposed mixed-use development is consistent with the objectives of the B2 Local Centre, providing a range of retail uses to serve the B2 Local zone needs of people who live and visit the local area. The restaurant /café and retail premises on the ground floor will have an outlook to the internal courtyard and this substantial area of open space comprising 650m2.*

10

*The proposal provides for employment opportunities in an accessible location in the Byron Bay Town Centre.*

*The provision of tourist accommodation on this site will contribute to the vibrancy of the town centre.*

- 15 **d)** The proposed development will be consistent with the objectives of the standard as follows—

(a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,

20 (b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,

(c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

*The proposed height of the building complements the streetscape and character of the area. The proposed built form has been designed to present as three separate elements.*

25 *The general height of the building is consistent with existing and surrounding development and the elements of non-compliance are set well back and not visible from the surrounding streetscape.*

*The proposed variation will not result in significant adverse visual impact with elements design to minimise their visibility. There will be no disruption of views or loss of privacy resulting from the proposed variation. The proposed variation does not increase the impacts of overshadowing on existing surrounding developments.*

30

## **6. Consideration of Applicants Written Request under Clause 4.6(3)(a)(i) and (ii)**

35 Development consent must not be granted unless the consent authority is satisfied that:

- a)** The applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the

case, and that there are sufficient environmental planning grounds to justify contravening the standard; and

- 5      **b)** The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

*Does the written request adequately address those issues at Clause 4.6(3)(a)?*

10      The height of the proposal is generally compliant with the 11.5m except for the swimming pool fencing, roof terrace walls, solar array, pool awnings and lift overrun, staircase and plant room which have varying non-compliances with the 11.5m of up to a maximum height of 14.10m.

15      A site plan with roof view and building frontages is shown in Figure 3. The area of the elements on the roof that exceed the building height limit are shown below and are marked up in red in Figure 4 below.

- 20      Large pool Awning – 99 m<sup>2</sup>  
Smaller Pool awning – 41.25 m<sup>2</sup>  
Fire stairs – 15 m<sup>2</sup>  
Hot water plant room 26.25 m<sup>2</sup>  
Lift Overrun, staircase and plant room – 80 m<sup>2</sup>



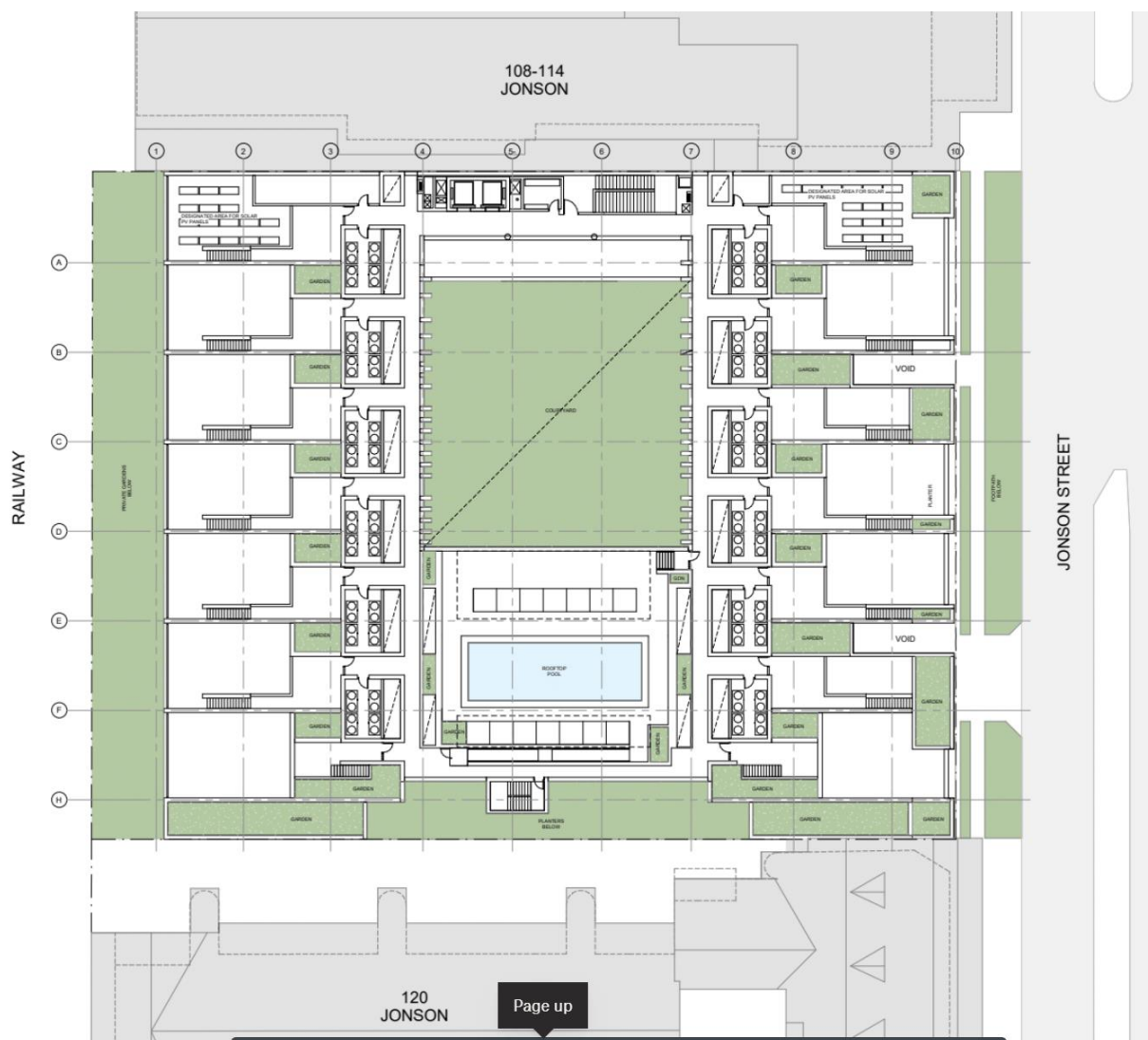


Fig 3. Site plan with roof view and building frontages

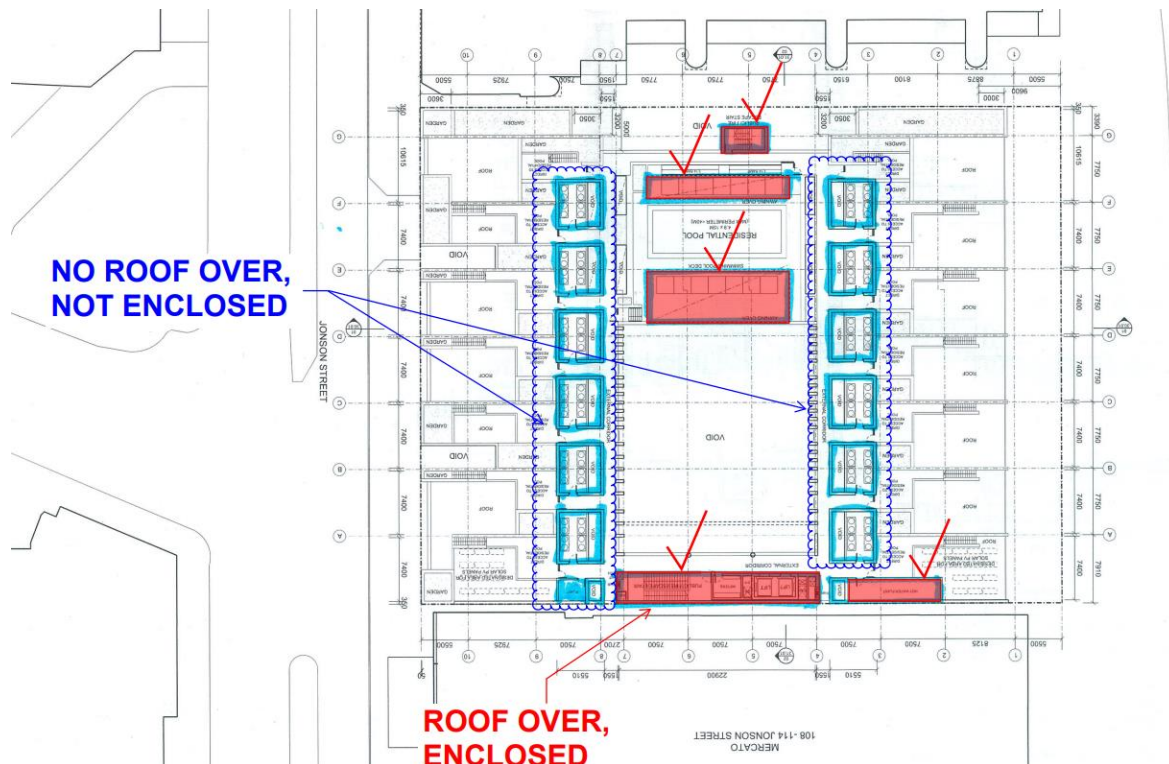


Fig 4. Elements that exceed height limit

5 These elements are for the main, ancillary to the proposal. They otherwise provide a necessary building service function and or are necessary for the safety and amenity of building users.

These elements due to roof top location and positioning will not be readily visible from the public street, will not impact on adjoining properties amenity or create additional use of the roof top area.

10 Notably, the pool and roof terrace wall elements are those that mostly exceed the height limit, and by only 10%.

As such the written request that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify contravening it is supported.

15 *Does the written request adequately address those issues at clause 4.6(3)(b)?*

For the reasons stated above, the elements that exceed the building height limit do not conflict with the objectives of the standard or the zone.

20 These elements are for the main, ancillary to the proposal. They otherwise provide a necessary building service function and or are necessary for the safety amenity of building users.

Visual and or amenity impacts from these are negligible given their roof top location and positioning, as compared to a compliant building form.

As such the written request that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case is supported.

25 *Is the development in the public interest?*

The development is in the public interest because it is consistent with the objectives of the standard and the objectives of the zone in which the development is proposed to be carried out.

**Clause 5.21 – Flood Planning**

- 5 Most of the subject land is mapped as flood prone (see below).



Fig 5. Flood Map

This clause requires that consent must not be granted unless the consent authority is satisfied that the development:

- 10 (a) *is compatible with the flood function and behaviour on the land, and*  
 (b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*  
 (c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event*  
 15 *of a flood, and*  
 (d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*  
 (e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*
- 20 The clause also requires that the consent authority must consider the following matters:  
 (a) *the impact of the development on projected changes to flood behaviour as a result of climate change,*  
 (b) *the intended design and scale of buildings resulting from the development,*

- (c) *whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) *the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.*

- 5 A flood planning level of RL3.22AHD applies to the site. A flood impact report has been prepared by PLANIT. This report has been assessed by staff as adequate to address flood planning for the proposal. Relevant conditions are included in the Recommendation to the Report.

**Clause 6.1 – Acid Sulfate Soils**

- 10 This clause provides that, where applicable, development consent must not be granted for the carrying out of works unless an acid sulfate soils management plan (ASSMP) has been prepared in accordance with the Acid Sulfate Soils Manual.

- 15 An ASSMP prepared by Tim Fitzroy & Associates, dated May 2021, provides that Actual Acid Sulfate Soils and Potential Acid Sulfate Soils can be adequately managed. Relevant conditions are included in the Recommendation to the Report.

**Clause 6.2 - Earthworks**

Clause 6.2(3) requires the consent authority to consider the effects of the proposed development on the environment and surrounding area as a result of any proposed earthworks.

- 20 The earthworks associated with the proposed development are significant, for the excavation of the proposed basement car park.

The proposal comprises Integrated Development as approval is required under the *Water Management Act 2000*. The development application was referred to WaterNSW and General Terms of Approval (GTA's) were issued on 30 June 2021.

- 25 A condition limits any excavations or dewatering to be in accordance with the GTA's. The impacts of the proposal can be addressed through appropriate conditions of consent.

**Clause 6.4 – Floodplain risk management**

- 30 In relation to tourist and visitor accommodation, this clause requires that the consent authority must be satisfied that the development will not, in flood events exceed the flood planning level, affect the safe occupation of, and evacuation from, the land.

A flood impact report has been prepared by PLANIT. This report has been assessed by staff as adequate to address flood risk for the proposal. Relevant conditions are included in the Recommendation to the Report.

**Clause 6.6 – Essential services**

- 35 Clause 6.6 requires the consent authority to be satisfied that essential services are available for the proposed development. Council officers are satisfied that the site is fully serviced and meets the requirements of clause 6.6. Relevant conditions are included in the Recommendation to the Report.

**Clause 6.13 – Design excellence – Byron Bay town centre**

Development consent must not be granted to a new building in the town centre unless Council is satisfied that it exhibits design excellence.

5 To achieve design excellence the proposal inter alia must incorporate sustainable design principles, have a high standard of architectural design, materials, and detailing, respond well to the environmental and built forms characteristics of the site and neighbouring buildings, and improve the quality of the public domain.

10 The clause also states that development consent must not be granted to a development unless the Byron Design Excellence Panel has endorsed the development as exhibiting design excellence.

Currently there is no such Panel. Instead, an independent design excellence expert was engaged to work alongside the Council assessment team for this development application to ensure optimum compliance was achieved by the proposal with these new controls.

15 Following a preliminary assessment of the submitted proposal by the Council assessment team, and meetings on same, requests for additional information and design amendments were sent to the applicant on 5 August, 10 September, 21 September, 8 October, and 13 October 2021.

20 The applicant has worked proactively and collaboratively with the Council assessment team and responded to these requests and submitted a series of plan iterations to address key areas of concern with the proposal as submitted:

- Apartment amenity
- Roof terrace amenity and shade protection
- Circulation and connectivity
- Bulk mass and façade & street wall expression
- 25 • Natural cross ventilation
- Sustainability and
- Waste collection, parking and loading bays.

30 Most of the above areas have been addressed by the applicant to the satisfaction of the design excellence expert and staff. Changes are summarised in section 'History Relevant to the Development Application' of this report, shown on the revised plans Attachment 1 and or addressed by relevant conditions in the recommendation.



PERSPECTIVE JONSON STREET



*Fig 6. Jonson Street perspective*

PERSPECTIVE JONSON STREET



*Fig 7. Jonson Street perspective*



## PERSPECTIVE COURTYARD



Fig 8. Internal courtyard perspective

5 In response to **sustainability** the following further comment is provided on the applicant's most recent submission.

The commitment to setting a baseline at "current best practice" is supported.

Being serviced apartments in single ownership provide a range of opportunities that are not as easily achieved in strata titled development by being in single ownership and having more control over the on-going operation of the building.

10 Current best practice is Net Zero Carbon in operation, and this has been achieved in a number of projects around Australia. This is acknowledged in the "Sustainability Strategy":

"Sustainability objectives for the 116-118 Jonson St Project are:

- To reduce GHG emissions with the goal of a building 100% powered by renewables.
- 15 • To mitigate the consumption of potable water resources, seek more sustainable infrastructure solutions and best practice water leaving the site'

While these objectives are supported it is noted that more detailed modelling and definition is required to ensure the objectives are achieved.

It is further noted that the objectives are consistent with and anticipated by the 'design excellence' provisions of the LEP'.

In considering whether the development exhibits design excellence, the consent authority must consider whether—

- 5 (a) the building incorporates sustainable design principles, including in relation to the following—
  - (i) sunlight,
  - (ii) natural ventilation,
  - (iii) wind,
  - (iv) reflectivity,
- 10 (v) visual and acoustic privacy,
- (vi) safety and security,
- (vii) resource, energy and water efficiency, durability and adaptability, and

- 15 With regard to the above, the Pathway to Net Zero Energy approach outlined on page 9/13 of the Sustainability Strategy is supported; noting that this will be achieved by: energy efficiency measures, fossil fuel free (induction cooktops including commercial premises) on site renewables (noting that the amount of PV on the roof could be significantly increased now that the roof terraces are removed from the design) and commitment to purchase of off-site renewables (noting that a ten year PPA is considered current best practice). This approach should not require additional offsetting for refrigerants.
- 20 Further, Council would support the use of BASIX and associated thermal performance modelling software (NatHERS) to provide preliminary assurance that the objectives can be met. This would not be onerous and would allow the DA to progress without needing to commit to a more comprehensive and expensive rating system at this stage.

Relevant conditions have been included in the recommendation to the Report.

- 25 In response to **waste collection, parking and loading bays** further comment is provided on the applicant's most recent submission in section DCP 2014 comments Chapters B4 and B8 to this report.

#### **Clause 6.14 – Active Street frontages in Byron Bay town centre**

The clause applies to the subject site.

- 30 Development consent must not be granted to a new building in the town centre unless Council is satisfied that it will have an active street frontage.

For the purposes of this clause, a building has an active street frontage if:

- (a) *all premises on the ground floor of the building facing the street or a public space are used for the purposes of business premises or retail premises*
- 35 Two tenancies are located on the ground floor facing the street. They are nominated for retail and café use.

Basement car park access and an electrical plant room are located facing the street at the southern edge of the building. A fire exit and fire infrastructure are also located at the street front at the northern boundary. Under the clause these elements are 'excepted' from that part of the building that promotes an active street frontage.

- 5 (b) *the street frontage of the building enables direct visual and physical connection between the street and the interior of the building*

There will be a direct visual connection for the majority of the two ground floor tenancies at the street front. The 3.6m wide walkway located between these tenancies provide some visual connection to the internal courtyard.

- 10 (c) *all premises on the ground floor are built to the boundary or are built to create a continuous building edge with adjoining commercial premises*

Ground floor is built to the boundaries.

- (d) *the street frontage of each premises on the ground floor of the building facing the street is not greater than 20 metres*

- 15 None of the ground floor elements are greater than 20m in length.

- (e) *parking, or loading and unloading, areas that are above ground level are not located at the front of the site*

All parking and loading is within the basement car park.

## PERSPECTIVE JONSON STREET ENTRY



Fig 9. Jonson Street perspective



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

Not applicable.

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

- 5 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 of relevance to the proposed development are addressed below:

<b>Part A</b>	<b>Compliance</b>	<b>Comment</b>
A13.4 Community Consultation Prior to Development Application Lodgement	Yes	<p>Pre-consultation was undertaken by the proponents in accordance with the DCP requirements, and included a project web site, letterbox drops, personal neighbour contact, site sign, emails to community stakeholders, press advertisements, and a public community information session.</p> <p>A report on the pre-consultation was submitted with the application, outlining the process and the results.</p>

<b>Chapter B1 Biodiversity</b>	<b>Compliance</b>	<b>Comment</b>
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	No; but acceptable in this case	<p>“Important wetlands” – i.e., wetland mapped under SEPP Coastal Management; are located on the rail corridor land immediately west of the development site.</p> <p>Table 3 of the DCP suggests that a 50m buffer is required.</p> <p>In this case, there is less than 15m from the western boundary of the site to the edge of the wetland vegetation.</p> <p>It is noted that the vegetation is on a separate publicly owned parcel and that the rail infrastructure is located between</p>



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Chapter B1 Biodiversity	Compliance	Comment
		<p>the vegetation and the site.</p> <p>While trains do not run on that infrastructure, there are proposals being examined to use that part of the corridor as part of a wider movement corridor, at least by way of a shared path cycleway, and potentially by light rail options in the longer term.</p> <p>In these circumstances, it is considered that a requirement of 50m separate is unnecessary and that it would unreasonably constrain the future development of the town centre.</p>
B1.2.2 Development infrastructure and other controls	Yes	The infrastructure associated with this development does not require any clearing of significant 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:	Yes	<p><u>Water Supply</u></p> <p>The site is serviced by a reticulated water supply. Council's Systems Planning Engineers advise that there is existing capacity in the system to service the proposed development.</p> <p><u>Sewage</u></p> <p>The site is serviced by a sewage supply. Council's Systems Planning Engineers advise that there is existing capacity in the system to service the proposed development.</p> <p><u>Access</u></p> <p>See Chapter B4 below.</p> <p><u>Other</u></p> <p>No issues are raised regarding electricity of telecommunications infrastructure.</p>

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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B3.2.3 Stormwater Management	Yes	A concept stormwater plan was submitted with the application.  The applicant is required to provide further stormwater easement details to verify matters relating to the nominated legal points of discharge for stormwater from the site. <b>Condition requiring deferred commencement consent is included in the recommendation.</b>
B3.2.4 Sedimentation and Erosion Control Measures	Yes	Standard conditions can adequately address issues.

Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access	Compliance	Comment
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The application is supported by a traffic and parking study by McLaren Traffic Engineering and Road Safety Consultants.

- 5 There have been several requests for additional information and clarification on the proposal from Council's assessment team to date. Of particular concern has been the arrangement proposed for waste collection, parking and loading bays.

A revised supplementary traffic and parking report with plans was submitted (rev Oct) to respond to the issues raised.

- 10 As it stands 119 car parks are provided in the basement, inclusive of 8 accessible parking spaces for guests and visitors.

Notwithstanding the above, the parking supply requirement is not met, by one (1) space.

The one (1) space car park deficiency on the main can be justified on the grounds that the retail and serviced apartment uses will have cross utilisation and complimentary timing for peak use.

- 15 Relevant conditions are otherwise included in the recommendation to address accessible parking numbers, parking layout, and service vehicle arrangements for loading and unloading and waste collection.

The proposal is now able to be supported by the assessment team.

Chapter B5 Provisions for Cycling		
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- 20 Cycleways are planned as part of the Byron Bypass and Council's adopted bike plan will build on existing cycleways in this location such that dedicated cycle paths will pass the subject site, connecting north and south.

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Fourteen (14) bicycle parks are proposed as part of the development. Within the basement, charging facilities will be available for electric bikes.

Bike racks are also proposed at ground level.

Chapter B7 Mosquitoes and Biting Midges		Compliance	Comment
B7.2.1	Mosquito and Biting Midge Risk Zones	Yes	The site is located within or directly adjacent to a mapped risk zone. The Applicant has addressed the requirement of this chapter.
B7.2.2	Strategies and Guidelines for proposed development in risk zones	No; but acceptable in this case	<p>For applications involving tourist and visitor accommodation with more than 5 units, the DCP requires a report from a qualified entomologist addressing risk.</p> <p>In this case, the rail corridor provides a cleared grass buffer between the vegetated risk area and the rear of the site. In that circumstance, the provision of screens to the rear facing units will be sufficient to address the risk, and a detailed report is not considered to be required.</p>

Chapter B8 Waste Minimisation and Management		Compliance	Comment
B8.3.1	Demolition of Buildings or Structures	Yes	<p>A Site Waste Minimisation and Management Plan (SWMMP) by Elephants Foot Recycling Solutions has been submitted in support of the application, addressing the requirements of the DCP.</p> <p>The SWMMP has been reviewed by Council's Resource Recovery Team and is acceptable, subject to recommended conditions of consent to ensure that actions are implemented during demolition stage of the project.</p>
B8.3.2	Construction of Buildings or Structures	Yes	The construction stage SWMMP has been reviewed by Council's Resource Recovery Team and is acceptable, subject to recommended conditions of consent to ensure that actions are implemented during

## BYRON SHIRE COUNCIL

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			the construction stage of the project.
B8.3.3	Bin Sizes and Collection Measures	Yes	An Operation SWMMP provides recommendations that are consistent with part of the DCP.  A site-specific collection contract will be used for all collection.
	Tourist Accommodation and Commercial and Retail Development	Yes	The operation stage SWMMP has been reviewed by Council's Resource Recovery Team and is acceptable, subject to recommended conditions of consent to ensure that actions are appropriately implemented.

Chapter B9 Landscaping		Compliance	Comment
B9.2.2	Landscape Plans for Development Applications	Yes	A detailed landscape plan has been submitted with the application, to address the requirements of these parts of the DCP.  Relevant conditions of consent are included in the recommendation.
B9.2.3	Further Requirements for more Complex Developments	Yes	As above.
B9.6.1	Landscaping of Tourist and Visitor Accommodation	Yes	A minimum of 10% of the site area must be dedicated to landscaping.  At ground level, the development includes a total of 1,040m <sup>2</sup> of landscaped area, including central landscaped courtyard and private garden areas for serviced apartments.  This equates to approx. 24% of the site area.  Landscaped and communal open space areas have direct and equitable access and amenity.

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Chapter B11 Planning for Crime Protection	Compliance	Comment
B11.2.1 Development that requires a formal crime risk assessment	Yes	The development includes a basement car park, so a formal crime risk assessment is required, and has been submitted to support the application.
B11.2.3 CPTED design opportunities	Yes	<p>The crime risk report provides an assessment of the proposal in relation to the DCP performance criteria.</p> <p>The proposal is for a mixed-use development with service apartments. The design, layout and managed access to the site has provided adequate passive surveillance and is able to meet CPTED principles.</p>

Chapter B12 Social Impact Assessment	Compliance	Comment
B12.1.3 Application of this Chapter	Yes	<p>An SIA is required for tourist and visitor accommodation for 50 or more persons.</p> <p>The proposal includes a total of 122 bedrooms, therefore has a capacity well in excess of 50 people.</p> <p>A SIA has been submitted with the application.</p> <p>The SIA finds that the proposal will generate a number of positive social impacts, including:</p> <ul style="list-style-type: none"><li>• increasing the diversity and availability of tourist accommodation in the town centre;</li><li>• provision of open green space for the use of the community;</li><li>• employment in the construction and fit out and operation of the proposed mixed use development including the retail, restaurant and commercial spaces, and in the maintenance of the communal spaces;</li><li>• improvement of the visual appearance of the site to the street;</li><li>• provision of an active street frontage to Jonson Street;</li><li>• opportunities to support small local independent retailers via micro retailing;</li></ul>



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		<p>and • the provision of a physical showcase of the Shire's urban history to identify and celebrate identity.</p> <p>The SIA demonstrates compliance with the requirements of the DCP.</p>
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Chapter B13 Access and Mobility	Compliance	Comment
B13.2.2 Shop top housing and serviced apartments	Yes	<p>An Access Assessment Report has been submitted in support of the application, demonstrating that the design complies with the DCP and all relevant legislation and standards.</p> <p>10% of units should be adaptable. There are 41 serviced apartments in total. 5 apartments are shown as "accessible/adaptable", spread across the 3 levels.</p>

Chapter C2 Areas Affected by Flood	Compliance	Comment
C2.13 Planning objectives and development controls	Yes	The proposal meets the objectives of the B2 zone.

Chapter D3 Tourism Development	Compliance	Comment
D3.2.4 Character and design in business and mixed-use zones	Yes	<p>Design Excellence provisions applied.</p> <p>The proposal is compatible with the character, landscape and land uses of the zone.</p>
D3.3.7 Serviced apartments	Yes	<p>Design Excellence provisions applied.</p> <p>The proposal is compatible with streetscape and character of locality.</p>

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			It meets the requirements of D1.6.
D1.6	Multi dwelling housing in urban zones:	Yes	A mix of serviced apartment sizes is provided in the form of 2, 3 and 4 bedrooms. This choice optimises accommodation choices to those visiting the Town Centre.
D1.6.1	Private open space courtyards	Yes	Ground floor apartments each have a ground level courtyard of approx. 40m <sup>2</sup> , with dimensions of 5m x 5m.
D1.6.2	Open space balcony	Yes	Upper floor units all have compliant balconies, with the second-floor apartments also having individual access to the roof top pool area.  The western facing units are not ideally orientated, only having access to afternoon sun.
D1.6.3	Landscaping	Yes	See assessment above.
D1.6.4	On-site car parking	Yes	See assessment above.
D1.6.5	Soundproofing	Yes	Apartments will be appropriately sound proofed.
D1.6.6	Clothes drying facilities	Yes	Apartments are all shown with laundry areas that can incorporate clothes driers or spaces to provide clothes drying areas.
D1.6.7	Equity of access and mobility	Yes	An Access Assessment Report has been submitted in support of the application, demonstrating that the design complies with the DCP and all relevant legislation and standards.
D1.6.8	Pipes and vents	Yes	All plant can be appropriately screened.
D1.6.9	TV antennae	Yes	Common facilities will be provided.
D1.6.10	Character	Yes	Design Excellence provisions applied.

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Chapter D4 Commercial and Retail Development		Compliance	Comment
D4.2.1	Design and character of retail and business areas	Yes	See assessment above.
D4.2.2	Design detail and appearance	Yes	See assessment above.
D4.2.3	Vehicle access and parking	Yes	See assessment above.
D4.2.4	Loading docks	Yes	See assessment above.
D4.2.5	Street setbacks	Yes	Ground floor – no setback. Upper floors are setback, with balconies utilised in setback.
D4.2.10	Restaurants, cafes, small bars etc	Yes	Noise is unlikely to be an issue at this location. Hours of operation and other requirements can be conditioned.

Chapter D8 Public Art		Compliance	Comment
D8.2.1	Provision of public art	Yes	The applicants have submitted a draft Voluntary Planning Agreement (VPA) proposing to provide a monetary contribution toward public art. This VPA has been exhibited and endorsed by the Public Art Panel. Relevant condition of consent included in the recommendation.
Chapter E10 Byron Bay Town Centre		Compliance	Comment
E10.2.1	Uses	Yes	Retail and active uses dominate the ground floor. Each proposed retail space has a depth to width ratio of between 1:1 and 3:1.
E10.2.2	Character	Yes	Development provides active street frontage, articulated facades, is fine grained safe and legible connections through it.
E10.2.3	Built form	Yes	See assessment above.

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	Buildings must contain no more than 3 storeys	Yes	Complies.
	Roof-top facilities not to contravene maximum building height	No; but acceptable in this case	See discussion above regarding building height variation.
	Floor to ceiling heights	No (ground and first floor); but acceptable in this case	<p>Ground floor: required 4.0m; proposed: 3.9m</p> <p>First floor: required 3.3m; proposed 3.1m</p> <p>Second floor: required 2.7m; proposed 3.1m</p> <p>The FTCH controls relate to the creation of comfortable and high-quality internal environments for occupants and users.</p> <p>The proposal is for mixed use development and not permanent residential.</p> <p>The proposal has otherwise satisfied amenity and build excellence criteria for this type of development. The variation to FTCH is acceptable.</p>
	Upper levels to be setback 3.0m (can be used for balconies)	Yes	Upper floors each have 3.0m wide balconies at street frontage.
	Access to sunlight for adjoining properties	Yes	Adjoining buildings retain the required access to daylight hours of sunlight.
10.2.4	Climate and context	Yes	See assessment above. Relevant conditions included in the recommendation.
10.2.5	Acoustic and visual privacy	Yes	Achieved by design. Relevant conditions included in the recommendation.
10.2.6	Car parking	Yes	See assessment above. Relevant conditions included in the recommendation.

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10.2.7	Waste and Recycling	Yes	See assessment above. Relevant conditions included in the recommendation.
10.2.9	Roof form, access and use	Yes	Relevant conditions included in the recommendation.
10.2.10	Green infrastructure	Yes	<p>The proposal includes vertical planting green walls and landscaping throughout the site.</p> <p>A condition is also recommended that the proposal provide a shaded environment for pedestrians on the eastern façade of the development at street level. This to take the form of a pergola or arbour type structure across the frontage of the development to cover the footpath in Jonson Street.</p> <p>Relevant conditions included in the recommendation.</p>
10.2.11	Design Excellence	Yes	See assessment above. Relevant conditions included in the recommendation.

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

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

It is considered that the proposal is suitable for the site. It will not have any adverse amenity impacts on the adjoining properties, and it meets the desired future character and built form controls for the Byron Bay Town Centre.

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

The development application was publicly exhibited

There were **21** submissions made on the development application:

- 19 For
- 10 - 1 Resolved

See comments under Round 1 – Solar Impact to 120 Jonson Street (Staff – 5 August 2021)

- 1 Against

- 15 Issues raised in the submission against the proposal were height and bulk of development. The development's building height exceedance and design excellence compliance have been addressed in detail in the report.

## Public interest

The proposal does not to prejudice or compromise the public interest or create an undesirable precedent.

### 20 5. DEVELOPER CONTRIBUTIONS

#### Water & Sewer Levies

Section 64 levies will be payable.

#### Developer Contributions

Section 7.12 Contributions 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

- 5 The proposal seeks consent for demolition of existing backpackers' hostel and construction of a mixed-use development comprising retail premises and serviced apartments.
- The application includes a request to vary the height of buildings development standard.
- The request to vary the development standard is supported in this instance given the site context, land use mix and location in the town centre area.
- 10 The applicant however is required to provide further stormwater easement details to verify matters relating to the nominated legal points of discharge for stormwater from the site.
- Given the above, the application is recommended for deferred commencement consent subject to recommended conditions in Attachment 2.

**Report No. 13.4      24.2020.39.1 - Centennial Circuit One-way Traffic Trial - Outcomes of the trial and next steps**

**Directorate:** Sustainable Environment and Economy

5    **Report Author:** Isabelle Hawton, Planner

**File No:** I2021/1566

**Summary:**

The Centennial Circuit one-way traffic trial was a 'quick-win' project from the Byron Arts and Industry Estate Precinct Plan and has been running since May 2021.

- 10    The trial has altered the flow of traffic in Centennial Circuit, from two-ways to a one-way clockwise circulation between Brigantine Street and Wollongbar Street. All other streets in the area have remained two-way.

The trial has been a resounding success, with the vast majority of feedback supportive of making the trial permanent.


- 15    It is recommended to extend the one-way traffic trial for approximately 12 months to allow for design and implementation of a permanent solution.

20    **RECOMMENDATION:**

**That Council:**

1.    **Extends the one-way traffic trial for an additional 12 months, or until such time as a permanent solution can be implemented.**
- 25    2.    **Considers a quarterly budget review of \$17,900 to commission the design for permanent one-way traffic circulation and to fund the interim trial extension measures.**
3.    **Continues to consider other opportunities for improving traffic circulation and flow within the Byron Arts and Industry Estate, including further linemarking and the possibility of other one-way streets.**

30    **Attachments:**

- 1    24.2020.39.1 - Yoursay feedback - Centennial Circuit one way traffic trial - During the trial, E2021/123497 

35

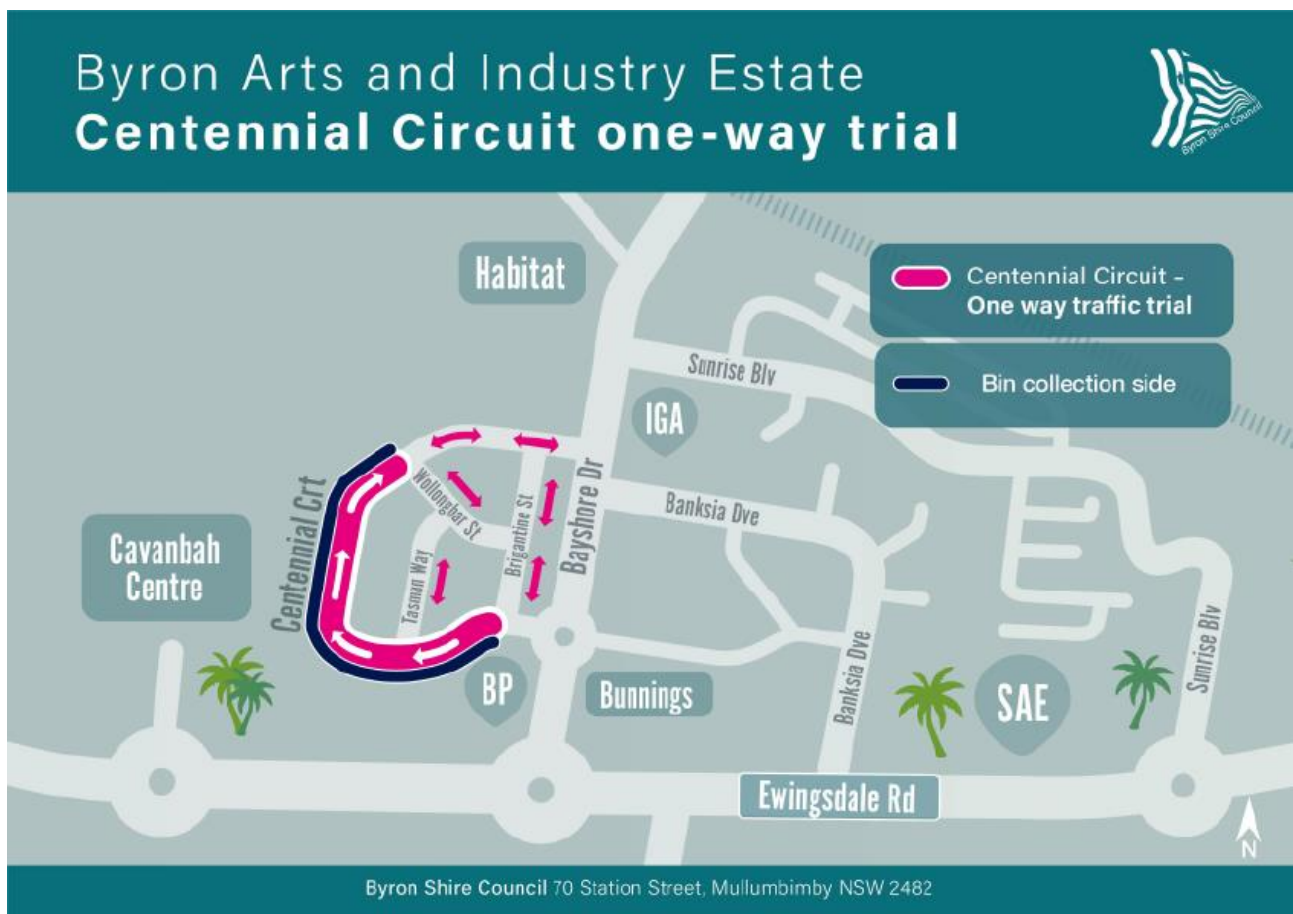
## Report

The Centennial Circuit one-way traffic trial was a 'quick-win' project from the [Byron Arts and Industry Estate Precinct Plan](#), adopted in 2019 (RES 19-452).

- 5 The aim of the trial was to test whether a one-way solution to part of Centennial Circuit would remedy some of the traffic flow and safety issues that were occurring in the estate. The trial was intended to be a simple, low-cost and temporary.

The trial was implemented in May 2021 and scheduled to finish on 30 November 2021.

Image below shows the extent of the one-way trial.



- 10 Council staff engaged with business owners pre and during the trial through door-to-door discussions, letterbox flyer drops, advertisements on BayFM and social media posts.

Feedback was gathered via Council's Your Say page and through Council's facebook account.

- 15 The trial has been overwhelmingly successful, with the vast majority of feedback supporting making the trial a permanent fixture in the Arts and Industry Estate.

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A recent facebook post on the trial has over 120 responses, and overwhelmingly people wanted the Circuit to remain one-way. Comments received through Your Say also reinforce this level of support (refer Attachment 1).

#### Next steps

5 Staff recommend extending the trial for 12 months to allow time to:

- design a permanent solution;
- carry out additional consultation on the permanent design; and
- prepare for permanent construction.

This would extend the trial from 30 November 2021 to 30 November 2022.

10 The trial extension and design will be managed by Council Infrastructure Services Directorate.

#### Budget to support extension

15 There will be approximately \$7,000 remaining in the Centennial Circuit one-way trial fund at the end of November 2021. The budget required to extend the trial and undertake the design is \$24,900 (as detailed in the table below). As such, an additional \$17,900 budget would be required in the next quarterly budget review. The 30 September 2021 Quarter Budget Review will be submitted to Council on 25 November 2021 and should Council approve the recommendation to this report, this will be included amongst other priorities for consideration.

Budget item	Estimate	Note
<b>Water filled barriers</b>	\$1,500	It is proposed to replace the hired barriers with recently acquired water filled barriers from the Talking Street Trial parklets, which would incur a one-off cost of approximately \$1,500 (owned by Council). However, this would rule out these barriers for use in the parklets for the interim.
<b>Waste collection</b>	\$8,400	Budget will also be required to continue the changes to waste collection through this time. Council is working to renegotiate the waste contract, but in the interim funding in the vicinity of \$700 per month will need to be secured. \$8,400 would be required over 12 months.
<b>Design estimate</b>	\$15,000	Budget will be required to create a design that will improve safety and traffic flow at key intersections and rectify any minor issues to do with the current design. This work will be undertaken by Council's Infrastructure Services Directorate, with input from relevant place planning staff. A budget estimate of \$15,000 has been provided by Infrastructure Services for the design work.

<b>Total</b>	\$24,900	
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## **Strategic Considerations**

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

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>	<b>Code</b>	<b>OP Activity</b>
Community Objective 4: We manage growth and change responsibly	4.1: Support the visions and aspirations of local communities through place-based planning and management	4.1.1: Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.5	Deliver one way traffic trial for Centennial Circuit (Byron Arts and Industry Estate Precinct Plan action)

### **Recent Resolutions**

- 19-433

- 5 • 19-452

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

Any permanent design will need to be approved by the Local Traffic Committee.

### **Financial Considerations**

As outlined above.

### **10 Consultation and Engagement**

Significant community consultation has been undertaken to date on this project.

The Byron Arts and Industry Estate Precinct Plan was adopted after community consultation, including a formal exhibition period.

- 15 The Centennial circuit one-way trial underwent a period of notification which included conversations with affected businesses, letterbox drops, radio advertisements and social media.

Additional consultation will be undertaken with the permanent design.



## Report No. 13.5 24.2020.27.1 - Bangalow Development Control Plan Changes Submissions Report

**Directorate:** Sustainable Environment and Economy

**Report Author:** Isabelle Hawton, Planner

5 **File No:** I2021/1529

### Summary:

10 Council staff have been working with the Bangalow community to update the Byron Shire Development Control Plan 2014 (DCP) chapters that relate to Bangalow. This is a priority action from the Bangalow Village Plan, which was adopted in February 2019 (**RES 19-006**).

At the Council Meeting on 5 August 2021, Council endorsed the recommendation to exhibit the proposed updates to the DCP Chapters E2 Bangalow and C1 Non-Indigenous Heritage for 28 days. This report presents the exhibition outcomes.







15 The proposed updates to the DCP chapters were exhibited from 1 September to 28 September 2021 and 16 submissions were received. Many of these submissions agreed with the majority of proposed changes but requested some detailed updates. The submissions are provided in full in Attachment 5.

20 The report recommends that the DCP updates (as per Attachments 1 and 2) be adopted with the updated changes reflective of the feedback received during the exhibition period.

### RECOMMENDATION:

25 **That Council adopts the Development Control Plan Chapters E2 Bangalow, Attachment 1 (E2021/125364) and C1 Non-indigenous Heritage, Attachment 2 (E2021/125359) and alterations to Part A (Attachment 3 - E2021/125362) and publishes the relevant chapters on its website and notifies the public as required by the Environmental Planning and Assessment Act and Regulation.**

### Attachments:

- 30
- 1 Byron Shire DCP 2014 Chapter E2 Bangalow - amended post public exhibition, E2021/125364 
  - 2 Byron DCP 2014 Chapter C1 Non-indigenous Heritage - Bangalow amended post exhibition, E2021/125359 
  - 35 3 Additional definitions to add to DCP Part A Dictionary, E2021/125362 
  - 4 Submissions overview, E2021/124074 
  - 5 Submissions received - redacted version, E2021/123655 
  - 6 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

## **Report**

Council staff have been working with the Bangalow community to update the Byron Shire Development Control Plan 2014 (DCP) chapters that relate to Bangalow. This is a priority action from the Bangalow Village Plan, which was adopted in February 2019 (*RES 19-006*).

At the Council Meeting on 5 August 2021, Council endorsed the recommendation to exhibit the proposed updates to the DCP Chapters E2 Bangalow and C1 Non-Indigenous Heritage for 28 days. This report presents the exhibition outcomes.

The proposed updates to the DCP make some significant changes to improve future development outcomes in Bangalow. These include:

- Providing a clearer structure for the E2 Chapter
- Removing outdated or contradictory sections in C1 and E2
- Removing double up between C1 and E2
- Moving heritage architectural guidelines for buildings in Byron Street to Chapter C1
- Creating new heritage architectural controls for Station Street precinct
- Adding in an Active Street Frontages provision
- Adding in provisions around connectivity and permeability
- Adding Urban Design outcomes and specific controls for Station Street in lieu of a separate 'Structure Plan'
- Amending and updating relevant maps and graphics

### **Community engagement during the public exhibition period**

The proposed updates to the DCP chapters were exhibited from 1 September to 28 September 2021 and 16 submissions were received. Many of these submissions agreed with the majority of proposed changes but requested some detailed updates. The submissions are provided in full in Attachment 5.

During the public exhibition period, Council staff reached out to various landowners, community groups, and key stakeholders to encourage them to make submissions and engage with the proposed chapters. These interactions happened via mail, email and over the phone.

Even though the total number of submissions is not large, it should be noted that the level of engagement with and understanding of the proposed content for the DCPs was high and translated to educated and informed constructive feedback to the proposed changes.

## Key issues

### Low rise heritage character of the Bangalow town centre

- 5 Many submissions referred to the desire to maintain and protect the low-rise heritage nature of the Bangalow village centre and the Bangalow Heritage Conservation Area more broadly. Feedback was generally positive – indicating that most submitters believed that the proposed changes were effectively meeting this expectation.

- 10 Feedback focussed on the desire to maintain the low-rise built form of Bangalow with many submissions expressing a wish for single storey/two storey buildings only. The minimum floor to ceiling heights introduced in the DCP chapters will reinforce this preference.

### Glossary of terms

- Several submissions suggested that the language of the DCP can sometimes be confusing for a lay-person, and that a glossary/dictionary explaining key terms would be helpful.
- 15 In response to this, some key words and definitions are proposed to be added to the existing dictionary in Part A of the DCP to provide further clarity on key terms. These definitions are included in Attachment 3.

### Pedestrian Permeability

- 20 There was strong support from several submissions for the measures to improve pedestrian permeability in the village centre. Submissions applauded the efforts to increase pedestrian access to and through sites, however some suggested that the wording might be softened.

No changes are proposed to this clause at this time.

### Updates/Changes to the Development Control Plan Chapters

- 25 A number of submissions suggested detailed changes to the proposed DCP chapters. Some of these have resulted in amendments to provide further clarity/improve the effectiveness of certain controls. These have been responded to in further detail in Attachment 4.

### Feedback outside the scope of this DCP amendment

- 30 A number of submissions made comment on issues outside the scope of these amendments. These included, but were not limited to, requests for additional pedestrian crossings, 'gateways to the village' and more general heritage concerns. Some of these requests might be better dealt with through a review of Chapter C1 Non-indigenous Heritage, at a later date. It is recommended that Council's Strategic Planning Team add this request to the DCP updates register for future consideration.
- 35

## Next Steps

The report recommends that the DCP updates (as per Attachment 1 and 2) be adopted with the updated changes reflective of the feedback received during the exhibition period.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1: Support the visions and aspirations of local communities through place-based planning and management	4.1.1: Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.4	Review and update Bangalow Development Control Plan (high priority action from the Bangalow Village Plan)

### Recent Resolutions

- 21-262 (Proceed to exhibition with proposed DCP amendments)
- 5
- 19-006 (Adoption of Bangalow Village Plan)

### Legal/Statutory/Policy Considerations

Discussed in body of the report.

### Financial Considerations

Not applicable.

### 10 Consultation and Engagement

Discussed in body of the report.

**Report No. 13.6 PLANNING - 26.2019.10.1 Submissions  
Report - North Beach Byron Rezoning  
Planning Proposal**

**Directorate:** Sustainable Environment and Economy

5 **Report Author:** Sharyn French, Manager Environmental and Economic Planning

**File No:** I2021/1415

**Summary:**

10 This report presents the outcomes of the exhibition of a Planning Proposal for the proposed rezoning of land at Bayshore Drive, Byron Bay.

The planning proposal was initiated following a landowner request to rezone land immediately to the north-west of the Elements of Byron Resort to allow for a subdivision to create up to nine (9) large residential lots.

15 The site includes several properties under one ownership, including the resort and land to the north-west previously used as a private golf course associated with a former tourist facility on the land. In more recent times cleared vacant parts of the land has been used to accommodate the Byron Writer's Festival.

20 Part of the subject land is zoned SP3 Tourist under Byron Local Environmental Plan 2014, with other parts of the land deferred, retaining the zoning under Byron Local Environmental Plan 1988, including 2(t) Tourist Area, 7(a) Wetlands, 7(b) Coastal Habitat and 7(f1) Coastal Lands.

The requested rezoning relates primarily to the cleared and vacant part of the land, to implement a zoning of E4 Environmental Living. This zoning has not previously been applied within LEP 2014, and this would be the first property zoned as such.

25 The objectives of the E4 Environmental Living Zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- *To ensure that residential development does not have an adverse effect on those values.*

30 In this case, the significant values of the land relate to its beachfront location and the ongoing implications of coastal processes.

The proponents commissioned a detailed Coastal Hazard Assessment, which provides contemporary modelling to establish the predicted location of the erosion escarpment in 50, 80 and 100 years.



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The modelling approach, which includes allowance for predicted sea-level rise, was agreed by staff of the Department of Planning, Industry and Environment Coastal Division, and forms a sound basis for the hazard assessment.

- 5 The modelling shows that the contemporary 100 year hazard line (i.e. for the year 2120) is located approximately 135m seaward of the previously mapped 100 year hazard line, which was used as the basis of the 7(f1) Coastal Land zoning and associated DCP Part J erosion precincts.

The contemporary modelling demonstrates that the area within the site subject to coastal hazard is smaller than previously understood.

- 10 On this basis, the planning proposal seeks to implement the E4 zoning for the cleared area between Bayshore Drive and the contemporary 100 year hazard line.

E2 Environmental Conservation is proposed seaward of the hazard line, ensuring that there will not be development in that hazard area.

- 15 The planning proposal also seeks to implement E2 Environmental Conservation and E3 Environmental Management zones across vegetated parts of the property, as agreed with the landowners through Council's E Zone Review process.

In September 2020, Council resolved to seek Gateway for the proposal (**Res 20-470**). A Gateway determination was issued in March 2021.

- 20 The proposed rezoning was publicly exhibited between April and May 2021. A total of 113 objections were received as well as 62 submissions of support.

- 25 NSW Rural Fire Service, NSW Biodiversity and Conservation Division and Heritage NSW were also consulted, along with Tweed Byron Local Aboriginal Land Council. Advice was received from NSW Rural Fire Service in relation to matters that need consideration at the DA stage. Advice was also received from the Biodiversity and Conservation Division (BCD) of the Department of Planning, Industry and Environment. Some of the issues raised by BCD have subsequently been addressed, resulting in two outstanding matters of objection.

Key issues addressed in this report relate to coastal hazards and flood risk.

- 30 The exhibited planning proposal proposed a 2ha minimum lot size (MLS) and an additional permitted uses clause to limit future subdivision of the E4 zone to 9 lots. Post exhibition an adjustment has been made to the northern boundary of the E4 zone to accurately reflect the boundary of the coastal wetland mapping. This adjustment has reduced the total area of the E4 zone. This together with a revised minimum lot size of 1ha will limit the total number of lots to nine, thereby removing the need for the proposed additional permitted  
35 uses clause.

The following changes are proposed to the planning proposal post exhibition:

- *Zoning adjustment to reduce northern boundary of E4 zone and expand adjoining E2 zone to accurately reflect the coastal wetland mapping*

- *Change to minimum lot size from 2ha to 1ha for E4 Zone*
- *Removal of proposed additional permitted uses clause to limit the E4 zone to a maximum 9 lots as the two changes above achieve the same outcome*
- *Amend minimum lot size of E3 zone from 1ha to 40ha*
- 5 • *Amend Height of Buildings map to apply maximum 9m building height across the entire E4 and E2 zone*
- *Update Acid Sulphate Soils map to apply to the site*
- *Amend Land Application map to remove some of the Deferred Matter areas*
- 10 • *Amend the Floor Space Ratio map to reflect the changes to the part of the site zoned SP3 Tourist*

These changes are not considered significant enough to warrant re-exhibition.

It is recommended that Council adopt the amended Planning Proposal in Attachment 1 and send to DPIE for finalisation.










### 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
- 20 Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

### RECOMMENDATION:

- 25 **That Council forwards the planning proposal, as contained in Attachment 1 (E2021/111179), along with updated Local Environmental Plan maps as detailed in this report, to the Department of Planning, Industry and Environment for finalisation.**





### Attachments:

- 30 1 Elements Planning Proposal - Updated version for Council report following public exhibition - 26.2019.10.1, E2021/111179 
- 2 Coastal Hazard Assessment - Planning Proposal Appendix B, E2021/53423 
- 3 Updated Flood Assessment - Planning Proposal Appendix C, E2021/125689 
- 4 Bushfire Assessment - Planning Proposal Appendix D, E2019/92528 
- 35 5 Updated Ecological Assessment - Planning Proposal Appendix E, E2021/125699 
- 6 Cultural Heritage Report - Planning Proposal Appendix F, E2020/5232 
- 7 Preliminary Contamination Report - Planning Proposal Appendix G, E2021/55944 
- 8 Alteration of Gateway determination - timeframe extended to 8 March 2022, E2021/125595 
- 40 9 Objection submissions, E2021/105676 

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- 10 Support submissions, E2021/105674 
- 11 NSW Rural Fire Service RFS submission, E2021/125869 
- 12 Biodiversity & Conservation Division, Dept Planning, Industry & Environment Submission,  
E2021/125860 
- 5 13 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

## Report

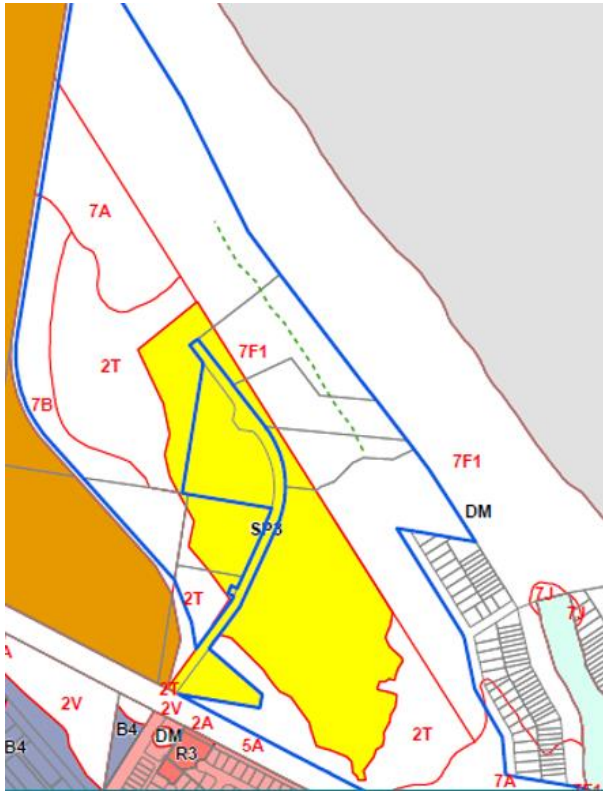
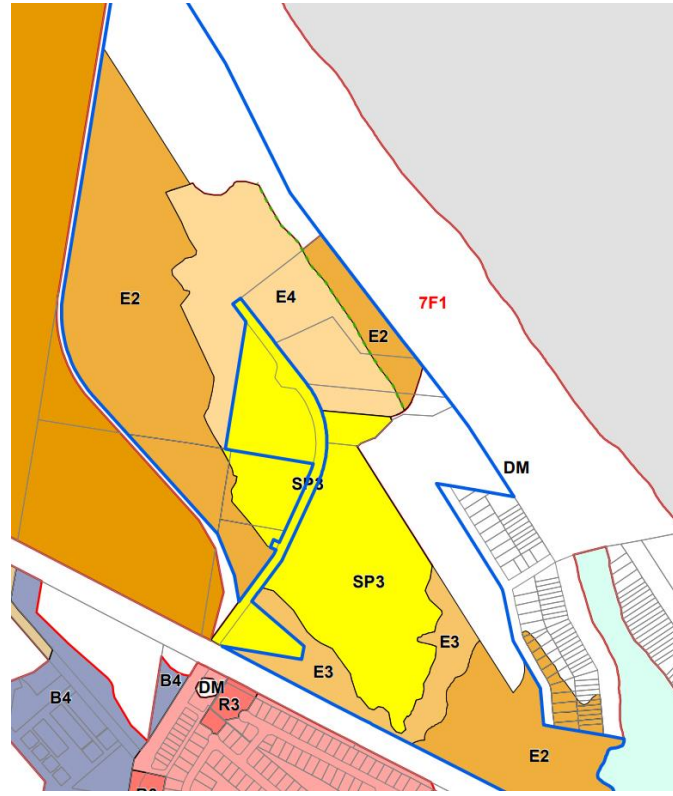
Planning Proposal 26.2019.10.1 (Attachments 1 to 8) relates to land around the Elements of Byron Resort, at the northern end of Bayshore Dr, Byron Bay.



### 5 The Site

The planning proposal mainly relates to the cleared parts of the site located north-west of the existing resort, which is proposed to be zoned E4 Environmental Living. It also proposes to implement the agreed environmental zones across the site as part of Council's E Zone Review process.

Part of the site is zoned SP3 Tourist under Byron Local Environmental Plan 2014, with much of the land 'deferred' and subject to the E Zone Review process. The deferred parts of the site contain areas zoned 2(t) Tourist Area, 7(a) Wetlands, 7(b) Coastal Habitat and 7(f1) Coastal Lands under Byron Local Environmental Plan 1988.

	
<p><b>Existing Zoning</b></p>	<p><b>Proposed Exhibited Zoning</b></p> <p>(Note. The northern section of the E4 zone has been reduced post exhibition to accurately reflect the boundary of the coastal wetland mapping– see further discussion in this report)</p>

## 5 Coastal Hazard

The location of the 7(f1) Coastal Lands zone was originally based on The Byron Bay - Hastings Point coastal hazard report, prepared in the late 1970s. The zone was intended to identify land subject to the most immediate coastal risks and is a very restrictive zone that does not permit permanent development.

- 10 To address coastal hazard on the site, the proponents commissioned a detailed Coastal Hazard Assessment of the property, which provides contemporary probabilistic modelling to establish the predicted location of the erosion escarpment in years 2050, 2070, 2100 and 2120 (Attachment 2).

- 15 The modelling approach, which includes allowance for sea-level rise and climate change, was agreed by staff of the Department of Planning, Industry and Environment Coastal Division, and forms a sound basis for the hazard assessment.

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For the purposes of the planning proposal, the seaward extent of the E4 Environmental Living zone is set at the year 100 (2120) 1% exceedance line.

- 5 This is where the model predicts the coastal erosion escarpment to be in 100 years' time. The 1% exceedance means there is 1% chance that the line could be further landward – i.e. there is 99% certainty that the line will not be further landward in 100 years.

The location of this contemporary 100 year hazard line is shown by the dashed green line on the existing zoning diagram above.

- 10 It is located approx. 135m seaward of the previously mapped 100 year hazard line, which was used as the basis of the 7(f1) Coastal Land zoning and associated DCP Part J erosion precincts.

The contemporary modelling demonstrates that the area within the site that is subject to coastal hazard is far smaller than previously understood.

- 15 Council resolved (Res. 20-470, Part 3) that the current 7(f1) Coastal Land zoning remain in place for the part of the site located seaward of the contemporary 100 year hazard line, pending completion of the Coastal Management Program, at which time it can be reviewed.

Through further consultation with the applicant and agencies an E2 zone has instead been applied. This was to ensure that this part of the future lots to be created retained the integrity of the hazard line without development being place on it.

- 20 The landowner has agreed to the application of an E2 Environmental Conservation zone on the part of the property seaward of the contemporary line, and E zones have been applied in accordance with the state government's 'Northern Councils E Zone Review Final Recommendations Report'.

- 25 The combination of the E4 and E2 zones will allow the subdivision of this cleared part of the property but ensure that all future development within the lots is located outside of the coastal hazard area. The application of a minimum lot size will restrict the subdivision potential of the land to a maximum of 9 lots.

- 30 The coastal hazard modelling was only applied to the cleared parts of the property. It was not extended for the full length of the property, and therefore cannot be used to 'fix' a zoning line north-west of the cleared area.

As such, it is recommended that the existing zoning of 7(f1) Coastal Lands remain outside of the area that was subject of the probabilistic modelling.

- 35 A combination of E2 Environmental Conservation and E3 Environmental Management is proposed over the remaining undeveloped and vegetated parts of the site, outside of the coastal hazard areas. The SP3 Tourist zone will remain over the existing resort.

The E3 Environmental Management area fringes the existing resort, where asset protection zones are required to be maintained in accordance with bush fire approvals.



**Flood Risk**

The flood advice provided to support the planning proposal, dated 27 November 2019 (Attachment 3), was prepared prior to recent state government changes to how flooding is considered in land use planning.

- 5 These changes included the introduction of two standard instrument local environmental plan clauses on flood related development controls and a local planning direction under section 9.1 of the Environmental Planning and Assessment Act 1979.

10 Whilst these new flood planning requirements do not apply where a Gateway has previously been issued as is the case with this PP, further information was requested from the applicant to ensure that the rezoning is appropriate and does not result in subsequent development applications that are inconsistent with the new flooding legislation.

Further additional flood assessment was requested to address the following matters:

- 15 • The updated flood model prepared by Royal HaskoningDHV, and relied on in their flood assessment, should be calibrated to a known event, to demonstrate the accuracy of predicted flood levels. All Tuflow model data files must be submitted with the revised assessment.
- 20 • The assessment should address cumulative impacts in relation to flood levels, impact assessment and evacuation options.
- 25 • Council will not support sheltering in place as the sole evacuation response. The assessment should demonstrate the ability to provide for a safe and effective evacuation option for future residents that does not rely on rescue by boat. If the recommended option involves raising of a section of Bayshore Drive, the flood impacts of such work need to be addressed and information provided demonstrating how the commitment to the works can be guaranteed.
- 30 • The flood assessment should specifically address Council's adopted Belongil Creek Floodplain Risk Management Study and Plan (BMT WBM, 2015). In particular, Figure 9-1 of the adopted Plan specifies the site as "No Development". Further information should be provided addressing the basis of that designation and providing justification for not following that recommendation.

35 Attachment 3 contains the original flood advice along with four additional reports that address the above matters. The following table provides a brief summary of these reports and an assessment of how they responded to the request for information.

Council's Infrastructure Planners have reviewed this additional work and are satisfied with the level of assessment undertaken, the data used in the modelling and the resulting outputs.

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Additional Flood Reports	Comment
Review of state governments changes to planning guidelines regarding flood planning levels and how changes to Council's adopted flood planning level could impact the proposed development, 19 July 2021	<p>This report investigated how the new state government flood planning controls affect the development potential of the site.</p> <p>It found that adopting a higher flood planning level at the study site would not prevent the proposed development of the site. Flood hazard and structural considerations were also investigated against a higher design flood event and indicate that the development is still considered feasible under these conditions.</p>
Review of Hydraulic Categorisation resulting in the site being considered 'no development' area in the Belongil Creek Floodplain Risk Management Study and Plan 2015 (FRMS&P), 3 September 2021	<p>Further investigation was conducted into this site being considered a "No Development" area, in the Belongil Creek Flood Risk Management Study and Plan (FRMS&amp;P).</p> <p>This investigation remodelled the flood risk on the subject site based on the FRMS&amp;P model and using more accurate ground elevation data and improved hydrological inputs. Based on this improved and refined data the updated model does not consider the site as a floodway. It also shows that the site is considered low hazard and under the FRMS&amp;P criteria it would be considered potentially suitable for development.</p>
Verification of the hydraulic model set used to investigate the study area, 16 September 2021	<p>This report provides information relating to the hydraulic model setup for the subject site. It details the updated information used to remodel the existing FRMS&amp;P model including: refined model resolution from 10m to 5m, more accurate ground elevation data (LiDAR), and improved hydrological inputs. It also provides a comparison of the updated model results to the existing FRMS&amp;P.</p>
Assessment of Evacuation Options, 6 October 2021	<p>This report provides a suite of evacuation options to minimise risk to life that don't rely on sheltering in place. It demonstrates that risk can be reduced and mitigated at the development assessment stage.</p>

### Exhibition of Planning Proposal

Council resolved to prepare the planning proposal and seek Gateway approval at its Planning Meeting of 17 September 2020 (**Res 20-470**). A Gateway determination was

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issued in March 2021, and a revised Gateway, to extend the finalisation period, was received in September 2021 (Attachment 8).

The proposed rezoning was publicly exhibited between April and May 2021. A total of 113 objections were received as well as 62 submissions of support (Attachments 9 & 10).

5 The issues raised in objection are addressed below:

Issues raised in Submissions	Comment
Coastal erosion risks:	
<ul style="list-style-type: none"><li>sea level rise ignored</li></ul>	<p>The coastal hazard assessment report (Attachment 2) modelling includes consideration of three different approaches to quantifying future sea level rise:</p> <ul style="list-style-type: none"><li>Council's current sea level rise policy, which is based on State Government modelling from 2009, adjusted to account for the estimated actual sea level rise over the period 1990-2020</li><li>peak sea levels as set out by Intergovernmental Panel on Climate Change (IPCC) 2013 reporting, increased by 10% to account for local variation</li><li>projections set out in a 2017 study of exposure to shoreline change in NSW (Kinsela et al)</li></ul> <p>The probabilistic modelling showed that the predicted coastal hazard lines at 20 years, 50 years and 100 years are in a similar position irrespective of which sea level rise approach is adopted.</p> <p>The modelling approach was agreed by staff of the Department of Planning, Industry and Environment Coastal Division, and forms a sound basis for the hazard assessment.</p>
<ul style="list-style-type: none"><li>increased risks with climate change</li></ul>	<p>In addition to accounting for sea level rise, the probabilistic modelling included consideration of more frequent storm events.</p>
<ul style="list-style-type: none"><li>drain on Council resources and funds to protect future houses</li></ul>	<p>This concern assumes that dwellings would be subject to coastal erosion events in the future.</p> <p>The E4 zoning is limited to the cleared parts of the site that are demonstrated to be outside of the coastal hazard area.</p>
<ul style="list-style-type: none"><li>planned retreat does not work in practice</li></ul>	<p>Given that development would be limited to areas not subject to coastal erosion, planned retreat is not necessary.</p>

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Issues raised in Submissions	Comment
<ul style="list-style-type: none"> <li>rezoning should not precede completion of the Coastal Management Program</li> </ul>	<p>Consideration of this rezoning proposal provides an opportunity to test policy / zoning matters that will require Shire-wide consideration as part of the CMP.</p> <p>The probabilistic modelling, which forms the basis of the zoning recommendations, is the same process that is required for the CMP, and therefore forms an appropriate basis for this project.</p>
Flooding risks:	
<ul style="list-style-type: none"> <li>Belongil Creek Flood Study (2009) indicates significantly deep flooding at this site, influenced by both catchment flooding and elevated ocean levels</li> </ul>	<p>The FRMS&amp;P model was rerun using new and updated data. This found that the site is no longer considered a floodway.</p>
<ul style="list-style-type: none"> <li>2015 Management Study and Plan shows a recommendation of 'no development' for this site</li> </ul>	<p>Further information was requested and provided by the applicant on this issue (Attachment 3).</p> <p>Further investigation was conducted into this site being considered a "No Development" area, in the Belongil Creek Flood Risk Management Study and Plan (FRMS&amp;P).</p> <p>This investigation remodelled the flood risk on the subject site based on the FRMS&amp;P model and using more accurate ground elevation data, improved hydrological inputs and a refined model resolution (from 10m to 5m). Based on this improved and refined data it shows that the site is considered low hazard and under the FRMS&amp;P criteria it would be considered potentially suitable for development.</p> <p>The refinements to the model will inform the future review of the FRMS&amp;P.</p>
<p>Impact on sensitive wetlands and bird habitat</p> <ul style="list-style-type: none"> <li>Migratory birds use the artificial wetland within the area proposed for subdivision (e.g. Latham Snipe)</li> </ul>	<p>Further information was requested and provided by the applicant on the Latham Snipes ecology (Attachment 5).</p> <p>This was referred to the Biodiversity Conservation Unit who advised that as a migratory bird it is listed on the schedules of the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). As such it is not triggered at the rezoning stage and will require further consideration at the DA stage.</p> <p>A Vegetation Management Plan is to be prepared for all</p>

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Issues raised in Submissions	Comment
	Environmental Zones on the site which will further consider habitat requirements for the Latham's Snipe.
Public access: <ul style="list-style-type: none"><li>beach access would be limited to narrow fenced corridor</li><li>significant impact on current aesthetic values</li></ul>	<p>Beach access currently exists via a formal right-of-way across the site, located just north of the main Elements building.</p> <p>The proposed rezoning plan has the E4 zone immediately north of the existing access, so that it remains within the Elements site.</p> <p>Exact details would be subject to future application, but a subdivision of the E4 land would change the visual character of the area, with private residential lots north-west of the access.</p>
Traffic impacts	The implementation of a 1ha minimum lot size would restrict future development to a maximum of 9 residential lots. The resultant traffic would not be significant.
Future development will be 'enclave for the rich'	This is not a relevant planning consideration.
Future lots will be used for holiday letting	It would be possible to condition any future development applications to restrict holiday letting, although the site is located in an existing tourist precinct and holiday letting of 9 dwellings would still be significantly less intense than the existing resort use.
Secondary dwellings/ dual occupancies will significantly increase density	The E4 Environmental Living Zone provides for Dwelling Houses with consent. All other forms of Residential Accommodation including secondary dwellings and dual occupancies are prohibited.
Increased demands on local infrastructure	The rezoning can enable up to 9 residential dwellings with no substantial increase in demand for public infrastructure. Developer contributions will be payable as part of any future development application. The site is serviced by an existing sealed road with access to existing sewer and water mains.

#### Consultation with public authorities and organisations

NSW Rural Fire Service, NSW Biodiversity and Conservation Division and Heritage NSW were consulted, along with Tweed Byron Local Aboriginal Land Council. The following agencies provided advice.

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#### NSW Rural Fire Service (Attachment 11):

Future development within the area zoned E4 Environmental Living must comply with the requirements of Planning for Bush Fire Protection 2019 and associated documents. These matters need consideration at the DA stage.

#### 5 Biodiversity & Conservation Division, Dept Planning, Industry & Environment (Attachment 12):

The initial BCD response raised several issues of objection to the proposed rezoning. Following further discussion and the submission of further information, some of these issues have been satisfactorily addressed, resulting in two outstanding matters of objection and one other matter.

10

BCD issues raised	Comment
The PP is expanded to include the entirety of the subject lot to the north of the area proposed for E4 zoning and this area to the north currently zoned 7f1 is zoned E2 as part of this PP.	<p>The contemporary coastal hazard modelling that's determined the new 100yr hazard line was only applied to the cleared parts of the property. As it was not applied to the full length of the property it cannot be used to 'fix' a zoning line north of the E4 zone.</p> <p>Council is currently working on a Coastal Management Program (CMP) for the Shire's beach compartments. Amongst other things, the CMP will identify land subject to coastal hazard, by way of contemporary "probabilistic" modelling, similar to that undertaken for the subject land.</p> <p>Until the CMP determines the coastal hazard for these areas and the policies for how that land will be managed, it is considered premature to rezone land that is subject to identified coastal hazard.</p> <p>This approach is supported by Council's long standing resolutions <b>16-576</b> (part 2) and <b>17-045</b> (Part 2c) which request the DPIE to provide a separate coastal hazard zone as the Standard Instrument LEP does not provide a suitable replacement for the 7(f1) Coastal Land and 7(f2) Urban Coastal Land Zones.</p>
The PP identifies the mechanism to be used to secure the requirement to prepare a vegetation management plan for land zoned E2, E3 and E4 in the planning area and describes the intent of the VMP and how it will	<p>Council's Development Control Plan 2014, Chapter B1 – Biodiversity provides for Vegetation Management Plans (VMP) and Biodiversity Conservation Management Plans (BCMP).</p> <p>A BCMP is required for any development that includes the subdivision of land.</p> <p>A BCMP contains similar information and management actions as a Vegetation Management Plan. However, a</p>



<b>BCD issues raised</b>	<b>Comment</b>
be implemented.	<p>BCMP generally has increased management actions over a longer period of time and requires more detailed information.</p> <p>BCDs requirement for a VMP will be considered at the DA stage.</p>

BCD also requested that Council considers waiting for relevant data from the Coastal Management Program (CMP) to inform the PP so the areas south of the planning area of the proposed E4 zone is also rezoned from its current 7f1 to an appropriate zone as part of this PP.

Council is currently working on a CMP for the Shire's northern and southern beach compartments. Amongst other things, the CMP will identify land subject to coastal hazard, by way of contemporary "probabilistic" modelling, similar to that undertaken for the land subject to this rezoning request. The CMP will also develop policies for how that land will be managed.

It is considered that, pending completion of the CMP, it is premature to rezone land that is subject to identified coastal hazard.

### **Amendments to the planning proposal**

The exhibited planning proposal proposed a 2ha minimum lot size (MLS) and an additional permitted uses clause to limit future subdivision of the E4 zone to 9 lots. Post exhibition an adjustment has been made to the northern boundary of the E4 zone to accurately reflect the boundary of the coastal wetland mapping. This adjustment has reduced the total area of the E4 zone and increased the E2 zone. This together with a revised minimum lot size of 1ha will limit the total number of lots to 9, thereby removing the need for the proposed additional permitted uses clause.

The following changes are proposed to the planning proposal post exhibition:

- Zoning adjustment to reduce northern boundary of E4 zone and expand adjoining E2 zone to accurately reflect the coastal wetland mapping
- Change to minimum lot size from 2ha to 1ha for E4 Zone
- Removal of proposed additional permitted uses clause to limit the E4 zone to a maximum 9 lots as the two changes above achieve the same outcome
- Amend minimum lot size of E3 zone from 1ha to 40ha
- Amend Height of Buildings map to apply maximum 9m building height across the entire E4 and E2 zone
- Update Acid Sulphate Soils map to apply to the site

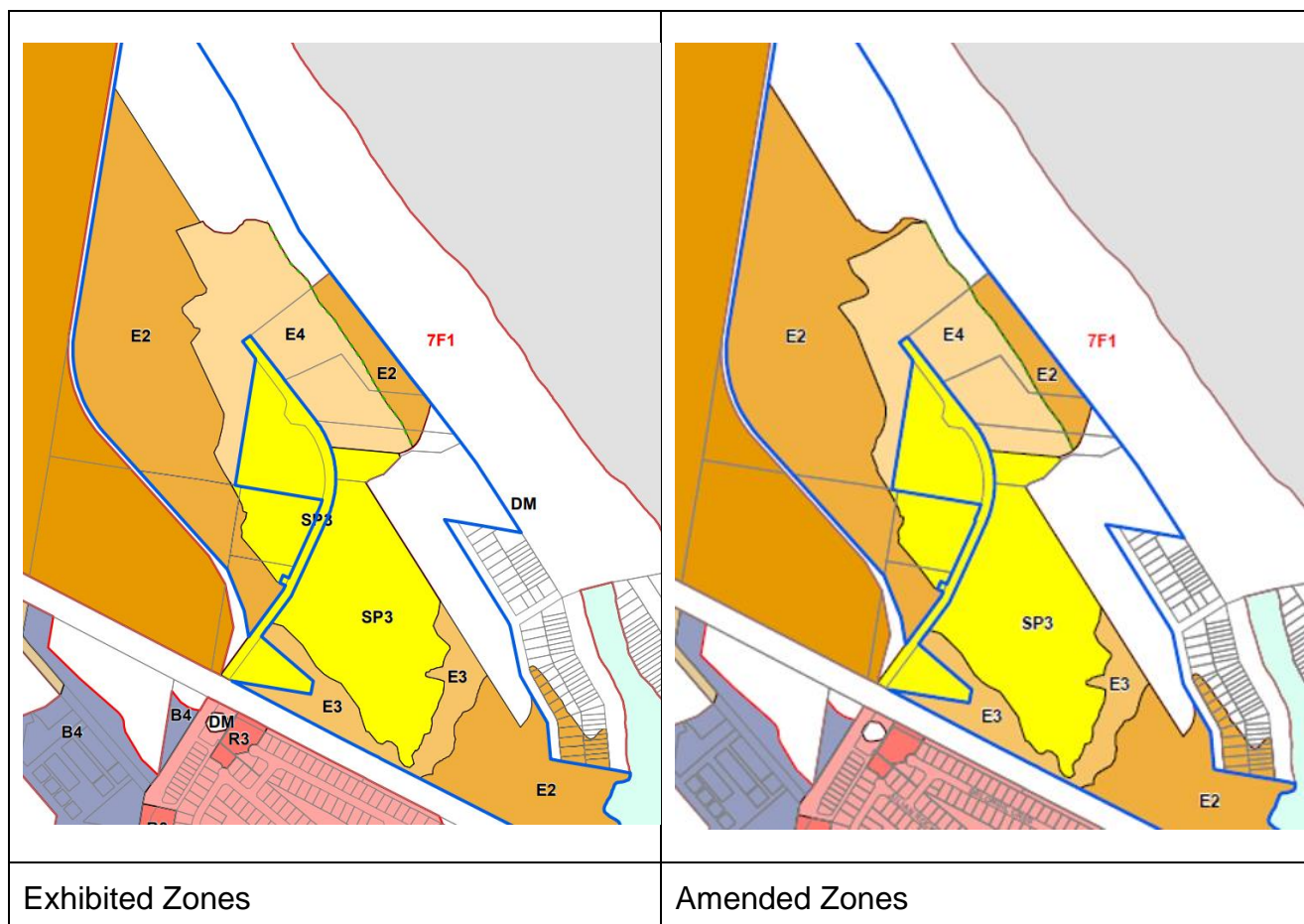
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- Amend Land Application map to remove some of the Deferred Matter areas
- Amend the Floor Space Ratio map to reflect the changes to the part of the site zoned SP3 Tourist

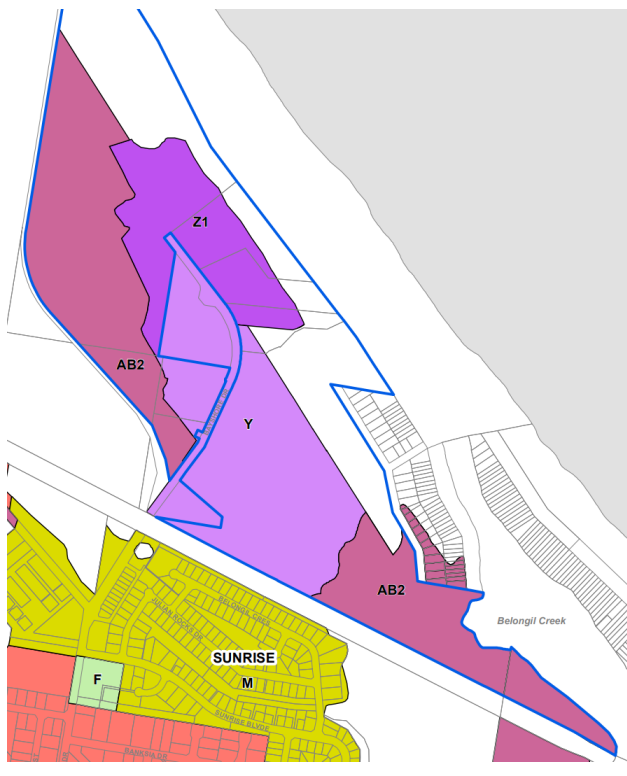
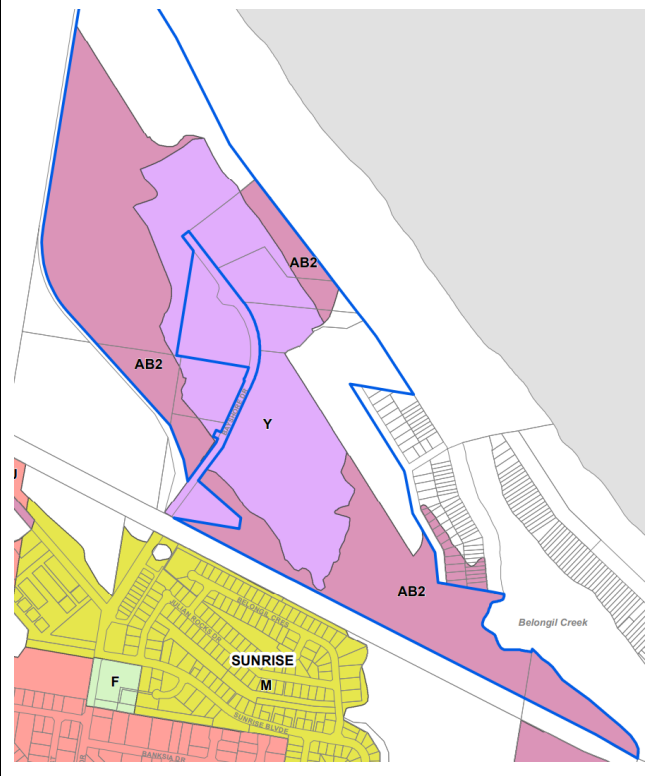


The amendments are not considered significant to warrant re-exhibition of the PP.



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<p>Exhibited minimum lot size (MLS)</p>	<p>Amended MLS</p>
	
<p>Exhibited Building Height</p>	<p>Amended Building Height</p>

## **Next steps**

Based on the assessment of the planning proposal and the feedback received from public exhibition, it is recommended that the amendments to Byron Local Environmental Plan 2014 proceed toward finalisation.

- 5 The draft will be sent to the Department of Planning Industry and Environment to finalise the amendment.

## **Strategic Considerations**

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

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
<b>Community Objective 4: We manage growth and change responsibly</b>	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.3	Manage development through a transparent and efficient assessment process	4.1.3.10	Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

## **Recent Resolutions**

- 20-204**  
21/05/2020 Resolved that this matter be deferred for discussion at a Strategic Planning Workshop and a report be provided at the first available Ordinary Planning Meeting after the winter recess.
- 20-470**  
17/09/2020
1. That Council prepare a planning proposal to rezone a section of land at North Beach Byron to E4 Environmental Living, and implement the agreed E2 and E3 environmental zones across the site (Attachment 1 E2020/67667), and forward the proposal to the Department of Planning, Industry and Environment for Gateway determination.
  2. That the planning proposal be placed on public exhibition in accordance with the Gateway determination, and that Council receive a further report at the end of the exhibition period detailing submissions made.
  3. That the current 7(f1) Coastal Land zoning remain in place for the part of the site located seaward of the contemporary 100 year hazard line, pending completion of the Coastal Management Program, at which time it can be reviewed

**Legal/Statutory/Policy Considerations**

The planning proposal will amend Byron Local Environmental Plan 2014 as outlined in this report.

**Financial Considerations**

- 5 The planning proposal continues to be progress on a cost-recovery basis paid for by the landowner.

**Consultation and Engagement**

The report above presents the outcomes of the latest community engagement process.

## Report No. 13.7 Federal Movement and Place Draft Concept Design

**Directorate:** Sustainable Environment and Economy

**Report Author:** Andrew FitzGibbon, Acting Place Activation Coordinator  
Isabelle Hawton, Planner

**File No:** I2021/1424

### Summary:

The purpose of this report is to seek Council endorsement of the Federal Movement and Place Draft Concept Design to go on public exhibition.

- 10 The public exhibition will be for a minimum of 28 days and in accordance with the Byron Shire Council Community Participation Plan.

It is an important project which aims through design significant improvements to safety, accessibility and placemaking for Federal Drive (refer to project scope and objectives in Attachment 1).

- 15 The draft concept design is provided at Attachment 2.

This draft has been developed with input from Federal Village Masterplan Steering Group representatives, Council engineering / placemaking staff and Transport NSW.

It is important to consult the whole of Federal and surrounding villages about this as the design relates to a significant 'place' at the heart of their community.

- 20 It is also important for this exhibition to occur now while the design is in the concept stage and while there is still meaningful opportunity for engagement to effect changes in the design.



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### RECOMMENDATION:

**That the Federal Movement and Place Draft Concept Design (Attachment 2 – E2021/127271) be publicly exhibited for a period of not less than 28 days and in accordance with the Byron Shire Council Community Participation Plan.**

- 30 **Attachments:**

- 1 Project Scope and Objectives - Federal, E2021/123824 
- 2 Draft Concept Plan - Federal Drive - Oct 2021, E2021/127271 

35



## Report

The purpose of this report is to seek Council endorsement for the Federal Movement and Place Draft Concept Design to move to a stage of public exhibition.

- 5 The public exhibition will be for a minimum of 28 days and in accordance with the Byron Shire Council Community Participation Plan.

It is a key project which aims through design significant improvements to safety, accessibility and placemaking for Federal Drive (refer to project scope and objectives in Attachment 1).

- 10 It is important to consult the whole of Federal and surrounding villages about this as the design relates to a significant 'place' at the heart of their community.

It is also important for this exhibition to occur now while the design is in concept stage and while there is still meaningful opportunity for engagement to effect changes in the design.

## Background

- 15 The Movement and Place design for Federal Drive is a detailed project that has been developed alongside the community-led masterplanning process underway in Federal.

Council endorsed this design project and associated funding on 24 June 2021 (refer [resolution 21-243](#) point 2).

The design work is being led by Better Cities Group alongside staff.

## Draft Concept Design

- 20 The draft concept design is provided at Attachment 2.

This draft has been developed with input from Federal Village Masterplan Steering Group representatives, Council engineering / placemaking staff, Transport NSW and Northern Rivers Bus Lines.

- 25 Note that for the public exhibition a communication package will be developed to clearly explain the various aspects of the plan and how the project objectives are addressed.

The communication package will include explanatory text and illustrative graphics.

## **Project Program**

The following table summarises the project program, including consultation undertaken to date and the next steps.

<b>#</b>	<b>Stage</b>	<b>Timing</b>
<b>1</b>	Concept drafting which included: <ul style="list-style-type: none"> <li>multiple concept meetings with community representatives, Council engineering / placemaking staff</li> <li>consultation with Transport NSW and Northern Rivers Bus Lines</li> </ul>	Completed in Aug / Sept 2021
<b>2</b>	Briefing to Council's Executive Team	Completed 30 Sept 2021
<b>3</b>	Briefing to the Place Planning Collective	Scheduled for 26 Oct 2021
<b>4</b>	Report to Council for endorsement to go to public exhibition	This report – 4 Nov 2021
<b>5</b>	Public exhibition of the draft design concept	Nov/Dec 2021
<b>6</b>	Design refinement – including further discussions with community representatives and Council engineering / placemaking staff	Jan 2022
<b>7</b>	Reporting final concept design to Executive Team and Council	Feb/Mar 2022
<b>8</b>	Detailed design to develop construction ready drawings	Apr/May 2022
<b>9</b>	Apply for grants for construction	Pending appropriate grant

## **Public Exhibition**

- 5 The following key stakeholders will be consulted during the public exhibition period:
- the whole community
  - Federal Village Masterplan Steering Group

- Federal Village Movement and Access Sub-group
- Land owners directly adjoining the primary study area
- Byron Shire Councillors
- Transport NSW

- 5 • Northern Rivers Bus Lines

### **Key issues**

Key issues to be explored during the consultation will be:

- Preferred bus stop locations and bus turning options
- Intersection treatments
- 10 • Accessibility
- Placemaking elements
- Carparking provision

## **Strategic Considerations**

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

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>	<b>Code</b>	<b>OP Activity</b>
<b>Community Objective 4: We manage growth and change responsibly</b>	4.1: Support the visions and aspirations of local communities through place-based planning and management	4.1.1: Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	<b>4.1.1.6</b>	Support the Federal Community Village Masterplan Steering Group to undertake community-led masterplanning for Federal

### **15 Recent Resolutions**

- Council endorsed this design project and associated funding on 24 June 2021 (refer [resolution 21-243](#) point 2)

**Legal/Statutory/Policy Considerations**

Public exhibition to be undertaken in accordance with Council's Community Participation Plan.

**Financial Considerations**

- 5 Consultation costs have already been funded as part of the project budget.

**Consultation and Engagement**

As noted within the report.

## Report No. 13.8 Biodiversity Projects and Operations Update

**Directorate:** Sustainable Environment and Economy

**Report Author:** Lizabeth Caddick, Biodiversity Officer

**File No:** I2021/1615

### 5 Summary:

This report provides the Council with an update on current projects and programmes being undertaken by the Biodiversity team, including:

- 2021-22 FY biodiversity conservation strategy projects
- Wildlife corridor mapping
- Koala activity surveys
- Wildlife road strike mitigation
- Koala habitat planting projects
- Leash-Up Pilot Communication Project
- Sustainable Agriculture Projects
- Flying-fox Management Plan
- Pest Animal Management Plan
- Bringing Back the Bruns
- Feral Cat trapping program – BSC and LLS partnership
- *Keeping Cats Safe at Home* Project - RSPCA NSW

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### RECOMMENDATION:

**That Council:**

1. **Notes that a draft wildlife corridor map has been prepared and that expert stakeholder consultation/peer review of this map will occur in late 2021, with formal exhibition of the map to follow in early 2022, subject to a further report for Council's consideration.**
2. **Notes that the "Bow Wow Leash me Now!" project is a finalist in the LGNSW's Excellence in the Environment Awards in the Communication, Education and Empowerment category with the online award ceremony being held on 16 November 2021.**

## Report

### ***2021-22 Financial Year Biodiversity Conservation Strategy Projects***

Council's 2021-22 Operational Plan has provided funding for the following new projects (Table 1), which are Biodiversity Conservation Strategy Actions.

**5 Table 1. 2020-2021 Biodiversity Conservation Strategy Projects**

<b>Project</b>	<b>OP number</b>	<b>Biodiversity Strategy Action number</b>	<b>Project Progress</b>	<b>Budget</b>
Develop a Strategic Action Plan for Wildlife Road Strike Mitigation in Byron Shire.	3.1.1.15	4.25 - Work with RMS, local wildlife groups and Regional Koala Communications Group to identify road strike hotspots in Byron Shire.,  4.26 - Seek funding for road strike mitigation trials at priority road strike hotspots.  4.27 - Consider roadkill mitigation measures and opportunities to improve wildlife connectivity into design work for new roads and road asset upgrades.	Finalising contract & collating road strike data.  Due to start January 2022.	\$11,500
Finalise shire-wide restoration map	3.1.1.17	1.20 Map areas that have been revegetated: a) using public funds, and b) for conservation purposes	Contract awarded. Starting October 2021.	\$8,850
Map potential habitat areas for Mitchell's Rainforest Snail	3.1.1.18	1.25 Map potential habitat areas for Mitchell's Rainforest Snail.	Seeking quotes.	\$8,000
Update 2017 vegetation and HEV mapping to reflect ground truthing	3.1.1.19	1.14 Update and maintain Council's vegetation and HEV mapping with revised Plant Community Types (PCTs) and	Contract awarded. Starting October	\$6,000



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done as part of EZone review (approx 250 sites).		current aerial photography.	2021.	
Update flora and fauna lists for the shire, including status of threatened flora and fauna	3.1.1.20	1.11 Conduct a review of Byron Shire's biodiversity values as a baseline for ongoing biodiversity monitoring. Include: • Updated Byron Shire flora and fauna lists, • Status of threatened flora and fauna, • Status of weed species, • Extent of native vegetation, • Extent of protected vegetation (public and private land) • Fire frequency status	Seeking quotes.	\$5,600

#### ***Wildlife Corridor Mapping***

Landmark Ecological have developed draft wildlife corridor mapping for Byron shire. The draft wildlife corridor map aims to protect core habitat and dispersal opportunities for key threatened plants and animals in the shire – i.e., those species that have core habitat in the shire, and that have the most limited dispersal capability. The methodology is similar to that used in development of Lismore Council's wildlife corridor maps (Landmark 2012) and the regional wildlife corridor mapping developed by NSW National Parks (Scotts 2003), but unlike previous wildlife corridor maps it includes plants and ecological communities as well as animals. 62 conservation priority fauna species, 65 flora species and 11 vegetation types based on a range of geologies were used to derive the corridor system.

The methodology takes into consideration:

- Current and historic species records and habitat,
- Threatened ecological communities, Big Scrub remnants, Coastal SEPP, existing areas of native vegetation regeneration.
- Existing connections (e.g., highway underpasses and waterways),
- Existing land use constraints (e.g., avoiding residential and industrial land, prime agricultural land, and roads where possible),
- Location of wildlife corridors in adjacent shires, plus OEH 2019 climate change corridors and DEC Key Habitats and Corridors for Forest Fauna (Scotts 2003),
- Likely impacts of climate change (through consideration of flood prone land, south facing slopes, riparian habitats etc.).

The intent of the wildlife corridor mapping is to:

- Support Council, environmental groups and landholders to strategically focus restoration and habitat connectivity projects to where they can have the greatest biodiversity benefit.
- 5 • To support Council and environmental groups in seeking grant funding for key strategic biodiversity conservation projects.
- To support the implementation of Council's Biodiversity DCP (Chapter B1) during the development assessment process, by supporting planning decisions that best protect and enhance our biodiversity, while continuing to facilitate permitted land uses, e.g.,  
10 on agricultural and residential zoned land.
- To provide the community with a big picture perspective of how individual properties fit into our natural environment, helping to foster connections with the natural world and motivate residents, in both rural and suburban corridors, to take steps to create and maintain wildlife connectivity in their backyards.

15 Next Steps

Staff are currently consulting with agricultural stakeholders through the Agriculture Cluster Group, as well as other expert stakeholders on the role and application of the corridor map in Byron Shire. We intend to engage with the community more broadly and put the corridor map on public exhibition in early 2022, subject to a further report to Council for  
20 endorsement.

Some amendments will be required to the Biodiversity DCP to:

- Ensure that the definition of a wildlife corridor in the DCP reflects the new mapping,
- Clearly articulate different management intent for corridors in areas of native vegetation compared with those in agricultural and high-density land use zones.

25 ***Coastal koala activity monitoring program 2021***

Council's coastal koala activity monitoring program is nearly complete, funded with a \$20,000 grant from the NSW 2018-2021 Koala Strategy. The field work has been delayed by wet weather, Covid-19 and difficulties accessing some sites that are on private property. To date 49 out of 58 sites have been surveyed. A small number of survey site  
30 locations have been changed (within 250 metres) where we were unable to access private land.

This monitoring repeats surveys done in the coastal KPOM area in 2011 and 2016 and uses the Spot Assessment Technique (SAT) to assess changes in koala activity. The surveys involve repeat monitoring of 58 sites (mostly on private land) for koala scats  
35 (droppings), which are used as an indicator of koala presence/absence and activity.

As well as providing us with updated information on koala activity in the shire, the project has been a great opportunity to talk with landowners in the CKPOM areas about koala conservation on their land and what they can do to help. Once all surveys are complete, full results will be reported to Biodiversity Advisory Committee.

5 **Wildlife Road Strike**

As per Table 1 above, Council is developing a Strategic Action Plan for Wildlife Road Strike Mitigation. This will use road strike data provided by wildlife carer groups and the NSW Government to identify key wildlife road strike hotspots in the shire. Appropriate and cost-effective mitigation measures will be identified at the highest priority sites. This will enable Council to seek funding for wildlife road strike mitigation at the most strategically important locations in the shire.

In 2020, Council has also been progressing installation of wildlife signage along several roads in the shire, as part of road upgrade projects, including:

- Skinners Shoot Road upgrade (Figure 1). The speed limit along this road has also been reduced from 80 to 50km/h.
- Bangalow Road upgrade (Figure 2)
- Gray's Lane upgrade (in progress). The speed limit along this road has also been reduced from 80 to 60 km/h.
- Tyagarah Road (Figure 3).
- Myocum Road upgrade – in progress.



Figure 1 – Skinners Shoot Rd koala sign

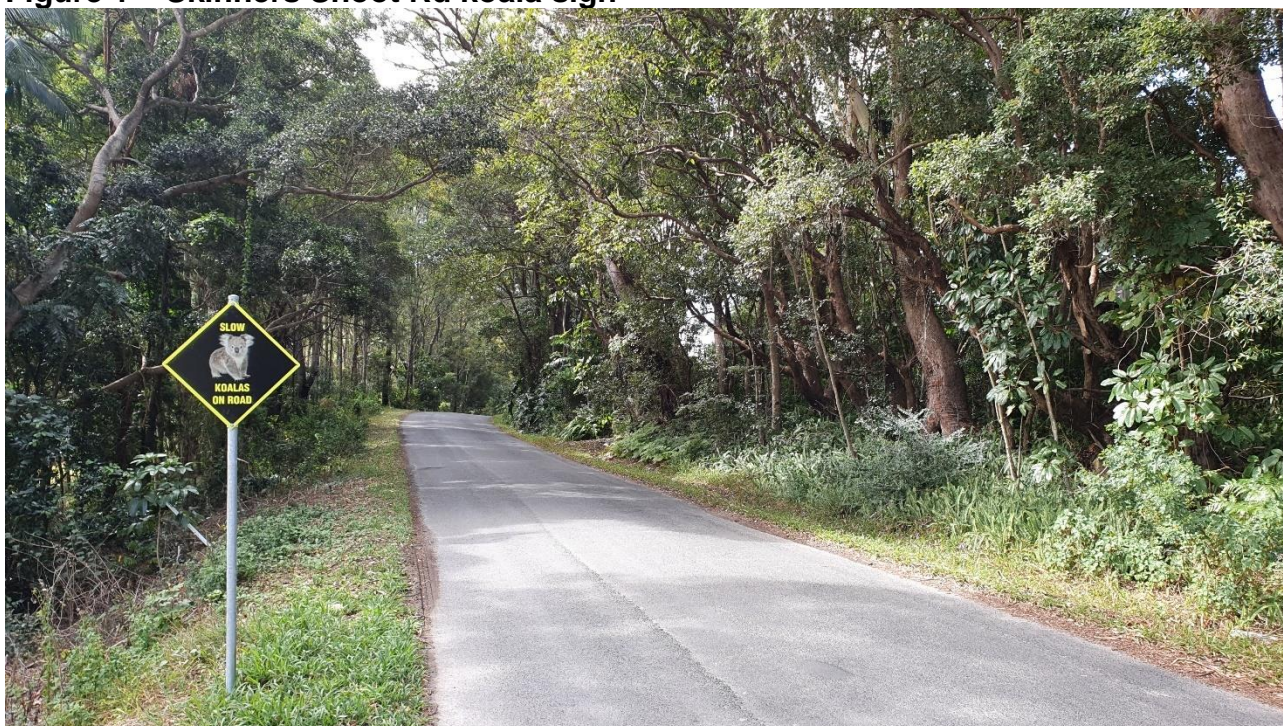


Figure 2 – Bangalow Rd wildlife sign





Figure 3 – Tyagarah Rd koala sign



- 5 At the end of the 2020-21 financial year, Council received a grant of \$12,000 from the NSW Koala Strategy for installation of a koala zone on Mafeking Rd, Goonengerry, either side of Byrangery Grass Reserve and in a known breeding koala habitat area. The koala zone includes two 6m x 7m road markings, as well as signs picturing a mother koala with a joey on her back (Figures 4 and 5).



**Figure 4 – Mafeking Rd Koala Zone**



**Figure 5 – Mafeking Rd Koala Sign**



## 5 ***Koala habitat planting projects***

Council is continuing to progress a number of projects focussed on creating or restoring koala habitat on private land, including:



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- North-East Hinterland Koala Conservation Project - This DPIE-funded project is a partnership between Tweed, Byron, Lismore and Ballina Councils and Friends of the Koala. Byron Shire Council has a budget of \$45,000 over three years for koala habitat planting and restoration on private land. 15 sites, totalling around 15 ha and over 2000 trees have been planted and maintenance work on these sites is in progress.
- Koala Food for the Future Project – the Saving our Species program has provided \$18,750 funding for koala habitat restoration on private land, with a similar methodology to the North-East Hinterland project. To date 10 sites, totalling 7.5 ha have been identified and planting is in progress.
- Council has been helping Mullumbimby High School students set up their Trees for Koalas - Connecting Communities project. Students from the school's Special Education Learning Centre and their families joined in a second planting at The Pocket on 4 May. More trees will be delivered to the school in August for planting on private properties.
- Byron Habitat Corridors Project - This Environment Trust funded project finished in March 2021. The project has resulted in planting of 6.6 ha (3983 plants) and restoration of 10.9 ha koala habitat at six private properties in Mullumbimby, Bangalow, Brunswick Heads, Myocum and Skinners Shoot, in addition to 3 community workshops and 2 community planting days.

#### ***Leash-Up Pilot Communication Project***

The Leash-Up project ran from June 2020 – June 2021, funded by a \$84,890 grant under the NSW Koala Strategy's 'Conservation through Community Action' pillar. The project developed a social behaviour change communications campaign and findings were reported to regional partners via the Northern Rivers Regional Koala Group.

The "Bow Wow Leash me Now!" leash-up project has recently been nominated as a finalist in the 2021 Local Government NSW Excellence in the Environment Awards. The online award ceremony is being held on 16 November 2021.

Leash-Up was a community engagement project aimed at increasing dog-leashing compliance in public spaces, to reduce the risk of dog-koala attacks. Rather than going straight to an education campaign, the project adopted a social marketing approach, guided by the theory of behaviour change, to engage with dog owners and understand their attitudes and social norms. This understanding enabled development of a targeted and engaging campaign, which was tested on the target audience before being deployed via television, social media and signage (Figure 6).

Use of dog-leashing as a measure of behaviour change enabled simple monitoring of the campaign at a pilot study site, and digitisation of the campaign via Facebook, Google and a website enabled us to measure the reach and influence of the campaign.

Figure 6 – Leash Up Graphics and Messaging.



Key findings were:

- 5
  - An incremental change in leashing of +11% hides more substantial behavioural changes:
    - Large dogs are now being leashed more frequently with a leashing increase of +27%
    - More dogs are being leashed on the street and at the park with a leashing increase of +20%
- 10
  - 35% of dog owners associate dog leashing with koala protection messages
  - 29% of dog owners have seen the Bow Wow TV ad
  - Disagreement that most people walk dogs on-leash has risen by +23% suggesting dog owners may be more attuned to non-leashing behaviour than prior to the campaign

- Owners of large dog may be more amenable to making changes to dog management and land management to benefit koalas and other wildlife.

5 Implementing behaviour change requires a long-term approach. To ensure project benefits are ongoing, the engagement tools developed (artwork, videos) can be reused in future by both Byron and other councils, to reinforce messages and stimulate community conversation. Results were communicated to other regional LGAs via the Northern Rivers Regional Koala Communications Group. As a pilot study, the intention was to share learnings and outputs with other councils working to conserve koalas. All artwork is available to the other regional Councils and the TV ad campaign was deployed regionally, 10 with the support of other local Councils.

15 Local Councils have a regulatory role over many issues (littering, parking, environmental health), and Council's frequently use awareness-raising campaigns to help manage regulatory issues. The methodology used in this campaign, including social marketing, behaviour change theory and testing of concepts on the target audience are applicable to community engagement campaigns across a range of issues.

Additionally, the project created a significant database of local dog owners, their demographics, views and attitudes, which provides a starting point for development of additional communications materials relating to numerous dog-owner compliance issues.

### ***Sustainable Agriculture***

#### 20 SmartFarms

The hand book for aspiring farmers - *Starting Out!- An introductory Guide to Farming in the Byron Shire* has been reprinted to allow for broader distribution. Promotion of the book is via the farmer network as well as through the organisations and individuals contributing to the book and Facebook. The book is distributed from real estate and stock and station 25 agents in the shire and distribution is also planned for rural stores.

SmartFarms workshops have commenced with over 110 people attending 4 workshops.

Smart Farms workshops completed so far:

- You and your land – planning what to do.
- Soils as part of Soils our national capital with BVL and Casino Food Co Op.
- 30 • Organic vegetable and flower Field Day hosted by Liz and Bob in Goonengerry which was filmed for Social media.
- Rotational grazing to reduce pasture weeds.

A Mentoring program has commenced and is providing a variety of mentors for farmers in a variety of ways:

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- The establishment of the Myocum grazing group assists newer farmers to learn from established farmers while they all learn from each other.
- 5 • Organic growers were invited to an organic vegetable and flower farm in Goonengerry to learn about organic growing. Networks were formed and the hosts make themselves available to discuss issues regarding organics, growing and marketing.
- Field day at a regenerative grazing farm in Myocum. The host is happy to talk cattle and regenerative farming with newer farmers starting out in the area.
- 10 • Council is partnering with the Farming Together program/Regenerative Agricultural Alliance mentor program. A 3 month program connecting 10 farmers with farming experts. There is also potential to have 12 farmers as part of the program, meeting with or having contact with a regenerative farming mentor monthly over a 12 month period.

15 Combating Pests and Weeds Grant (Commonwealth) 2020 - Agricultural advice, weed and pest animal control in Byron Shire

Tropical Soda Apple eradication in the Shire is complete. Over 5ha of the weed in the Shire has been controlled by Rous County Council which includes several follow-up controls over the last 12 months.

- 20 Five primary producing landholders are participating in the control of 5.5ha of environmental weeds (\$27k). The project is addressing a variety of weeds including pasture and riparian weeds for the benefit of both productivity and the environment.

- 25 A broad acre weed management project will address weeds on 120ha of agricultural lands by a managed grazing incentive project. As part of this project, 14 primary producers will be participating in a Regenerative Agriculture based property planning workshop in late 2021. 453ha of farmland in the Shire will be planned for managed/cell grazing.
- 30 Regenerative grazing of this type promotes pasture development and condition which competes well with many pasture weeds, as well as providing many other soil, moisture and nutrient retention benefits over the long term. Of these 12 participants, 6 farmers have been selected to receive grants up to \$4,500 to assist them to implement their plans, for purchases such as electric fences, posts, energisers and water systems on their farms (over 140ha).

#### Additional agricultural extension activities

Update on achievements since Nov 2020:

- 35 • Byron Shire Farmer Network database set up and running consisting of over 260 members. Members receive weekly information emails specific to their farming type, incentive opportunities and notifications of field days and workshops.
- 14 on site Farm Visits.

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- 11 Real estate agents/buyers sent details and pdf of the new “Starting out” and “Farmers farm and cows DO moo” guides.
- 10 “Newsletter” emails gone out to the BFN for workshops, events, and grant info.
- 200 email introductions of extension role and service to landholders with properties over 30 acres.
- Agriculture extension role and service with contact numbers put in the latest Rates notice distributed to all rate payers in the Shire.
- Presenter/Speaker at 6 events in the Shire

#### ***Flying-fox Management***

- 10 A Flying-fox Project Reference Group meets quarterly to discuss issues, upcoming projects and community concerns. The group is a good sounding board, representing the local neighbourhoods of the flying-fox camps in the Shire. They also work well as a conduit for information to their local areas.

#### Flying-fox Camp Management Plan Implementation:

- 15 The Flying-fox Camp Management Plan (2018-2023) has been implemented over the last 3 years with funds from Council, LGNSW and a State grant.

- 20 The LGNSW funded a \$40,000 project to create a 10m vegetation buffer between houses in Colins St Bangalow and the Paddys Ck flying-fox camp. This effectively moved flying-foxes away from the neighbourhoods back yards, reducing the impacts on the households considerably with regard to noise, smell, mess and the use of their own back yards.

- 25 The NSW Environmental Trust funded the Flying-Improvements project to the value of \$79,500 over 3years and the project will be completed by December 2021.  
Project outcomes include:

- Contribution to Flying-fox management officer salary over 2 years
- 6ha of Flying-fox camp rehabilitation by bush regeneration (3 camps)
- 1260 riparian and rainforest plants for camp rehabilitation
- 180m of riparian rehabilitation
- 100m2 of riverbank stabilisation
- 4 media releases discussing the values of Flying-foxes to the environment.

Council has noted a reduction in complaints from the community compared to before the projects were commenced.

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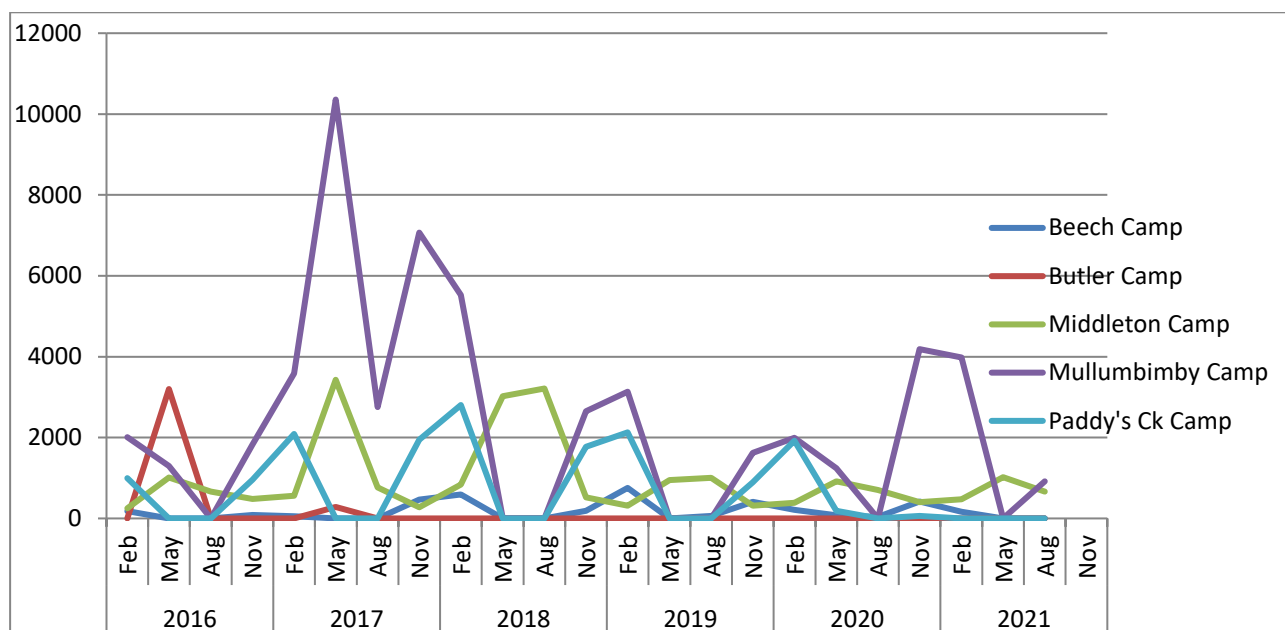
13.8

### Camp Monitoring

The CSIRO Flying-fox census is carried out quarterly each year. The results of the National Census from 2016 are tabled below and in Figure 7.

		Beech Camp Suffolk Park	Butler St Camp Byron Bay	Middleton Camp Byron Bay	Mullumbimby Camp Bruns R.	Paddy's Ck Camp Bangalow
2016	Feb	180	0	250	2010	1000
	May	0	3200	1016	1300	0
	Aug	0	0	660	0	0
	Nov	84	0	478	1826	955
2017	Feb	57	0	562	3584	2088
	May	0	285	3429	10359	0
	Aug	0	0	767	2755	0
	Nov	469	0	276	7072	1947
2018	Feb	596	0	835	5522	2805
	May	0	0	3020	0	0
	Aug	0	0	3214	0	0
	Nov	187	0	521	2654	1776
2019	Feb	755	0	318	3132	2128
	May	0	0	947	0	0
	Aug	64	0	1002	0	0
	Nov	411	0	317	1623	891
2020	Feb	214	0	388	1995	1919
	May	80	0	914	1242	187
	Aug	36	0	702	0	0
	Nov	415	0	405	4190	65
2021	Feb	167	0	476	3980	0
	May	0	0	1017	0	0
	Aug	0	0	665	920	0
	Nov					





**Figure 7. Total number of Flying-foxes counted at the 5 managed camps in Byron Shire**

### ***Pest Animal Management Plan***

#### **5 Wild Dogs, Cats and Foxes**

Trapping is on-going on Council lands through our contractor- JR Trapping. JR Trapping was also engaged by Council to trap on private land in the Shire for 23 trapping weeks under the Australian Government Drought Pest and Weeds project.

10 In the 2020-21 year, 1 dog and 1 fox were trapped on Council land at the West Byron STP and the Waste Recovery Centre in Myocum.

In total, in the 2020-21-year, JR Trapping trapped 36 dogs, 27 foxes and 6 cats were trapped in the Shire for Council by JR Trapping.

A contract for a further 8 trapping weeks on private land until the end of June 2021 will commence shortly, funded by Australian Government Drought Pest and Weeds project.

15 Council participated in a feral cat trapping project funded by NCLLS. Priority areas were identified following consultation with Council staff, BVL and JR Trapping. 17 cats were trapped in this project by JR Trapping as contractors.

#### **Feral Deer**

20 A young male Rusa deer was found in the north of the Shire on Tuesday 3 August. This was the first record of a deer in the Shire. The deer was dispatched that day by a local hunter.

A media report was sent to all outlets and was picked up by newspapers and radio. The main messages for the community included:

- to report all sightings on Feralscan ([www.feralscan.com.au](http://www.feralscan.com.au)). A recording alerts the NCLLS, DPI and Council.
- landholders have a biosecurity obligation to control all pest weeds and animals on their land

5 No other sightings have been recorded in the Shire since.

Council is participating in an awareness campaign with neighbouring Councils to make sure people know what to do if they do spot a deer in the Shire. For more information about deer and the campaign in the Northern Rivers go to [www.feraldeeralert.com.au](http://www.feraldeeralert.com.au)

### Indian Myna

10 Myna trapping has been a success so far with great results for the 20/21 year.

- 11 community members are involved in the Shire
- 7 members received 1:1 training and follow-up with dispatching of trapped birds
- 95 Indian Mynas trapped so far.

15 Council has received another 6 cage traps and the trapping program has re-commenced this Spring.

### ***Bringing Back the Bruns***

#### Fish Habitat Restoration Program – Federal Grant

20 Contracting, sub-contracting and design discussions have commenced with partners NCLLS and Soil Conservation Service for the *Bringing Back the Bruns* project on the Brunswick River in Mullumbimby.



**Figure 8. Fish Habitat Restoration Program project site in red**

A 190m bank of the upper Brunswick River estuary has been identified in the Brunswick Coastal Zone Management Plan as a strategic project site (CZMP B8), Figure 8. There is major bank undercutting and erosion with a narrow and sparse riparian vegetation buffer (Figure 9). The primary cause is channel meander migration, accelerated by the lack of riparian vegetation and possibly wave action from the wind and boats. The eroding bank contributes towards poor water quality of the Brunswick River estuary. This, with the lack of a functioning riparian zone means that there is poor aquatic and minimal terrestrial habitat at the site.

The project is twofold - to stabilize and rehabilitate the riverbank using designs and techniques that will also provide habitat on the bed and bank. The landholder has committed to providing and maintaining appropriate riparian vegetation to a minimum 12m from the top of the riverbank, stock fencing and on-going maintenance to complete the project and ensure its on-going estuarine and terrestrial habitat value. The project will incorporate innovative bank stabilization designs which will provide diversity to the aquatic habitat and promote colonization of stabilizing mangroves. In time the structures will degrade and disappear, leaving mangroves and other local native riparian vegetation to maintain the stability of the bank and provide native habitat.



**Figure 9. Fish Habitat Restoration Program restoration site on Brunswick River**

**Project Objectives:**

1. Reduce ongoing sediment and poor water quality entering the Brunswick River, to improve aquatic habitat.
2. Provide, improve and secure aquatic and riparian habitat on strategic reaches of the Brunswick River.
3. Stabilise the riverbank using structures of natural materials that will encourage colonization of mangroves and degrade overtime leaving local native vegetation to stabilise the riverbank and provide aquatic and terrestrial habitat.

Planned on-ground outcomes:

Significant aquatic and riparian rehabilitation along a strategic reach on the Brunswick River estuary. It is anticipated the project will achieve:

- 190m of stable riverbank,
- 5 • improved aquatic habitat,
- 190m of fenced riparian zone,
- 0.2ha riparian rehabilitation,
- the establishment of an extra 600 riparian plants ,
- 10 • Landholder Management Agreement to maintain the outcomes of the project for at least three years to assist the establishment and on-going maintenance of aquatic and riparian habitat.

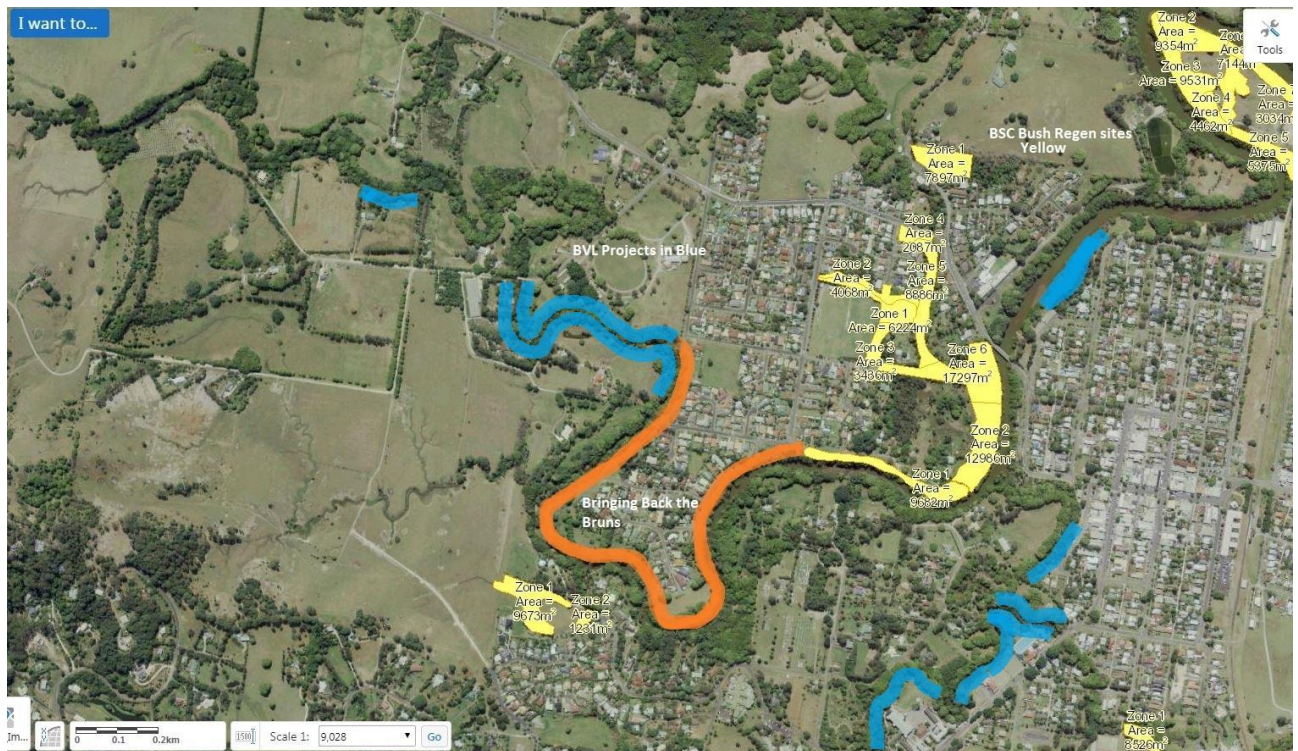
The project has been extended by 6 months due to the delayed release of the funding agreement to NCLLS.

**Fisheries Habitat Action Grant (Federal) – Mullumbimby Riparian Riverbank Project**

- 15 1.8km (Figure 10, orange area) of bush regeneration has been completed by contractors. Councils Bush Regeneration Team will be maintaining the site quarterly to encourage a dense native riparian zone for the benefit of improved water quality, terrestrial and aquatic habitat. Two community information days were held at the site to inform the project and to promote good riverbank management by the local community.

20





**Figure 10. Habitat Action Grant project site in Orange. Brunswick Valley Landcare sites in Blue. BSC Bush Regeneration sites in Yellow**

## 5 ***Keeping Cats Safe at Home' Project - RSPCA NSW***

In October Council launched a new web page on responsible cat ownership: [Responsible cat ownership - Byron Shire Council \(nsw.gov.au\)](https://www.byrongov.au/responsible-cat-ownership). This website provides regarding the impact of domestic cats on native wildlife and what people can do to protect their cats and wildlife, including tips on building a 'catio' (enclosed outdoor space for cats) and walking your cat on a lead.

This information will also support the *RSPCA Keeping Cats Safe At Home* project, which Council is about to start participating in. This is a 4-year behaviour change project run by the RSPCA and supported by the NSW Environment Trust, which will encourage cat owners to keep their cats safe at home through a range of project activities. The RSPCA will be developing tailored behaviour change strategies for 10 successful Councils (of which Byron Shire Council is one), which may include social marketing, school visits, community engagement events, and GPS trackers to help owners understand the impact of their cat and support with desexing and building cat enclosures.

The community consultation phase of this project is currently in progress, with a '*what do you think about cats?*' online survey running until November 2021. Behaviour change strategies will be developed and implemented from January 2022-Jan 2025.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>	<b>Code</b>	<b>OP Activity</b>
Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community	Enhance community safety and amenity while respecting our shared values	Enhance public safety, health and liveability through the use of council's regulatory controls and services	2.4.3.6	Facilitate companion animals education
Community Objective 3: We protect and enhance our natural environment	Partner to protect and enhance our biodiversity, ecosystems and ecology	Protect and enhance our natural environment and biodiversity	3.1.1.1	Implement the Biodiversity Conservation Strategy
			3.1.1.2	Revise Wildlife Corridor Mapping (Biodiversity Conservation Strategy action)
			3.1.1.6	Investigate opportunities for Council to provide incentives for landholders to conduct restoration works on their properties that will assist with long term biodiversity conservation.(Biodiversity Conservation Strategy action)
			3.1.1.9	Implement the Flying Fox Camp Management Plan
			3.1.1.10	Continue to undertake the Flying Fox National Census
			3.1.1.11	Implement the Koala Plan of Management



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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			3.1.1.12	Partner with key stakeholders on koala research and management projects, including - NE Hinterland Koala Conservation Project - North Coast Koala Linkage and - Maximising outcomes for koalas on private land project. (Koala Plan of Management action)
			3.1.1.13	Deliver and report on feral animal projects (Action in Pest Animal Management Plan)
			3.1.1.14	Deliver the pests and weeds grant funded project
Community Objective 3: We protect and enhance our natural environment	Strive to become a sustainable community	Support community environmental and sustainability projects	3.2.2.1	Provide coastal, environmental and sustainability information and encourage and support community activities and groups
			3.2.2.2	Participate in regional sustainability and environmental working groups and initiatives.
			3.2.2.4	Support Friends of the Koala, Bangalow Koalas and Wires through the Regional Koala Communications Group.
			3.2.2.5	Support Brunswick Valley Landcare to deliver the Land for Wildlife Program and biodiversity enquiries

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Community Objective 3: We protect and enhance our natural environment	Partner to protect and enhance the health of the Shire's coastlines, estuaries, waterways and catchments	Implement Coastal Management Program	3.3.1.3	Continue Bringing Back the Brunswick River Project
Community Objective 3: We protect and enhance our natural environment	Support and secure our farming future	Develop and implement strategies to support agriculture, agri-business and farmers	3.4.1.1	Finalise and commence implementation of the Agriculture Action Plan
			3.4.1.2	Continue to deliver Smart Farms – Small Grants project
			3.4.1.3	Continue to convene Agricultural Cluster Group Meetings

#### Legal/Statutory/Policy Considerations

Not applicable to the report.

#### Financial Considerations

Where relevant, budgets for specific projects noted above.

#### 5 Consultation and Engagement

Not applicable to the report.

## Report No. 13.9      Update Resolution 20-203 Linnaeus Estate

**Directorate:** Sustainable Environment and Economy

**Report Author:** Shannon Burt, Director Sustainable Environment and Economy  
Alex Caras, Land Use Planning Coordinator

5    **File No:** I2021/1619

### Summary:

Council considered Report No 13.3 - PLANNING - 26.2018.2.1 The Linnaeus Estate - Options for proceeding with Community Title Subdivision at the Ordinary (Planning) Meeting of 21 May 2020 [Agenda of Ordinary \(Planning\) Meeting - 21 May 2020 \(infocouncil.biz\)](#) and resolved as follows:

#### Resolved 20-203:

1. That Council:
  - a) Note the report PLANNING - 26.2018.2.1 The Linnaeus Estate - Options for proceeding with Community Title Subdivision.
  - 15    b) Support the preparation of an amended planning proposal for Lot 1 DP 1031848, Broken Head Road, Broken Head (The Linnaeus Estate) that rectifies the issues noted in this report.
  - c) Require the proponent to provide a current coastal hazard study that informs the amended planning proposal to Council's satisfaction.
  - 20    d) Receive a further report that considers (i) proposed amendments to the planning proposal, (ii) the outcomes of the coastal hazard study, and (iii) submissions that were received during the public exhibition period.
2. That any planning proposal and/or development application consultation and engagement period reflects the Community Participation Plan namely that: Before the lodgement of a planning proposal and/or development application for community significant development, the applicant must:
  - carry out a community meeting or workshop to be facilitated by Council;
  - notify adjoining and surrounding landowners and known community groups; and
  - 30    • ensure the community has adequate time to consider and comment on the proposal.
3. That Council request the proponent to submit a current audit of buildings, structures and works on site to enable Council staff to review against existing consents and approvals to assess compliance. This audit is to be submitted within three months.
- 35    This report provides an update on the status of each of the points of the resolution.

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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#### **RECOMMENDATION:**

##### **That Council:**

1. Notes the staff update on Resolution 20-203 The Linneaus Estate - Options for proceeding with Community Title Subdivision.
2. In noting the site inspection findings (section 5 of the audit), understands that staff will do the follow up with the landowner (and do a site inspection if deemed necessary) to clarify the nature of the minor inconsistencies identified between some of the building forms on site as they appear in the various approval documentation on file.

##### **Attachments:**

- 1 Attachment 1 - 26.2018.2.1 Site Audit - Planning Ingenuity Draft Report Version 2 - 951 Broken Head Road, E2021/127687 

## Report

### Update on Resolution 20-203

Resolution points are addressed below.

5    **1. That Council:**

- a) Note the report PLANNING - 26.2018.2.1 The Linnaeus Estate - Options for proceeding with Community Title Subdivision.**

      This part of the resolution is complete.

10

- b) Support the preparation of an amended planning proposal for Lot 1 DP 1031848, Broken Head Road, Broken Head (The Linnaeus Estate) that rectifies the issues noted in this report.**

15    This part of the resolution as it relates to the application of minimum lot sizes to strata and community title schemes in Environmental and Special purpose zones is complete as per Planning Proposal (House Keeping).

20    [Housekeeping amendments - Byron Shire Council \(nsw.gov.au\)](https://www.byrongov.au/Planning/Amendments/Housekeeping%20amendments)

20

      Any future changes to the zoning of the subject land will need to be considered by a separate Planning Proposal, which can be Council and or landowner initiated.

- 25    **c) Require the proponent to provide a current coastal hazard study that informs the amended planning proposal to Council's satisfaction.**

      The subject land is part of the Coastal Management Program Southern Coastline.

30    [Coastal Management Program Southern Coastline - Byron Shire Council \(nsw.gov.au\)](https://www.byrongov.au/Planning/Amendments/Coastal%20Management%20Program%20Southern%20Coastline)

30

      The Coastal Management Program for the Southern Coastline is a long-term strategy to guide the management of issues to the:

- 35
  - Coastal areas from Broken Head in the south to Cape Byron in the north.
  - Coastal creeks and lakes including Belongil Creek estuary, Tallow Creek estuary, Ti Tree (Taylor's) Lake and their wider catchments.

      A coastal hazard study currently underway will include the subject land.

40    This study is a prerequisite to inform any future planning proposal for the subject land.

- 45    **d) Receive a further report that considers (i) proposed amendments to the planning proposal, (ii) the outcomes of the coastal hazard study, and (iii) submissions that were received during the public exhibition period.**

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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This report is dependent on b) and c) above.

2. **That any planning proposal and/or development application consultation and engagement period reflects the Community Participation Plan namely that:**
- 5 **Before the lodgement of a planning proposal and/or development application for community significant development, the applicant must:**
- **carry out a community meeting or workshop to be facilitated by Council;**
  - **notify adjoining and surrounding landowners and known community groups; and**
  - 10 • **ensure the community has adequate time to consider and comment on the proposal.**

This part of the resolution will be met by the landowner/proponent as required.

- 15 3. **That Council request the proponent to submit a current audit of buildings, structures and works on site to enable Council staff to review against existing consents and approvals to assess compliance. This audit is to be submitted within three months.**

The above resolution followed a complaint submitted to Council and issues raised in public access during the 21 May Council Meeting.

20 On 11 August 2020, the landowner submitted an audit to Council seeking to address the above Council resolution.

Following this, Council staff engaged an independent planning consultant to review the audit report to assess compliance.

25 Staff acknowledge the significant time delay since receipt of the audit report from the landowner until now. This is explained by difficulties in engaging a consultant in a timely manner for various reasons including COVID restrictions, to undertake the review.

The audit report in full is Attachment 1. The conclusions of the audit report follow.



Approved development

As outlined in Section 4 of this Audit Report, the majority of buildings that the landowner has noted on site are accounted for in DA approvals and subsequent CC and OC approvals. However, there are some inconsistencies in the documentation provided that will require clarification from the landowner and/or Council staff. It is also noted that we have not been provided Occupation Certificates for Buildings 16 and 29, which have been constructed on site.

There also appears to be some minor inconsistencies in relation to the Court approved DA plans and stamped CC plans for Buildings 2 to 22. These inconsistencies relate to the building form, however do not appear to add any significant bulk to those buildings. It is noted that all of the constructed buildings have obtained Occupation Certificates. Thus, it is likely that any inconsistencies between plans were accepted by Council prior to occupation of those buildings.

Site inspection findings

As indicated in Section 5, a site inspection will be undertaken following clarification of certain aspects being provided by the applicant and from further review of Council files if necessary.

Land use

In addition to the above, there appears to be some ambiguity with regards to the use of buildings on the site. The development on site was approved as a private education facility with ancillary accommodation. This included the provision of "academic, cultural and vocational" programs on the site. Over time, through numerous modifications and new DAs on the site, the size and quantum of 'non-educational' buildings has expanded. Each of these has been consented under the auspice of being ancillary to the main private educational use. However, a number of these buildings appear to be capable of being inhabited independently and it is not entirely clear what connection they have to the main private educational use of the site.

It is noted that tourist or visitor accommodation is permitted on the site as an 'additional permitted use', but only where it is ancillary to the private educational use and is for the purpose of providing education or training for professional and personal development through a variety of academic, cultural and vocational programs. The nature of use is a matter of fact and is outside the ambit of this audit. Notwithstanding, the nature of use is central to the approvals on the site and further investigation in this regard is recommended.

Given the above, it is recommended that Council note the findings.

- 5 In noting the site inspection findings (section 5 of the audit), understand that staff will do the follow up with the landowner (and do a site inspection if deemed necessary) to clarify the nature of the minor inconsistencies identified between some of the building forms on site as they appear in the various approval documentation on file.

## **Strategic Considerations**

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

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>	<b>Code</b>	<b>OP Activity</b>
<b>Community Objective 4: We manage growth and change responsibly</b>	4.1: Support the visions and aspirations of local communities through place-based planning	4.1.3: Manage development through a transparent and efficient assessment process	<b>4.1.3.5</b>	Respond to and investigate complaints against building standards

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
	and management			

### **Recent Resolutions**

- 20-203

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

As discussed in the report.

### **5 Financial Considerations**

Not applicable to this report.

### **Consultation and Engagement**

As noted in reference to the Resolution 20-203.

## Report No. 13.10 Update Resolution 21-273 Emergency Housing

**Directorate:** Sustainable Environment and Economy

**Report Author:** Shannon Burt, Director Sustainable Environment and Economy

5 **File No:** I2021/1620

### Summary:

Council at the Ordinary (Planning) Meeting of 5 August 2021 considered a Notice of Motion 9.2 Emergency Housing [Agenda of Ordinary \(Planning\) Meeting - Thursday, 5 August 2021 \(infocouncil.biz\)](#) and resolved as follows:

10 **21-273 Resolved** that Council:

1. Requests staff to prepare a report to Council prior to submitting a development application and any required supporting local approval applications for a "Transitional Supported Accommodation" development made under existing definitions in the Local Environmental Plan 2014, on that part of Lot 22 identified for Affordable Housing in the "Plan of Management Community Land Mullumbimby Sports Fields" that meets the following parameters:

20 *"Transitional Supported Accommodation" is temporary accommodation to bridge the gap from those in insecure housing or at risk of homelessness to permanent housing and is located as close as possible to existing residential facilities and social support services.*

*"Temporary accommodation" is a residential use or development for a period of not more than 48 months from the date on which an occupation certificate is issued under the Act.*

2. Requests an update on the progress of the emergency accommodation for women that was requested by the Community Centre and advises the timeframe in which this may be delivered.

3. Requests a report exploring the potential and highlighting the barriers for the Old Mullumbimby Hospital Site to be used for temporary accommodation until the permanent use of the site has been finalised.

4. Provides a report on any Council land zoned RE1 and the barriers which would prevent it under the current rules from providing emergency accommodation as per 1. above.

This report presents an update on each of the items of the resolution.

35




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**RECOMMENDATION:**

**5 That Council:**

- 1. Notes the staff update on Resolution 21-273 Emergency Housing.**
- 2. Not proceed with the preparation of a development application for Transitional Supported Accommodation on part of Lot 22, and instead continues to look for more appropriate, less constrained sites for this type of development.**
- 10 3. Continues to work with the other member councils in the NRJO on potential housing solutions for our region.**
- 4. Continues to work with relevant state government agencies, housing providers and local housing groups to deliver (on ground) safe, secure and location appropriate housing solutions for Byron Shire locals and key workers.**
- 15 5. Continues to advocate and agitate for housing policy change and financial support from the state and commonwealth governments where opportunities arise.**

**Attachments:**

- 20 1 FINAL Transitional Supported Accommodation Lt 22 Stuart St Mullumbimby, E2021/127099**  

- 2 Precinct Structure Plan - Deicke Richards - Mullumbimby Former Hospital Site - Outcome of Charette, E2021/127103** 
- 3 Mullumbimby Hospital PRG - adopted recommendations November 2018, E2021/127118** 

25

## Report

### Update on Resolution 21-273

Resolution items are addressed below.

1. Requests staff to prepare a report to Council prior to submitting a development application and any required supporting local approval applications for a “Transitional Supported Accommodation” development made under existing definitions in the Local Environmental Plan 2014, on that part of Lot 22 identified for Affordable Housing in the “Plan of Management Community Land Mullumbimby Sports Fields” that meets the following parameters:

*“Transitional Supported Accommodation” is temporary accommodation to bridge the gap from those in insecure housing or at risk of homelessness to permanent housing and is located as close as possible to existing residential facilities and social support services.*

*“Temporary accommodation” is a residential use or development for a period of not more than 48 months from the date on which an occupation certificate is issued under the Act.*

Council engaged an independent planning consultant to prepare a report to outline the planning controls that apply to the subject land and the constraints and opportunities that are relevant in the preparation of a development application for Transitional Supported Accommodation (point 1). It also provides an assessment against the planning controls that may limit the use of any land zoned RE1 for emergency accommodation point 4.

The report in full is Attachment 1.

In summary the report finds that

- *An application for Transitional Supported Accommodation could be prepared for the subject land, but only in the form of a caravan park that includes permanent sites.*
- *However, the subject land is highly constrained and as little as 1 hectare of the 3.4-hectare site is likely to be able to be used as a caravan park.*
- *By comparison, the Glen Villa Resort in Byron Bay is located on a 5.5-hectare site with approximately 2.5 hectares allocated to cabins.*
- *Moveable dwelling sites are required to be a minimum of 80 m<sup>2</sup>. With fire separation distances and the need for roads, landscaping and other infrastructure, the actual yield is likely to be as low as 40 sites.*
- *The cost of extending services to the sites as well as the cost of filling and achieving a flood resilient access across the railway line and back to Stuart Street are likely to be excessive and difficult to balance against the low yield while still achieving low-cost accommodation.*

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- *It is not certain that access across the rail line would be provided by the NSW government.*
- *A development application for a caravan park to be used for Transitional Supported Accommodation on part Lot 22 would take a long time to prepare and would be expensive. It would have a low probability of success and be expensive to construct and service if it were approved.*

Given the above, it is recommended that Council not proceed with the preparation of a development application for Transitional Supported Accommodation on part of Lot 22, and instead continues to look for more appropriate, less constrained sites for this type of development.

2. **Requests an update on the progress of the emergency accommodation for women that was requested by the Community Centre and advises the timeframe in which this may be delivered.**

A contract has been signed for a moveable dwelling to be installed onsite at Suffolk Beachfront Holiday Park by 2 February 2022. The moveable dwelling consists of a living space of 54 square metres, 2 bedrooms, 1 bathroom and all modern amenities. The original delivery timeframe for the dwelling was 12 months due to COVID-19 supply implications, however given the nature of the emergency accommodation the supplier was able to expedite and agree to deliver within a 4-month window.

3. **Requests a report exploring the potential and highlighting the barriers for the Old Mullumbimby Hospital Site to be used for temporary accommodation until the permanent use of the site has been finalised.**

There following factors prevent the site from being used for temporary accommodation at this time.

#### Site contamination

Following the demolition and removal of the asbestos contaminated hospital buildings, additional contamination was discovered on the site. Council has engaged a registered auditor to progress remediation under the provisions of the NSW Contaminated Land Management Act 1997.

Specialist consultants have completed the detailed site investigation (DIS) which has been accepted by the auditor and will be the basis for the development and implementation of a remediation action plan (RAP) and associated works.

Following completion of the RAP works, the validation of the RAP will comprise a site survey to confirm compliance with the technical specifications of the capping containment structure. The outcomes of RAP process will be addressed in an environmental management plan (EMP) for the future management and use of the site.



The status of the site remediation and associated requirements were the subject of Report No. 13.16 Remediation Mullumbimby Hospital Site to the [Agenda of Ordinary Meeting - Thursday, 28 October 2021 \(infocouncil.biz\)](#)

### Land use zoning

- 5 The site is currently zoned SP2 Infrastructure (Health Services Facility). Under this zoning only those land uses defined can be permitted with approval/consent. Temporary accommodation, transition supported accommodation and any other forms of residential accommodation are not permitted land uses.

- 10 In keeping with the recommendations of the Mullumbimby Hospital Site Project Reference Group (Attachments 2 and 3) it remains Council's aim that the property is developed to include a range of community uses including housing and associated support services. Council's Place Planning team is continuing to work on this aspect of the project while the remediation is being finalised. Further updates will be provided to Council as their work progresses.

- 15 **4. Provides a report on any Council land zoned RE1 and the barriers which would prevent it under the current rules from providing emergency accommodation as per 1. above.**

The report referred to in point 1 also includes commentary about point 4 as follows:

- 20 • *It has also been requested to identify the planning controls that may limit the use of any land zoned RE1 for emergency accommodation wherever it may occur (point 4).*
- 25 • *Emergency accommodation is not a use defined in Byron LEP 2014 and is therefore a prohibited use in the RE1 zone where all uses not specifically identified as permitted are prohibited. The only potentially useful permitted use is caravan parks. Although caravan parks are a permitted use in the zone, this does not mean that all land zoned as RE1 is suitable for that use. Being a permitted use means that you can prepare and lodge a development application, but it does not mean it has to be approved.*
- 30 • *The approval process is a merit assessment that is specific to each site. The objectives of the RE1 zone indicate that it is not the intention of this zone to provide emergency accommodation or residential accommodation. A caravan park that is aimed at the tourist related market (at least in part) is more likely to achieve the zone objectives than one dedicated to providing long-term accommodation for singles and families to live in (long term is greater than three months).*
- 35
- 40 • *Although Byron LEP 2014 does not require a development to be consistent with all of the zone objectives, there is an expectation that Council will still need to justify the inconsistency with the objectives on the basis of the suitability of the site and the merits of the caravan park development proposed.*

- Any application will also need to address the provisions of Byron Shire Development Control Plan 2014 – Chapter D3 section D3.3.3. Subclause 3. a) to i) provides a good summary of the issues and controls that are likely to limit the use of any land zoned RE1 for a caravan park, including sites for long-term occupation.
- The relevant regulation for caravan parks in NSW is the Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005, which sets standards for:
  - the design, construction, maintenance and operation of caravan parks and camping grounds;
  - the design, construction and installation of manufactured homes and other moveable dwellings; and
  - promotion of the health, safety and amenity of the occupiers of those dwellings.
- A caravan park would need to comply with this regulation.
- An approval under section 68 of the Local Government Act 1993 is also required to operate a caravan park or camping ground. This must be renewed every five years.

### **Next steps**

That Council continues to work with the other member councils in the NRJO on potential housing solutions for our region.

That Council continues to work with relevant state government agencies, housing sector providers and local housing groups to deliver on ground safe, secure and locationally appropriate housing solutions for Byron Shire locals and key workers.

That Council continues to advocate and agitate for housing policy change and financial support from the state and commonwealth governments where opportunities arise.

## **Strategic Considerations**

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

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
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<b>Community Objective 4: We manage growth and change responsibly</b>	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
<b>Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community</b>	2.2	Support access to a wide range of services and activities that contribute to the wellbeing of all members of the Byron Shire community	2.2.1	Develop and maintain collaborative relationships with government, sector and community

### **Recent Resolutions**

- 21-112
- 21-062
- 21-066
- 5 • 21-122
- 21-123
- 21-253
- 21-273

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

- 10 As discussed in the report.

### **Financial Considerations**

As discussion in the report.

### **Consultation and Engagement**

Not applicable to the report.

# **Report No. 13.11 Resolution 21-221 Multiple Occupancies and Rural Workers Cottages & Resolution 21-275 MOs and CTs - pathway for secondary dwellings and dual occupancies**

5 **Directorate:** Sustainable Environment and Economy

**Report Author:** Shannon Burt, Director Sustainable Environment and Economy  
Alex Caras, Land Use Planning Coordinator  
Chris Larkin, Manager Sustainable Development

**File No:** I2021/1621

## 10 **Summary:**

Council at the Ordinary Meeting of 24 June 2021 considered a Notice of Motion No. 9.2 Multiple Occupancies and Rural Workers Cottages [Agenda of Ordinary Meeting - Thursday, 24 June 2021 \(infocouncil.biz\)](#) and resolved as follows:

**21-221 Resolved** that Council:

- 15 1. Prepares a report exploring the possibilities, hurdles, and opportunities for continuing Multiple Occupancies and Community Title as a pathway to providing more options for accessible and affordable housing in the Byron Shire.
2. Prepares a report on pathways to encourage the use of rural workers' cottages to provide accommodation for farmers wanting to live and work on the land.
- 20 3. Progress points 1 and 2 as part of the review of the RLUS to commence FY21/22. Noting this review will enable a fresh dialogue with relevant state government agencies on the current needs of our rural community five years on from the original RLUS adoption.
- 25 Separate and subsequently, Council at the Ordinary (Planning) meeting of 5 August 2021 considered Notice of Motion No. 9.5 MOs and CTs – pathway for secondary dwellings and dual occupancies [Agenda of Ordinary \(Planning\) Meeting - Thursday, 5 August 2021 \(infocouncil.biz\)](#) and resolved as follows:

- 30 **21-275 Resolved** that Council investigates how to enable a workable pathway to facilitate secondary dwellings on Multiple Occupancies and to facilitate secondary dwellings and/or dual occupancies on Community Titles.

Multiple Occupancies (MO) and rural Community Title (CT) developments have had various approval pathways in the past.

- 35 Both resolutions have requested a further report on the current pathways to enable new MO or CT development and to facilitate secondary dwellings on existing MOs and to facilitate secondary dwellings and/or dual occupancies on existing CTs.

This report addresses those parts of the above resolutions in more detail.

**RECOMMENDATION:**

**5 That Council:**

- 1. Notes the staff update on Resolution 21-221 Multiple Occupancies and Rural Workers Cottages & Resolution 21-275 MOs and CTs - pathway for secondary dwellings and dual occupancies.**
- 10 2. Requests staff to prepare and submit a planning proposal to the Department of Planning Industry and Environment for Gateway Determination to amend clauses 4.1B and 4.2B Byron Local Environmental Plan 2014 to:**
  - 15 i. remove the restriction of one dwelling per neighbourhood lot and make any other necessary changes to permit dual occupancy and secondary dwellings on existing Multiple Occupancy and rural Community Title development; and**
  - ii. update where relevant the assessment criteria for Multiple Occupancy and rural Community Title development.**

20

## Report

### Update on Resolution 21-221

Resolution items are addressed below.

- 5     **1. Prepares a report exploring the possibilities, hurdles, and opportunities for continuing Multiple Occupancies and Community Title as a pathway to providing more options for accessible and affordable housing in the Byron Shire.**

10    See discussion below.

- 2. Prepares a report on pathways to encourage the use of rural workers' cottages to provide accommodation for farmers wanting to live and work on the land.**

15    Rural workers dwellings across the Shire were originally approved to help landowners manage the ongoing viability of their farm holdings. But in many cases the size and viability of these farm holdings have been reduced over the years due to a wide variety of reasons including aging of farmers, loss of economic viability, declining farming skills in younger generations and sales of portions of the original property.

20    Clause 16 of Byron LEP 1988 enables development consent to be obtained for a rural worker's dwelling provided that certain conditions are met. The LEP 1988 applies to that land deferred from LEP 2014.

### **16 Rural workers' dwellings**

- (1) *This clause applies to land within Zones Nos 1 (a), 1 (b1), 1 (b2), 1 (d), 7 (c) or 7 (d).*
- 25    (2) *The council shall not consent to the erection of a rural workers' dwelling on land to which this clause applies unless—*
- (a) *the erection of the additional dwelling will not impair the suitability of the land for agriculture,*
- (b) *the needs of existing agriculture genuinely require that rural workers reside on the land,*
- 30    (c) *any other rural workers' dwellings on the land are being used by persons substantially engaged in agricultural employment on that land, and*
- (d) *the rural worker to occupy the dwelling is to be employed by the owner of the land.*
- 35    (3) *A rural worker's dwelling may, with the consent of the council, be erected on a parcel of land to which this clause applies on which a rural worker's dwelling is already in existence if the number of such dwellings does not exceed one for each 40 hectares of land contained within the parcel.*



A rural worker's dwelling under Byron LEP 1988 is defined as:

**rural worker's dwelling** means a dwelling which is on land upon which there is already erected a dwelling and which is occupied by persons engaged in rural occupation on that land.

- 5 Clause 4.2C of Byron LEP 2014 also enables development consent to be obtained for rural worker's dwellings provided that certain conditions are met.

**4.2C Erection of rural workers' dwellings on land in Zones RU1 and RU2**

- (1) *The objective of this clause is to ensure the provision of adequate accommodation for employees of existing agricultural or rural industries.*
- 10 (2) *This clause applies to land in the following zones—*
- (a) *Zone RU1 Primary Production,*
- (b) *Zone RU2 Rural Landscape.*
- (3) *Development consent must not be granted for the erection of a rural worker's dwelling on land to which this clause applies, unless the consent authority is satisfied that—*
- 15 (a) *the development will be on the same lot as an existing lawfully erected dwelling house, and*
- (b) *the development will not impair the use of the land for agricultural or rural industries, and*
- 20 (c) *the agriculture or rural industry being carried out on the land has a demonstrated economic capacity to support the ongoing employment of rural workers, and*
- (d) *the development is necessary considering the nature of the agriculture or rural industry land use lawfully occurring on the land or as a result of the remote or*
- 25 *isolated location of the land.*

A rural worker's dwelling under the Byron LEP 2014 is defined as:

- rural worker's dwelling** means a building or place that is additional to a dwelling house on the same lot and that is used predominantly as a place of residence by persons employed, whether on a long-term or short-term basis, for the purpose of agriculture or a rural industry on that land.
- 30

The Department of Primary Industry provides advice to councils to determine if rural workers dwellings should be provided for in their LEP together with some relevant planning considerations.

Topics include:

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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- Are rural workers dwellings needed?
- Recommended approaches
- Developing relevant criteria for rural workers dwellings

See [Rural Workers Dwellings \(nsw.gov.au\)](https://www.nsw.gov.au/rural-workers-dwellings)

- 5 Under the RU1 and RU2 zones of Byron LEP 2014, detached dual occupancy development and secondary dwellings are also permissible with development consent. Both of which have had substantial development applications made and approved in recent years.

- 10 It is highly likely that the take up of rural worker's dwellings as an accommodation option on rural land is currently not occurring because of this. These types of development can be approved without having to demonstrate that the 'dwelling' is required for a rural worker on that land and is otherwise not constrained by the strict planning provisions around a rural worker's dwelling. This would also appear to be the case given that so much of our rural land is no longer being farmed but instead occupied for lifestyle purposes only. This
- 15 observation is supported by economic data which has shown a decline in primary industry output in the Shire in recent years.

- Notwithstanding the above, Council has a current commitment to supporting our agricultural sector and the employment of an Agricultural Extension Officer to do so. This may result in an increased demand for bonofide rural worker's dwellings due also to
- 20 farming and agribusiness initiatives and projects being rolled out by various business groups, organisations and agencies across the northern rivers region.

[Agriculture - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/agriculture)

1. **Progress points 1 and 2 as part of the review of the RLUS to commence in FY21/22. Noting this review will enable a fresh dialogue with relevant state**
- 25 **government agencies on the current needs of our rural community five years on from the original RLUS adoption.**

Noted for further action by staff FY21/22.

#### 30 **Update on Resolution 21-275**

- That Council investigates how to enable a workable pathway to facilitate secondary dwellings on Multiple Occupancies and to facilitate secondary dwellings and/or dual occupancies on Community Titles.**

- 35 MOs and rural CT developments have been granted additional dwelling density compared to freehold rural lots. In this regard the parent parcel had one dwelling entitlement before being developed for a MO or rural CT development, comprising somewhere between three dwelling and fifteen dwellings.

The exact number of additional dwelling sites would be determined from the assessment of the development application for the MO or rural CT development in terms of a site capability assessment or by a local environmental plan (LEP) amendment.

- 5 Under Byron LEP 2014 Clause [4.2B](#) limits the number of dwellings for MOs to 1 dwelling per 3 hectares up to a maximum of 15 dwellings on the lot, or the number shown for that lot on the [Multiple Occupancy and Community Title Map](#) (where applicable). Subsequent conversion of MOs to CT Development restricts the number of residential lots created based on the number of dwelling sites approved under the MO.

- 10 Under Byron LEP 1988 the maximum number of dwellings is reflected in the Schedules below.

[Byron Local Environmental Plan 1988 - NSW Legislation](#) – Schedule 8

[Byron Local Environmental Plan 1988 - NSW Legislation](#) – Schedule 10

[Byron Local Environmental Plan 1988 - NSW Legislation](#) – Schedule 13

- 15 Having regard to the above, there are three planning pathways for additional dwellings to be permitted subject to approval on MO or CT communities.

### **Pathway 1 to permit additional ‘dwellings’ on existing approved MO or CT sites**

(Note: a secondary dwelling or dual occupancy dwelling is considered an additional dwelling)

### **Existing Multiple Occupancies**

- 20 A development application under clause [4.2B](#) of LEP 2014 can be lodged to amend an existing MO development consent where the approved/constructed number of dwellings does not exceed the assessed site capability of the land for that MO development, provided that property is identified on the Multiple Occupancy and Community Title Map under the clause.
- 25 This pathway presents the possibility of one lot constructing additional dwellings at the expense of other lots within that approved MO development. For example, a property that has say an area of 40 hectares theoretically could have 13 dwellings on it. If ten dwellings already exist on it, the MO community would need to determine amongst themselves who would benefit from receipt of the additional yield of three more dwellings if approved.
- 30 In this circumstance, it remains a matter for the MO community to determine prior to DA lodgement which MO share/s, would receive the additional dwelling/s. This would not be a matter for Council staff to arbitrate once a development application is lodged.

- 35 Further, the historical context of the existing approved MO community would need to be considered by Council as part of the DA assessment in terms of merit, even though the land may no longer fall under provisions of the Byron LEP 1988.

Applications for additional development/dwellings often result in objections from the community.

5 An example of this is a MO approved in the late 1990's in Goonengerry. The applicant's applied for 12 sites, Council approved 10 sites and following a third-party appeal by a community group, the development consent was amended back to 7 dwellings.

In this circumstance, it would now seem somewhat perverse if Council were to permit an additional 7 dwellings on this land in the form of dual occupancies or secondary dwellings given the site history.

10 It should also be noted that many older MOs approved under Byron LEP 1988 are not mapped under Byron LEP 2014, and as such the pathway for additional dwelling sites would need to rely upon existing use rights for expanding the approved MO. Any applications for extra dwellings would again need to consider the historical context of the development, the merits of the application and the site capability of the land noting any maximum number of dwellings would be based on 1 dwelling per three hectares and up to 15 a maximum of 15.

### Existing Community title developments

20 As discussed, the rural CT developments have been approved based on one dwelling per lot ([4.1B](#)) Subdivisions that have been approved under Byron LEP 2014 could have the number of dwellings increased. It is noted some development consents have conditions of approval that also reflect this limitation on the number of dwellings and or the restriction is carried over into the Management Plan and Statement for the subdivision. It is considered this is a development standard that could be varied under Clause 4.6 of the LEP. Such an application will need to be considered on merit, having regards to the historical context of the property and the site capability of the land. Again, the ultimate number of dwellings 25 would be limited to one per three hectares and the community would need to determine who benefits from the receipt of the additional dwellings.

Like older MOs some of the older CT subdivisions approved under Byron LEP 1988 are not mapped under Byron LEP 2014. The pathway for additional dwellings would also rely upon existing use rights as discussed above.

### 30 **Pathway 2 to permit additional 'dwellings' on existing mapped and or vacant MO or CT sites**

(Note: a secondary dwelling or dual occupancy dwelling is considered an additional dwelling)

35 As discussed, currently in Byron LEP 2014 clause [4.2B](#) controls housing density on these sites and [4.1B](#) restricts sites to 1 dwelling.

Although secondary dwellings and dual occupancies are permitted in the RU1 and RU2 zones, the above-mentioned clauses restrict dwelling numbers on MO or CT communities.

The process listed above under Pathway 1 has limited application and provides little certainty of approval.

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Council could if of a mind, consider an amendment to clauses 4.2 B and 4.1B of LEP 2014 to permit additional dwellings on merit and to simplify the approval process for same.

The amendment would be two-fold – firstly remove the restriction of one dwelling per neighbourhood lot and make any other necessary changes to the LEP to permit dual occupancy and secondary dwellings on existing MO and CT development. And update where relevant the assessment criteria (previously imposed by State Environmental Planning Policy No 15 Rural Land Sharing, and subsequently refined and adopted by Council for the former Byron Rural Settlement Strategy and in LEP 1988 and LEP 2014) for this type of development.

#### 10 **Pathway 3 to permit new MO or CT sites on vacant land not currently identified for such development**

MO and CT development was already considered in the preparation Council's [Rural Land Use Strategy](#) (adopted 2017), where only a handful of sites met the site suitability assessment criteria. An early draft of the Rural Land Use Strategy (2016) identified substantial areas for MO and/or CT development, but these were rejected by the State government mainly due to their distance from nearest service centre/s and sub-standard road infrastructure.

The current State/regional policy framework (namely the [North Coast Regional Plan](#) and s117 [Ministerial Direction 5.3 - Farmland of State and Regional Significance on the NSW Far North Coast](#)) severely restricts Council's ability to amend the Rural Land Use Strategy for the purpose of increasing MO or CT rural settlement in the Shire.

The North Coast Regional Plan is currently under review.

A review of the Rural Land Use Strategy is to follow the North Coast Regional Plan update later in FY21/22. This review will enable a fresh dialogue with relevant state government agencies on the current needs of our rural community five years on from the original Rural Land Use Strategy adoption.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

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

### **Recent Resolutions**

- 21-221
- 5 • 21-275

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

The preparation of the planning proposal will need to satisfy the requirements of the Environmental Planning and Assessment Act 1979 and guidance and information on the process for preparing planning proposals from the DPIE.

- 10 It should be noted that Council has developed the Rural Land Use Strategy and Residential Strategy to guide future housing within the Shire. Additional housing in rural MO and CT developments is not currently supported within these strategies, mainly due to locational and road infrastructure constraints. This may be an issue raised by the DPIE in considering whether to issue a Gateway Determination for the planning proposal if it is to
- 15 be progressed following any Council resolution.

### **Financial Considerations**

The planning proposal would be considered Council initiated and will be funded from the existing land use planning services budget.

### **Consultation and Engagement**

- 20 Not applicable to this report.



## Report No. 13.12 Update Resolution 20-727 Proposed Off Leash Dog Park at Mullumbimby Recreation Grounds

**Directorate:** Sustainable Environment and Economy

5 **Report Author:** Shannon Burt, Director Sustainable Environment and Economy

**File No:** I2021/1639

### Summary:

10 Council at the Ordinary Meeting of 17 December 2020 considered a Notice of Motion No. 9.4 Opportunity for activation and increased passive surveillance at the Mullumbimby Skate Bowl [Agenda of Ordinary Meeting - Thursday, 17 December 2020 \(infocouncil.biz\)](https://infocouncil.biz) and resolved as follows:

**20-727 Resolved** that Council:

- 15 1. Supports the concept of activating the sports field adjacent to the Mullumbimby skate bowl with a dog park with the aim of creating increased passive surveillance and stopping people being able to drive on the field and damage it.
- 20 2. Requests the Sustainable Environment and Economy Directorate staff to arrange for the preparation of a detailed design for a dog park for consultation with the community, and a report of the outcomes of the consultation to Council for final design endorsement.
- 25 3. Requests the Sustainable Environment and Economy Directorate staff to ensure that the dog park design is integrated with the wider planning work, which is looking at the future use and development on adjacent lands including Lot 22 vacant land community gardens, private lands, sports fields and the skate bowl.
- 30 4. Approves a budget allocation of \$20,000 from an appropriately identified source to undertake the necessary design work on the dog park to enable the community consultation process, and following, refinement of a final design to enable project delivery.

This report presents an update on the resolution.

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### RECOMMENDATION:

**That Council:**

- 35 1. **Notes the staff update on Resolution 20-727 Opportunity for activation and increased passive surveillance at the Mullumbimby Skate Bowl.**
2. **Not progress the concept plan prepared for activating the sports field adjacent to the Mullumbimby Skate Bowl with an Off Leash Dog Park at this time.**

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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- 3. Instead look for an alternate site for an Off Leash Dog Park in Mullumbimby that is on Council owned or other land.**

**Attachments:**

5

- 1 Attachment 1 Mullumbimby Recreation Ground - Crown Land Map, E2021/129125 
- 2 Attachment 2 - Concept Plan Off Leash Dog Park, E2021/129123 

## Report

### Update on Resolution 20-727

Resolution items are addressed below.

- 5     **1. Supports the concept of activating the sports field adjacent to the Mullumbimby skate bowl with a dog park with the aim of creating increased passive surveillance and stopping people being able to drive on the field and damage it.**

A SPW was held on the 7 October 2021 to discuss the Mullumbimby Recreation Grounds considering community interest and projects put forward for the site including:

- 10    The Mullum Chamber of Commerce - Pump Track

The Mullum Bruns Cricket Club - Cricket pitch upgrade

Mullum Netball Club – Netball facilities upgrade

Council Off Leash Dog Park - Concept Plan and Grant Application

Youth/Community Centre - Unsolicited Proposal

- 15    The update from staff highlighted several matters relevant to the consideration and ability for the above projects progressing including land tenure, Native Title and Plan of Management status.

The Mullumbimby Recreation Grounds is Crown land where Native Title Rights and Interests continue and any activities on the reserve need to comply with Native Title Act requirements. (Attachment 1) Broadly speaking, that requires:

- 20    i. Council to respect native title rights and interests and in the first instance avoid/minimise impacts from Council projects on those rights as much as possible (just like Council respects and avoids/minimises impacts from Council projects on private property rights as much as possible).
- 25    ii. Council to include compensation for impacts on Native Title rights in budgets for projects if Council resolves to proceed with a project for new or upgraded works on the reserve.
- 30    iii. Any Projects for new or upgraded works on the reserve need to meet some very specific definitions contained in the Native Title Act to be allowed to proceed and projects that do not meet those definitions cannot go ahead unless an Indigenous Land Use Agreement (ILUA) is negotiated that allows the project to proceed.

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Based on the above, it is recommended that Council look for an alternative site for the proposed Dog Park. (Please note resources have not been expended yet on reviewing whether it would satisfy the third requirement above or not).

- 5 **2. Requests the Sustainable and Economy Directorate staff to arrange for the preparation of a detailed design for a dog park for consultation with the community, and a report of the outcomes of the consultation to Council for final design endorsement.**

A concept plan for an Off Leash Dog Park has been prepared (Attachment 2). But due to 1 above, it will need to be revised in its size and layout to suit a new location.

- 10 **3. Requests the Sustainable and Economy Directorate staff to ensure that the dog park design is integrated with the wider planning work, which is looking at the future use and development on adjacent lands including Lot 22 vacant land community gardens, private lands, sports fields and the skate bowl.**

15 Should the alternate site identified for the Off Leash Dog Park be part of or adjacent to Lot 22 Council land or private land the new design will be integrated to suit the wider development layout of the Saltwater Creek Precinct.

- 20 **4. Approves a budget allocation of \$20,000 from an appropriately identified source to undertake the necessary design work on the dog park to enable the community consultation process, and following, refinement of a final design to enable project delivery.**

A concept plan for an Off Leash Dog Park has been prepared (Attachment 2). However, due to 1, wider community consultation has been put on hold until a new site has been identified for its location and development.

## Strategic Considerations

### 25 Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
<b>Community Objective 1: We have infrastructure, transport and services which meet our expectations</b>	1.2: Provide essential services and reliable infrastructure which meet an acceptable community standard	1.2.4: Provide active and passive recreational Community space that is accessible and inclusive for all (SP)	<b>1.2.4.5</b>	Deliver the grant funded car park works and provision of off-leash dog area project at the Mullumbimby Recreation Grounds

**Recent Resolutions**

- 20-727

**Legal/Statutory/Policy Considerations**

As discussed in the report.

**5 Financial Considerations**

As per resolution.

**Consultation and Engagement**

Not applicable to this report.

**Report No. 13.13 Update Resolution 21-180 (3) land use definitions as they apply to rural land**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Shannon Burt, Director Sustainable Environment and Economy

5 **File No:** I2021/1649

**Summary:**

10 Council at the Ordinary (Planning) Meeting of 10 June 2021 considered Report No 13.1 - PLANNING - Housekeeping planning proposal exhibition outcomes 26.2020.6.1 [Agenda of Ordinary \(Planning\) Meeting - Thursday, 10 June 2021 \(infocouncil.biz\)](#) and resolved as follows:

**21-180 Resolved** that Council:

- 15 1. Forwards the planning proposal to amend Byron LEP 2014, as revised in Attachment 1 (E2021/65655) to include the changes recommended in this report to NSW Parliamentary Counsel's Office (PCO) requesting that a draft LEP instrument be prepared.
2. Pending receipt of PCO opinion that the plan can be made, forward the plan to the NSW Department of Planning, Industry and Environment for notification on the NSW Government legislation website.
- 20 3. Holds a Strategic Planning Workshop to consider and clarify issues around ambiguity in some of the uses on rural properties including;
  - a) the definition of small scale industry;
  - b) function centres;
  - c) artisan food and drink premises;
  - 25 d) roadside food stalls in R5 (Large Lot Residential Zones); and
  - e) any others that require clarification.

This report presents an update on each of the items of the resolution.

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30 **RECOMMENDATION:**

**That Council notes the staff update on Resolution 21-180 part (3) land use definitions as they apply to rural land.**

35



## Report

### Update on Resolution 21-180

1. **Forwards the planning proposal to amend Byron LEP 2014, as revised in Attachment 1 (E2021/65655) to include the changes recommended in this report to NSW Parliamentary Counsel's Office (PCO) requesting that a draft LEP instrument be prepared.**

Planning proposal currently being finalised by DPIE.

2. **Pending receipt of PCO opinion that the plan can be made, forward the plan to the NSW Department of Planning, Industry and Environment for notification on the NSW Government legislation website.**

Planning proposal currently being finalised by DPIE.

3. **Holds a Strategic Planning Workshop to consider and clarify issues around ambiguity in some of the uses on rural properties including:**

- a) **the definition of small scale industry;**
- b) **function centres;**
- c) **artisan food and drink premises;**
- d) **roadside food stalls in R5 (Large Lot Residential Zones); and**
- e) **any others that require clarification.**

Point 3 of the resolution sought a SPW on issues and ambiguity of certain land use terms as they seem to apply to rural land under the relevant Local Environmental Plan.

This followed discussion at the planning meeting by councillors about aspects of the planning proposal and a submission made to it. The planning proposal included changes to the LEP to permit small scale roadside stalls as exempt development in RU1 and RU2 zones and permit artisan food and drink industry with development consent in the RU2 zone. Details of these are included in the report and its attachments (link provided above).

Due to limited SPW days, it has not been possible to schedule a SPW on this item this year. Instead, further explanation of each land use is provided below.

Land use term LEP 2014	Land use definition / reference in LEP 2014
Small scale industry	<p>There is no specific land use definition or reference in LEP 2014 to 'small scale industry'.</p> <p>The term small scale however is defined in clause <a href="#">6.8 Rural and nature-based tourism development</a> as:</p> <p><i>small scale</i> means a scale that is small enough to be generally managed and operated by the principal owner</p>

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Land use term LEP 2014	Land use definition / reference in LEP 2014
	<p>living on the property.</p> <p>Clause 6.8 applies to land zoned RU1 and RU2 and seeks to ensure that tourism development in rural and natural areas is small scale and does not adversely impact on the agricultural production, scenic or environmental values of the land.</p> <p>The only other mention of small scale is in clause <a href="#">6.11 Temporary Use of function centres in RU1 and RU2 zones</a></p> <p>In this instance, it is a head of consideration for a development application for a function centre use in zone RU2 i.e., the development is small scale and low impact.</p> <p>There are otherwise multiple other definitions that apply to 'industry' and 'industrial' land use types in the standard LEP dictionary to LEP 2014.</p> <p>For ease of understanding these, a land use matrix for all land uses in LEP 2014 and their relationship to the land uses zones can be viewed by the following link:</p> <p><a href="#">Revision-5-Byron-LEP-2014-Land-Use-Matrix-amended-August-2020-to-included-Function-Centre-in-RU2-LEP-Amd-20-Excel-previous-revision.pdf</a></p>
Function centres	<p>Defined as under LEP 2014:</p> <p><i>function centre</i> means a building or place used for the holding of events, functions, conferences, and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.</p> <p>Land use matrix link above shows which land use zones function centres are permitted in.</p> <p>Clause <a href="#">6.11 Temporary Use of function centres in RU1 and RU2 zones</a> provides additional controls for temporary use of land for functions centres in zone RU2.</p> <p>Further chapter <a href="#">D9 Rural Function Centres</a> in DCP 2014 addresses the suitability of potential sites and establishes minimum standards for the management of events on those sites.</p>

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Land use term LEP 2014	Land use definition / reference in LEP 2014
Artisan food and drink premises	<p>Defined as under LEP 2014:</p> <p><i>artisan food and drink industry</i> means a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following—</p> <ul style="list-style-type: none"> <li>• a retail area for the sale of the products,</li> <li>• a restaurant or cafe,</li> <li>• facilities for holding tastings, tours or workshops.</li> </ul> <p>Land use matrix link above shows which land use zones function centres are permitted in.</p> <p><a href="#">Clause 5.4 Controls relating to miscellaneous permissible uses</a> provides for controls in industrial or rural zones relating to the retail floor area of an artisan food and drink industry.</p>
Roadside stalls in R5 (Large Lot Residential Zones)	<p>Defined as under LEP 2014:</p> <p><i>roadside stall</i> means a place or temporary structure used for the retail sale of agricultural produce or hand-crafted goods (or both) produced from the property on which the stall is situated or from an adjacent property.</p> <p>Land use matrix link above shows which land use zones roadside stalls are permitted in.</p> <p><a href="#">Clause 5.4 Controls relating to miscellaneous permissible uses</a> provides for controls relating to the gross floor area of roadside stalls.</p> <p>Roadside stalls are a permitted use in zone R5.</p>
Any other matters that require clarification	As this matter is open ended no specific staff comments have been able to be provided in the report.

### Key issues

- 5 Staff undertake regular reviews of the LEP and DCP controls to maintain currency with state government changes and directions, case law, requests made by landowners and or by Council resolution (where lawful). Regular reports are presented on Housekeeping Amendments to Council on same.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

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

### Recent Resolutions

- 21-180

### 5 Legal/Statutory/Policy Considerations

As discussed in the report.

### Financial Considerations

Not applicable to this report.

### Consultation and Engagement

- 10 Not applicable to this report.

**Report No. 13.14 Byron Shire Local Heritage Grants Program 2021-22**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Shannon Burt, Director Sustainable Environment and Economy

5 **File No:** I2021/1650

**Summary:**

This report seeks Council endorsement of the funding allocation for the Byron Shire Local Places Heritage Grants Program 2021-22.

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**RECOMMENDATION:**

- 15 1. That Council endorses the recommended funding allocations of the Byron Shire Local Places Heritage Grants Program 2020-21 being three (3) applications (Attachments 1-3 (E2021/128086, E2021/128090, E2021/128091) which will each receive a grant amount of \$3,500 to complete building repairs, enhancements, and maintenance to prominent local heritage items in main towns.
- 20 2. That the grant applicants be notified of Council's decision.

**Attachments:**

- 1 Confidential - Attachment 1 - Local Heritage Places Fund Application 2021/22, E2021/128086
- 25 2 Confidential - Attachment 2 - Local Heritage Places Fund Application 2021/22, E2021/128090
- 3 Confidential - Attachment 3 - Local Heritage Places Fund Application 2021/22, E2021/128091
- 4 Confidential - Attachment 4 - Grant Application Assessment, E2021/128868

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## Report

The Local Heritage Places Grants program is jointly funded by Council and the NSW Heritage Division as part of its commitment to heritage management and tourism within Byron Shire. The purpose of the fund is to provide small grants to support owners of heritage items or draft heritage items in maintaining their heritage property.

There is an amount of up to \$12,000.00 in the 2020-21 fund made up of a grant from the Heritage Division of the NSW Office of Environment of up to \$5,500.00 and \$6,500.00 from Council.

Up to \$3,000 is the maximum normally available for each project from the total funding pool. The main conditions are that property owners need to provide one dollar for every dollar contributed jointly by Council and the Heritage Division and that the work must be completed before or by March 2022.

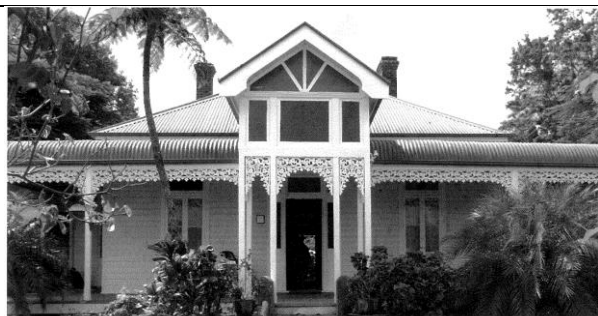
Due to the impact COVID restrictions and lockdowns has had on our community; it is believed that applications are down on previous years. Only three (3) applications were received this year.

Each proposal was assessed by Council's Heritage Advisor against the required Heritage Division criteria. [Local Heritage Places Funding - Byron Shire Council \(nsw.gov.au\)](https://www.nsw.gov.au/heritage/places/funding)

The grant applications are confidential Attachments 1 – 3. A summary of each is provided below.

APPLICATION	PROPOSAL
<p><b>1. Inverary, 130 Main Road, Mullumbimby</b></p> <p>The building is significant to the precinct. It is a rare example of a late 19th century weatherboard house and is connected to a pioneering family of the district, the Campbells.</p> <p>The land on which the house Inverary was built was selected by the Campbell family in 1881. The house was built at the end of the Nineteenth Century, and it remains substantially as built. SHI 12600915</p>	<p>Repainting of Exterior - Includes preparation and repainting of walls, doors, windows, metal window canopies, some stripping and treatment.</p>





## 2. 58 Kingsley St, Byron Bay

This elegantly proportioned weatherboard house was built in 1907 and has been well maintained throughout its history. The building is situated in Kingsley St amongst others of its style. The building is a very good period example of a timber bungalow. The house is part of the Kingsley precinct.

SHI 1260023

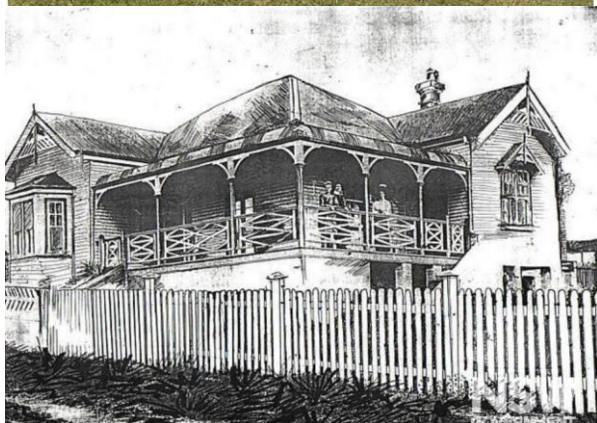
Repair and reconstruct deteriorated balustrade to verandah and arbour entry structure. Wet rot to timber.



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#### 3. 26 Satinash Crescent, Bangalow.

(Formerly 3 Granuaille Crescent)

House is a heritage listed item I026

Repair of deteriorated verandah including corner support post, bearers and decking in hardwood.

'Finely proportioned timber residence with high quality Federation style timber detailing located on an elevated site at the north end of the village. The house displays local materials and craftsmanship in carpentry of a very high standard'.

SHI 1260081



The focus for the 2021-2022 Local Heritage Grants Program is conservation works that enhance individual places, buildings and historic streetscapes including buildings in conservation areas that will promote and foster community appreciation of the history of the Shire.

5

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After consideration by the Council's Heritage Adviser and the Director Sustainable Environment and Economy, it was agreed the three (3) projects meet the criteria and are recommended to Council for funding this year. Confidential Attachment 4.

- 5 In summary the three (3) applications will each receive \$3,500. This is an additional amount to that advertised but given the limited number of applications and merit of each received is reasonable and acceptable.

- 10 The funding of these projects will support over \$21,550 worth of work to be carried out in this financial year on heritage property restoration.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
<b>Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community</b>	2.5: Encourage community appreciation of cultural vitality and diversity	2.5.2: Recognise and support the heritage of Byron Shire	<b>2.5.2.2</b>	Conduct the Local Heritage Places Grant Program

## Financial Considerations

- 15 Council will deliver the Local Heritage Grants Program with the aid of a grant from the Heritage Division of the NSW Office of Environment and Heritage with Council providing at least \$6,500 to qualify for up to \$5,500 from the Heritage Division of the Office of Environment and Heritage.

## Consultation and Engagement

- 20 The Local Heritage Grants program is a key action task in the Byron Shire Heritage Strategy 2020-2024.



## Report No. 13.15 Update Resolution 21-244 Dogs in Public Spaces Strategy

**Directorate:** Sustainable Environment and Economy

**Report Author:** Shannon Burt, Director Sustainable Environment and Economy  
Sarah Nagel, Manager Public and Environmental Services

**File No:** I2021/1653

### Summary:

Council considered Report No 13.14 - Dog and Cat Management Initiatives at the Ordinary meeting 24 June 2021 [Agenda of Ordinary Meeting - Thursday, 24 June 2021 \(infocouncil.biz\)](https://www.infocouncil.biz) and resolved as follows:

**Resolved 21-244** that Council notes the staff update provided on Dog and Cat Management initiatives being managed by Sustainable Environment & Economy Directorate staff.

This report included an update on the status of the Dogs in Public Spaces Strategy previously commenced.

This report provides a further update, and in particular sets out the next stage of the project, the community engagement program.

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### RECOMMENDATION:

**That Council:**

- 1. Notes the staff update on Resolution 21-244 as it relates to the Dogs in Public Spaces Strategy.**
- 2. Endorses the Community Engagement Plan activities which includes the formation of a Community Working Group by Locale Consulting and a staff project control group to help inform and guide the preparation of the Dogs in Public Spaces Strategy.**

## **Report**

As reported in June 2021, the development of a Dogs in Public Spaces Strategy (DiPS) will contribute to Council's Companion Animal Management Plan and will seek to encourage responsible pet ownership and compliance with relevant legislation.

5 The DiPS is being developed in three stages:

1. Initial information gathering and research.
2. Further information gathered through community engagement; and
3. Strategy development and implementation.

10 It is proposed that the DiPS will replace the Byron Shire Council Policy 5.31 Companion Animal Exercise Areas – which was last reviewed in 2011.

Since the report to Council in June 2021, Locale Consulting has been engaged to work alongside staff to complete the DiPS project.

Locale Consulting have prepared a community engagement plan for the DiPs project, the principals, and activities of which are summarised below.

- 15 • There are a range of key messages associated with the project and early and consistent delivery of these messages in the engagement process is important.
- Due to the ongoing Covid-19 pandemic, this Plan will be implemented in a flexible and adaptable manner and having regard to any restrictions in place at the time.
- 20 • To harness community engagement across the Shire a Community Working Group (CWG) will be established through an Expression of Interest (EOI) process. The CWG will consist of up to 15 members representing the diverse interests in this issue (across localities and interest groups).
- To ensure maximum stakeholder reach, an online survey will be available for completion as well as face to face drop-in sessions held across the main localities within the Shire.
- 25 • Wherever possible, consultation activities would be supported by Council's communications team – social media, Councillor updates, Council's Have Your Say page and website promotion.
- 30 • Council may also implement optional engagement activities during the project using internal resources like dog day pop up events, educational events.

Details of the CWG are summarised below:



### Purpose

The CWG is being established to help inform and guide the preparation of the DiPS. This Strategy will set out the vision, themes, and actions for the management of dogs in public spaces across the Shire.

### 5 Membership

The CWG will seek to represent a wide span of community interests. This includes:

- dog owners and non-dog owners
  - business people including tourism operators and food outlets
  - neighbourhood and residents' groups
  - 10 • vets and animal welfare groups
  - environmental protection authorities and interest groups
  - sporting groups and general users of parklands and exercise spaces
  - people with a disability and any special interest groups
  - the elderly and young people
  - 15 The CWG will consist of up to 15 community members made up of representatives from different localities across the Shire and reflecting the diverse interests in the issue.
- Members must live in the Shire. Council staff will use an expression of interest process to appoint members to the Group.

### Role

- 20 The CWG will work closely with Council staff and the project consultants, Locale Consulting, to provide meaningful, representative input and feedback on key policy issues about the management of dogs in public spaces.

This includes exploring:

- changes to the existing conditions for off-leash areas
- 25 • whether there is a need for new dog exclusion zones, off-leash areas or enclosed
- dog parks
- the suitability of existing dog exercise areas and associated infrastructure such as
- signage and bins

- how Council can encourage and promote responsible dog ownership

The CWG will be advisory only and will not have a decision-making role.

Format

The CWG will meet four times during the project duration as follows:

- 5     1.    Inception: getting to know each other explaining the roles, responsibilities & involvement in the Group in the project
2.    Co-design: work on elements of the face-to-face drop-in sessions for the project
3.    Exploration of topics: early input from the Group into the vision, themes, and actions into the draft Strategy
- 10    4.    Feedback: on the emerging vision, themes and actions for the draft Strategy before the formal exhibition

With regards to the CWG, staff propose to progress an EOI process to establish the group and commence meetings before the end of the year. Membership selection will be based on a set of criteria scored/weighted by the consultants and a staff project control group.

- 15    If the formation of the CWG is delayed beyond the end of the year, this will push out the community engagement program and completion of the DiPS into the next Financial Year.

## **Strategic Considerations**

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

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>	<b>Code</b>	<b>OP Activity</b>
<b>Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community</b>	2.4: Enhance community safety and amenity while respecting our shared values	2.4.3: Enhance public safety, health and liveability through the use of council's regulatory controls and services	<b>2.4.3.5</b>	Provide companion animal management services
<b>Community Objective 2: We cultivate and celebrate our diverse cultures, lifestyle and sense of community</b>	2.4: Enhance community safety and amenity while respecting our shared values	2.4.3: Enhance public safety, health and liveability through the use of council's regulatory controls and services	<b>2.4.3.6</b>	Facilitate companion animals education

### **Recent Resolutions**

- 18-362
- 21-244

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

- 5 The DiPS will assist Council meet its obligations under companion animals legislation.

### **Financial Considerations**

The DiPS is funded by the FY21/22 public and environmental service program budget.

### **Consultation and Engagement**

As discussed in the report.

## Report No. 13.16 PLANNING - 26.2020.7.1 - Planning Proposal Stage 3 E zone Implementattion Program Submissions report

**Directorate:** Sustainable Environment and Economy

5 **Report Author:** Alex Caras, Land Use Plannning Coordinator

**File No:** I2021/1662

### Summary:

10 The implementation of Environmental Zones commenced in 2018 and is being delivered in a number of stages. To date Stages 1 and 2 are complete, Stage 3 is the subject of this report and Stage 4, to commence in 2022, will finalise the application of Environmental Zones.

To date Stages 1-3 have collectively resulted in a **net gain of 1,420ha of E2 Environmental Conservation zones** on private land, when compared to areas previously zoned 7a, 7b, 7k & 7j in Byron LEP 1988.

15 The Stage 3 Planning Proposal (PP) applies environmental and non-environmental zones to over 2,200 private properties in the Shire, which includes approximately 4,960 ha of E2 Environmental Conservation zones and 830 ha of E3 Environmental Management zones. It also amends other LEP 2014 maps such as Minimum Lot Size, Height of Building, Floor Space Ratio, Drinking Water Catchment, Acid Sulfate Soils and Multiple Occupancy & Community Title Maps.

PP 3 was exhibited from 29 March to 30 July 2021. The 335 public submissions received can be categorised as follows:

- Landowner submissions — 'Agreed' E zone and non-E zone properties
- Landowner submissions — 'Not Agreed' E zone properties
- 25 • Government Agency submissions
- Submission from Community Alliance for Byron Shire
- Submission from Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)

30 There are 205 properties where agreement was reached on proposed E zones and non-E zones. Details of these properties, including landowner feedback and proposed LEP map changes, are contained in Attachment 1.

There are thirty-five (35) properties where landowner agreement on proposed E zones could not be reached. Thirteen (13) of these already have an existing environmental zone under LEP 1988 (namely 7a Wetlands, 7b Coastal Habitat and or 7k Habitat).

35 Although proposed E zone areas on many of these properties have already been reduced (based on feedback from landowner), no agreement on the final amended zones could be

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reached. A detailed analysis of these properties, including landowners' reasons for not agreeing and Council's response to these, is contained in Attachment 2.

This report presents:

- 5       • a summary of the submissions received during exhibition of the Stage 3 Planning Proposal; and
- corresponding property specific LEP2014 mapping amendments for adoption.

10       The report recommends that [E zone Stage 3 Planning Proposal](#) be updated to reflect the proposed LEP 2014 zones and other related mapping changes in Attachments 1 and 2 of this report, and forwarded to the Department of Planning, Industry & Environment for finalisation.

It also notes that property owners whose land will be subject to an E zone will be notified in writing of Council's decision and advised that they have 28 days to notify the Department of Planning and Environment to request a review of the proposed zoning of their property.

#### 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
- 20       Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

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#### RECOMMENDATION:







1.   **That Council in relation to Stage 3 E Zones planning proposal adopts:**
  - 25       a)   the proposed LEP 2014 map changes for properties identified in Attachment 1; and
  - b)   the proposed LEP 2014 zones (environmental and non-environmental) and consequential mapping for the 'not agreed' properties contained in Attachment 2,
- 30   2.   **That Council requests that the NSW Department of Planning, Industry and Environment, as the plan-making authority in this instance, make the final LEP for notification on the NSW Government legislation website.**
- 35   3.   **That Council notes, post consideration of the submissions and endorsement of the final planning proposal, landowners whose land will be subject to an E zone are to be notified in writing of Council's decision and advised that they have 28 days to notify the Department of Planning and Environment to request a review of the proposed zoning of their property.**

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### **Attachments:**

- 5      1      Summary of proposed E Zone Mapping Changes arising from Stage 3 Exhibition (excluding  
Not Agreed outcomes), E2021/60380 
- 2      Summary of Not Agreed Landowner submissions, E2021/78307 
- 3      Government Agency submissions - Biodiversity & Conservation Division (DPIE) and Local  
Land Services, E2021/126714 
- 10     4      Response to and submissions from Community Alliance for Byron Shire (CABS),  
E2021/127168 
- 5      Bundjalung Byron Bay Aboriginal Corporation (Arakwal) Submission re Lots 332 & 334  
Riverside Crescent Brunswick Heads, E2021/126786 
- 6      Form of Special Disclosure of Pecuniary Interest, E2012/2815 
- 15



## Background

Council at its 22 March 2018 Ordinary Meeting resolved (**Res 18-188**) to implement the Department's 'Northern Councils E Zone Review Final Recommendations Report' in several stages to deliver more timely and effective outcomes for affected landowners. An overview of the latest staged implementation program is shown in Figure 1 below.

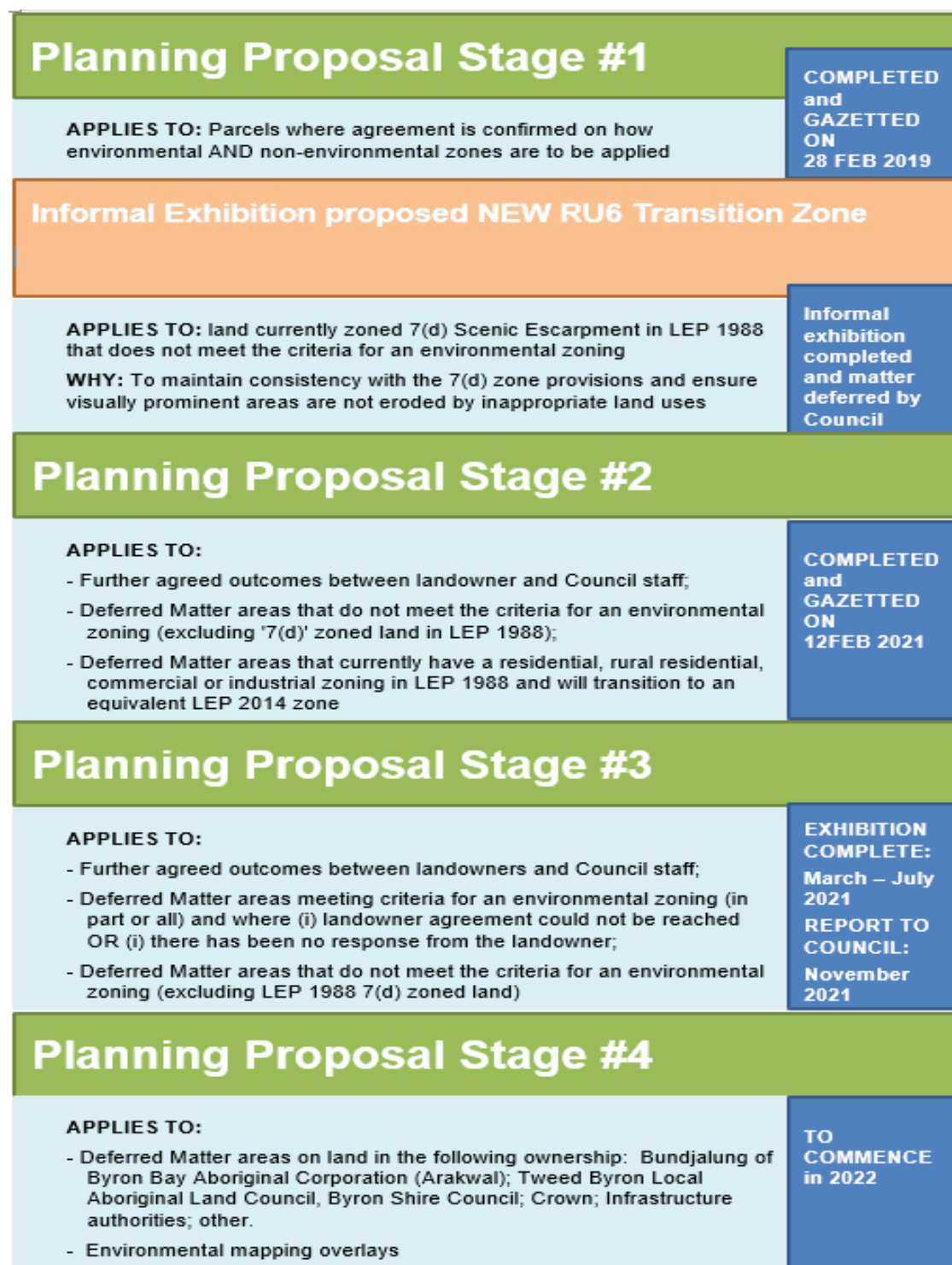


Figure 1: Staging Program to apply environmental and other zones on certain land in Byron LEP 2014

## Stage 1 Planning Proposal (PP1)

- 5 PP1 applied environmental and non-environmental zones to 64 properties in the Shire based on agreed outcomes. This included approximately 340 ha of *E2 Environmental Conservation* zones and 60 ha of *E3 Environmental Management* zones.

Status: completed and gazetted on 28 February 2020.

## Stage 2 Planning Proposal (PP2)

- 10 PP2 applied environmental and non-environmental zones to 619 properties in the Shire based on agreed outcomes. Approximately 1,485 ha of *E2 Environmental Conservation* zones and 400 ha of *E3 Environmental Management* zones are applied in PP2. It also amends other LEP 2014 maps such as Minimum Lot Size, Height of Building, Drinking Water Catchment and Acid Sulfate Soils Maps.

Status: completed and gazetted on 14 May 2021.

## Stage 3 Planning Proposal (PP3) – subject of this report

- 15 PP3 applies environmental and non-environmental zones to over 2,200 properties in the Shire, which includes approximately 4,960 ha of [\*E2 Environmental Conservation\*](#) zones and 830 ha of [\*E3 Environmental Management\*](#) zones.

In relation to the Stage 3 Planning Proposal, Council at its 20 November 2020 Planning Meeting resolved [*Resolution 20-614*] the following:

- 20 1. *Amend the planning proposal contained in Attachment 1 (E2020/85949) to exclude the following land in the 7D Scenic Escarpment Zone, representing ‘non-agreed’ environmental zoning outcomes that can be collectively considered as part of a future strategic review of remaining 7D land in the Shire:*
- 25 a) *Lot 5 DP 625004, 470 Main Arm Road, Main Arm*
- b) *PT Lot 22 SP 549688, 139 Bangalow Road, Byron Bay*
- c) *Lot 21 DP 859004, 83 Walkers Lane, The Pocket*
- d) *Lot 1 DP 719570, 133 Middle Ridge Road, Upper Main Arm*
- e) *Lot 5 DP 625004, 470 Main Arm Road, Main Arm*
- f) *Lot 11 DP 816147, 689 Left Bank Road, Mullumbimby Creek*
- 30 g) *Lot 285 DP 1198641, 64 Corkwood Cres, Suffolk Park*
- h) *Lot 4 DP 635176, 526 Broken Head Road, Broken Head*
2. *Submit the amended planning proposal to the NSW Department of Planning, Industry and Environment for Gateway determination;*

3. *Pending Gateway determination, undertake public exhibition of the planning proposal and consult with government agencies in accordance with the Gateway determination; and*
4. *Receive a report outlining the exhibition outcomes.*

5 In accordance with item '1.' in the above resolution, land in the 7D Scenic Escarpment zone will only have an E Zone applied where agreed by the landowner. Otherwise, all remaining land in the 7D zone will remain 'deferred' and collectively considered as part of a future strategic review of remaining 7D land in the Shire and or until a suitable replacement zone (LEP 2014) is supported by the Department of Planning, Industry and Environment.

The remainder of this report presents a summary of submissions (and other feedback) received during the exhibition of PP3 along with recommended LEP mapping amendments for adoption.

## **Report**

15 PP3 was submitted to Department of Planning & Environment for gateway determination in December 2020. A positive gateway determination was received in February 2021 subject to the following conditions:

- *Consulting with following government agencies (during exhibition):*
  - *NSW Rural Fire Service;*
  - 20 – *NSW Biodiversity and Conservation Division;*
  - *NSW Department of Primary Industries;*
  - *the Local Aboriginal Land Council; and*
  - *NSW Division of Resources and Geoscience.*
- *Notifying all affected landowners in writing of the planning proposal and the public exhibition arrangements*
- *Amending the planning proposal as follows prior to exhibition:*
  - a) *Appendix 1 be altered to note that Direction 4.3 Flood Prone Land does apply to the planning proposal;*
  - b) *44 Ti Tree Road, Byron Bay (property ID: 94240) be altered to include an E2 zone over the area of the site mapped as 'Coastal Wetland' under the Coastal Management SEPP;*
  - c) *Jones Road, Wooyung (property ID 240048) be altered to be zoned E1 National Parks and Nature Reserves; and*
  - d) *Amend Table 5.1 in the planning proposal as follows:*
    - 35 i. *include a new column to describe each property's complete zoning;*
    - ii. *update the primary land use of 228 Broken Head Road, Suffolk Park to reflect an Env/Urban instead of Urban Res; include a new column to indicate*

*whether the property is identified as state and/or regionally significant farmland.”*

*iii. include a new column to describe each property's complete zoning.*

- 5
- *When Council has considered the submissions received during public exhibition and has endorsed the final planning proposal, landowners whose land will be subject to an E zone are to be notified in writing of Council's decision and advised that they have 28 days to notify the Department of Planning and Environment to request a review of the proposed zoning of their property.*

## Public Exhibition

- 10 [E Zones Stage 3 Planning Proposal](#) (PP3) was exhibited from **29 March to 30 July 2021**.

Landowner notification was undertaken in stages due to the large number of properties captured in PP3 (> 2,200) and the need to ensure staff could respond to enquiries in a timely manner.

335 public submissions were received and are categorised as follows:

- 15
- Landowner submissions — ‘Agreed’ E zone and non-E zone properties
  - Landowner submissions — ‘Not Agreed’ E zone properties
  - Government Agency submissions
  - Submission from Community Alliance for Byron Shire
  - Submission from Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)
- 20 There are 215 landowners that Council has not had any response from throughout the E zone engagement process. These properties have been included in PP3 ‘as exhibited’.

## Landowner submissions — ‘Agreed’ E zone and non-E zone properties

- 25 There are 205 properties where agreement was reached on proposed E zones and non-E zones. Details of these properties, including landowner feedback and proposed LEP map changes, are contained in Table 1(a) of Attachment 1.

Attachment 1 also contains the following other proposed changes:

- 30
- Table 1(b) – Land parcels to be removed from Planning Proposal 3 (e.g. contains no deferred matter or proposed/exhibited Ezone)
  - Table 1(c) – Land parcels to be updated in LEP 2014 Multiple Occupancy and Community Title Map (as no longer a deferred matter)
  - Table 1(d) – Proposed Changes to certain land parcels previously zoned in E zones PP2 (as a result of submissions on adjoining PP3 land)

**RECOMMENDATION: That Council adopts the proposed LEP maps changes in Attachment 1.**

## **Landowner submissions —'Not Agreed' E zone properties**

There are thirty-five (35) properties where landowner agreement on proposed E zones could not be reached. Thirteen (13) of these already have an existing environmental zone under LEP 1988 (i.e., *7a Wetlands*, *7b Coastal Habitat* and or *7k Habitat*).

- 5 The proposed E zones largely relate to intact areas of high environmental value vegetation having one or more of the following attributes: Key Threatened Species Habitat; Endangered Ecological Communities; SEPP Coastal Wetlands; Over-cleared vegetation communities and/or riparian and estuarine vegetation on waterfront land.

- 10 Although proposed E zone areas on many of these properties have already been reduced (based on feedback from landowner), no agreement on the final amended zones could be reached. Inevitably there will be a minority of landowners where there's been (i) a change of mind about what was originally agreed to on their land, (ii) a change in ownership since an agreed outcome was reached.

- 15 A detailed analysis of these properties, including landowners' reasons for not agreeing and Council's response to these, is contained in Attachment 2. The analysis of each property considers primary use(s) of the land together with historical aerial photography (mainly back to 1966), current aerial photography (e.g., Nearmaps), feedback from landowners, recent DA approvals, prior zoning, site inspections by Council Ecologist (including photo points) and/or drone footage.

- 20 **RECOMMENDATION: That Council adopts the proposed LEP 2014 zones (environmental and non-environmental) for each of the 'not agreed' properties contained in Attachment 2** (noting that these landowners be notified in writing of Council's decision and advised that they have 28 days to notify the Department of Planning and Environment to request a review of the proposed zoning of their property).
- 25

## **Government Agency Submissions**

- 30 In accordance with the Gateway Determination issued 8 February 2021, the following public authorities were consulted under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:

- NSW Rural Fire Service
- NSW Biodiversity and Conservation Division (of DPIE)
- NSW Department of Primary Industries
- Arakwal Aboriginal Corporation
- 35 - Tweed Byron Aboriginal Land Council
- NSW Division of Resources and Geoscience.

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Two (2) government agency responses were received (Attachment 3). A summary of key issues raised and planning response to these is presented in Table 1 below.

**Table 1 – Summary of government agency submissions received and planning response**

Agency Name	Issues raised and Planning Response
<p><b>1. NSW Biodiversity and Conservation Division</b> (Department of Planning, Industry &amp; Environment)</p>	<p>Considers Council's review and application of E zones across the Shire has generally been well implemented, however recommends that prior to finalising the proposed Stage 3 amendments relating to 'Deferred Matter' lands not formerly zoned 7(a), 7(b), 7(j) or 7(k) under BLEP 1988 and Non – Deferred Matter land zoned under BLEP 2014, the council must ensure that:</p> <ol style="list-style-type: none"> <li>1. The PP has appropriately determined the primary use of the land.</li> <li>2. Justification is included in the PP of the council's determination of the primary use of each of the relevant parcels.</li> <li>3. The PP has distinguished between environmental conservation and environmental management land uses as follows: <ol style="list-style-type: none"> <li>a. In areas of native vegetation where ancillary uses are absent or have not occurred in the last two years, the land use would align with Environmental Conservation.</li> <li>b. In areas of native vegetation where ancillary uses are present or which have occurred the last two years, such as grazing, the land use would align with Environmental Management.</li> </ol> </li> </ol> <p><b><u>Planning Response</u></b></p> <p><b>Council has determined the primary use of individual land parcels using all relevant information available. This includes the characteristics of the land, its prior zoning, aerial photography, visual inspection, contact with landowners and other property information held by Council (e.g., development approvals; farmland rating status, Private Native Forestry or Property Vegetation Plan approvals).</b></p> <p><b>BCD's request to provide more detailed justification of the primary land use(s) identified for <u>each</u> parcel of land would require a significant body of work and resources that go beyond any North Coast council's capacity to implement the</b></p>



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Agency Name	Issues raised and Planning Response
	<p><b>‘Northern Councils E Zone Review Final Recommendations Report’. Undertaking such a detailed level of investigation on each land parcel is neither practical nor justified, noting that all landowners were given the opportunity to provide feedback on the primary use(s) identified for their land as part of the engagement process since 2017 (i.e. in addition to confirming vegetation accuracy). Where necessary, updates to ‘primary land use’ have been made because of landowner feedback received.</b></p> <p>4. The E2 zone is applied to land that meets the criteria in Table 1 of the E Zone Review where the land use has been identified as Environmental Conservation as per our recommendation 3.a. above.</p> <p>5. The E3 zone is applied to land that meets the criteria in Table 1 or Table 2 of the E zone Review where the land use has been identified as Environmental Management as per our recommendation 3.b. above.</p> <p><b><u>Planning Response (4 &amp; 5)</u></b></p> <p><b>Noted. There may be instances where agreed zoning outcomes do not align precisely with the primary use(s) of the land but still deliver a better planning result</b></p> <p>6. Where the primary use of the land is not considered to be environmental conservation or environmental management and the E2 or E3 zone criteria are verified as present on the land, then the land should be zoned E2 or E3 if the landowner agrees to applying either of those zones.</p> <p><b><u>Planning Response</u></b></p> <p><b>Noted. This is substantially consistent with the approach taken throughout the E zone review process.</b></p> <p>7. Where the primary use of the land is not considered to be environmental conservation or environmental management and the E2 or E3 zone criteria are verified as present on the land, but the landholder does not agree to an E2 or E3 zone, then mapped planning controls should be applied to the land.</p> <p><b><u>Planning Response</u></b></p> <p><b>Noted. This is substantially consistent with the approach taken throughout the E zone review process.</b></p> <p>8. Where mapped planning controls are required, these should</p>

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Agency Name	Issues raised and Planning Response
	<p>be developed and incorporated into the PP to ensure E2/E3 zone criteria known to be present are appropriately considered as part of the development application process.</p> <p><b><u>Planning Response</u></b></p> <p><b>Noted. Mapped overlays/planning controls will be considered in the E zones Stage 4 planning proposal.</b></p> <p>9. Primary Use' test — PP provides no justification for how zone boundaries have been split.</p> <p><b><u>Planning Response</u></b></p> <p>Throughout the E zone review process staff have endeavoured to reach agreed outcomes (wherever possible) when applying both environmental and non-environmental zone on private land. The reality is that many of the agreed zoning outcomes do not always align precisely with the primary use(s) of the land. Indeed, there are many examples of E2 zone landowners in Byron shire that have high value open forest with koala habitat but use light grazing as a valuable and essential tool for understorey weed control.</p> <p>There are also examples where primary production activities such as cattle grazing occur throughout an entire property, but the landowner has still agreed to rezone areas containing high environmental value vegetation to <i>E2 Environmental Conservation</i>, even though such areas are not solely managed for this purpose.</p> <p>In the case of split zones in PP3, the BCD submission (p4) cites the example below where lots appear to have similar and contiguous canopy, and which may therefore reflect a similar land use across the two zone types.</p>

Agency Name	Issues raised and Planning Response
	<div data-bbox="544 331 1441 943" data-label="Image"> </div> <p data-bbox="544 976 1420 1234">In this instance the RU2 areas were negotiated with the landowners after confirming that both properties had multiple dwellings and RU2 was required for houses, bushfire APZs and access roads. At the same time key areas of vegetation that met the E2 zone criteria were retained as Ezone while connectivity of Ezone vegetation across the landscape was also a key outcome.</p> <p data-bbox="544 1267 1436 1375">Overall, most split zones in PP3 were based on negotiated outcomes with owners, but also informed by the following supporting information where applicable and available:</p> <ul data-bbox="544 1413 1436 1980" style="list-style-type: none"> <li>• vegetation mapping 2017 (including canopy and condition attributes),</li> <li>• historical aerial photography (mainly back to 1966),</li> <li>• current aerial photography (including 2020 Nearmaps),</li> <li>• site inspections by Council's Ecologist (including photo points),</li> <li>• drone footage</li> <li>• topography (very steep inaccessible terrain not suitable for farming),</li> <li>• DA information,</li> <li>• connectivity with neighbours (e.g., valleys largely cleared for dwellings and roads as per neighbour),</li> </ul>

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### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Agency Name	Issues raised and Planning Response
	<ul style="list-style-type: none"><li>existing infrastructure (houses, sheds, water tanks etc.),</li><li>future landowner intentions (e.g. restoration plans).</li></ul> <p><b><u>Conclusion</u></b></p> <p>Staff have invested a substantial amount of resources into individual parcels by contacting each landowner wherever possible to confirm 'primary land use/s' and vegetation accuracy. BCD's request to provide more detailed justification of the primary land use(s) identified for <u>each</u> parcel of land is neither practical nor justified, noting that the greatest attention in determining 'primary land use' has been focused on the "Not Agreed" E zone properties. This was considered the most practical and efficient approach given the substantially high number of properties included in PP3 (&gt; 2,200).</p> <p><b>NO CHANGES RECOMMENDED</b></p>
<b>2. NSW Local Land Services</b> (on behalf of Tweed Byron Local Aboriginal Land Council)	<p>Discussions with Local Land Services and Tweed Byron Local Aboriginal Land Council (TBALC) representatives resulted in a request to defer all land owned or subject to native title claim by TBALC from PP3.</p> <p><b><u>Planning Response</u></b></p> <p><b>Agreed. The deferment of these properties is captured in Attachment 1 and is consistent with treatment of properties owned by Jali LALC and Bundjalung of Byron Bay Aboriginal Corporation (Arakwal).</b></p>

Note: The adjoining councils of Tweed and Ballina were also given the opportunity to provide comments on the exhibition of PP3, however no response was received.

### Submission from Community Alliance for Byron Shire (CABS)

Council received a submission from CABS identifying a number of concerns with PP3, namely that:

- parts of the Cape Byron Marine Park are not being zoned to W1 Natural Waterways, where applicable on certain properties in this planning proposal;
- Council is upzoning wide swathes of the Shire by applying new zones that allow a greater range of permissible land uses compared to what the current LEP 1988 environmental zone/s allow.

In relation to the first point above, properties in PP3 that contain Cape Byron Marine Park have been updated to include the gazetted *W1 Natural Waterways zone*, except where infrastructure overlaps with the proposed W1 zone. These updates are captured in Table 1(a) of Attachment 1.

- 5 In relation to the second point above, CABS position is that any land currently zoned 6(a), 6(b), 7(a), 7(b), 7(d), 7(f1), 7(f2), 7(j), 7(k), 8(a) in LEP 1988 should not be rezoned to anything other than *E1 National Parks*, *E2 Environmental Conservation* or *W1 Natural Waterways*. Conversely, if the exhibited PP3 maps show land that is currently zoned as listed above being re-zoned to RU1, RU2, RU5, R5, E3, R2, R3, RE1, RE2, SP1, SP2, 10 SP3 then that land (not the entire land parcel) is to be removed from the Planning Proposal and the existing zoning under the Byron LEP 1988 should remain in place.

**Planning Response (in relation to second point above)**

- 15 CABS' request to defer any land currently zoned 6(a), 6(b), 7(a), 7(b), 7(d), 7(f1), 7(f2), 7(j), 7(k), 8(a) in LEP 1988 and that has not been rezoned to anything other than *E1 National Parks*, *E2 Environmental Conservation* or *W1 Natural Waterways* is not supported for the following reasons:

- The E zone engagement process to date has been robust, constructive, and well received by the majority of those affected. This is demonstrated by nearly 1,200 agreed outcomes to date and the fact that Stages 1-3 have collectively resulted in a 20 **net gain of 1,420ha of *E2 Environmental Conservation zones*** on private land, when compared to areas previously zoned 7A, 7B, 7k & 7J in Byron LEP 1988.
- In the absence of agreed outcomes, all Far North Coast councils must be consistent with the Northern Councils E Zone Review Final Recommendations report when applying E zones (i.e.. satisfy E zone criteria and primary land use).
- 25 • 8(a) National Parks and Nature Reserve Zones. This 'deferred matter' zone totals 2.7 Ha in Byron Shire and is made up of road reserves within National Parks or small areas of Crown Land. They are not included in Planning Proposal 3 as this applies primarily to private land. (Note: All land administered by National Parks & Wildlife Service is zoned *E1 National Parks*).
- 30 • 7(f1) Coastal lands and 7(f2) Urban Coastal Lands will be "*considered under a separate process and remain as a Deferred Matter under the Byron Local LEP 2014 until appropriate planning controls are developed in consultation with the State Government*" ([Fact Sheet 1 – EZones FAQs](#)).
- The only PP3 properties where 7(d) Scenic Escarpment land has been zoned E3 are 35 small areas over internal roads.
- Five (5) parcels zoned 6(a) Open Space Zone and 6(b) Private Open Space Zone have been included in Planning Proposal 3, as follows:

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Property Number	Current LEP 1988 Zone (s)	Proposed LEP 2014 Zone(s)	Change in zoning summary
157230	6(a) (Open Space Zone)	RE1 Public Recreation and E2 Environmental Conservation	Eureka Public Recreation Reserve. Increase of 2,395 sqm of land to be zoned E2.
211460	6(b) (Private Open Space Zone)	RE2 Private Recreation	Mullumbimby Ex-services Club. No change in permissible uses.
90190, 213940, 213500, 170560	6(b) (Private Open Space Zone), 1(d) (Investigation Zone)	RE2 Private Recreation and E2 Environmental Conservation	Ocean Shores Country Club. 5,983 sqm now in E2.  Remaining RE2 is consistent with the primary land use.
111970, 267456, 170950	6(b) (Private Open Space Zone) and 7(b) (Coastal Habitat Zone)	RE2 Private Recreation and E2 Environmental Conservation	Byron Bay Golf Club. Increase of 29,924 sqm (3ha) of Environmentally protected area (E2).

A copy of the CABS submissions and detailed response to the property-specific matters raised is contained in Attachment 4.

### Submission from Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)

- 5 The submission refers to two privately owned lots that are accessed via Crown land from Riverside Crescent in Brunswick Heads (Lots 332 & 334 in DP755692). PP3 proposes to apply an E3 Environmental Conservation zone to both lots which are currently zoned *7B Coastal Habitat* and have a collective area of 1,438 sqm. Neither parcel has a dwelling entitlement, and both are mapped as “intermediate flood hazard”.
- 10 The submission recommends that an *E2 Environmental Conservation Zone* should be applied for the reasons cited below:



- both lots contain conservation vegetation and are within a surrounding wildlife corridor;
- both lots do not contain a constructed road frontage;
- the land is also flood and bushfire prone and contains high wetland vegetation, cultural landscape, and coastal habitat areas.

A copy of the Arakwal submission is contained in Attachment 5.

### **Planning Response**

The proposed zoning of both lots was further considered in relation to matters raised in the Arakwal submission. This included a site visit undertaken by Council's Ezone Ecologist, which identified mostly weeds and fruit trees on the land and hence not meeting the criteria for E2 zoning. However, as both properties are within 40m of the Brunswick River, Cape Byron Marine Park and flood affected ('intermediate' flood hazard), they do meet the E3 criteria for 'Riparian and estuarine vegetation and wetlands. Therefore, no change is recommended to the proposed E3 zone on both lots.

### **Other consultation with Arakwal**

Staff also met with Arakwal representatives in June 2021 to discuss future zoning of the following (Deferred Matter) properties in their ownership:

<b>Property description</b>	<b>Current zoning in BLEP 1988</b>
10 Ironbark Ave, Byron Bay	<i>7b Coastal Habitat</i>
Lot 438 DP 729107, Bangalow Rd, Byron Bay	<i>1d Investigation</i>

Following this meeting it was decided to defer these properties from Planning Proposal 3 to allow time for further discussions with Arakwal representatives and internal staff. This is consistent with treatment of properties owned by Jali LALC and Tweed Byron LALC in the E zone review program.

### **Conclusion**

This report presents a summary of submissions (and other feedback) received during the exhibition of PP3 along with recommended LEP mapping amendments for adoption.

Collectively Stages 1-3 of Council's E zone implementation program have resulted in a net gain of **1,420ha** of *E2 Environmental Conservation* zones on private land, when compared to areas previously zoned 7A, 7B, 7k & 7J in Byron LEP 1988. This figure is expected to increase when the E zones Stage 4 planning proposal is prepared in 2022.

It's worth noting that Council's E zone implementation program was the NSW runner-up in the 2020 Planning Institute of Australia Awards for 'Public Engagement and Community

Planning’.

It’s also worth noting that to date Byron Shire Council is the only Far North Coast council to have undertaken (and substantially completed) the application of E zones on private land. This has been largely achieved through our ‘up front’ engagement with landowners combined with a robust, collaborative, and flexible approach to achieving “agreed outcomes” wherever possible, as well as through the local community’s strong support for the E zone planning process.

The Stage 3 Planning Proposal represents the most significant of the E zone review stages for Council to adopt prior to finishing its term.

## **Recommendation**

It is recommended that [E zone Stage 3 Planning Proposal](#) be updated to reflect the proposed LEP 2014 zones and other related mapping changes in Attachments 1 and 2 of this report, and forwarded to the Department of Planning, Industry & Environment for finalisation.

## **Strategic Considerations**

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

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>	<b>Code</b>	<b>OP Activity</b>
<b>Community Objective 3: We protect and enhance our natural environment</b>	3.1: Partner to protect and enhance our biodiversity, ecosystems and ecology	3.1.1: Protect and enhance our natural environment and biodiversity	<b>3.1.1.5</b>	Continue the E zone review (Action No.9 from Rural Land Use Strategy)

### **Recent Resolutions**

- [20-614](#)

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

The process of applying E zones and mapped overlays in Byron LEP 2014 is being undertaken in accordance with Section 117 Direction 2.5 – *Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs*. This direction specifically requires that a planning proposal that introduces or alters an *E2 Environmental Conservation* or *E3 Environmental Management Zone*, or an overlay and associated clause must be consistent with the *Northern Councils E Zone Review Final Recommendations*.

## Financial Considerations

- 5 The remaining 2021/22 budget for the E zone Implementation program will most likely be exhausted before Stage 4 is completed in 2022. If so, a separate report will be presented to Council detailing the additional 2021/221 budget requirements to enable completion of a Stage 4 planning proposal. Stage 4 will include Council, public authority, and Aboriginal owned lands as well as LEP mapping overlays and will be the final stage of the E zone Implementation program.

## Consultation and Engagement

- 10 Consultation was undertaken as per the planning proposal Gateway determination [conditions](#). Due to the large number of properties, landowner notification was undertaken in stages requesting feedback by one or more of the following options: calling a designated 'hotline' phone number; emailing to our Ezones inbox, scheduling a phone back or face to face meeting using our online booking calendar. This resulted in more than 400 contacts with landowners and or consultants.

15

STAFF REPORTS - INFRASTRUCTURE SERVICES

**Report No. 13.17 Tender 2021-1093 - Byron STP Biosolids Shed Roof Replacement**

5 **Directorate:** Infrastructure Services

**Report Author:** Joshua Winter, Capital Works Engineer

**File No:** I2021/1654

**Summary:**

10 On 10 September 2021, the General Manager, under delegated authority, approved the use of the open tender method to call for tenders for Contract 2021-1093 – Byron STP Biosolids Shed Roof Replacement.

The Request for Tender was advertised from 16 September to 8 October 2021. Tenders were received from two organisations.

15 Tenders have been assessed in accordance with the provisions of the Local Government (General) Regulations 2005. This report summarises the background and assessment of the tenders and provides a recommendation to award the tender for Contract 2021-1093.

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**RECOMMENDATION:**

- 20 1. That Council award Tender 2021-1093 to the tenderer recommended in the Tender Evaluation Report (Confidential Attachment 1).
2. That the project budget be increased by \$210,000 with funding provided from the Sewer Capital Works Reserve.
- 25 3. That Council makes public its decision, including the name and amount of the successful tenderer, in accordance with Clause 179(b) of the Local Government (General) Regulation 2021.

**Attachments:**

- 30 1 Confidential - 24.2021.32.1 - 2021-1093 - Byron STP Biosolids Roof Replacement - Evaluation Report, E2021/128262

## Report

On 10 September 2021, the General Manager, under delegated authority, approved the use of the open tendering method to call for tenders for Contract 2021-1093 – Byron STP Biosolids Shed Roof Replacement.

- 5 A contract to undertake these works is required due to the specialist nature of the works and the risk associated with undertaking the works.

- 10 The Request for Tender sought responses from proponents for the supply and construction of the Byron STP Biosolids Shed roof replacement and structural rectification works, as well as the demolition of the current chemical storage shed and construction of new footings for the future chemical storage shed installation.

The Contract is expected to commence in November 2021 for a period of approximately eight weeks.

The Contract will be managed by the Utilities Capital Works Engineer.

Tenders were advertised as follows:

- 15 Vendorpanel & Council website: 16 September to 8 October 2021.

Site briefings were held at the West Byron Sewage Treatment Plant. Three organisations attended.

An Evaluation Panel comprising of three members was formed.

- 20 Tenders closed on 8 October 2021 and tenders were received from the following proponents:

- Advanced Concrete Engineering
- Bishton Group

Tenders were evaluated by the Evaluation Panel in accordance with the following evaluation criteria:

- 25 *Mandatory criteria:*

- a) Tenderer must have a valid Australian Business Number.
- b) Substantial conformance to Conditions of Contract and Statement of Requirements.
- c) Workers compensation insurance for all employees.
- 30 d) Holds, or is willing to obtain, the insurances as specified in the Statement of Requirements.
- e) Satisfactory Work Health and Safety practices.

- f) Satisfactory environmental management practices.
- g) Proponent confirms no involvement from Australia's offshore detention centres.
- h) Proponent confirms no involvement with the construction or operation of the Carmichael mine or otherwise have ties to Bravus Mining & Resources.

5 *Qualitative criteria:*

- (a) Demonstrated experience on similar projects with respect to technical aspects and project costs: references from previously completed projects; Disclosure of prior commitments during the contract period - work at hand
- 10 (b) Nominated project team including the organisational structure, qualification and relevant experience of key personnel and subcontractors
- (c) Demonstrated understanding of the project and ability to carry out the work and manage the contract

The evaluation deemed both submissions as qualifying tenders and scored the submissions in accordance with the attached Evaluation Report.

15 **Financial Considerations**

The price basis for the contract is a lump sum.

- General Ledger Account 7649.036 has been established and Council approved an original budget of \$60,000 for this project upon adoption of the original 2021/2022 budget estimates. A further \$210,000 is required to fund the project with funding available in the Sewerage Capital Works Reserve to finalise the works. Should Council approve the additional funding recommended the budget for this project will be \$270,000.
- 20

**Statutory and Policy Compliance Considerations**

- The tendering process has been undertaken in accordance with Council's Purchasing and Procurement Policy, and the provisions of the Local Government (General) Regulation 2021.
- 25

The Local Government (General) Regulations 2021 define the options available to Council. An extract is provided below.

**Local Government (General) Regulation 2021 - Reg 178**

[Acceptance of tenders](#)

- 30 178 *Acceptance of tenders*

- (1) *After considering the tenders submitted for a proposed contract, the council must either—*



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### STAFF REPORTS - INFRASTRUCTURE SERVICES

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(a) *accept the tender that, having regard to all the circumstances, appears to it to be the most advantageous, or*

(b) *decline to accept any of the tenders.*

5 (1A) *Without limiting subsection (1), in considering the tenders submitted for a proposed contract for the performance of domestic or other waste management services, the council must take into account whether or not existing workers (within the meaning of section 170) will be offered employment or engagement on terms and conditions comparable to those applicable to the workers immediately before the tender was submitted.*

10 (2) *A council must ensure that every contract it enters into as a result of a tender accepted by the council is with the successful tenderer and in accordance with the tender (modified by any variation under section 176). However, if the successful tender was made by the council (as provided for in section 55(2A) of the Act), the council is not required to enter into any contract in order to carry out the requirements*  
15 *of the proposed contract.*

(3) *A council that decides not to accept any of the tenders for a proposed contract or receives no tenders for the proposed contract must, by resolution, do one of the following—*

(a) *postpone or cancel the proposal for the contract,*

20 (b) *invite, in accordance with section 167, 168 or 169, fresh tenders based on the same or different details,*

(c) *invite, in accordance with section 168, fresh applications from persons interested in tendering for the proposed contract,*

25 (d) *invite, in accordance with section 169, fresh applications from persons interested in tendering for contracts of the same kind as the proposed contract,*

(e) *enter into negotiations with any person (whether or not the person was a tenderer) with a view to entering into a contract in relation to the subject matter of the tender,*

(f) *carry out the requirements of the proposed contract itself.*

30 (4) *If a council resolves to enter into negotiations as referred to in subsection (3)(e), the resolution must state the following—*

(a) *the council's reasons for declining to invite fresh tenders or applications as referred to in subsection (3)(b)–(d),*

35 (b) *the council's reasons for determining to enter into negotiations with the person or persons referred to in subsection (3)(e).*

Council's endorsement of the recommendation to award the tender as recommended in the attached Evaluation Report is sought.