

# Agenda Ordinary (Planning) Meeting

Thursday, 8 September 2022



**BYRON**  
SHIRE  
COUNCIL

# Agenda Ordinary (Planning) Meeting

held at Conference Room, Station Street, Mullumbimby  
commencing at 11.00am

Public access relating to items on this agenda can be made between 11:00am and 11:30am on the day of the meeting. Requests for public access should be made to the General Manager or Mayor no later than 12:00 midday on the day prior to the meeting.

A handwritten signature in black ink, appearing to read 'Mark Arnold'.

**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.



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## OATH AND AFFIRMATION FOR COUNCILLORS

Councillors are reminded of the oath of office or affirmation of office made at or before their first meeting of the council in accordance with Clause 233A of the Local Government Act 1993. This includes undertaking the duties of the office of councillor in the best interests of the people of Byron Shire and the Byron Shire Council and faithfully and impartially carrying out the functions, powers, authorities and discretions vested under the Act or any other Act to the best of one's ability and judgment.

# BYRON SHIRE COUNCIL

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

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

NOTICES OF MOTION

**Notice of Motion No. 9.1 North Byron Parklands - Splendour in the Grass 2022**

5 File No: I2022/1014

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I move:

- 10 1. That Council writes to Anthony John Roberts MP, Minister for Planning and Minister for Homes, and to the Independent Planning Commission as the declared consent authority that approved the development application (SSD 8169) for the North Byron Parklands site (applicant Billinudgel Property P/L) and conveys the following concerns regarding Splendour in the Grass 2022:
- 15 a) Council notes the many negative impacts created by Splendour in the Grass (SITG) event and the effect of the festival on patrons, Byron Shire residents and businesses
- 20 b) Since the time of the trial period, several resolutions (including 17-376 and 18-834) of Council have expressed multiple concerns surrounding the approval process and the final permanent approval given to the owners of the site to hold increasingly larger, and more frequent, events at the site. These concerns remained unheeded and many of them have now been realised at this latest SITG event
- 25 c) Council has never supported the use of the site as per the 2019 approval determined by the Independent Planning Commission and in particular wishes to reiterate Resolution 18-834 of 13 December 2018:
- 30 1. *That Council does not currently support the proposal including the increase in attendance numbers, event types, and event days on the North Byron Parklands site beyond what has already been approved until its concerns as raised within its submission are satisfied*
- 35 2. *That Council writes to advise the Department of Planning and the Independent Planning Commission of this position*
3. *That Council does not support DOP's recommendation with respect to Parklands' self-monitoring of compliance;*
4. *That Council proposes that any consideration of ongoing events must include an independent monitoring process, with the involvement of Council*
5. *That Council's costs for monitoring should be funded by the applicants*

# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

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6. *That this monitoring needs to be used as part of the Planning Secretary's ongoing compliance*
7. *That the original trial approval was that Council would be the consent authority at the end of the trial period and that this condition should remain;*

- 10
- d) Council is deeply concerned by the following unacceptable impacts of SITG 2022 on the Byron Shire community:
- traffic queues onto the site extending for several kilometres onto the M1 posed a danger to motorists
  - traffic delays of several hours impacted people who had to reach other destinations
  - social amenity was severely affected – traffic blockages inhibited people in several ways including being unable to reach their homes, visit local business and to pick up children from schools – many waited several hours in cars with children -- and school buses were held up for several hours,
  - loss of business – businesses in many parts of the Shire's capacity to operate was reduced due to the traffic impacts and inability of customers to reach them
  - businesses who could have relied on SITG patrons reported lost business as the mud and water on the site, and the traffic delays, prevented SITG patrons from visiting other parts of the Shire
- 25
- e) Council is very concerned about the safety of this event, and future events, on the site, with regard to, but not limited to, the following issues as widely recorded by medical staff in local hospitals and clinics, and patrons and witnesses at SITG:
- 30
- serious injuries such as broken bones, sprains and staph infections occasioned by the muddy conditions
  - the 'super-spreader' effect of COVID and other viral infections that emerged during and after the event that not only threaten health of patrons but impact on the operation of businesses and schools Shire-wide and beyond when carried back to patrons' homes in other locations
  - inadequate crowd management in the stage/tent areas resulting in falls, injuries and patrons fainting
  - inadequate provision of first aid or medical support and use of untrained security staff in lieu of first aid personnel
- 35

# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

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- lack of readily available drinking water despite the widespread provision of alcohol sales
- excessive toilet queues and overflowing toilets resulting in widespread urinating and defecating on the ground with the potential for the spread of illness;

f) Council has serious concerns about the adequacy and impacts of the onsite sewage management system, given patrons' witnessing of overflowing toilets. Combined with the high water flow across the flooded site, urination and defecation outside of the toilet areas, these factors create the potential for serious contamination of the SEPP (Coastal Management 2018) wetland and resultant deleterious effects on the local ecology;

g) Council continues to have concerns about environmental impacts on and adjacent to the site, in particular the Billinudgel Nature Reserve.

h) Council has concerns about self-monitoring of the site by its owners, which is not independent. Compliance monitoring of events on the site as compliance reports, provided by the North Byron Parklands under NBP's self-monitoring regime, are at odds with local residents' and patrons' reports of compliance breaches.

2. That Council requests the Minister to:

- a) instigate an independent review of SITG 2022 with reference to, but not limited to, ecological impacts, health and safety, social impacts, public amenity, business impacts, and any other impacts on the Shire;
- b) recognise that Council is the key stakeholder for the community and should contribute to determining the terms of any review;
- c) consider the findings of the review as a basis for the manner in which further events may occur on the site.

3. That Council seeks community feedback on any impacts of SITG 2022 as per (2a) to inform any review of the event and to assist in future recommendations

### **Attachments:**

- 1 Supporting information to NoM - Splendour in the Grass - Redacted, E2022/78193 

**Signed: Cr Cate Coorey**

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

See Attachment 1 Supporting Information.

## Staff comments

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

The Notice of Motion proposes that Council write directly to the relevant Minister in relation to the recent Splendour in the Grass (SITG) 2022 event about the issues raised in points 1a-h.

It also proposes that Council request the Minister to consider instigating an independent review of the SITG 2022 event as per points 2a-c.

Whether an independent inquiry is convened or not will be at the discretion of the relevant Minister.

Point 3 suggests that Council seeks community feedback on any impacts of SITG 2022 as per point (2a) to inform any review of the event and to assist in future recommendations.

Given the nature of event i.e., state significant development, and the relevant approval and primary regulatory bodies i.e., state government, this responsibility should sit with them not Council. It should also be noted that the engagement/feedback exercise proposed is not currently scoped or resourced.

Notwithstanding the above, in March 2019, the NSW Independent Planning Commission granted Development Consent for undertaking a number of events on a permanent basis at the North Byron Parklands venue, where SITG is held. These consent conditions required the establishment of a Regulatory Working Group (RWG).

To this aim, the North Byron Parklands RWG has been operating for many years to review environmental management and community relations.

Members include the NSW Police, Byron Shire Council, Tweed Shire Council, Roads and Maritime Services, Rural Fire Service, State Emergency Service, Office of Environment and Heritage and National Parks and Wildlife Service.

A community representative from both Tweed and Byron local government areas also sits on the RWG and are appointed by their respective Councils through an expression of interest process.

The last RWG meeting was held in February 2022. Minutes can be found here: <http://northbyronparklands.com/2017/docs/RWG/minutes/RWG%20Minutes%20Final%200.05.22.pdf> An update to the RWG was provided at that meeting on the plans for SITG 2022 event.

The RWG provides Council and community through member representatives the most immediate forum to receive and give feedback to the organisers of SITG.

The next RWG meeting is scheduled for 24 August 2022. SITG management will be in attendance to provide details and participate in discussions regarding the recent festival.

## BYRON SHIRE COUNCIL

### NOTICES OF MOTION

9.1

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

Point 3 of the Notice of Motion is not currently scoped or resourced.

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

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
<b>2: Inclusive Community</b> We have an inclusive and active community where diversity is embraced and everyone is valued	2.1: Foster opportunities to express, celebrate and participate in arts and cultural activity	2.1.3: Events and festivals - Support and enable arts & cultural activity, festivals, projects, and events	2.1.3.9	Collaborate with government, agency and industry on policy and legislative reforms



**Notice of Motion No. 9.2    CONFIDENTIAL - Fines imposed on  
house in Stuart Street**

**File No:** I2022/1015

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**RECOMMENDATION:**

1. That pursuant to Section 10A(2)(a) and (b) of the Local Government Act, 1993, Council resolve to move into Confidential Session to discuss the report Fines imposed on house in Stuart Street.
- 10 2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
  - a) personnel matters concerning particular individuals (other than councillors)
  - b) discussion in relation to the personal hardship of a resident or ratepayer
- 15 3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:

**The NoM and comments contain personnel and hardship information**

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20 **Signed: Cr Michael Lyon**

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## **Notice of Motion No. 9.3 Wallum Place Affordable Housing Investigation**

**File No:** I2022/1104

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**I move that Council:**

10 **Request staff to undertake an investigation into the suitability of the B4 Mixed Use part of Council-owned land at 42 Wallum Place (Lot 4 DP1004514) (excluding the Byron Herb Nursery), for an affordable housing development to provide much needed housing supply for key workers and low – moderate income residents living in Byron Shire.**

15 **Signed: Cr Michael Lyon**

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

Byron Shire is under enormous pressure to provide affordable housing for key workers and lower income residents. In such a crisis, it is our responsibility to come up with solutions that utilise our community resources in the best way possible.

20 This proposal will utilise a currently vacant asset, to provide a much-needed service to the community.

The subject parcel of land is Council-owned operational land and should have the capacity to accommodate medium-density housing. The site is zoned B4 - Mixed Use, which is the same zoning as the Habitat development to the south, across Wallum Place.

25 The land was previously zoned 2(v) in the 1988 LEP, having been identified (along with the Habitat site) as appropriate for a bespoke village development. After Habitat began to be developed, the subject site remained largely disused and unmanaged by Council.

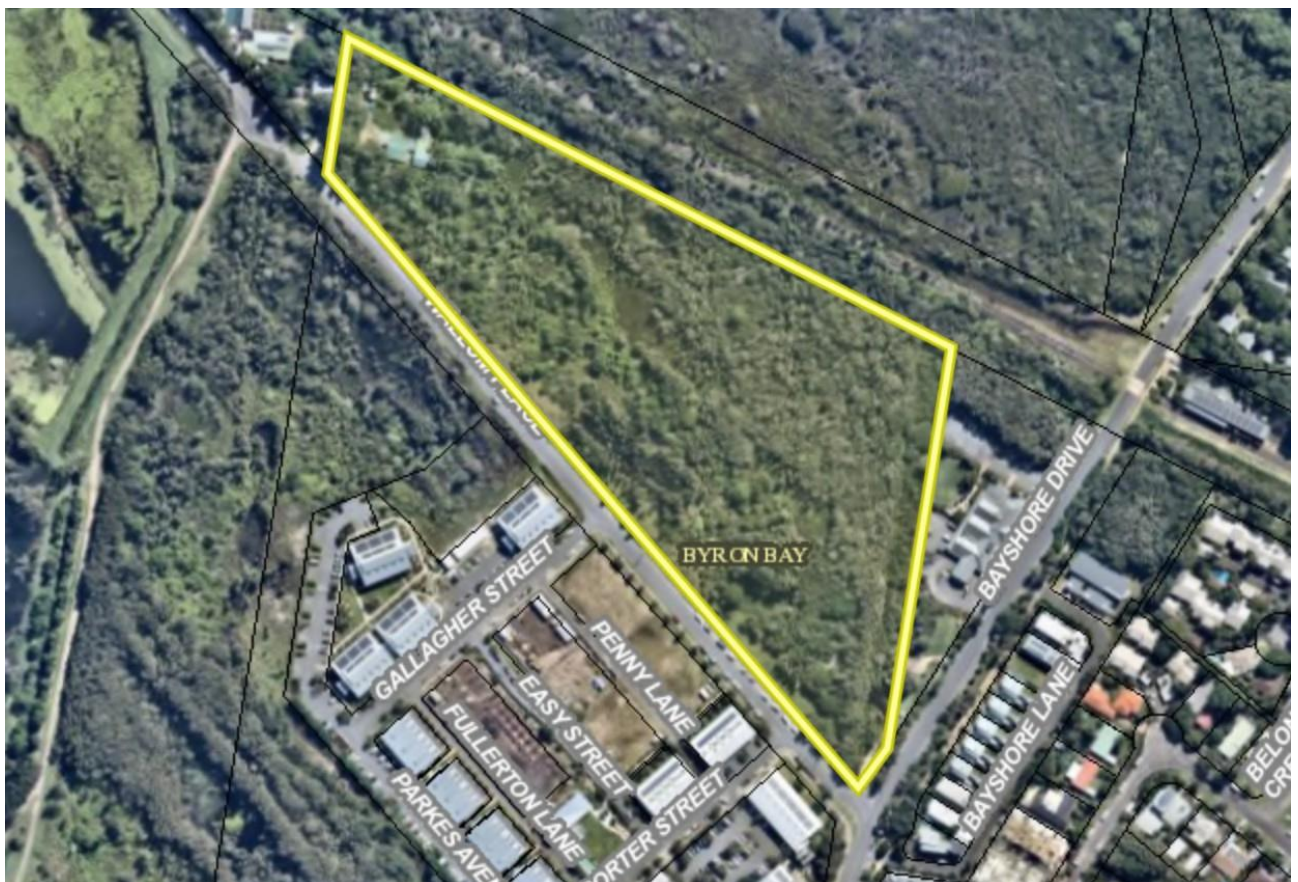
30 The site was previously cleared, and much of the current vegetation has grown in past 10 years, as can be seen in attached satellite photo from 2009. The first stage of fill for Habitat can also be seen in this image.

This site represents an excellent opportunity to provide a significant amount of much needed affordable housing in a timely and straightforward manner. The site is Council owned, already appropriately zoned, and relatively unconstrained.

It is located close to key employment centres, as well as the soon to be complete TAFE CLC.

5 The site is in within walking distance to the Solar Train to Byron Bay town centre, as well as being well connected to bus routes, and cycle paths, allowing for access to sustainable public and active transport options. Proximity to the rail corridor also allows for good connections to any future rail trail or light rail that may service broader Shire in the future.

I hope a thorough and timely investigation will reveal that this site is both capable and suitable to provide desperately needed affordable housing to Byron Shire.



10 *Figure 1 Subject Site*



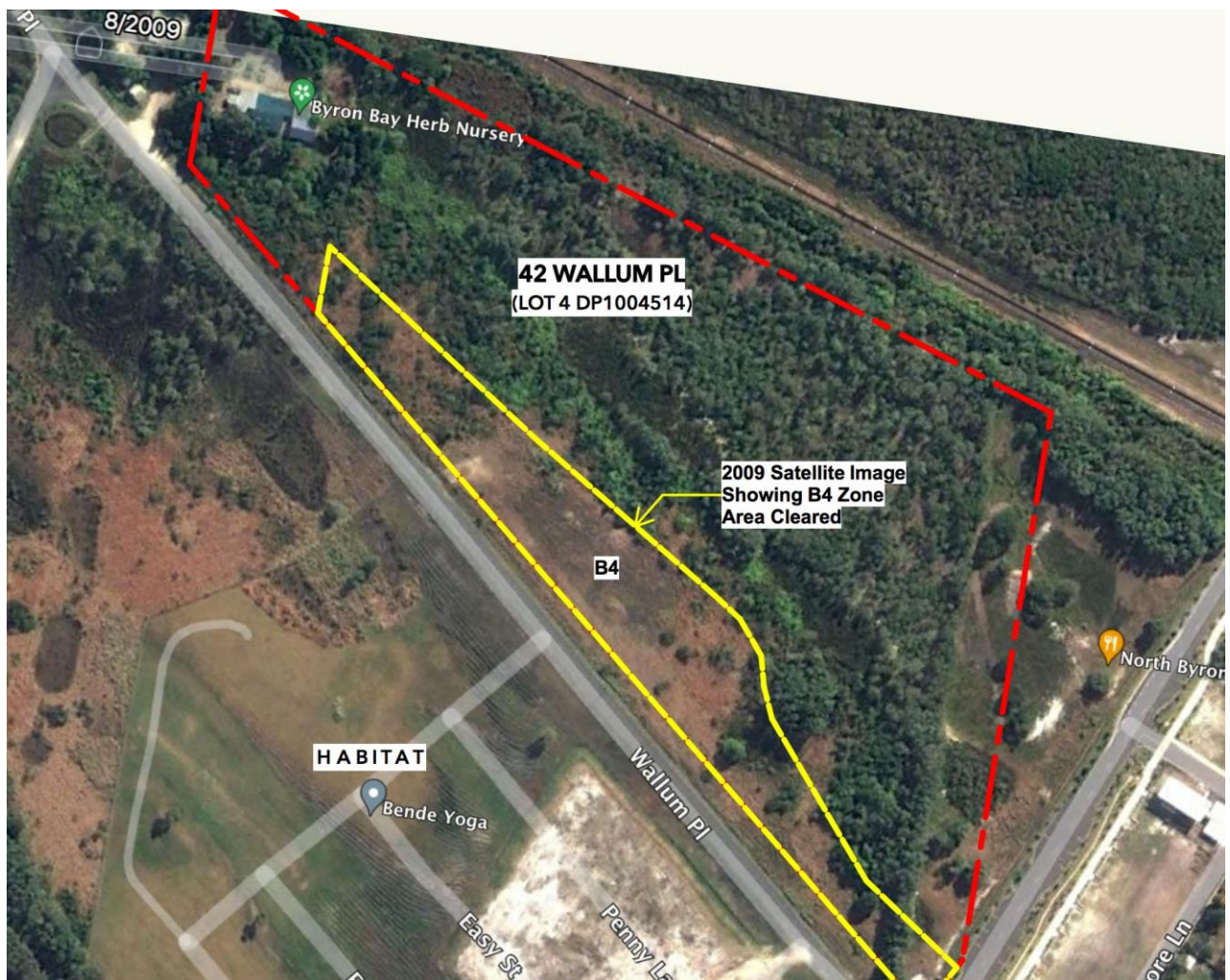


Figure 1 2009 Satellite Image

**Staff comments by Shannon Burt, Director, Sustainable Environment and Economy.**

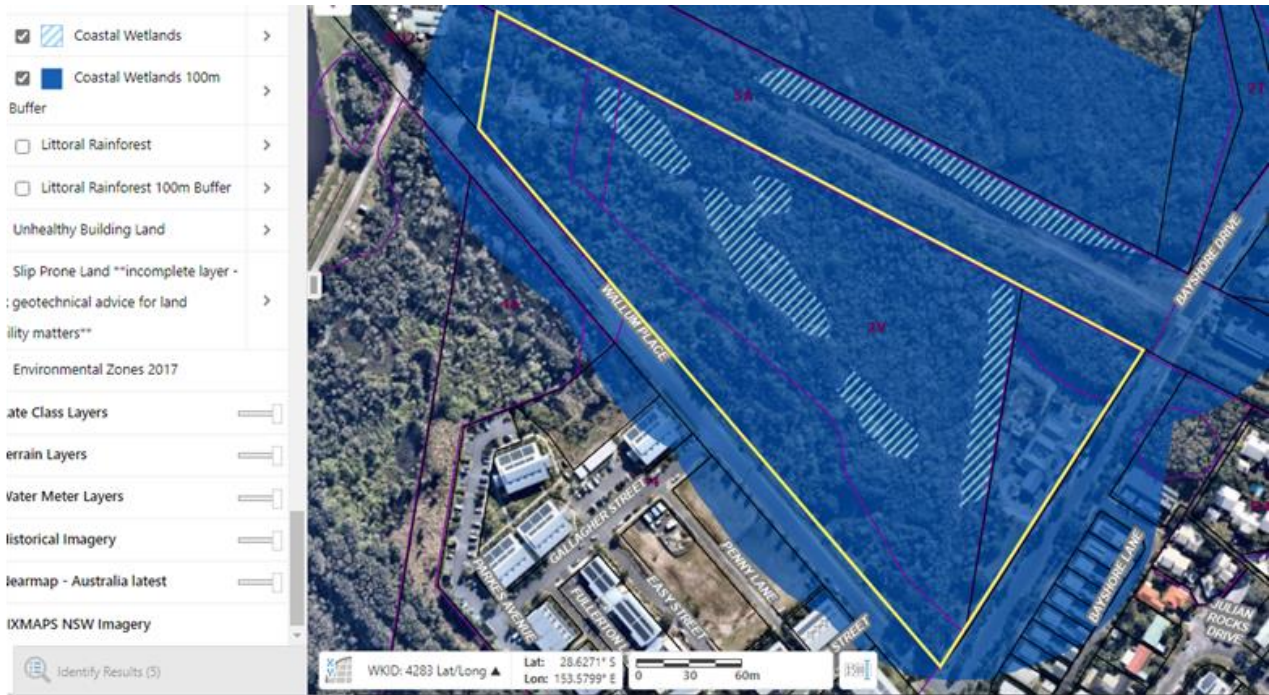
Lot 4 DP 1004514 Wallum Place is Council owned operational land. It is split zoned B4 Mixed Use and Deferred Matter under Byron LEP 2014. The Deferred Matter part of the land is subject to the current Stage 4 C zone review. Stage 4 applies to land owned by public authorities and our traditional owners and custodians. Initial engagement has commenced and is likely to go into 2023.

[Environmental zones \(E Zones\) - Byron Shire Council \(nsw.gov.au\)](https://www.byrongov.au/environmental-zones)

The subject land is located next to the Arts and Industrial Estate and Sunrise areas, and close to Byron Bay, and has a part B4 Mixed Use zone that permits a range of land uses including: multi dwelling accommodation, residential flat buildings, shop top housing. However, the site is subject to multiple environmental constraints that require further

thorough consideration prior to any decisions on development suitability being made – examples of main ones shown in maps below:

### Map showing CM SEPP 'Coastal Wetlands' + 100m Buffer on subject land

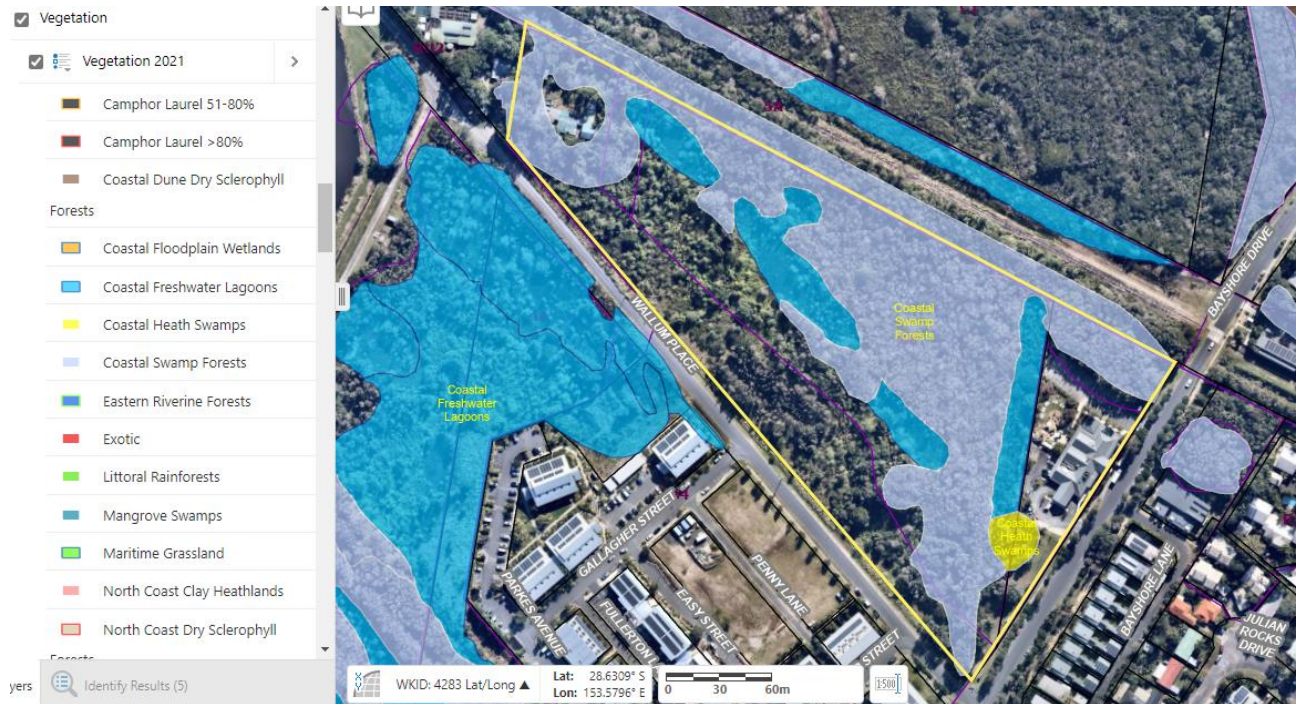


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# Map showing Vegetation types on subject land (coastal freshwater lagoons / coastal swamp forests)



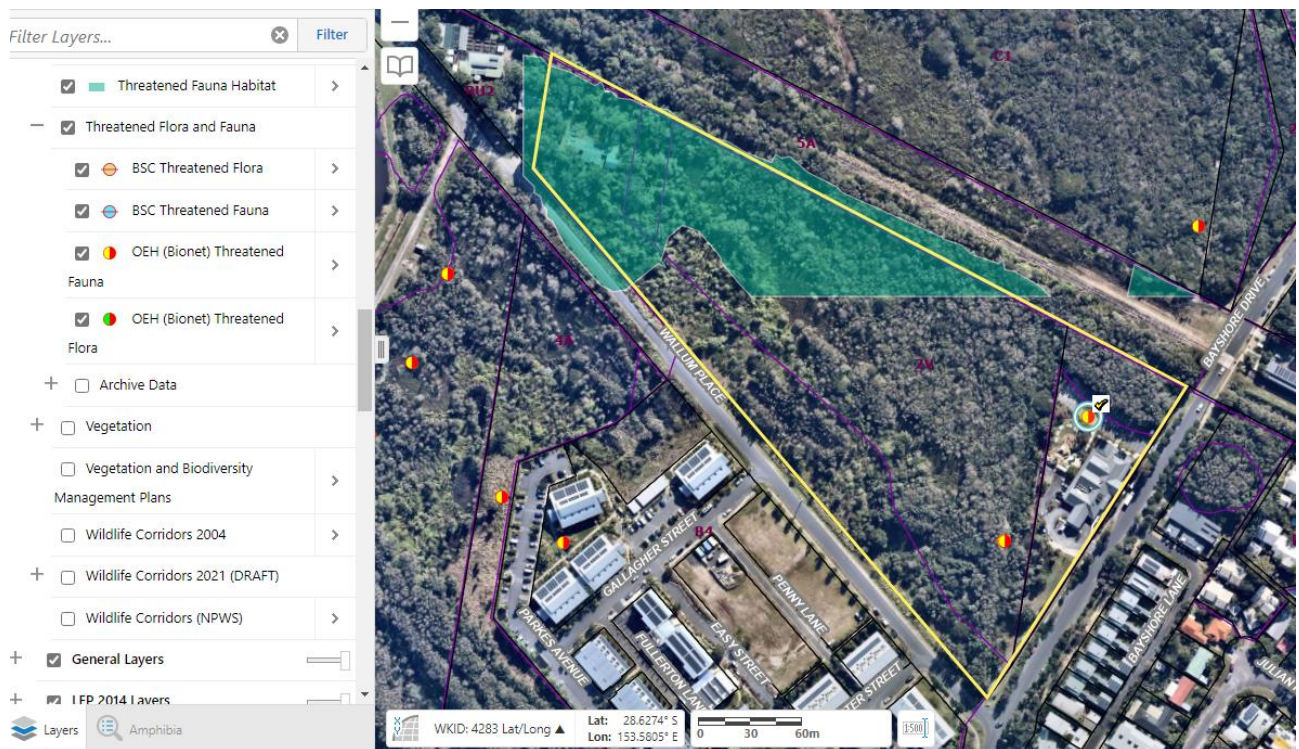
# Map showing High Environmental Value Vegetation (HEV) on subject land



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# Map showing Bionet threatened species records (OEH) on and around subject land (mainly wallum froglet)





Notwithstanding the above, the Notice of Motion seeks preparation of a report to investigate and outline the planning controls that apply to the subject land, and the constraints and opportunities that are relevant to the development of the B4 Mixed Use part of the site for Affordable Housing.

### Financial/Resource/Legal Implications:

Staff and resources required to implement resolutions are considered on a case-by-case basis. There is no scope of works or budget estimate for this report to be prepared.

An estimate of up to \$10,000 can be assumed based on previous like reports.

- 10 A source of funds for this report could be taken the Property Development Reserve.

Resolution **22-120** regarding the Byron Shire Council and Landcom Project Agreement for an Affordable Housing Development on 57 Station Street Mullumbimby – part 7 – “Notes that we are in a housing emergency and approaches this project as a potential template for other projects across the Shire.”

- 15 The 57 Station Street Mullumbimby project provides council with a project and governance pathway for developments on council owned land such as this.

The Housing SEPP also applies to the B4 Mixed Use zone and can be used as a planning pathway to support the delivery of a range of affordable housing typologies once any development footprint is identified as suitable by Council.

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

CSP Objective	CSP Strategy	DP Action
<b>4: Ethical Growth</b> We manage growth and change responsibly	4.2: Enable housing diversity and support people experiencing housing insecurity	4.2.2: Partnerships and pilots to address housing needs - Investigate partnerships and pilots that deliver an innovative and affordable housing model for the Shire



## **Notice of Motion No. 9.4 Stormwater Investigation Requirements**

**File No:** I2022/1111

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**I move that Council:**

- 10 1. **Acknowledges the value of infiltration of rainfall into the soil profile of all locations in the Shire, both for its provision of soil moisture for plant growth and for its reduction of stormwater runoff.**
2. **Acknowledges the value of rural properties all over the Shire dealing with the impacts of impervious surfaces on the property itself rather than shedding those impacts onto a downstream receiving environment.**
- 15 3. **Receives a report on amending the DCP and other guiding documents in relation to stormwater investigations to require:**
  - 20 a) **that the receiving catchment is investigated far enough downstream from any development site that development impacts on stormwater have become insignificant. Where this distance downstream cannot be otherwise determined, a test is made for a catchment of at least 10 times the catchment area on which runoff characteristics are proposed to be altered;**
  - b) **that no urban property can make impervious more than 80% of the property area; and**
  - 25 c) **that no rural property (ie one with onsite sewage management) can make impervious more than 60% of the property area.**

**Signed: Cr Duncan Dey**

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

- 30 Councillors recently considered a Development Application for Fed Sheds in the rural village of Federal (Report 13.11 to our meeting of 11 August 2022). The 4,000 m<sup>2</sup> allotment on which intensive development was proposed is directly uphill of an existing rural residential subdivision, Coachwood Court. That roadway curves to capture runoff from the hillside above, including from the 4,000 m<sup>2</sup> allotment. Total catchment to  
35 Coachwood Court is about five times that (i.e., 2 hectares).

There is a pre-existing stormwater / flood problem in Coachwood Court. Roadside table drains collect hillside stormwater and direct it in flood times onto private property. The single pipe draining the table drains may be adequate for low flows but there is no overland flow path to carry excess flows.

- 5 In 2022 the heavy concrete lid on a maintenance hole in that pipeline was blown off by water pressure.

- 10 The Stormwater Investigation that supported the DA for the uphill property made calculations based only on the 4,000 m<sup>2</sup> property area. It obeyed the rules and reduced post-development peak flows from its own area back to the pre-development peak. This is achieved by retaining stormwater temporarily and releasing it slightly later than would be the case without that retention. The volume released does not change. The proposal then discharges this water after piping it to Coachwood Court. No calcs were done for the full catchment to Coachwood Court.



- 15 Information in the Stormwater Report is scant but it focuses on water at the allotment boundary rather than examining the consequences of that water when it reaches Coachwood Court.

- 20 I believe impacts should be evaluated and remediated when necessary for the full extent downstream, until a point is reached where those impacts are no longer detected. That is the intent of the change I propose in Part 3(a) above.

Additionally, the design proposed under the DA in Federal maximised building footprint at the expense of all other concerns. Expensive engineering 'solutions' were then required, to squeeze the remaining obligations onto the property (parking, onsite sewage, stormwater quality measures, etc).

I believe that our rural landscape and village-scape are better served by a more relaxed approach to land-use. A simple formula as proposed in Part 3(b) would enable that, as well as reducing the cost per square metre to the developer. It offers equity in the sharing of stormwater impacts and responsibilities across all properties in a catchment.

- 5 Councillors also recently considered a DA for Mixed Use in Jonson Street Byron Bay (Report 13.7 to our meeting of 11 August). The DCP currently enables and almost encourages urban commercial development to put buildings on 100% of the property area and then seek permissions to use areas off-site for everything else, including parking during the construction phase.
- 10 This approach is causing creeping stormwater / flood problems in CBD areas like Byron Bay. The public purse is about to open to create multi-million-dollar engineering solutions for Byron, including electric pumps that will be expected to work during storm events like March 2022. Storms are inherently associated with blackouts in our region.

- 15 A better way forward would be to emulate nature, even if only 20% of it. The remaining 80% could still be made impervious under the idea put forward in Part 3(c) of this motion.

The motion does not propose adopting these approaches today. It asks that we consider this different and better way of interacting with the hydrologic environment, by receiving a report. We do not have an Advisory Committee for stormwater. Council is thus that committee.

## 20 **Staff comments**

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

Point 3 of the Notice of Motion requests staff to prepare a report on amending the DCP and other guiding documents in relation to stormwater investigations including downstream development impacts and built upon areas.

- 25 Council's Development Control Plan and adopted engineering standards already include provisions to consider downstream impacts (see section B3.2.3 of DCP 2014) but do not include any specific provisions to restrict impervious areas.

To this aim, Council considered a report on **Water Sensitive Urban Design (WSUD)** at the [Ordinary Meeting held on Thursday, 25 November 2021](#) (see report no. 13.18).

- 30 This report responded to Council resolution **21-343** from the 26 August 2021 meeting that requested details on the progress in implementing the Byron Shire Council Water Sensitive Urban Design (WSUD) Policy and Strategy. Link below:

[Water Sensitive Urban Design Policy](#)

- 35 Council resolved **21-548** *to be presented to the next available Council meeting: 1. Draft Water Sensitive Urban Design – Development Control Plan 2. Draft Water Sensitive Urban Design – Guidance Materials 3. Initial annual drainage infrastructure report.*

## BYRON SHIRE COUNCIL

### NOTICES OF MOTION

9.4

This work is progressing but has been significantly delayed due to resourcing challenges the result of COVID-19 and 2022 Flood events. An update report is now likely to be presented to Council on resolution **21-548** before the end of this year.

- 5 It is considered that point 3 of the Notice of Motion can and should be accommodated through this work instead of a standalone project as proposed, which is otherwise not resourced or funded.

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

- 10 As discussed above. Point 3 of the Notice of Motion can and should be accommodated through work progressing under Resolution **21-548** instead of a standalone project as proposed, which is otherwise not resourced or funded.

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

CSP Objective	CSP Strategy	DP Action
<b>5: Connected Infrastructure</b> We have connected infrastructure, transport, and facilities that are safe, accessible, and reliable	5.5: Provide continuous and sustainable water and sewerage management	5.5.4 Water sensitive urban design - Improve Council's planning, processes and capacity to integrate water sensitive urban design into Council works and address catchment-based priorities

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

## Report No. 13.1 Outcome of NSW Flood Inquiries

**Directorate:** Corporate and Community Services

5 **Report Author:** Esmeralda Davis, Director Corporate and Community Services  
Shannon Burt, Director Sustainable Environment and Economy  
Phillip Holloway, Director Infrastructure Services

**File No:** I2022/1109

### Summary:

10 In March 2022, the NSW Government commissioned an independent expert inquiry into the preparation for, causes of, response to and recovery from the 2022 catastrophic flood event across the state of NSW, resulting in 28 recommendations.

A Parliamentary select committee was established on 23 March 2022 to inquire into and report on response to major flooding across New South Wales in 2022, which  
15 subsequently tabled 21 findings and 37 recommendations.

This report provides an overview of the inquiries' terms of reference and recommendations, and outlines projects already supported by Council which align with and support the intent of some of the inquiries' recommendations.




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### RECOMMENDATION:

25 **That Council notes the recommendations of the two NSW Flood Inquiry reports and that staff have commenced work to identify relevant actions to be pursued through Local, State and Federal avenues.**

### Attachments:

- 30 1 NSW Independent Flood Inquiry - Full Report 29 July 2022, E2022/81140   
2 Parliamentary Report - Response to major flooding across New South Wales in 2022 - Full report 9 August 2022, E2022/81142   
3 Final Submission to NSW Independent Flood Inquiry - updated following 19 May extraordinary meeting Res 22-134, E2022/47283 

35

## **Report**

### **1. Independent Flood Inquiry**

5 In March 2022, the NSW Government commissioned an independent expert inquiry into the preparation for, causes of, response to and recovery from the 2022 catastrophic flood event across the state of NSW. The [Full Report](#) has now been published and can be found at Attachment 1 (E2022/81140).

Professor Mary O'Kane AC and Michael Fuller APM were engaged to lead the Inquiry.

The Inquiry was tasked with examining and reporting on:

- 10
  - causes of and factors contributing to the frequency, intensity, timing and location of floods
  - preparation and planning by agencies and the community for floods in NSW
  - responses to floods, particularly measures to protect life, property and the environment
  - the transition from incident response to recovery
- 15
  - recovery, including housing, clean-up, financial support, community engagement and longer-term community rebuilding.

The Inquiry was asked to consider and, if warranted, make recommendations on matters, including:

- 20
  - the safety of emergency services and community first responders
  - current and future land use planning and management and building standards in flood prone locations across NSW
  - appropriate action to adapt to future flood risks to communities and their surrounds
  - coordination and collaboration between all levels of government.

### **Inquiry submissions**

- 25 The Inquiry welcomed submissions from all flood-affected residents, emergency and support personnel, organisations and the general public. The Inquiry held 144 meetings with community and stakeholders and received 1,494 submissions in total. These included a meeting in Mullumbimby on 6 June 2022 and a comprehensive submission from Byron Shire Council (Attachment 3 E2022/47283).

30

## Recommendations

The Inquiry makes 28 recommendations.

The [Government response](#) supports all 28 recommendations, either in full or in principle:

- Supports 6 recommendations
- 5 • Supports in Principle 22 recommendations

The 28 recommendations are summarised below with government supported recommendations in bold text. Full details are provided in Attachment 1:

1. Improve knowledge resources to support flood management
2. Fund climate and weather research
- 10 3. Establish permanent SEOCON
4. Increase flood rescue capability
5. Reshape 'Resilience NSW' and recovery activities
- 6. Create a Community First Responders Program**
- 15 7. Transfer role of Public Information Functional Area Coordinator (PIFAC) to Department of Customer Service
- 8. Develop NSW disaster app**
- 9. Reduce impact to essential services (telecommunications, electricity, water)**
10. Provide transition initiatives to improve the community's experience during immediate disaster recovery phase
- 20 **11. Establish a high-level Government standing committee, Task Force 'Hawk', that meets, trains and exercises to ensure Government is prepared to respond to any emergency**
12. Implement SES and RFS back-office merger
- 13. Commission studies into compound mental health issues**
- 25 14. Design, implement and deliver an evidence-based, targeted flood education campaign in schools
15. Establish a permanent state-wide agency - NSW Reconstruction Authority (NSWRA)
- 16. Adopt and utilise a Disaster Cost Benefit Framework for investment options in risk mitigation**

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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17. Enable landholders to access information on previous disasters for affected land in NSW
18. The Government reinforce its adoption of a risk-based approach to calculating flood planning level (re-determinations for all high-risk catchments should be completed within 3 years)
19. Build disaster adaptation plans for all towns
20. Adopt guiding principles for floodplain management that treat flood plains as assets
21. Simplify the planning system disaster provisions
22. Relocate communities most at risk with good homes and amenities
23. Consider establishing housing and development funding options
24. Pursue a multi-pronged, decadal strategy for housing, especially social housing
25. Protect permanent residents in caravan parks and manufactured home estates from flood
26. Roads: ensure appropriate access and egress during and following a flood event, prioritising high risk communities
27. Environment: ensure Indigenous voices are well heard in land use planning and natural resource management
28. Ensure essential services and floodplain infrastructure is situated as much as possible above flood planning level and/or probable maximum flood level, and infrastructure is adequately maintained.

### **2. Parliamentary Inquiry - Response to Major Flooding across NSW in 2022**

The select committee was established on 23 March 2022 to inquire into and report on response to major flooding across New South Wales in 2022, and in particular:

- the preparation, coordination and response to the Western Sydney and North Coast floods by the Government
- the role, composition and resource allocations of Resilience NSW, the NSW State Emergency Service and other relevant Government agencies
- coordination between the New South Wales Government, New South Wales Government departments and agencies, the Federal Government, Federal Government departments and agencies, local governments, private sector operators and the community, including requests or offers of assistance,



- public communication, systems and strategies,
  - the implementation of recommendations from inquiries into previous natural disasters,
  - the overall effectiveness of the flood response, and
- 5      • any other related matter

**Inquiry submissions**

The committee engaged through an online questionnaire, a series of public forums in flood affected areas and, early engagement with elected representatives living and working in flood affected regions.

- 10      The committee received 87 submissions, 4 supplementary submissions and 119 responses from individual participants to the online questionnaire. The committee held 6 public hearings, 1 each in Ballina, Lismore, Murwillumbah and Windsor and 2 at Parliament House, Sydney. The committee also held public forums in Ballina, Lismore, Murwillumbah and Windsor, and conducted site visits to a number of flood affected areas.

**15      Recommendations**

The committee tabled 21 findings and 37 recommendations which are outlined in the full report at Attachment 2 (E2022/81142) with a summary of the recommendations below.

There are 35 recommendations listed for the NSW Government, 1 for NSW State Emergency Service, and 1 for Service NSW:

**20      That the NSW Government:**

1. Consider a restructure of the NSW State Emergency Service
2. Consider abolishing Resilience NSW if it is unable to ensure the organisation's role is clear and its policies are focused on meeting community needs
- 25      3. Embed into its emergency plans the appointment of a senior police officer with combat experience to lead recovery efforts following natural disasters
4. Ensure that all emergency and recovery plans, are reviewed and updated regularly and provide clarity on the role of non-government partners
5. Work with the Commonwealth to develop a national cross-agency app to integrate all community services and agencies into a single platform
- 30      7. Advocate through the National Cabinet for the Bureau of Meteorology to review its rain data infrastructure and flood modelling tools, to ensure forecasting locations, rain and flood gauges and other infrastructure are appropriately placed, maintained and updated

## BYRON SHIRE COUNCIL

### STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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8. In consultation with telecommunication providers and satellite communication providers, investigate ways to minimise the complete loss of telecommunication services in natural disasters
- 5 9. Review its public awareness and communication strategies in relation to natural disasters
- 10 10. Work with the community broadcasting sector to identify ways in which community broadcasters could be better supported to provide critical services during natural disasters, with a view to providing them adequate long term funding
- 10 11. Invest in the required personnel, training and vessels to ensure that all agencies involved in flood rescue can be mobilised to their fullest potential
- 15 12. Allocate funding to the improvement of the Pitt Town Evacuation Route and other key possible evacuation routes in Sydney's northwest
- 15 13. Work with local governments to identify alternative routes to vulnerable roads, and that the NSW and Australian Governments fund the construction of these important routes to improve evacuation and access options in times of disaster
- 20 14. Consider reimbursing Xavier Catholic College and other community groups and organisations that operated evacuation centres
- 20 15. Ensure that the current review of evacuation centres considers the role, accreditation and support of community evacuation centres, with the outcomes of this review to be made public and incorporated into the update of state emergency plans
- 25 16. Develop a more proactive, rapid response to manage animal welfare following natural disasters which includes improved collaboration and communication with local veterinarians and animal welfare organisations
- 25 17. Ensure that community groups, both existing and emerging, including First Nations groups, are well integrated into disaster recovery, by incorporating them into state recovery plans and engaging with them in between and in the lead up to natural disasters
- 30 18. In partnership with community groups, including First Nations groups, develop initiatives to build community resilience, particularly in regions at high risk of future natural disaster events
- 30 19. Establish a standing workforce from within the public service to staff evacuation and recovery centres, with this workforce to be trained ahead of time and mobilised as soon as a natural disaster occurs
- 35 20. Overhaul the way in which it conducts its grants process as it frustrated applicants and further traumatised them by repeatedly re-interviewing them and making them prove that they were flooded

## BYRON SHIRE COUNCIL

### STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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21. Ensure that flood affected individuals can continue to access financial assistance for as long as there is demonstrated need
23. Consider entering into a service agreement with an organisation that has the resources and capacity to manage donations and activate quickly during natural disasters
- 5 24. Address the mental health needs of local communities following the February-March 2022 floods through capacity building services and funding
25. Accelerate its caravan program and ensure it is made available as an option to all displaced residents from the February-March 2022 floods
- 10 26. Consider investing in supporting relocations, land swaps and providing fair and adequate compensation for landowners who wish to relocate from severely flood-impacted areas
27. Review the provision of temporary and long term housing options provided to those affected by the February-March 2022 floods
- 15 28. Work with First Nations peoples to support Aboriginal organisations in their capacity to operate and respond in times of natural disasters
29. Work in partnership with key Aboriginal stakeholders, including the Jali Local Aboriginal Land Council, to prioritise the rebuild of Cabbage Tree Island, and ensure a safe and resourced evacuation plan is in place
- 20 30. Prioritise support for the full restoration of sewage treatment facilities on the Richmond River, for the benefit of communities in the Northern Rivers region
31. Provide an increased level of targeted support to flood affected communities contending with widespread mould
32. Advocate through the National Cabinet to widen eligibility under the Disaster Funding Recovery Arrangements to allow local councils to build back better
- 25 33. Invest in the restoration of the Wilsons and Richmond Rivers to include riparian restoration, water quality and river health improvement
34. Provide immediate support to the Hawkesbury City Council to remediate the riverbank erosion affecting Cornwallis Road, Cornwallis without any further delay
- 30 35. Significantly increase its investment in flood mitigation and preparation, including its support of local governments to do the same by increasing ongoing, long term funding and access to technical guidance and assistance for local councils and; ensuring that land-use planning and development takes a risk-based approach
- 35 36. Work with local government, industry and sustainable planning experts, including the Government Architect, on policy initiatives in the New South Wales planning system that will help deliver more resilient and sustainable homes, buildings and places

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.1

37. Work with relevant agencies and local landowners to find ways to improve the management of drainage channels including looking for recommendations to reduce red and green tape

### Other recommendations:

- 5     6. That the NSW State Emergency Service, in partnership with the Bureau of Meteorology, investigate ways in which local communities and local media with local knowledge can play a stronger role in flood predictions and warnings
22. That Service NSW establish teams of assessors that can be on the ground to assess and approve grant applications
- 10    The Government response to this report is due on 9 November 2022.

## **Next steps**

Staff are currently reviewing the recommendations to identify relevant actions to be pursued through Local, State and Federal avenues.

- 15    Council has already supported a number of projects, funded by Natural Disaster grants, which closely align with and support the intent of some of the inquiries' recommendations. These include:

### **Res 22-197**

- Individual Case Coordination (Mullumbimby & District Neighbourhood Centre)
- 20    - Community Engagement - resilience and recovery (Mullumbimby & District Neighbourhood Centre)
- Breakfast Co-ordinator at the Fletcher Street Homeless Hub (Byron Community Centre Fletcher Street Homeless Hub)
- Council Local Recovery Coordinator (1-year fixed term)
- South Golden Beach resilience betterment program
- 25    - Review of Disaster Preparedness Dashboard

### **Res 22-378**

- Council Natural Disaster Planner
- Council Natural Disaster Policy Planner
- Discussion Paper: 'After the floods: Working out possibilities together'
- 30    - Business and Visitor Economy Strategy
- South Golden Beach Resilience Betterment Program

## BYRON SHIRE COUNCIL

### STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.1

- Byron Shire Council Flooding and Drainage Easement Community Education Program
- Community Education Strategy and Review of Flood Options
- Byron Shire Events Strategy
- Review and Update of Byron DCP 2014 Chapter 'C2' - Areas Affected by Flood and DCP 2010 Part 'K' – Flood Liable Land
- Byron Shire Council Drainage Enhancement Program
- Supporting Community Resilience and Recovery: Emergency Communications
- Supporting Community Resilience and Recovery: Spontaneous Volunteering
- Northern Rivers Together – Regional marketing and promotion campaign

10

The Mayor has also recently written to the CEO of the Northern Rivers Reconstruction Corporation (NRRC) to confirm that the NRRC will work with Byron Shire Council to identify, prioritise and support projects that can rejuvenate local communities in the northern rivers with a particular focus on housing and infrastructure.

## 15 Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action
<b>1: Effective Leadership</b> We have effective decision making and community leadership that is open and informed	1.4: Enhance organisation capability through innovative practices and regional partnerships	1.4.1 Inter-governmental relationships - Develop and maintain effective relationships with other levels of government to advocate for the needs of the community
<b>1: Effective Leadership</b> We have effective decision making and community leadership that is open and informed	1.5: Empower community leadership through collaboration, capacity building, and cultivating community driven initiatives	1.5.2: Collaboration and capacity building - Collaborate with stakeholders to build community capacity

# BYRON SHIRE COUNCIL

## STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.1

CSP Objective	CSP Strategy	DP Action
<b>3: Nurtured Environment</b> We nurture and enhance the natural environment	3.3: Protect the health of our coastline, estuaries, waterways, and catchments	3.3.2: Floodplain management - Mitigate the impact of flooding on private and public property
<b>4: Ethical Growth</b> We manage growth and change responsibly	4.5: Support a resilient community that can adapt and respond to change	4.5.1: Emergency management and response - Support and participate in local emergency management
<b>4: Ethical Growth</b> We manage growth and change responsibly	4.5: Support a resilient community that can adapt and respond to change	4.5.2: Recovery - Support disaster recovery following the 2022 flood events
<b>4: Ethical Growth</b> We manage growth and change responsibly	4.5: Support a resilient community that can adapt and respond to change	4.5.3: Disaster preparedness - Support and coordinate disaster prevention, preparedness, response and recovery activities
<b>5: Connected Infrastructure</b> We have connected infrastructure, transport, and facilities that are safe, accessible, and reliable	5.1: Provide a safe, reliable, and accessible transport network	5.1.5: Restore road network - Restore the affected parts of the road network that were impacted by the 2022 flood events
<b>5: Connected Infrastructure</b> We have connected infrastructure, transport, and facilities that are safe, accessible, and reliable	5.3: Invest in renewable energy and emerging technologies	5.3.4 Telecommunications - Advocate for more disaster resilient communication networks
<b>5: Connected Infrastructure</b> We have connected infrastructure, transport, and facilities that are safe, accessible, and reliable	5.5: Provide continuous and sustainable water and sewerage management	5.5.3: Storm-water - Provide stormwater infrastructure to manage flood mitigation and improve social and environmental outcomes

## **Recent Resolutions**

- Res 22-197
- Res 22-378
- Res 22-213
- 5 • Res 22-190

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

N/A

## **Financial Considerations**

- 10 The financial implications of any Council actions arising from the implementation of the inquiry recommendations are yet to be identified and will likely require budget allocations.

## **Consultation and Engagement**

The independent panel and select committee engagement/consultation process with relevant stakeholders for the two inquiries has been listed in the body of the report.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 13.2 PLANNING - 26.2022.1.1 Submissions report to permit secondary dwellings and dual occupancies on rural multiple occupancy and community title sites**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Sam Tarrant, Planner

**File No:** I2022/876

**Summary:**

A planning proposal to permit secondary dwellings and dual occupancies within approved rural multiple occupancies and community title sites was placed on public exhibition from 20 June to 22 July 2022.

During exhibition 144 submissions were received. The majority of submissions received were supportive of the proposed changes, eight objections were received.

Additional wording to clause 4.1B is recommended based on advice from Department of Primary Industries to strengthen the consideration of agricultural land use conflicts:

‘Development consent must not be granted unless the consent authority is satisfied that.....mitigation measures are in place to minimise potential adverse impacts on agricultural production and adjoining land use conflicts where appropriate’

The report recommends that the planning proposal is sent to DPE for finalisation and that Byron DCP 2014 is amended to reflect the amendment to Byron LEP 2014.

**NOTE TO COUNCILLORS:**

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







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**RECOMMENDATION:**

**That Council:**

- 5     1.     **Adopts the amended planning proposal to permit secondary dwellings and dual occupancies on multiple occupancies and rural community title sites as attached to this report (Attachment 1 - #E2022/73196), and forwards this to the Department of Planning and Environment for finalisation.**
- 10    2.     **Requests staff to review and amend Byron DCP 2014 to reflect secondary dwellings and dual occupancies are now permitted with consent and to clarify Vegetation Management Plan (VMP) requirements and development application process and proceed to public exhibition with these changes.**

**Attachments:**

- 15    1     26.2022.1.1 MO CT Planning Proposal - Post Exhibition version, E2022/73196 
- 2     26.2022.1.1 Combined public submissions, E2022/72537 
- 3     26.2021.1.1 Combined agency submissions, E2022/73732 
- 4     Template - Form of Special Disclosure of Pecuniary Interest, E2012/2815 

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## Report

At the 4 November 2021 Planning Meeting Council resolved **21-498** as follows;

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.
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:
  - 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.

A planning proposal was prepared as outlined in part two (2) of the resolution and a positive gateway determination was received on 3 May 2022.

The planning proposal was exhibited from 20 June to 22 July 2022 with the proposal and gateway posted on Council's website and community groups notified.

During exhibition 144 submissions were received. 133 of the submissions were in support of the amendments and 8 did not support the proposal. One submission was received after exhibition had closed. This submission has been marked as a late submission and included in this report.

The public submissions are contained in attachment 2 and are summarised in the below table. The agency submissions are contained in attachment 3.

### Public submissions

Submission	Staff comment
DCP chapter D2 should be reviewed to ensure adequate controls for additional dwellings	<p>Chapter D2 contains controls for secondary dwellings and dual occupancies as well as controls specific to MO and CT sites.</p> <p>It is recommended that Byron DCP 2014 be updated to (i) reflect secondary dwellings and dual occupancies are now permitted with consent and (ii) to clarify Vegetation Management Plan (VMP) requirements.</p>

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.2

Submission	Staff comment
The MO CT maps do not show all the rural MO and CTs.	Noted. The MO CT map identifies sites that can apply for use as MO or CT. Byron LEP 1988 contained schedules to identify sites to permit this type of development and as some sites had already been approved as MOs and CTs, they were not placed onto the MO CT map when Byron LEP 2014 came into effect.
The proposal will result in demise of affordable MO land as there is an incentive to convert to more expensive CT land.	The only way to enable secondary dwellings and dual occupancies is on CT sites. Conversion to CT enables more equitable rating distribution than MO and reduces financial burden on the wider community to fund corresponding demand on infrastructure.
Consultation is required with affected residents and surrounding land owners.	Council posted notification of this proposal on our website and emailed community groups. Council does not have an accurate database of all approved MO and CTs making it impractical to send notification.
The amendment cannot guarantee an increase in affordable housing only that CT land will have greater land value. Affordable MO land will no longer be available to people who are seeking affordable rural community living.	<p>It is noted that there is currently no mechanism to guarantee any additional dwellings will be used for affordable housing.</p> <p>The proposal will only enable additional housing supply in our rural areas.</p>
The current controls and RLUS has been developed to stop overdevelopment of the rural areas which is at odds with this proposal.	The proposal will not amend the RLUS and controls within Byron LEP and DCP are maintained to assess applications for additional dwellings.
It is pre-emptive to proceed with this amendment before all government flood reviews are complete noting that many areas where these communities are located have been majorly affected by flooding and	This proposal will only enable secondary dwellings or dual occupancies on existing CT sites. No new sites are being introduced through this planning proposal.

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.2

Submission	Staff comment
landslip.	
It should be clear that extra dwellings trigger need for additional tree plantings and the DCP updated to reflect this.	<p>The DCP currently requires 900 trees per dwelling. This is conditioned at the subdivision stage and a Vegetation Management Plan (VMP) Submitted.</p> <p>If Council adopts the PP and secondary dwellings become permissible, it may be appropriate to amend Byron DCP D2 to confirm that prior to receiving individual development applications that CT consents are amended along with a site-specific VMP to accommodate the potential for additional dwellings.</p>
The road infrastructure and causeways cannot cope with the additional traffic	It is noted that additional dwellings will contribute additional load to some rural roads, but Council considers the need to provide additional housing to be an immediate priority.
I support this proposal	Noted.
<p>The proposal will meet the need for more housing options in the shire.</p> <p>Council needs to consider all options to counter the housing crisis.</p>	<p>The proposal will enable additional dwellings on some rural CT sites.</p> <p>Other options will be considered as part of Council's review of its Rural Land Use Strategy and Residential Strategy.</p>
Lobby groups have pushed for this amendment without proper consultation of rural residents	All submissions received are attached to this report and presented to Council for final decision.
No data is provided on the number of dwellings this proposal will create	The exact number of new dwellings this proposal will create is not known. Additional dwellings are only possible on CT sites. The capacity of individual CT sites is only assessable at the DA stage.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.2

Submission	Staff comment
	There are a number of MOs that have not converted to a CT and other MOs identified on the MO CT map which are not activated. This makes it difficult to provide an accurate number of dwellings that will be provided via this proposal.
Clarity is needed on the process for implementing this change through the DA process, noting conditions of consent restricting single dwellings and the time sensitivity of enabling more dwellings.	CT consents and CT statements will need to be amended to remove conditions restricting single dwellings on each lot and VMP updated to accommodate required plantings for additional dwellings.
CT are well positioned to accommodate additional residents	Noted.
Additional homes are needed as soon as possible. This proposal is part of the housing solution.	Noted.  Other options will be considered as part of Council's review of its Rural Land Use Strategy and Residential Strategy.
The controls should also apply to MO sites	Additional secondary dwellings and dual occupancies are not possible on MOs due to the Standard Template LEP definitions and MOs being on a single lot.
Council should ensure additional dwellings do not go to short-term holiday rental	Conditions of consent can be applied to additional dwellings to prohibit their use as short-term holiday accommodation, however this may be overridden by State policy.
This proposal is a good option to provide additional housing in the short term without the need for long and expensive rezoning process	Noted.
Council needs to re-think what areas are appropriate for future development in light of	The planning proposal does not identify new areas for development. All DAs resulting

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.2

Submission	Staff comment
this flooding	from this planning proposal will be assessed on their merits.
This proposal is equitable because the vast majority of rural lots in the shire already have the ability to apply for a secondary dwelling	Noted.

### Agency submissions

#### Department of Primary Industries – Agriculture

Given the existing controls and subsequent site assessment as part of future development applications DPI has no objection to the proposed changes.

- 5 DPI recommends that clause 4.1B(4) is strengthened by ensuring proposals for additional dwellings demonstrate measures to mitigate against potential adverse impacts on agricultural production or land use conflict with agricultural operation undertaken on neighbouring land.

- 10 **Staff comment:** additional wording has been included in 4.1B to strengthen considerations for primary production and land use conflicts when determining applications for CT subdivisions.

#### Biodiversity Conservation Division (BCD)

- 15 Provides no objection to the proposal however notes that the conversion of MOs to CTs could result in lots that enable the Rural Boundary Clearing Code and recommends conditions of consent are applied to turn this code off for environmental conservation purposes.

- 20 **Staff comment:** The planning proposal will not enable additional rural CT lots, only additional dwellings within them. Conditions of consent have been applied previously to turn off the Rural Boundary Clearing Code for environmental grounds and can be applied to applications for CT subdivision where appropriate.

The planning proposal was also sent to **RFS, Arakwal and Tweed Byron Local Aboriginal Land Council**. At present, no response has been received from these agencies.

## Changes recommended to the exhibited planning proposal

Based on agency submissions, a new line has been inserted into clause 4.1B Minimum subdivision lot size for multiple occupancy or rural community title developments 4 (c) to ensure applications include measures to mitigate against potential adverse impacts on agricultural production or land use conflicts as follows:

(4) Development consent must not be granted under subclause (3) unless the consent authority is satisfied that—

(a) appropriate management measures are in place that will ensure the protection and enhancement of the landscape, biodiversity and rural setting of the land, and

(b) improved social and economic outcomes can be achieved, and

**(c) mitigation measures are in place to minimise potential adverse impacts on agricultural production and adjoining land use conflicts where appropriate.**

## Byron Development Control Plan 2014

Byron Development Control Plan (DCP) 2014 Chapter D2 currently has a part relating to community title development on rural land (D2.8).

This part currently prohibits secondary dwellings and dual occupancies and provides other controls including a vegetation management plan (VMP) requirement of 900 trees to be planted per dwelling house.

It is recommended that this part is updated to remove the restriction of secondary dwellings and dual occupancies and link to the existing controls for rural secondary dwellings and dual occupancies.

It is also recommended that the VMP part be updated to clarify that additional dwellings will require 900 trees per dwelling, with secondary dwellings requiring 450. This will incentivise secondary dwellings which have a 70m<sup>2</sup> limit, which are more likely to be affordable and have less of an environmental impact due to their smaller footprint.

Additional information should be added to this part to clarify that existing development consents which include conditions of one dwelling per lot are required to be amended along with the VMP to facilitate the additional dwellings.

## Secondary dwellings and dual occupancies on Multiple Occupancy sites

- 5 Based on the standard definition of secondary dwellings, they must be contained on the same lot of land as the principal dwelling. Because of this definition, there can only ever be one secondary dwelling permitted on a MO lot because legally a MO must be on a single lot. The secondary dwelling would form part of the total dwelling count under [4.2B](#).

A *secondary dwelling* is defined in Byron LEP 2014 as a self-contained dwelling that—

- (a) is established in conjunction with another dwelling (the principal dwelling), and
- (b) is on the same lot of land as the principal dwelling, and
- 10 (c) is located within, or is attached to, or is separate from, the principal dwelling.

An attached dual occupancy currently can be constructed on a MO, however this will count as two dwellings when calculating the dwelling count under [4.2B](#).

In practice, neither MO scenario is likely to eventuate as there can only be one “shareholder” that receives the additional dwelling at the expense of another shareholder.

- 15 On the other hand an MO could convert to a CT under the proposed amendments to clause [4.1B](#) and theoretically each CT lot could submit an application for a dual occupancy or secondary dwelling.

## Next steps

- 20 It is recommended that the amended planning proposal as attached to this report is sent to Department of Planning and Environment for finalisation and Byron DCP 2014 is amended to reflect the above changes and placed on public exhibition.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
<b>4: Ethical Growth</b> We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.4: LEP & DCP - Review and update the Local Environmental Plan and Development Control Plans	4.1.4.2	Review and update LEP and DCP to reflect strategic land use priorities and/or legislative reforms



## Recent Resolutions

- **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.

5

- **21-221:** 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
- **21-498:** notes the update on resolution **21-275** and **21-221** and request 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.

## Legal/Statutory/Policy Considerations

20 N/A

## Financial Considerations

N/A

## Consultation and Engagement

25 The proposal was exhibited in accordance with the gateway determination, as outlined within this report.

**Report No. 13.3 PLANNING - 10.2021.458.1 Demolition of Existing Dwelling House, Removal of Seven (7) Native Trees, Erection of a New Dwelling House and Ancillary Infrastructure at 99 Alcorn Street Suffolk Park**

5

**Directorate:** Sustainable Environment and Economy

**Report Author:** Lachlan Wall, Gateway Planner

**File No:** I2022/894

**Proposal:**

**DA No:** 10.2021.458.1

**NSW PP** PAN-123783

**Proposal description:** Demolition of Existing Dwelling House, Removal of Seven (7) Native Trees, Erection of a New Dwelling House and Ancillary Infrastructure

**Property description:** LOT: 7 SEC: 10 DP: 11632  
99 Alcorn Street SUFFOLK PARK

**Parcel No/s:** 53810

**Applicant:** Archimages Architecture Pty Ltd

**Owner:** Mr D J & Mrs R M Papadimos

**Zoning:** 7(f)2 Urban Coastal Lands Zone Byron LEP 1988

**Date received:** 30 July 2021

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

**Concurrence required** No

**Public notification or exhibition:** – Level 1 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.3

- Exhibition period: 12/8/21 to 25/8/21
- Submissions received: 3
- Submissions acknowledged: ☒ Yes    ☐ No    ☐ N/A

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

Other:

**Variation request to Development Standards under an EPI (e.g. clause 4.6)**    Not applicable

**Delegation to determine**    Council

**Issues:**    Coastal Erosion  
Littoral Rainforest

### Summary

This development application seeks consent for the demolition of existing dwelling house, removal of seven (7) native trees and construction of a new dwelling house and ancillary infrastructure. The proposed development footprint intersects with the mapped littoral rainforest, which operates under the State Environmental Planning Policy (Resilience and Hazards) 2021. Clause 2.7 of this policy states that 'any development' that occurs within the coastal wetlands area is designated development. Applications for designated development and must be determined by Council.

The application was initially advertised and notified between 12 August 2021 to 25 August 2021 and was re-notified a second time for a period of 28 days between 1 November 2021 to 30 November 2021. In accordance with the Byron Community Participation Plan and three (3) submissions were received from the public during this time.

In terms of environmental impacts, an assessment of the proposal demonstrates that 7 native trees and a number of other non-native tree will need to be removed as part of the development. To ensure that the proposed development has minimal impact on the mapped littoral rainforest the proposed design has been reduced in total footprint and increased setbacks to the mapped vegetation under the Coastal SEPP.

The proposed development is considered to be satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site and is recommended for approval subject to the conditions listed in Attachment 2.

# BYRON SHIRE COUNCIL



## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.3

### NOTE TO COUNCILLORS:

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

### RECOMMENDATION:

- 10 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.458.1 for Demolition of Existing Dwelling House, Removal of Seven (7) Native Trees, Erection of a New Dwelling House and Ancillary Infrastructure, be granted consent subject to the conditions in Attachment 2.**
- 15 **Attachments:**
- 1 DA10.2021.458.1 - plans, E2022/75359 
  - 2 DA10.2021.458.1 - Conditions of consent, E2022/75892 
  - 3 Confidential - DA10.2021.458.1 - Submissions, E2022/75358
- 20



## Assessment:

### 1. INTRODUCTION

#### History/Background

5 Council records do not appear to have any record of a development consent for the existing structure on the site.

Information supplied with the application including a record of site history provided by the property owner indicates that the owner has owned the property since 1988, but the construction date of the dwelling is unknown. Historical images of the area would suggest that the dwelling was constructed between 1965 and 1979. A timber shed has been  
10 erected within the south-eastern corner of the site. The survey plan submitted demonstrates that the timber shed encroaches the eastern property boundary.

The applicant also sought development related advice from Council prior to lodging of this DA as required by the Secretary's Environmental Assessment Requirements.

### 15 Description of the proposed development

This development application seeks approval for Demolition of Existing Dwelling House, Removal of Seven (7) Native Trees, Erection of a New Dwelling House and Ancillary Infrastructure.

The following is proposed in detail

20 (a) Demolition of existing dwelling house

A single storey dwelling exists on the property. This structure is to be demolished in its entirety as part of this application.

(b) New dwelling house

25 Construction of a new single storey dwelling with an attached garage. The dwelling contains 3 bedrooms with a combined living-dining room.

Ancillary infrastructure related to the new dwelling involves the construction of a new driveway, stormwater drainage.

30 (c) Removal of seven (7) native trees as well as sixteen (16) non-native trees. Of the native species, this includes 5 tuckeroos, a beach acronychia and a coastal banksia

The following table describes which trees on the site are to be removed and retained

35

## Description of the site

5 The subject site is 746m<sup>2</sup> parcel of land situated on the eastern side of Alcorn Street, Suffolk Park. The lot is a regular rectangular configuration with a 16.5m frontage. The site is relatively flat and abuts the public reserve to the east.

The site contains an existing dwelling that was constructed circa 1980, the exact date is not known, however. Vegetation is a mix of native and non-native trees and other vegetation. The eastern area of the site contains an area of littoral rainforest vegetation which connects to the beach reserve to the east of the site.

10 Surrounding development to the north, south and west is residential in nature with a mix of dwelling houses, dual occupancies and secondary dwellings. There are no known covenants or restrictions on use affecting the property currently.

The land is subject to coastal erosion risk and acid sulfate soils but is not mapped as bushfire prone or flood prone land.



15 Figure 1: Aerial photo with land zoning overlay. Subject property identified by yellow polygon





Figure 2: view from Alcorn Street



5

Figure 3: view from rear of existing dwelling looking east towards the beach





Figure 4: view looking north at eastern property boundary



Figure 5: view of adjoining dwelling to the north



Figure 6: view from rear of existing dwelling looking south



## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Land is legally described	LOT: 7 SEC: 10 DP: 11632	
Property address	99 Alcorn Street SUFFOLK PARK	
Land is zoned:	7(f)2 Urban Coastal Lands Zone Byron LEP 1988	
Land area is:	746.1 m <sup>2</sup>	
Property is constrained by:	Acid Sulfate Soils Class 3 High Environmental Value Coastal Erosion Precinct 1 & 2	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

## 2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
Natural Resource Planner	No objections subject to conditions.
Essential Energy	No objections subject to conditions.
Bundjalung (Arakwal)	Referral sent but, no response was received. AHIMS search undertaken as part of assessment did not identify any Aboriginal Sites or places in or near the site. Conditions of consent to apply in terms of any artefact or

Referral	Issue
	object uncovered during construction

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

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

#### **Environmental Planning & Assessment Act 1979 (EP&A Act)**

##### Section 4.16 Determination

- 10 **(9) Restrictions on determination of development applications for designated development**  
A consent authority must not determine a development application for designated development—
- (a) until after the submission period (within the meaning of Schedule 1) has expired, or
- (b) if a submission is made with respect to the application within the submission period, until after 21 days following the date on which a copy of the submission is forwarded to the Planning Secretary have expired.
- 15 A copy of the submissions was forwarded to the Planning Secretary on the 08/08/2022. And this application may not be determined until after the 30/08/2022. The application is to be determined at the September Council Planning (08/09/2022) or later.

#### **State Environmental Planning Instruments (SEPP)**

- 20 ***SEPP (Resilience and Hazards) 2021***

##### **Clause 2.7 Development on certain land within coastal wetlands and littoral rainforests area**

- 25 Part of the site is mapped under the SEPP as Littoral Rainforest. The original development plans required works within the mapped area and the removal of a native tree. Through the assessment process amended plans and discussions with the applicant have resulted in a design that significantly reduced the scope of works within the mapped area to primarily the demolition of an existing shed in the south east corner of the site.



It is considered that the development is unlikely to have an adverse impact on the biophysical, hydrological and ecological integrity of the littoral rainforest in accordance with the requirements of Clause 2.7.

5 **Clause 2.8 Development on land in proximity to coastal wetlands or littoral rainforest.**

10 The proposed development will not significantly impact on the biophysical, hydrological and ecological integrity of the littoral rainforest. The quantity and quality of surface and ground water flows to and from the adjacent littoral rainforest are also unlikely to be impacted upon as the new stormwater discharge from the development is managed through dispersion trenches and design and construction of the system to be accordance with Byron Council's comprehensive guidelines for stormwater management. The proposal satisfactorily addresses the requirements of clause 11.

15

**Clause 4.6 Contamination and Remediation to be considered in determining a development application.**

20 The area has been used for residential accommodation for a significant period of time. The dwelling was likely constructed between 1965 and 1979. The site is not listed on the Council or Environmental Protection Agency's contaminated land registers. There are no records of potentially contaminating land uses occurring on or near the site. The site is considered suitable for ongoing residential use.

25 However given the age of the building the demolition of the existing dwelling may expose potentially hazardous materials, such as asbestos. The presence of asbestos is managed through conditions of consent and is the responsibility of Worksafe and the principal certifying authority to dispose of any potentially hazardous material. These matters can be adequately managed through conditions of consent as proposed.

***SEPP (Infrastructure) 2007***

30 **Clause 45: Determination of development applications – other development**

The proposed development is located within proximity to overhead electrical infrastructure. The application was referred to Essential Energy who have provided comments and these are included within the recommendation of this report. The development has satisfied clause 45 of SEPP Infrastructure.

35

***SEPP (Building Sustainability Index: BASIX) 2004***

40 A valid BASIX certificate has been supplied with the application. Commitments for energy, water and thermal comfort are shown on the DA plans. It is noted that the Rainwater tank required by this certificate is not shown however a the approved plans can be marked in red to require this.

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

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

- 5
- (a) The proposed development is defined in the LEP 1988 Dictionary as dwelling-house;
  - (b) The land is within the LEP1988 7(f)2 Urban Coastal Lands 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</b>	<b>Consideration</b>
(a) to identify urban land likely to be influenced by coastal processes,	The land has been identified within Council's erosion precincts.
(b) to permit urban development within the zone subject to the council having due consideration to the intensity of that development and the likelihood of such development being adversely affected by, or adversely affecting, coastal processes,	The development is consistent with the scale and character of development within the locality and has considered the likelihood of being adversely affected or affecting coastal processes, by the imposition of conditions,
(c) to permit urban development within the zone subject to the council having due consideration to— (i) the need to relocate buildings in the long term, (ii) the need for development consent to be limited to a particular period, (iii) the form, bulk, intensity and nature of the development, and (iv) continued safe public access to the site, and	The development is required to be removed subject to conditions should the erosion escarpment come within 50m of the development.  This places a limit on the time the consent may be active.  The form, bulk, intensity and nature of the development is consistent with the character of the streetscape and greater locality.  The development as proposed does not impact on public access to the site.
(d) to allow detailed provisions to be made, by means of a development control plan, to set aside specific areas within the zone for different land uses and intensities of development.	The development is subject to the provisions of Part J of the Byron Development Control Plan 2010.



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

- 5 The proposed dwelling is satisfactory in terms of removability in the event of a coastal erosion event coming to within 50 metres of the house. Conditions to apply in terms limiting the consent, for the dwelling to be subsequently removed and the need for a restriction on title to the same effect.

**Clause 40 Height**

Maximum height of proposed dwelling = 5.9m  
Complies

**Clause 45 Essential Services**

- 10 The site has existing connections for the provision of sewerage, drainage and water service to the land. Where existing connections are not in accordance with Council's current standards. These works can be provided subject to conditions.

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

- 15 The site is mapped as class 3 Acid sulfate soils. Council's environmental health officer has recommended that a condition be imposed that requires a acid sulfate soils management plan, however no excavation work is required 1m below natural ground level is required or proposed as part of this application. The proposed works do not trigger further requirements of this clause as such this condition is not included.

It is considered the proposal raises no other issues under the LEP.

- 20 **Clause 64B Demolition requires development consent**

Consent has been sought for demolition of the structure. Conditions to apply.

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

No proposed instruments apply to the development.

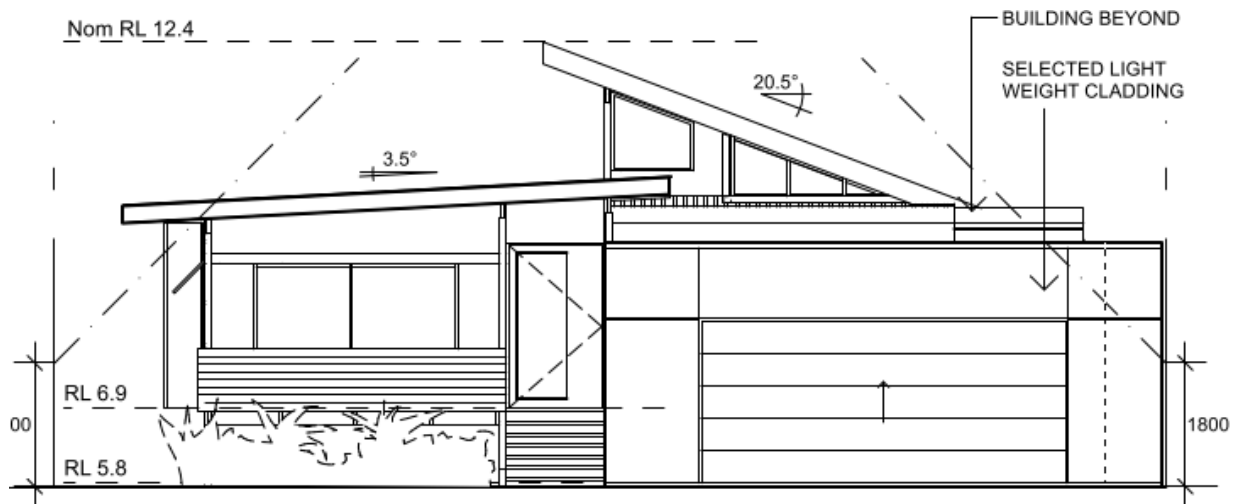
**4.4B Byron Shire Development Control Plan 2010 (DCP 2010)**

- 30 The following specific comments are provided in terms of DCP 2010.

**C2.5 Element - Building Height Plane**

The proposed dwelling has a nil setback to the southern boundary resulting in an unnecessary BHP encroachment. A condition of consent is recommended to provide for a

minimum 900 mm setback to the southern boundary. The encroachment on the northern elevation is considered acceptable noting the dwelling is single storey and provides limited opportunities for overlooking of neighbours and the like.



5 Figure 9: West elevation showing Building Height Plane non-compliance as a dashed line

## C2.6 Element - Setback from street, side and rear boundaries

The application proposes variations to both the street and side boundaries being;

- A street setback of 4m to part of the garage.
- A nil side setback for the garage.

10

As discussed conditions to apply to require the side setback to the southern boundary to meet the standard 900 mm requirements.

The street front setback variation is supported for the following reasons

- Requiring the fully compliant setback of 6.5m is undesirable given the site may be affected by coastal processes and allows for a greater setback to the coastal erosion escarpment and separation from the mapped littoral rainforest.
- The variation is not likely to create a significant shift in the streetscape character.
- The variation does not create impacts to the amenity, privacy, views of, or access to, the surrounding properties

15

## 20 C3.6 Element - Fences

The proposed fencing complies with the control in relation to fence height. An amendment to the gate that crosses the driveway is required to ensure that the fence is either sliding or opens into the site.

**Part J Coastal Erosion Lands**

The site contains land within the Erosion Precincts 1 (dark blue) & 2 (light blue). All works proposed under this consent are located within the Erosion precinct 2.

5



*Figure 15: Coastal erosion precinct mapping*

10

An Engineering report was submitted to demonstrate the building can be dismantled and removed from the site by road vehicle. The report also includes construction requirements to ensure the building is demountable. The development complies with the provisions of part J2.2. Conditions to apply.

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

Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
<b>92</b>	Yes (b) demolition	Yes	Yes subject to conditions
<b>93</b>	No	N/a	N/a
<b>94</b>	No	N/a	N/a
<b>94A</b>	No	N/a	N/a

Clause 78 Notice of designated development application must be exhibited on relevant land

The application was exhibited in accordance with the requirements of this clause.

5

Clause 81 Forwarding of submissions to Planning Secretary (for designated development)

The development application was advertised and notified for a period of 28 days in accordance with the requirements of the Act and Regulation and 3 submissions were received during this time.

10

A letter was sent to the Planning Secretary on 08 August 2022 advising that 3 public submissions had been received. A copy of these submissions accompanied this letter. Confirmation of receipt of this letter was received on the 09 August 2022.

15 **4.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

Impact on:	Likely significant impact/s?
<b>Natural environment</b>	No. The proposal will not have a significantly adverse impact on the natural environment of the locality. Council's Natural Resource Planner recommended a construction management plan be prepared prior to the issue of a construction certificate to ensure impacts from the construction on the littoral rainforest are appropriately managed.
<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.

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

Nil

## 4.7 The suitability of the site for the development

The site attributes are suitable for the proposed development.

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

The development application was publicly exhibited

There were **3** submissions made on the development application:

Submission concerns	Comment
Removal of trees	Noted. The trees to be removed will be adequately compensated as part of the vegetation management plan as recommended by Council's natural resource planner. This will provide for a net improvement for the littoral rainforest ecosystem in this area.
Side setback encroachment by 900mm for the Garage on the southern boundary	This report recommends that amended plans be provided before the issue of a Construction Certificate that require the southern wall of the garage be setback from the southern boundary a minimum of 900mm.
Building Height Plane encroachment for the garage on the southern boundary. If the garage was pulled back to 900mm off the southern boundary this would create better amenity for the street and both of our houses	As noted above, the increase to the setback of this element significantly improves the amenity of the site.
Roofing Material/ Colour choice not identified request that the colour and material of the roof be: non-reflective, and medium to dark in colour	A condition is included to restrict the colour of the roof so that it is required to be non-reflective, earth tone colours, and the use of white and near white colours are not permissible.
The north-eastern corner of the property seems to be grossly over-planted for the block as compensatory planting.	Council's Natural Resource Planner has considered the application and has recommended that instead of the

Submission concerns	Comment
<p>There are already many Tuckeroos in the back of the block and adding a further 15 trees of such density of foliage and height will affect the solar access and amenity.</p> <ul style="list-style-type: none"><li>- Could these extra trees be planted in the dune area behind no.99 instead?</li><li>- Or half of these trees might need to be sufficient within no.99?</li></ul>	<p>landscaping plan and requiring the compensatory plantings as shown on the plan submitted be undertaken, a condition requiring the preparation of a vegetation management plan be prepared prior to the issue of a construction certificate. This allows for a greater variety of plantings to be undertaken on the site and result in the enhancement of the littoral rainforest area.</p> <p>Allowing vegetation compensation works as a result of private developments on public land is not desirable outcome. Where the removal of vegetation occurs as a result of development, any compensatory planting works should occur within the property boundary. Further the land owner does not have consent to undertake any works within the public beach reserve to the east of the site.</p>

## **4.9 Public interest**

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

## **5 4. DEVELOPER CONTRIBUTIONS**

### **5.1 Water & Sewer Levies**

No Section 64 levies will be required.

### **5.2 Developer Contributions**

No Developer Contributions will be required.



## 5. 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"/>

## 6. CONCLUSION

- 5 The DA proposes the Demolition of Existing Dwelling House, Removal of Seven (7) Native Trees, Erection of a New Dwelling House and Ancillary Infrastructure. The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site and raises no significant issues in terms of environmental impacts which cannot be managed, and the site is considered suitable for the development. The application is recommended for approval subject to the
- 10 conditions of consent.

**Report No. 13.4      PLANNING - 10.2021.470.1 Alterations & Additions to Mullumbimby Ex Services Club at Dalley Street Mullumbimby**

**Directorate:** Sustainable Environment and Economy

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

**File No:** I2022/895

**Proposal:**

**DA No:** 10.2021.470.1

**NSW PP** PAN-126025

**Proposal description:** Alterations and Additions to the Mullumbimby Ex-Services Club Ltd

**Property description:** PT: 10 DP: 1138286  
Dalley Street MULLUMBIMBY, 45-47 Stuart Street MULLUMBIMBY

**Parcel No/s:** 240802, 240872

**Applicant:** Mr M Scott

**Owner:** Mullumbimby Ex-Services Club Ltd

**Zoning:** B2 Local Centre

**Date received:** 30 August 2021

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

**Concurrence required** Yes – Enter CNR No.

**Public notification or exhibition:**

- Level 0 advertising under Council's Community Participation Plan for Alterations and additions to a building type that is not specifically listed in Level 1 or Level 2.
- Submissions received: Nil

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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– Submissions acknowledged: ☐ Yes ☐ No ☒ N/A

**Estimated cost** \$2,365,000.00

**Delegation to determine** Council

**Issues** Chapter D8 DCP Public Art – Applicant requests variations

### Summary:

The DA proposes Alterations and Additions to the Mullumbimby Ex-Services Club Ltd involving the following:

- 5 • minor amendments to ground floor plan to ensure disability access meets current requirements;
- partial demolition works;
- up-grading and re-roofing the existing beer garden;
- refurbishment of the existing sports bar;
- provision of new female toilets;
- 10 • change of use of the former squash court to new bar / café area;
- changing the use of administrative offices to a restaurant / café;
- extending building to provide deck and seating for restaurant / café, outdoor children's playground
- landscaping; and
- 15 • provision of ancillary infrastructure.

The partial demolition works are mainly on the north western corner of the ground floor. This will involve relocation of two original foundation stones to the southern side of the Dalley Street elevation below the existing service emblems. The areas being increased in size include a new ladies' toilets, circulation space and café deck.

- 20 The Club has requested that in making its determination on this DA that Council consider waiving DCP requirements for a monetary contribution in lieu of provision of public art and for provision of additional car parking. In terms of public art a variation to the DCP is supported as the club is a community organisation and the general support it provides to sporting groups and other charitable organisations. In terms of parking, the proposal
- 25 generates a demand for an additional 6.3 car parking under Chapter B4 of the Byron DCP 2014, but these can't be provided on site. In support of the proposal, it is recommended that on street parking for a minimum of 8 car spaces be upgraded by the applicant in accordance with Section B4.2.7.7 Car Parking Credits and Street Parking. There is an area in Tincogan Street that can be sealed and formalised as street parking providing a

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.4

benefit to not only the club but also an improvement to the public domain to make up for this numerical shortfall. Conditions of consent to apply.

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

### 5 NOTE TO COUNCILLORS:

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


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### RECOMMENDATION:

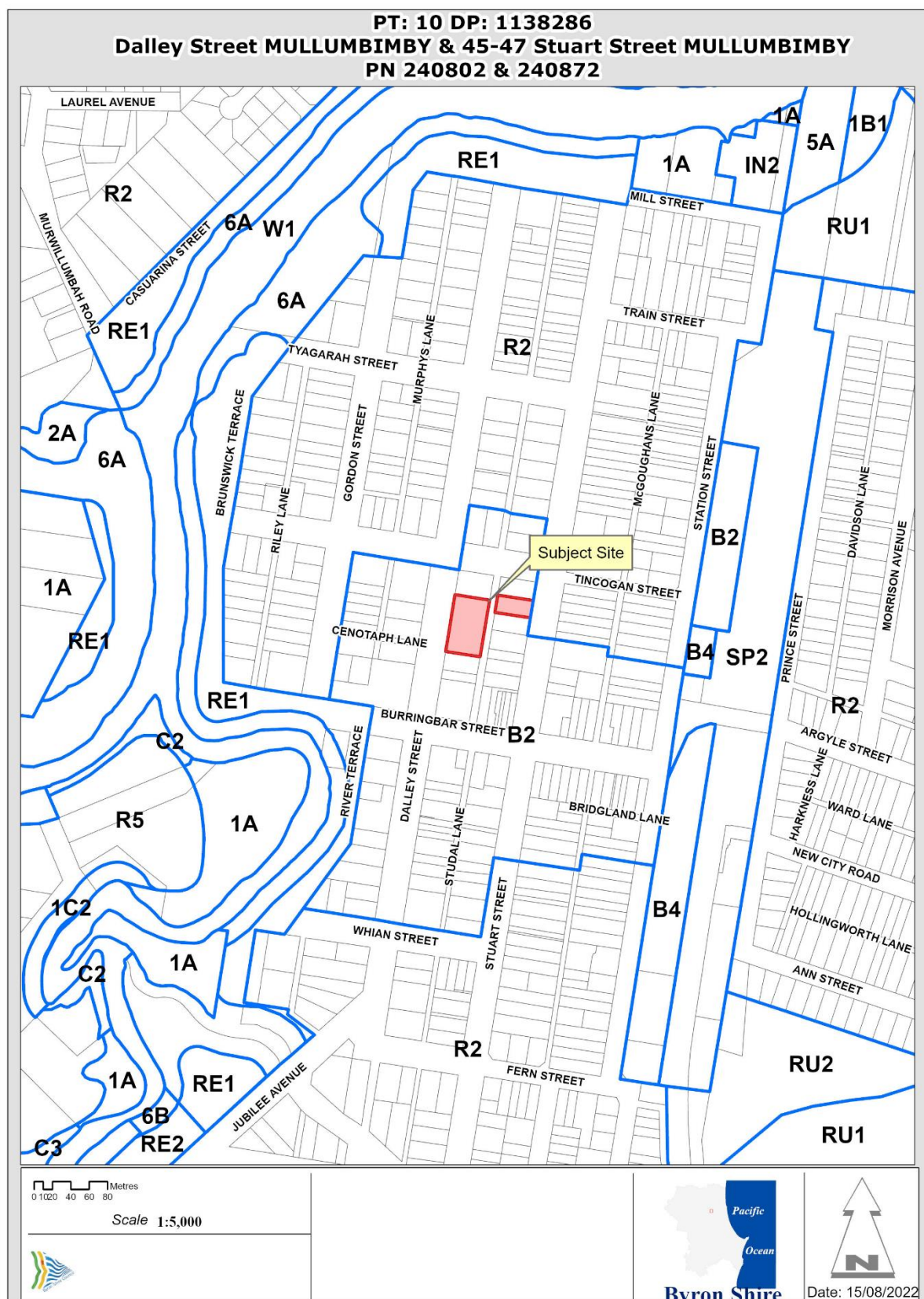
- 15 **That Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.470.1 for Alterations and Additions to the Mullumbimby Ex-Services Club Ltd, be granted consent subject to the conditions of approval attached to this report.**

### Attachments:

20

- 1 10.2021.470.1 Amended Architectural Plans Compete Set, E2022/76498 
- 2 10.2021.470.1 Recommended Conditions of Consent, E2022/77886 

13.4



**Figure 1: Locality plan**

**Assessment:**

**1. INTRODUCTION**

**History/Background**

**5 Extract of Council Records Building and Development Approvals since 1958:**

06.1958.00002033.001	Building Applications	Alterations to New Bar	Approved	19/08/1958
06.1993.00002506.001	Building Applications	Add or Alt to Assembly Bldgs	Approved...	05/11/1993
05.1993.00000327.001	Development Appli...	Commercial Development	Approved...	25/10/1993
05.1996.00000139.001	Development Appli...	Sign - SIGN ILLUMINATED	Approved...	13/05/1996
06.1997.00002246.001	Building Applications	Alt/Add to Licensed Premises - Refurbishment of main lounge & poker ma	Approved...	18/06/1997
10.2007.00000521.001	Development Appli...	Alterations and additions to Mullumbimby Ex Services Club	Approved	25/01/2008
10.2007.00000521.002	Development Appli...	S96 - Move Condition 10 (Land to be Consolidated) to be complied with	Approved	08/04/2009
10.2007.00000521.003	Development Appli...	S96 - Stage the consent and make minor internal changes (Alterations	Approved	03/07/2009

**Description of the proposed development**

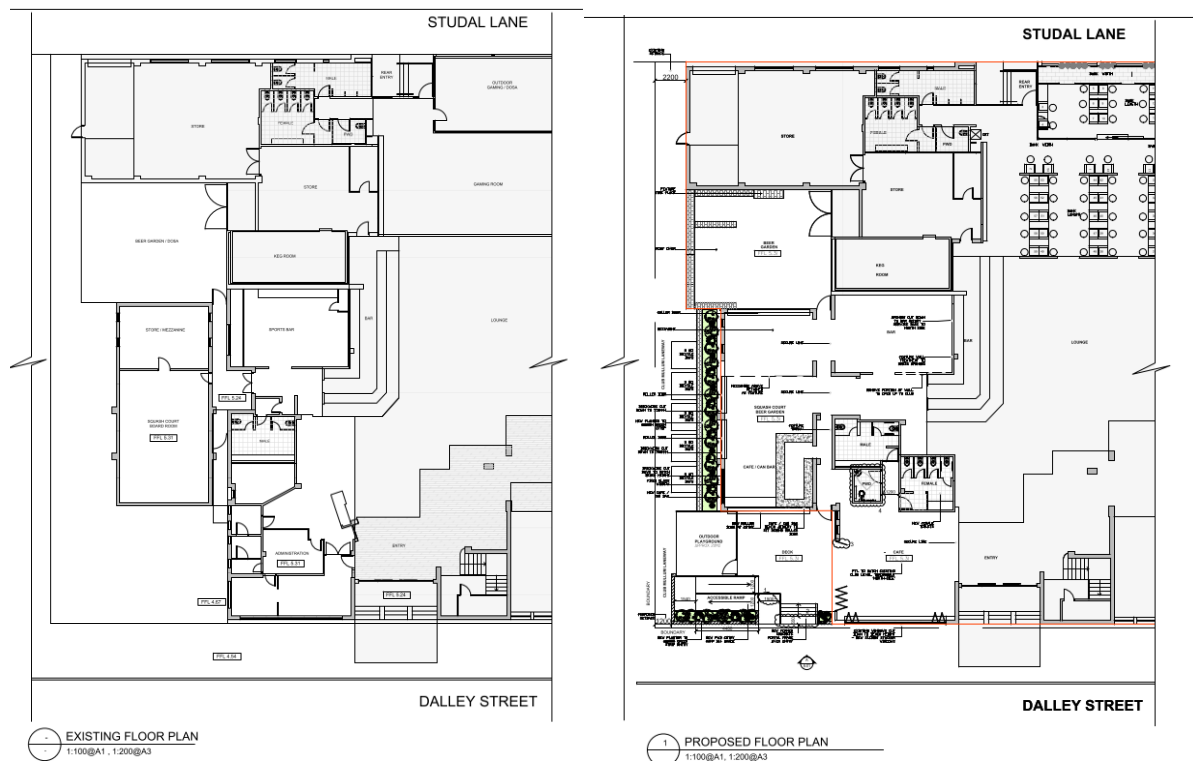
10 This application seeks approval for Alterations and Additions to the Mullumbimby Ex-Services Club Ltd

The DA is for renovations to the building which include:

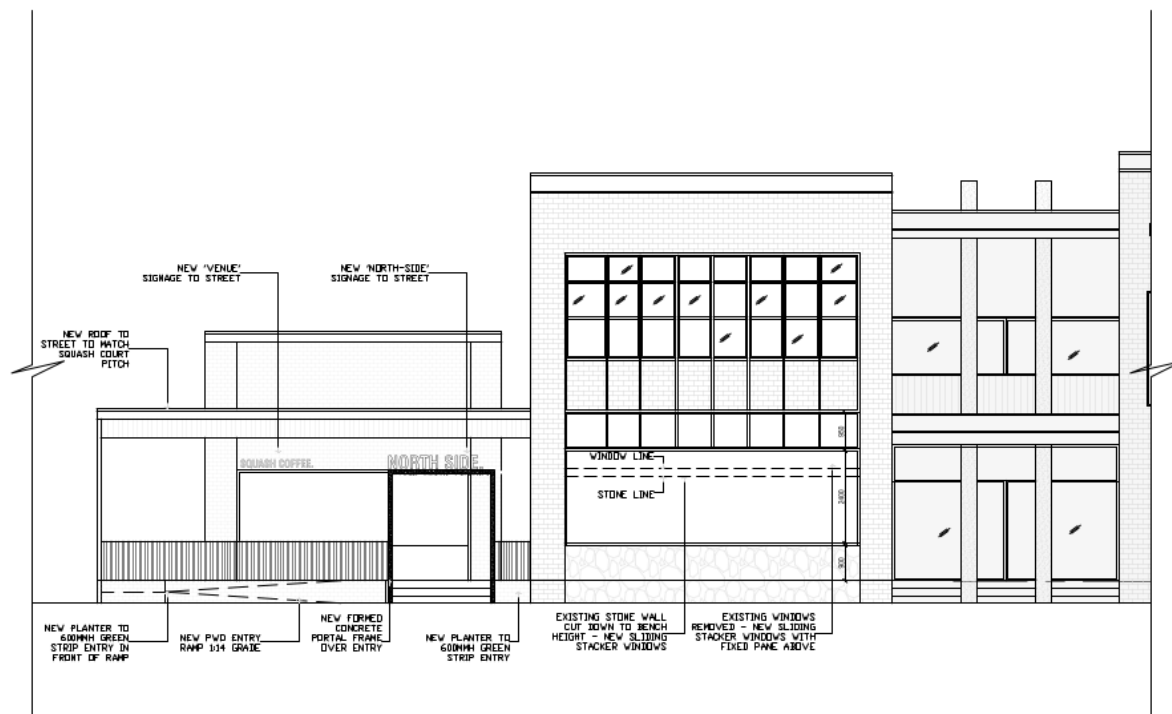
- minor amendments to ground floor plan to ensure disability access meets current requirements;
- partial demolition works;
- 15 • up-grading and re-roofing the existing beer garden;
- refurbishment of the existing sports bar;
- provision of new female toilets;
- change of use of the former squash court to new bar I café area;
- changing the use of administrative offices to a restaurant I café;
- 20 • extending building to provide deck and seating for restaurant I café, outdoor children's playground
- landscaping; and
- provision of ancillary infrastructure.

25 The partial demolition works are mainly on the north western corner of the ground floor. This will involve relocation of two original foundation stones to the southern side of the Dalley Street elevation below the existing service emblems.

The plans do not propose any works on the first floor but the Club will change how these spaces are used for administration purposes. Disabled access improvement works will be exempt from developer contributions section 7.12 Levy.



5 **Figure 2:** Ground Floor Plan - Existing and Proposed





**Figure 3:** Proposed Dalley Street Elevation

The Club has requested that in making its determination on this DA that Council consider waiving DCP requirements for a monetary contribution in lieu of provision of public art and for additional car parking. The Club has submitted the following statements:

*The Club has considered Council's [staff] position, advice and requests that it reconsider the requirement to make contributions to public art and car parking having regard to the following. The Club on a regular basis provides donations to numerous community organisations such as the; Mullumbimby CWA, Brunswick Heads Surf Life Saving Club, Mullumbimby Agricultural Show Society, Mullumbimby Chamber of Commerce, Mullumbimby Junior Rugby League Club and Mullumbimby RSL Sub Branch. In the last 5 years donations totalling \$90,401.29 have been made. Payment of public art and car parking contributions will impact on its ability to donate further to these and other community organisations. Additionally, The Club is used by Council and the State Government in times of emergency as an evacuation centre. This occurred in 2019 (bushfires) and 2022 (floods). This use is supported by The Club but curtails its trading ability without compensation. This ultimately impacts on the recovery of day-to-day costs when it cannot trade. The Club has property in Dalley Street (The Club), Stuart Street (a parking lot which is also used by the public) and Jubilee Ave (Bowling Club). If public art is to be provided the Club believes it should be able to commission such artwork to be placed on its property Alternatively, while completely independent organisations there is a close affiliation between The Club and the Mullumbimby RSL Sub Branch (RSL Sub Branch). The Club is aware that the RSL Sub Branch has commenced planning on a project to upgrade the Cenotaph which is in genuine need of repair. The Club would like to commit to assisting the RSL Sub Branch in this project and would consider the allocation of the public art contribution appropriate to that.*

*... It is respectfully requested that in the assessment of the DA Council give weight and consideration to the social and economic support The Club provides to the Mullumbimby and surrounding community and waiver contributions and preparation of Voluntary Planning Agreements for public art and car parking. I am instructed that The Club respectfully requests the DA be taken to Council for determination so that it can make representations to it in regard possible Voluntary Planning Agreements in regard public art and car parking.*

The applicant provided the following Architects statement with the DA when it was originally lodged:

*Only two years ago Mullumbimby Ex Services Club faced the prospect of closure after a decade of financial decline. The Club had previously built up a land bank of neighbouring sites which were subsequently sold off to address the Club's declining financial position.*

*Year 2019 saw a new Board and Management take on the challenge of revitalising the Club's trade and a series of minor internal refurbishments have seen the Clubhouse refreshed and trading profitably once again, and in a position to be a positive centrepiece for the community.*

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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*The Club is a gathering place where members of the local community can connect and pursue their interests together. The Ex-Services Club also plays a role in supporting other community groups such as the local schools, playgroups, veterans and war widows, senior citizens, hospitals and nursing homes as well emergency services.*

- 5     *The Board engaged Project Leaders Pty Ltd, a specialist Licensed Club Architect, to prepare a Masterplan for their site. Part of this Masterplan is to substantially rejuvenate the Clubhouse and create an active street frontage, coffee shop, children's playground and new alfresco area. These modifications will improve the Club's ability to engage with the community and streetscape and for the first time there will be an equal-access ramp from the footpath into the clubhouse.*
- 10

- It is intended that the coffee shop will trade daily from 6am. The servery portion is located within the original squash court which opens onto a new roofed terrace which also incorporates the children's playground. It is intended to re-purpose the redundant administration offices within the new coffee shop. The space will include bi-fold windows opening to Dalley Street, further enhancing the activation of the street frontage.*
- 15

*There is no increase to the licensed area and the additional unlicensed area of deck that can be utilised is only 44m<sup>2</sup> inclusive of entry circulation.*

- It is intended to utilise the existing structure of the squash court and incorporate openings into the northern façade which will have a vista of Mt Chincogan. Much of the original squash court will be showcased with the timber floor, all line-markings and even the original lights preserved. They will be complimented by an authentic slightly industrial look. Both ends to squash court structure will be opened, creating a seamless passage from the street through to the courtyard within. It is proposed to relocate the two foundation stones on the Dalley Street façade to an equally prominent position on the south of the entry stairs under the three Services Emblems.*
- 20
- 25

*The existing beer garden is at grade and this will be raised to match the floor level of the club and a new roof will replace the existing. At the time of original construction, there was only a male bathroom that serviced the bar so a new female bathroom is being added (the Club has a compliant access bathroom in place already).*

- 30     *The Club also intends to landscape and light the pedestrian access lane to the North of the Club to further improve the amenity and street appeal of the Clubhouse. On completion, the Club will have a family-friendly new concession that will revitalise their Dalley Street location in the CBD and enhance the long-term viability of the Ex-Services Club.*

### 35     **Description of the site**

A site inspection was carried out on 17 March 2022 and 11 August 2022.

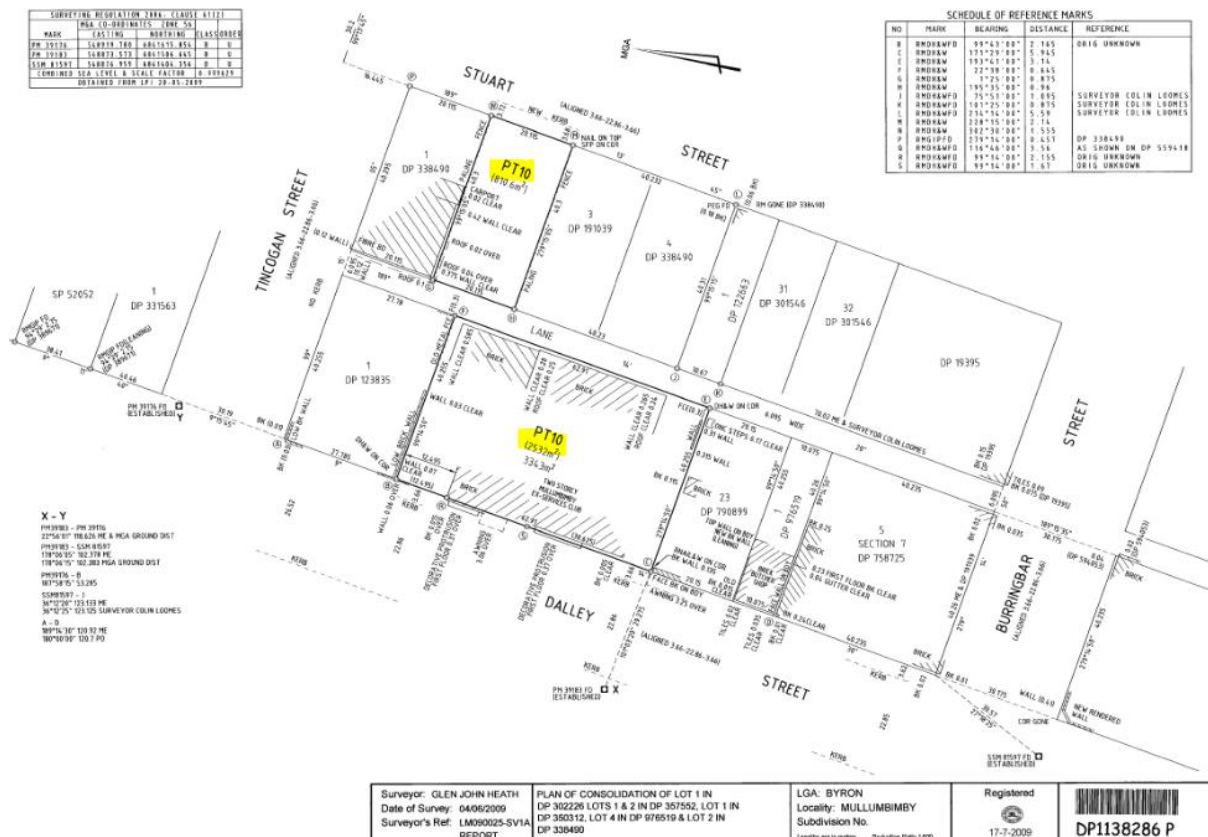
Land is legally described	PT: 10 DP: 1138286
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Property address	Dalley Street MULLUMBIMBY, 45-47 Stuart Street MULLUMBIMBY		
Land is zoned:	B2 Local Centre		
Land area is:	3343 m <sup>2</sup> (2532 m <sup>2</sup> Building & 810.6 m <sup>2</sup> Car Park)		
Property is constrained by:	Flood Liable Land; Acid Sulfate Soils Class 4		
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	



**Figure 4:** Deposited Plan (note. PT Lot 10 is across 2 parcels including the car park off Studal Lane)



**Figure 5:** Land Use Zoning Map Extract







**Figure 6: Site Photos**

## 5    **2. SUMMARY OF REFERRALS**

<b>Referral</b>	<b>Issue</b>
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
Building Surveyor	No objections subject to a construction certificate being required in the conditions.
S64 / Systems Planning Officer	No objections subject to conditions requiring contributions.

## BYRON SHIRE COUNCIL

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Referral	Issue
Contributions Planner	No objections subject to 7.12 Levy.
Heritage Consultant	No objections subject to conditions.

#### Notes:

#### Development Engineer:

5 The proposal increases the parking by demand by 6.3 spaces. There is no available area to provide parking spaces on-site, however improvements to public parking in the surrounding streets is recommended to provide/mitigate the deficiency in parking (See car parking discussion below under Byron DCP 2014 -Section B4.2.7.7 Car Parking Credits and Street Parking)

#### Building Certifier:

10 Building generally capable of complying with the BCA, existing building is up to an acceptable standard and the need for a Clause 94 upgrade will not be required. A construction certificate is required for the works.

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

15 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 not bush fire prone land.

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

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

#### State Environmental Planning Policies (SEPP)

Consolidated SEPPs 2021

Considerations	Satisfactory	Unsatisfactory
<i>Resilience and Hazards SEPP 2021</i> Consideration: <u>Chapter 2 Coastal Management</u> The land is mapped in the Coastal Environment and Coastal Use Area in accordance with Division 3 & 4 of this Chapter. The consent authority can be satisfied that	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## BYRON SHIRE COUNCIL

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Considerations	Satisfactory	Unsatisfactory
<p>the development is designed, sited and will be managed to avoid any adverse impact on:</p> <ul style="list-style-type: none"><li>• the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,</li><li>• coastal environmental values and natural coastal processes,</li><li>• the water quality of the marine estate (within the meaning of the <a href="#">Marine Estate Management Act 2014</a>),</li><li>• marine vegetation, native vegetation and fauna and their habitats</li><li>• Aboriginal cultural heritage, practices and places,</li></ul> <p><u>Chapter 4 Remediation of Land</u></p> <p>The site is not mapped on Council Contaminated Land Register. The nearest registered contaminated land parcel is the service station to the north of the laneway which contains an Underground petrol storage system (UPSS) but all works are proposed to be undertaken at least 1.2 metres from this boundary and the proposal does not change land use or increase the sensitivity of the use on the land. No further investigation is considered warranted.</p>		



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

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

- 5 (a) The proposed development is defined in the LEP 2014 Dictionary as (alterations and additions to) Registered Club;
- (b) The land is within the B2 Local Centre according to the Land Zoning Map;
- (c) The proposed development is permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

<b>Zone Objective</b>	<b>Consideration</b>
<ul style="list-style-type: none"> <li>• 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.</li> </ul>	The proposed development is not inconsistent with the objectives of the B2 Zone.
<ul style="list-style-type: none"> <li>• To encourage employment opportunities in accessible locations.</li> </ul>	
<ul style="list-style-type: none"> <li>• To maximise public transport patronage and encourage walking and cycling.</li> </ul>	
<ul style="list-style-type: none"> <li>• To encourage vibrant centres by allowing residential and tourist and visitor accommodation above commercial premises.</li> </ul>	

### Clause 4.3 Height of buildings

- 10 All additions to the building are maximum 3.66 metres, below the 9 metres maximum permissible height of buildings.

### Clause 4.4 Floor space ratio and 4.5 Calculation of floor space ratio and site area

- 15 The areas being increased in size include a new ladies' toilets, circulation space and café deck. The proposed development will increase the total Gross Floor Area to 1,892 m<sup>2</sup> excluding the open café deck and Beer Garden areas. The site area of the lot including the car park is a total of 3,343 m<sup>2</sup>. The proposed floor space ratio of the development on the land will be 0.57 :1 (including the car park on the same lot), being less than the maximum FSR of 0.75:1.

### 5.10 Heritage Conservation

- 20 The site is in the Mullumbimby Heritage Conservation Area and in the vicinity of several key heritage items including the Civic Memorial Hall/Centre and former Fire Station on the western side of Dalley Street. The applicant submitted a Heritage Impact Statement and the DA was referred to Council's Heritage Committee and Heritage Advisor.

Council Heritage Advisor has considered the proposal and HIS and concludes that:

*I concur with the SOHI that the proposed development will not diminish the integrity nor have an adverse impact on the heritage significance of the Mullumbimby Conservation Area or important elements in the streetscape. The addition is complementary and will not detract from the architectural value of this mid-century building.*

5 Clause 5.21 Flood planning

Council's Development Engineer has assessed flood planning in relation the proposed works and has recommended that due to the extent of works being less than 50% existing weatherproof area, the existing FPL of 5.31m AHD can be adopted. In recommending this, consideration has been made about the impact of the development on projected changes to flood behaviour as a result of climate change, the intended design and scale of buildings resulting from the development, whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood, and the potential to modify buildings resulting from development if the surrounding area is impacted by flooding. The proposal will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood. This meets the objectives of this clause, as follows—

- (a) to minimise the flood risk to life and property associated with the use of land,
- (b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,
- (c) to avoid adverse or cumulative impacts on flood behaviour and the environment,
- (d) to enable the safe occupation and efficient evacuation of people in the event of a flood...

Clause 6.1 Acid Sulfate Soils

25 The site is mapped potential acid sulfate soils class 4. No works are proposed Works more than 2 metres below the natural ground surface. Not are there works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface. No management measures are required or recommended.

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

No draft EPI's affect the proposal.

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

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

Council's engineer has calculated that the proposal increases the parking demand by 6.3 spaces, considering parking credits and site history. There is no available area to provide additional parking spaces on-site, however improvements in the surrounds street network

can be provided to make up for this shortfall. Section B4.2.7.7 Car Parking Credits and Street Parking specifies

7. Council will consider proposals to increase on street parking capacity for the provision of some or all customer car parking spaces by increasing on street parking capacity where there is a material public benefit, and where:
  - a) The net increase in formalised (ie paved &/or linemarked) on street parking is 25% greater than the number otherwise required on site;
  - b) The resulting streetscape conforms with the principles of good urban design;
  - c) The level of pedestrian, cycle and traffic amenity on the street is maintained; and
  - d) The proposal is not detrimental to utility services.

**Parking required on-site = 6.3 spaces**

- 5
  - 25% of the required parking spaces = 1.6 spaces
  - Total required parking on-street = 7.9 spaces say 8 spaces



**Figure 7:** Street upgrades recommended in lieu of on-site parking

- 10 The unsealed area on the northern side of Tincogan Street is considered suitable for upgrading. A condition is recommended to provide eight on-street parking spaces with kerb & gutter and drainage.

Chapters B8 Waste minimisation and management, B11 Planning for crime prevention and B12 Social impact assessment

- 15 The club has a longstanding history of operation, and the above matters are addressed under the current management arrangements for the club. Due to the minor increase in floor area and the nature of the activities to be undertaken in those areas including

amenities, café, and improved access to the existing club it is not considered warranted that that a full social impact assessment be undertaking.

### Chapter B13 Access and Mobility

- 5 The works will improve disability access to the existing club. Plans have been assessed by Councils' Building Surveyor and all works will comply with the Building Code of Australia.

### Chapter C1 Non – Indigenous Heritage

- 10 The site is in the Mullumbimby Heritage Conservation Area and in the vicinity of several items of heritage significance. The DA was referred to the local heritage committee and Council's appointed heritage advisor, who considered the submitted Heritage Impact Statement and concurred with its findings. This is addressed under Section 4.2 of this report.

### Chapter C2 Areas Affected by Flood

- 15 The Flood Planning Level of 5.31m AHD applies to the site. Conditions of consent to apply.

### Chapter D4 Commercial and Retail Development

D4.2.10 Restaurants, Cafes, Small bars, Pubs Registered Clubs, Function Centres and other Licensed Premises in the Urban Areas of Byron Shire.

Existing Hours of operation are as follows:

- 20 The Ex-services Club is open:

Monday - 10am to 8pm

Tuesday - 10am to 9pm

Wednesday - 10am to 10pm

Thursday - 10am to 10pm

- 25 Friday - 10am to 11pm

Saturday - 10am to 11pm and Sunday - 10am to 9pm.

The proposed new bar will operate the same hours as the Club.

The proposed new café and restaurant / café will operate 6am to 2pm, 7 days.

- 30 The proposed hours of operation for the extensions raise no issues having regards to the clubs location in the Mullumbimby Town Centre.

### Chapter D8 Public Art

- 35 This chapter applies to DAs for projects that have an estimated cost greater than \$1 million and are located within zones RU2, RU5, B1, B2, B3, B4, B7, SP3 or W2 and include development for a range of purposes including a registered club. The cost of works at the

time of lodgement on the DA was \$2,365,000. The applicant was requested to provide a public art plan or given the option to offer a voluntary planning agreement. The applicant has sought a variation to the requirements for Public Art based on the development not being for a new Registered club and the Club's statement that any monetary contribution will reduce the Club's ability to give back to the Community. (See earlier discussion in the introduction).

It is recommended that a variation be granted to the public art requirements in this instance considering the clubs involvement with the community and charity and sporting organisations.

**Chapter E3 Mullumbimby**

The proposed development is compatible with the design principle to "encourage the central business and shopping area to remain compact and to maximise its accessibility for residents and visitors". The proposed works are in keeping with the existing building and streetscape character.

## 4.5 Environmental Planning and Assessment Regulation 2000 considerations

	<b>Applicable to the proposal:</b>	<b>Considered the control as it relates to the proposal:</b>	<b>If this control is applicable, does the proposal comply?</b>
Clause 92 - Additional matters that consent authority must consider	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA
Clause 93 Fire safety and other considerations	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Clause 94 - Consent authority may require buildings to be upgraded	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA
Clause 94A - Fire safety and other considerations applying to erection of temporary structures	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> NA

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

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

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.

- 5 Council Policies that are applicable to the proposed development have been considered in this assessment.

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

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

10

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

- 15 The development application for alterations and additions to a registered club is not required to be publicly notified under the Byron Shire Community Participation plan. There were **no** submissions made on the development application.

#### 4.9 Public interest

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



## 5. DEVELOPER CONTRIBUTIONS

### 5.1 Water & Sewer Levies

The proposal will generate additional onto Councils Water and Sewer System. 64 levies will be payable.

### 5 5.2 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

- 10 The proposed Alterations and Additions to the Mullumbimby Ex-Services Club is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The variation to the public art requirements under DCP 2014 are supported for the reasons discussed in the body of the report. The proposal raises no significant issues in terms of environmental impacts which cannot be managed,
- 15 and the site is considered suitable for the development. The application is recommended for approval subject to conditions of consent.

**Report No. 13.5      PLANNING - Section 8.2 Review of  
Determination 10.2021.693.1 Use of  
Alterations and Additions to Shed and  
Decks at 2 Hamiltons Lane Byron Bay**

5    **Directorate:**                      Sustainable Environment and Economy

**Report Author:**                  Patricia Docherty, Planner

**File No:**                              I2022/906

**Section 8.2 Review of  
Development                      10.2021.693.1  
Application No.**

**Applicant:**                          Byron Bay Planning and Property Consultants

**Development:**                    Use of Alterations and Additions to a Shed

**Parcel No.:**                        119400

**Location:**                              LOT: 2 DP: 791508, 2 Hamiltons Lane BYRON BAY

**Date of Refusal:**                      31 March 2022

**Delegated Officer**                    Shannon Burt, Director Sustainable Environment and  
Economy

**Original Assessing  
Officer:**                              Lachlan Wall

**8.2 Assessment Officer**            Patricia Docherty

**Date 8.2 Review  
Lodged:**

**7 June 2022**

**Exhibition**

**14 June 2022 to**

**1 Submission received (objection)**

**27 June 2022**

**Delegation of S8.2  
Determination**

**Council**

**Summary:**

This application seeks a request to review determination of refusal of Development Application number 10.2021.693.1, dated 31 March 2022 pursuant to Section 8.2 of the Environmental Planning & Assessment Act 1979 (The Act) and in accordance with Part 12 of the Environmental Planning & Assessment Regulation 2021 (The Regulation). The Section 8.2 review must be lodged and determined within 6 months of the 31 March 2022 (Period ends 30 September 2022).

The Section 8.2 Review was received on 7 June 2022 and was publicly exhibited - Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications. Exhibition period: 14 June 2022 to 27 June 2022. One (1) Submission of objection was received. As the original application was refused under staff delegation by the Director of Sustainable Environment and Economy, the matter is reported to Council for determination.

The original DA was refused due to the height of the structure exceeding the 9 metre height limit under the LEP and the bonafides of the shed (see photos within the body of this report) In this regard the shed was constructed without consent.

The applicant's S8.2 Review request submits that the application is for use of an existing approved shed (under previous DA 10.2016.766.1) and other related works. Upon further investigation of the site history based on the information submitted with the 8.2 Review, it is evident that the development was not constructed in accordance with any previous development consent and the merits of the development therefore must be considered in full and accordance with current, relevant environmental planning matters. That is the previous approval has little to no relevance to the current proposal.

The issues that were raised in the original refusal still remain having regards to the building's height and the bonafides of the building to be used as shed. Further, additional reasons are now identified for refusal including impact on biodiversity and koalas. One objection was received reiterating concerns about the height of the structure, amenity impacts and the bonafides of the subject shed.

It is recommended that the S8.2 Application be refused for the reasons listed below. As the shed has been constructed without consent, Council will also need to investigate compliance action should this refusal be upheld.

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 8.4 of the Environmental Planning & Assessment Act 1979, that Council, being the consent authority uphold the refusal of DA 10.2021.693.1, with the reasons for refusal amended as follows:**

- a) The application is not satisfactory pursuant to Section 4.15 (b) of the Environmental Planning and Assessment Act 1979 and Sections 1.3, 6.4, 7.1 and 7.7 of the Biodiversity Conservation Act 2016 because vegetation clearing was undertaken to facilitate its construction without approval and the application fails to provide a Biodiversity Development Assessment Report to demonstrate that the development took adequate steps to avoid or minimise biodiversity impacts on land within the Biodiversity Values Map.
- b) The application is not satisfactory pursuant to Section 4.1 (a)(i) and (b) of the Environmental Planning and Assessment Act 1979 and Section 12.2.2 and 13.2 of the Byron Coast Comprehensive Koala Plan of Management (CKPoM), as enforced under State Environmental Planning Policy (Koala Habitat Protection) 2021, because the application fails to provide a Koala Habitat Assessment Report and a Koala Habitat Restoration Plan for unauthorised development and clearing of vegetation on land identified as Core Koala Habitat.
- c) The application is not satisfactory pursuant to Section 4.15 (1) (a) (i) and (c) of the Environmental Planning and Assessment Act 1979 and Appendix 3 of the Byron Coast Comprehensive Koala Plan of Management (CKPoM), because it is considered that there would be insufficient space outside of the development footprint to achieve the amount of compensation required as a result of the unauthorised development and clearing of vegetation.
- d) The application is not satisfactory having regard to Section 4.15(1)(a) (i) of the Environmental Planning and Assessment Act 1979 because it does not provide sufficient information to demonstrate the building height has been accurately measured from existing ground level and fails to

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.5

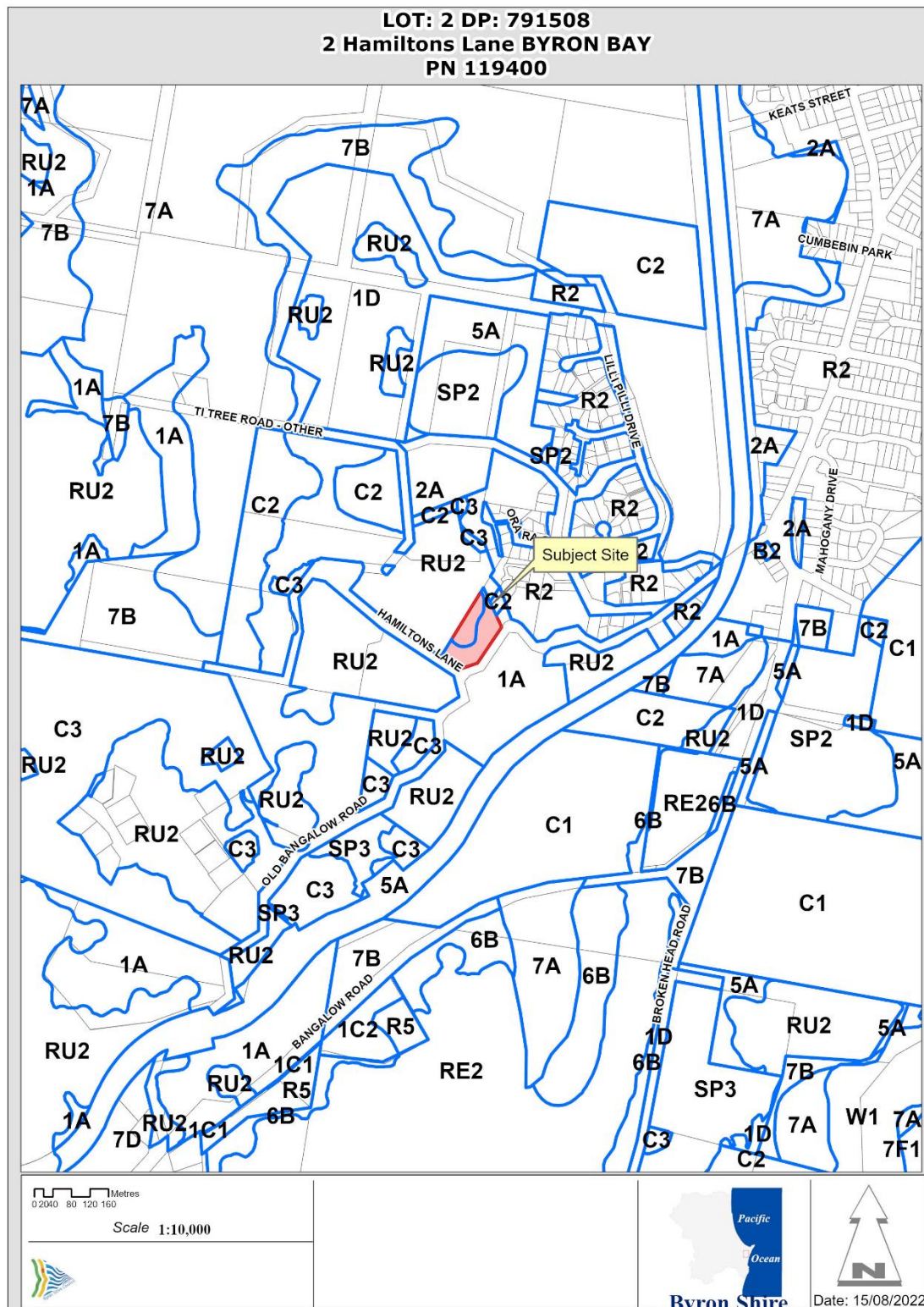
**demonstrate compliance with the limit of 9 metres pursuant to Clause 40 Height of the Byron Local Environmental Plan 1988 and Clause 4.3 Height of Buildings of the Byron Local Environmental Plan 2014.**

- 5           e)    **The application is not satisfactory pursuant to Section 4.15 (1) (a) (iii) of the Environmental Planning and Assessment Act 1979 and Chapter B1 Section 1.2 of Byron Shire Development Control Plan 2014 because ecologically significant areas (red flags) and their setbacks were not**
- 10                   **identified or considered prior to designing the development; the remaining space outside of the development footprint is insufficient to**
- 15                   **achieve adequate compensation for unauthorised vegetation removal, failing to demonstrate ‘No net loss of biodiversity’; and cannot**
- demonstrate sufficient steps were taken to avoid and minimise biodiversity impacts**
- f)    **The development is not satisfactory having regard to subsection 4.15(1) (c) of the Environmental Planning and Assessment Act 1979 as the site is**
- 20                   **not suitable for the development as the development does not comply with the applicable development standards in the Byron Local**
- Environmental Plan 1988 and Byron Local Environmental Plan 2014.**
- g)    **The development is not satisfactory pursuant to Section 4.15 (1)(d) because matters raised in submissions of objection are not addressed in**
- 25                   **the application.**
- h)    **The development is not satisfactory in relation to the Public Interest under subsection 4.15(1)(e) of the Environmental Planning and Assessment Act**
- 30                   **1979 having regards to the unapproved shed, which is not ancillary and subservient to the principal dwelling on the site, impacts on biodiversity**
- due to non-compliance with Biodiversity Conservation Act 2016, and State Environmental Planning Policy (Koala Habitat Protection) 2021 Byron**
- Coast Comprehensive Koala Plan of Management (CKPoM) and failure to address compliance with the applicable height controls under Byron LEP**
- 1988 and Byron LEP 2014.**

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.5











# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.5

### **Attachments:**

- 1 S8.2 Review - 10.2021.693.1 - Survey Report - 2 Hamiltons Lane\_PAN-227280,  
E2022/52816 
- 5 2 S8.2 Review - 10.2021.693.1 - Section 8.2 Review - 2 Hamiltons Lane\_PAN-227280,  
E2022/52825 
- 3 S8.2 Review - 10.2021.693.1 - Site Plan - Shed - 2 Hamiltons Lane\_PAN-227280,  
E2022/52827 
- 10 4 S8.2 Review - 10.2021.693.1 - Floor Plans - Shed - 2 Hamiltons Lane\_PAN-227280 (1),  
E2022/52815 
- 5 S8.2 Review - 10.2021.693.1 - Elevations and Sections - Shed - 2 Hamiltons Lane\_PAN-  
227280, E2022/52814 
- 6 Development Assessment Report - 10.2021.693.1, A2022/2502 

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## Assessment:

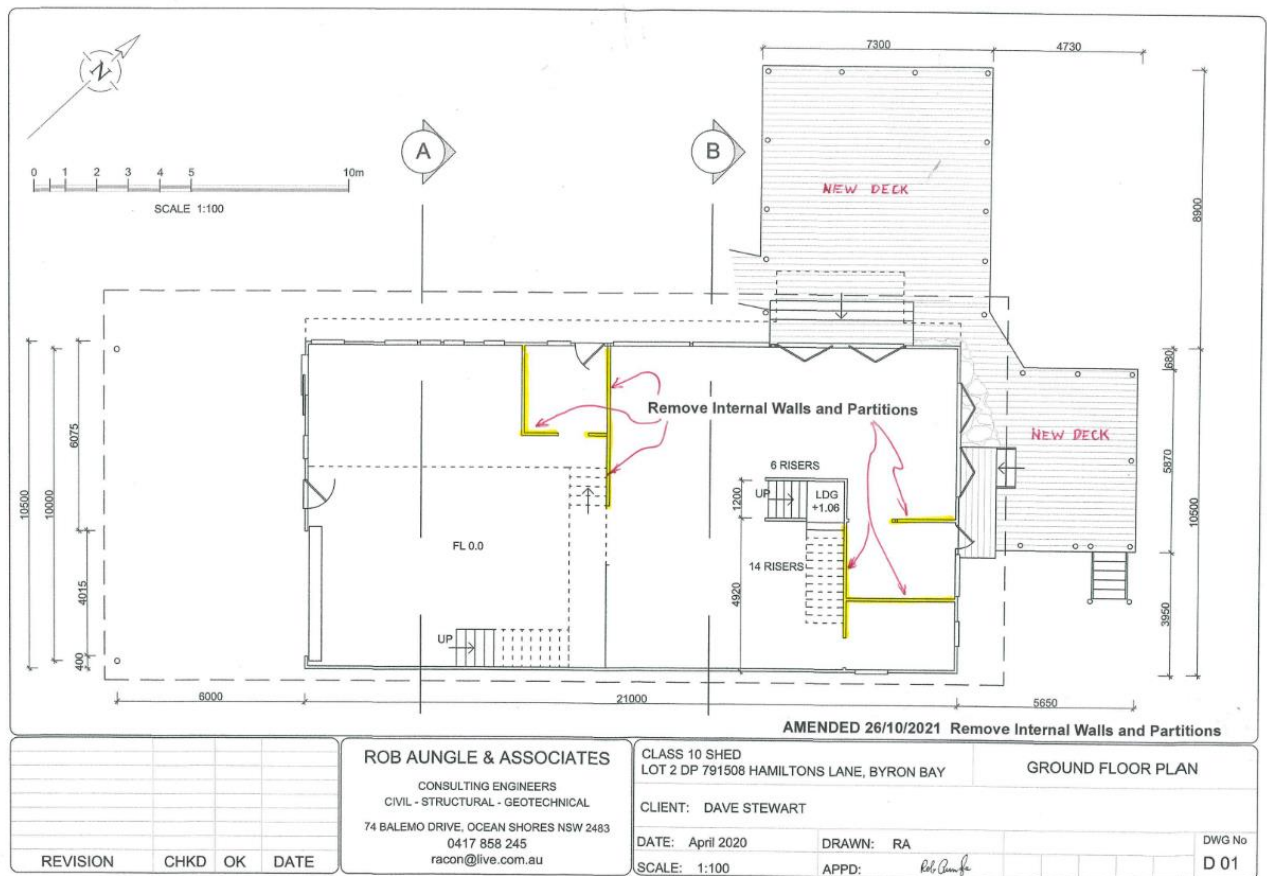
### The original Reason/s for refusal of DA 10.2021.693.1, are as follows:

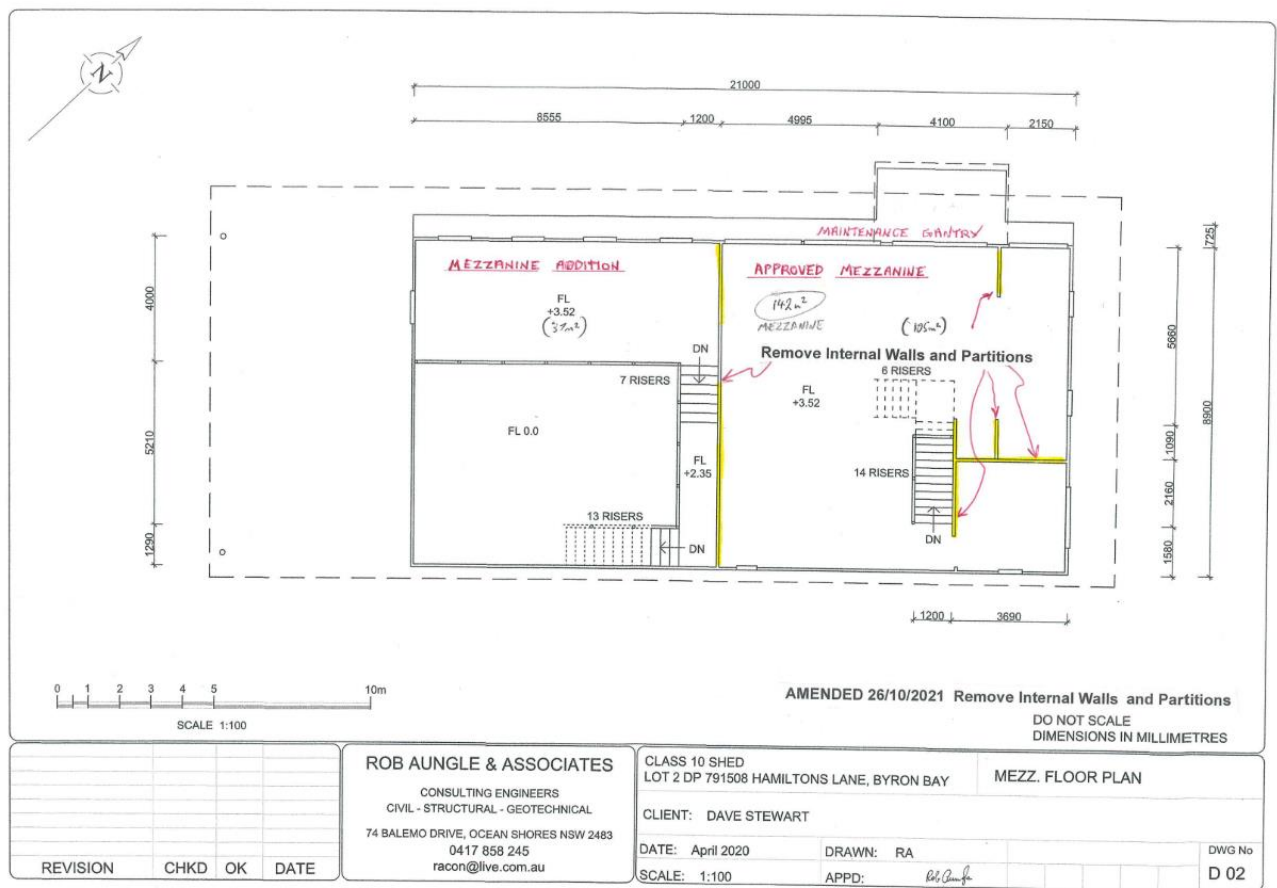
- 5 1. The Application is not satisfactory having regard to Section 4.15(1)(a) (i) of the Environmental Planning and Assessment Act 1979 because the development as built does not comply with Clause 40 Height of the Byron Local Environmental Plan 1988 and Clause 4.3 Height of Buildings of the Byron Local Environmental Plan 2014, with the building exceeding the 9 m height limit.
- 10 2. The development is not satisfactory having regard to subsection 4.15(1) (c) of the Environmental Planning and Assessment Act 1979 as the site is not suitable for the proposed development as the development does not comply with the applicable development standards in the Byron Local Environmental Plan 1988 and Byron Local Environmental Plan 2014.
- 15 3. The development is not satisfactory in relation to the Public Interest under subsection 4.15(1) (e) of the Environmental Planning and Assessment Act 1979 having regards to the bonafides of the proposal as a shed and the non-compliance with the applicable height controls under Byron LEP 1988 and Byron LEP 2014.

### Issues addressed in the revised submission:

- 20 Under section 8.2 (3) of the Act, the applicant may amend the proposed development the subject of the original application for development consent. Council, being the consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.

- 25 In requesting the review, the Applicant makes no amendments to the development and it is considered to be substantially the same development as that refused under DA 10.2021.693.1.





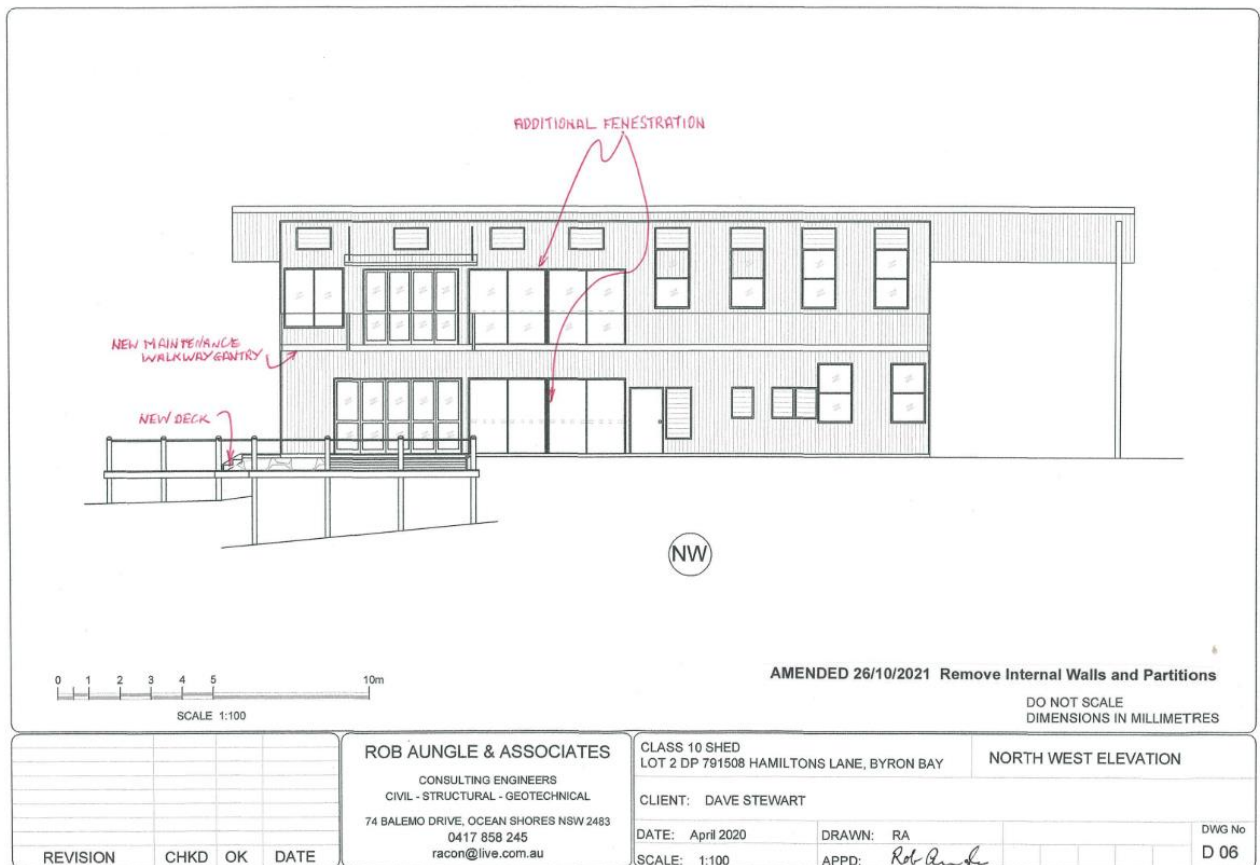
5

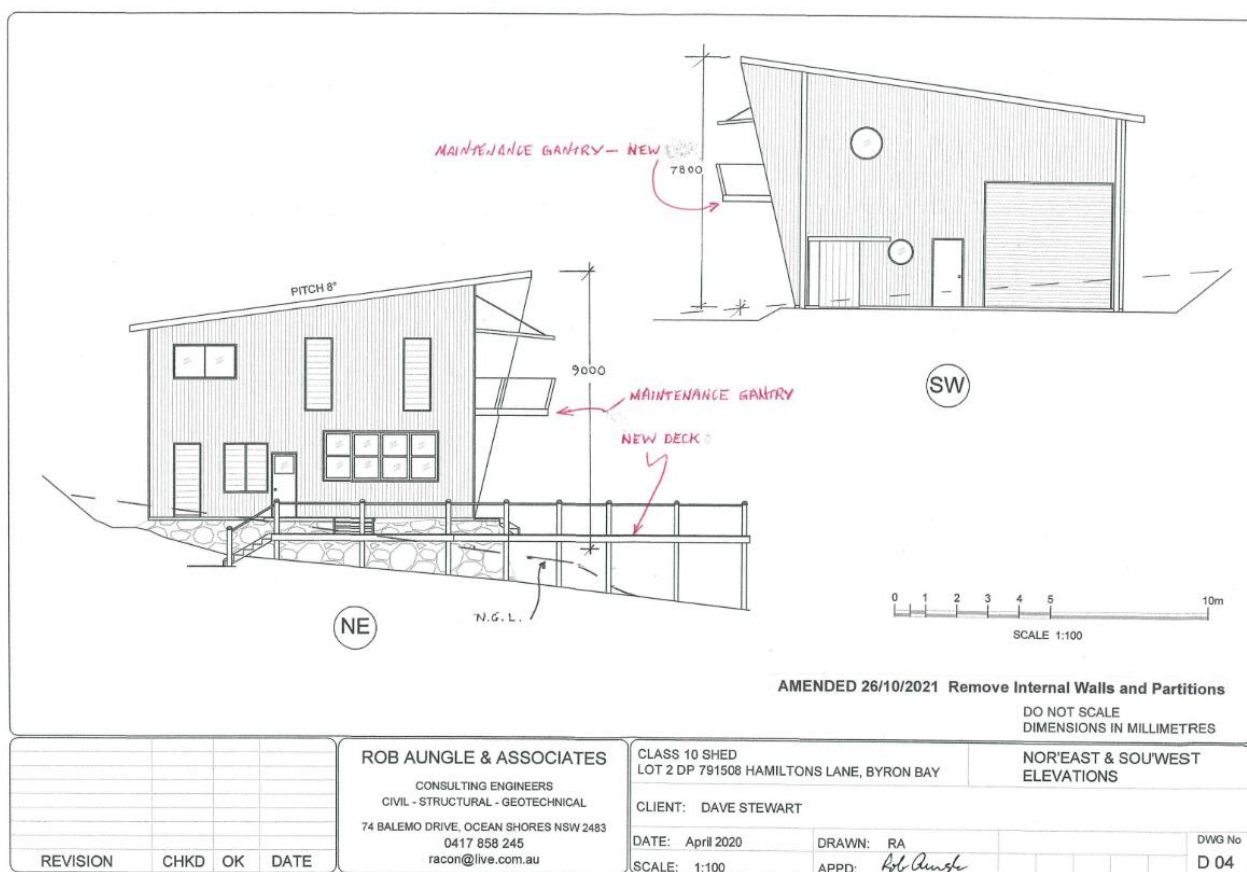
10

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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The S8.2 application included a letter from a registered surveyor and the following written summary of the 8.2 Review being sought:

- 5 This report is to accompany a Section 8.2 Review Application in relation to DA 10.2021.693.1, which sought to regularise the already constructed amend Shed design, constructed under Consent 10.2016.776.1 dated 24<sup>th</sup> Jan. 2017 on Lot 2 D.P.791508 No 2 Hamiltons lane Byron Bay. This property has an area of approx. 1.1 ha.
- 10 This DA 10.2021.693.1 was refused by Council on the 31<sup>st</sup> March 2022 on three grounds.
- 15 The Shed has been constructed at variance to the original approved design, and a recent attempt to address this via Sec 4.55 Application 10.2016.776.2 was rejected by Council on the 28<sup>th</sup> of Sept 2021, on the basis that the building was too different, and that at each level of the building five spaces had been created by internal walls making the structure "*consistent with a habitable structure*".
- 20 The constructed shed now contains a larger than previously approved storage mezzanine of 142m<sup>2</sup>, and the roof has been changed from a pitched roof with a gable end, to a skillion roof.
- Also there were changes to its fenestration, where there has been a removal of previously approved fenestration to the east, and an increase in fenestration at both



levels to the west, including sliding doors to access a maintenance balcony at first floor level, and a workspace balcony at ground level.

The shed remains in the same approved location and with the same approved footprint.

- 5 Walls and Roof are clad in Grey Kliploc.

These minor amendments proposed do not alter the nature of the approval, being a Shed constructed under Consent 10.2016. 776.1, however it is agreed that to ensure the intent of the previous Shed approval is maintained, that all internal walls and partitions will be removed. As such its shape, form and character will remain a Shed.

- 10 The applicant submitted a survey with the S8.2 Review, prepared by Byron Bay Surveying Pty Ltd. The survey plan nominates the surveyed height of the building at four corners of the existing constructed roof and the setback distances to the north, east and west boundaries: (See Attachment 1 - Council Doc # E2022/52816):

- 15 To address the concerns of Council, a detailed survey of the property was conducted to establish natural ground levels before the shed was lawfully commenced under Consent 10.2016. 776.1 dated 24<sup>th</sup> Jan. 2017 and subsequent CC 11.2016. 776.1. (See Attached Byron Bay Surveying Report 20 May 2022)

This report finds that :-

- 20 *Upon the part of land surveyed, stands a sheet metal outbuilding roofed with metal which is the subject of this survey only.*

*The position of the outbuilding and associated structures in relation to the boundaries of the subject land is shown on the attached sketch, drawing BYR117 /dent. The height of the outbuilding's roof was requested to be determined above natural ground level.*

- 25 *The points located are shown in circle letters on the sketch and their heights are as follows:*

- 30
- Corner A -8.9 metres
  - Corner B -4.9 metres
  - Corner C -4.0 metres
  - Corner D -8.2 metres

*Natural surface levels have been determined by interpolation between undisturbed surface points remote from disturbed works ground and following contour lines of the general undisturbed topography.*

- 35 Other matters raised in the submitted request for review of determination:

The annexed survey report, shows clearly that the Structure does not exceed the Statutory 9m maximum building height set for this part of the Byron Shire under the provisions of Clause 40 Height of the Byron Local Environmental Plan 1988 and Clause 4.3 of Byron LEP 2014, and the Maps that accompany the LEP.

On this basis, the shed does comply with the Maximum Height Development Standard, and therefore Reason 2 of the Refusal Notice is not a valid reason for refusal, and as such this Sec 8.2 Review should result in a Development Consent being issued for the rural shed on site.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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The annexed survey report, shows clearly that the Structure does not exceed the Statutory 9m maximum building height set for this part of the Byron Shire under the provisions of Clause 40 Height of the Byron Local Environmental Plan 1988 and Clause 4.3 of Byron LEP 2014, and the Maps that accompany the LEP.

In relation to its use as a Shed, the plans submitted with the application show the removal of all internal walls.

This meets the requirements of DCP 2014 Part D2.7.2 Farm Buildings, Shed & other structures, point 6 :-

*"Sheds should be open, have minimal dividing walls and plumbing and be suitable for machinery and vehicle storage. Plans of decommissioning should be included with Development Applications seeking to change the use of the building from a dwelling to a shed."*

It is to be used in conjunction with the plant raising business on site which supplies stock for the owners Landscaping Business. It will thus house machinery, equipment and ancillary storage relating to these landuse activities.

On this basis Reason 3 of the Refusal Notice is not a valid reason for refusal, and as such this Sec 8.2 Review should result in a Development Consent being issued for the rural shed on site.

### Relevant background details from Development Assessment Report 10.2021.693.1

#### History/Background

<u>Application / Register No</u>	<u>Description</u>	<u>Status</u>	<u>Date</u>
<a href="#">5.1997.476.1</a> Development Applications	Dwelling- rural - DWELLING	APPD	30/01/1998
<a href="#">6.1997.2726.1</a> Building Applications	Dwelling	APPD	18/12/1997
<a href="#">10.2016.776.1</a> Development Application	Shed	APPR	23/01/2017
<a href="#">10.2016.776.2</a> Development Application	S4.55 for Use of Alterations and Additions to Shed	REFU	28/09/2021
<a href="#">10.2021.693.1</a> Development Application	Use of Alterations and Additions to a Shed	Pending	
<a href="#">11.2016.776.1</a> Construction Certificate	Shed	APPR	10/07/2017
<a href="#">30.2021.8082.1</a> Customer Request Management	See email & photos E2021/120927 - unauthorised additions and alteratio	Pending	

5

This application was raised by compliance investigation following a complaint about unapproved works.

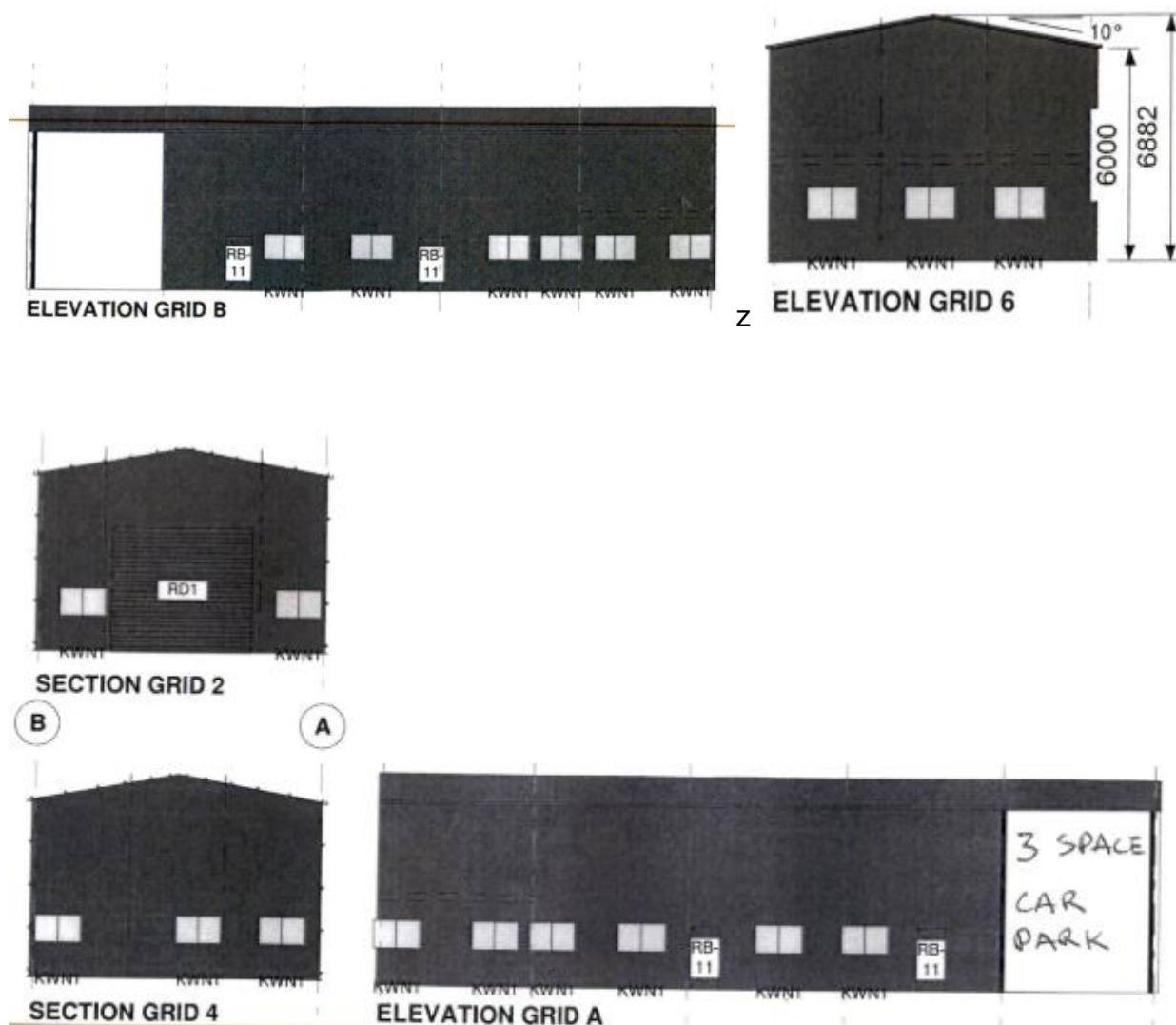
Two notices of proposed orders have been issued in relation to this structure and the unapproved works.

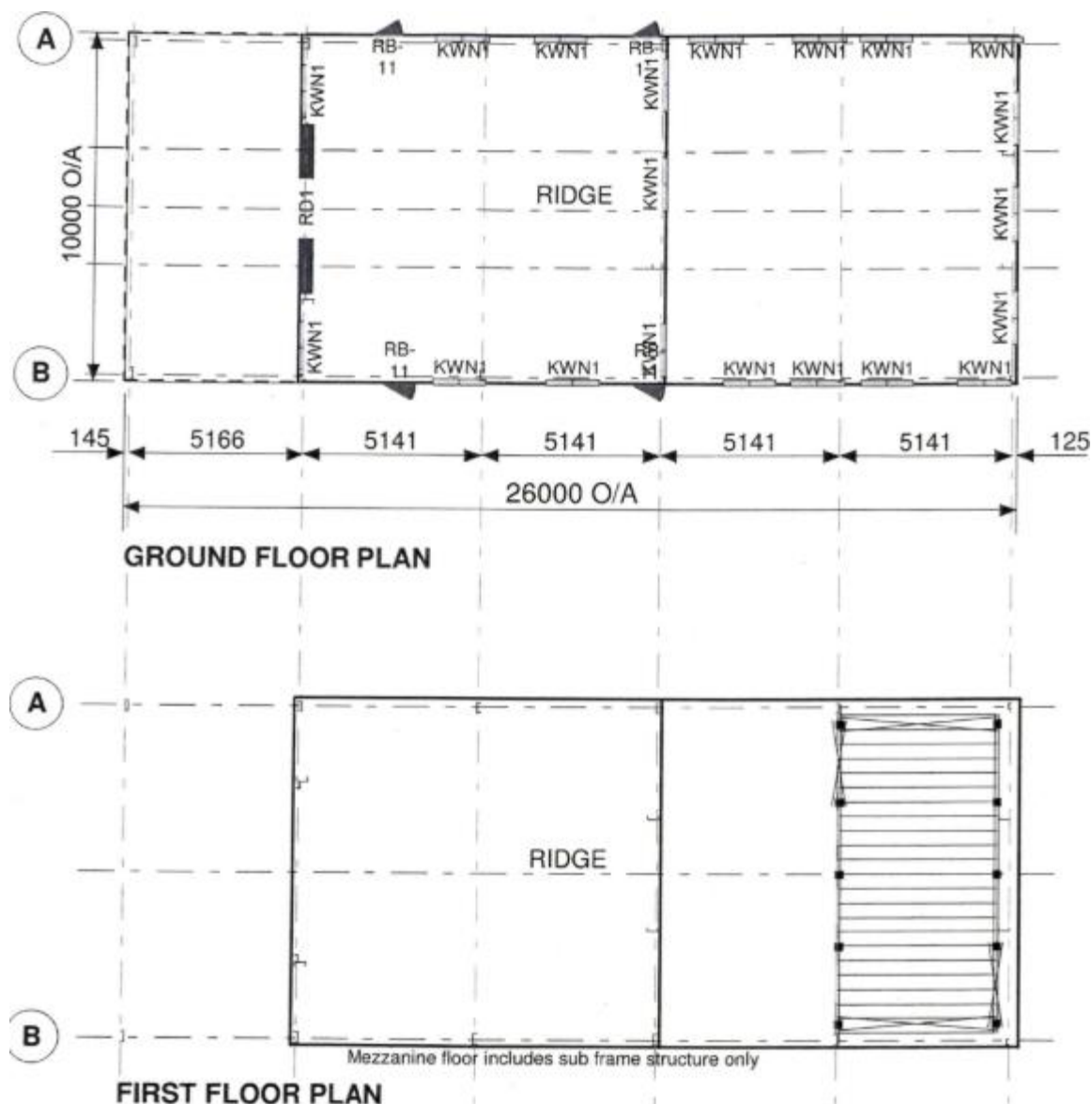
- 10 The constructed shed configuration is not in accordance with 10.2016.776.1 and 11.2016.776.1

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Further unapproved earthworks and retaining walls have been undertaken within or underneath the building footprint.

## 5 Description of the proposed development

This application seeks approval for Use of Alterations and Additions to a Shed

The unapproved additions include;

- 103m<sup>2</sup> of decking constructed on the ground floor.
- 22m<sup>2</sup> of decking constructed on the first floor mezzanine area
- 45m<sup>2</sup> of mezzanine extension
- New stairs to access mezzanine area.
- A significant number of windows and doors have been installed of varying sizes



- Changes to the roof pitch and overall height of the structure to 9.042m
- Retaining wall approximately 1.9m in height and varying
- Unapproved earthworks varying in height / depth

5 New works proposed under this application include

- Removal of unapproved internal walls within the shed on both floors.

**Description of the site**



10 Northwest Elevation

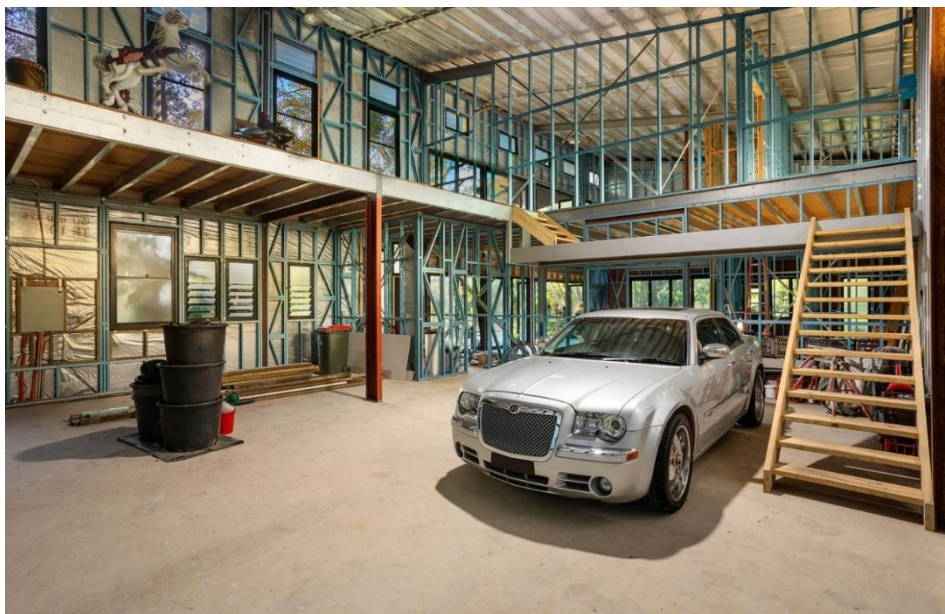


Extensive deck areas on Northwest and Northeast Elevations

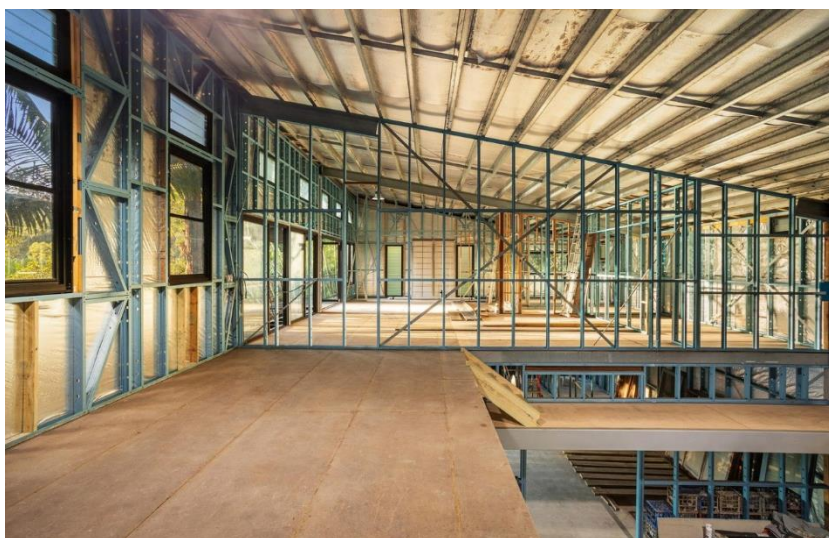


5 Upper floor balcony and deck and lower floor deck on Northwest Elevation





Framing for dividing lower floor into individual rooms



- 5 Framing for dividing upper floor into individual rooms

A site inspection was carried out on 23 March 2022



Ground floor area as constructed.



First floor balcony





First floor mezzanine area



First floor mezzanine area and balcony.



Zoning map of the site, the structure as built is partially located within the RU2 Rural Landscape zoned land with the majority of the building footprint being located within the 1A General rural zoned land.

5

Land is legally described	LOT: 2 DP: 791508	
Property address	2 Hamiltons Lane BYRON BAY	
Land is zoned:	RU2 Rural Landscape / 1A general rural Byron LEP 1988	
Land area is:	1.102ha	
Property is constrained by:	Bushfire prone land High Environmental Value	
	Is a BDAR required due to the location of the proposed development? *see discussion below	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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	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 now mapped within the BV mapped land.

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

Notes:

- 5 The site is subject to a Planning proposal to rezone the land currently zoned under this LEP to RU2. The zoning change is not imminent and is not considered further at this point in time.

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

- 10 A variation to a development standard is outlined below relating to clause 40 Height and no request to vary has been submitted.

#### **Clause 40 Height**

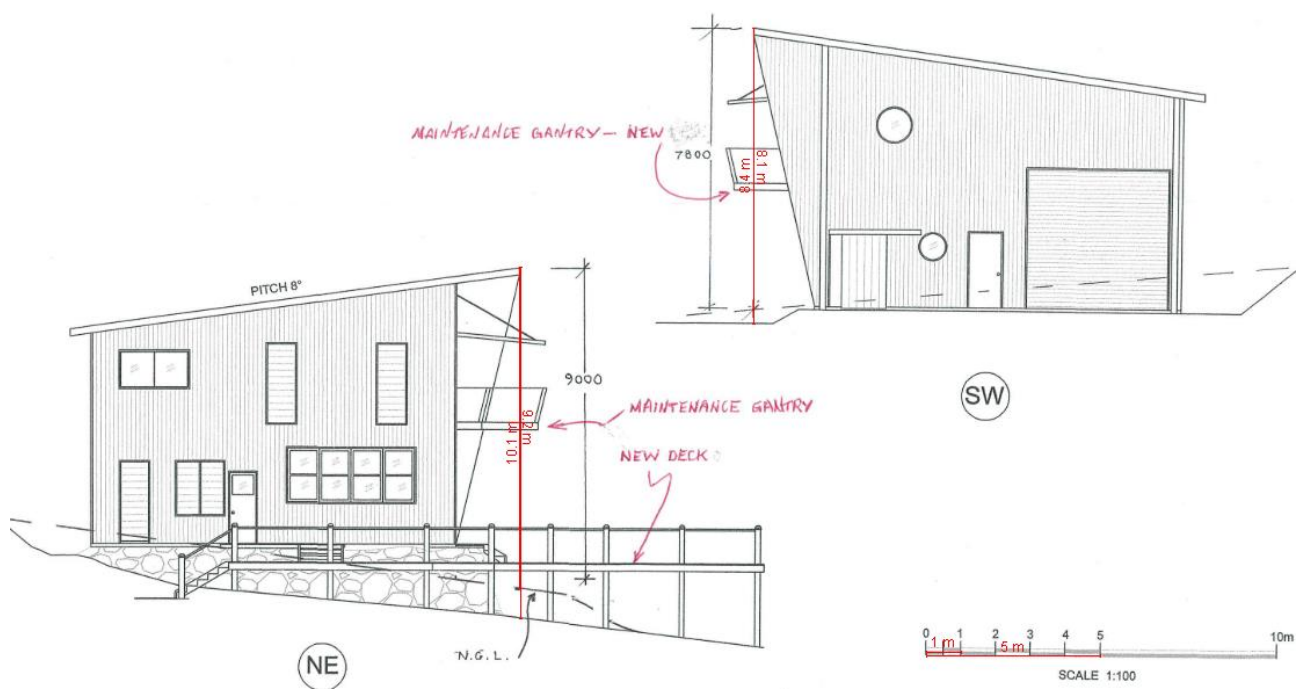
(2) The council must not consent to the erection of any building—

(b) on land within any other zone, if—

- (i) the floor of the topmost floor level of the building exceeds 4.5 metres above the existing ground level, or
- (ii) the vertical distance between the topmost part of the building and the existing ground level below exceeds 9 metres.

15

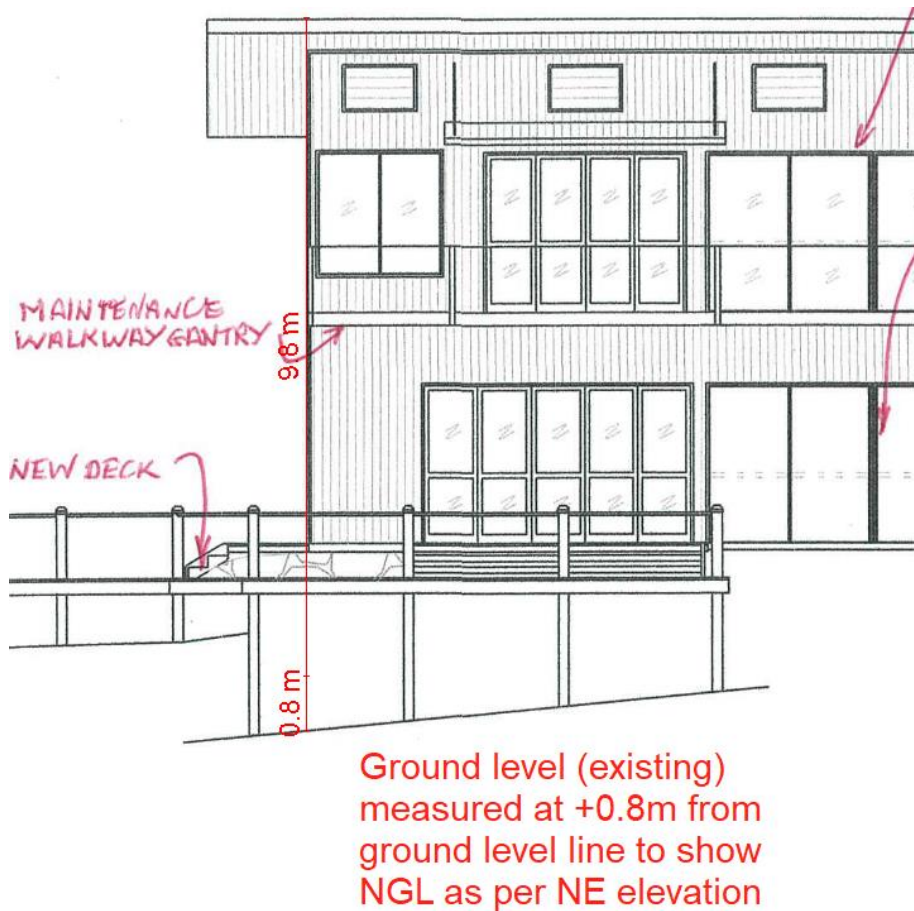
The shed as constructed varies in height, and exceeds the 9m height limit for the site at the NE elevation of the dwelling.



Left (North East elevation)

Right (South West elevation)





#### NW elevation

- 5 It is unable to be determined the full extent of the non-compliance as the ground level (existing) has not been provided for the other elevation or sections submitted with this application. However, based on the plans submitted the maximum height of the shed as constructed is likely between 10.1 and 9.8m at the highest point at the north-western corner of the development.

Based on this assessment, the variation to this development standard is between **8.8% - 12.2%**.

- 10 No request to vary a development standard has been provided with this application.

In determining the height of buildings guidance is provided by the LEC is set out below.

- 15 It is the pre-development or pre-excavation ground level that is relevant. In *Bettar*, the Court took the existing ground level from the footpath level because the whole site had been developed. O'Neill also observed that existing ground level "...is usually achieved by taking the lowest level of an existing site, as shown on the site survey, directly beneath the highest point of the proposed development".

*Bettar v City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney* [2015] NSWLEC 1189 (*Stamford Properties*).

The application is not accompanied by a survey that identifies the lowest level of the existing site directly below the highest point of the development. The plans submitted also do not measure the full height of the structure from ground level (existing), the plans do not appear to even measure to the extent of the natural ground line as shown on the elevation plans. There is no detail provided in the section to determine the ground level.

Based on the original development consent (10.2016.776.1) no consent for earthworks was issued, and no subsequent consent for earthworks has been issued. Based on the plans submitted a significant level of cut and fill has been undertaken, in some instances over 1m in depth / height. Again the plans submitted provide insufficient detail to determine the extent of any earthworks undertaken.

The extent of these works have significantly increased the height of the structure.

Large retaining walls have also been constructed underneath the structure and large deck area. these retaining walls vary in height up to 1.8m as measured on the plans submitted.

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

This site is subject to Planning portal stage 3 E zone (26.2020.7.1) this proposal has been adopted by the elected Council see resolution below.

<b>Report No. 13.16</b>	<b>PLANNING - 26.2020.7.1 - Planning Proposal Stage 3 E zone</b>
	<b>Implementation Program Submissions report</b>
<b>File No:</b>	I2021/1662

#### **Resolved:**

1. That Council in relation to Stage 3 E Zones planning proposal adopts:
  - 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
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.
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. (Coorey/Lyon)

*The motion was put to the vote and declared carried.*

The site will be rezoned to RU2 under the BLEP 2014. This resolution has to back through the department of planning and is not imminent to be implemented. The zone change will not materially impact on the permissibility of the shed.

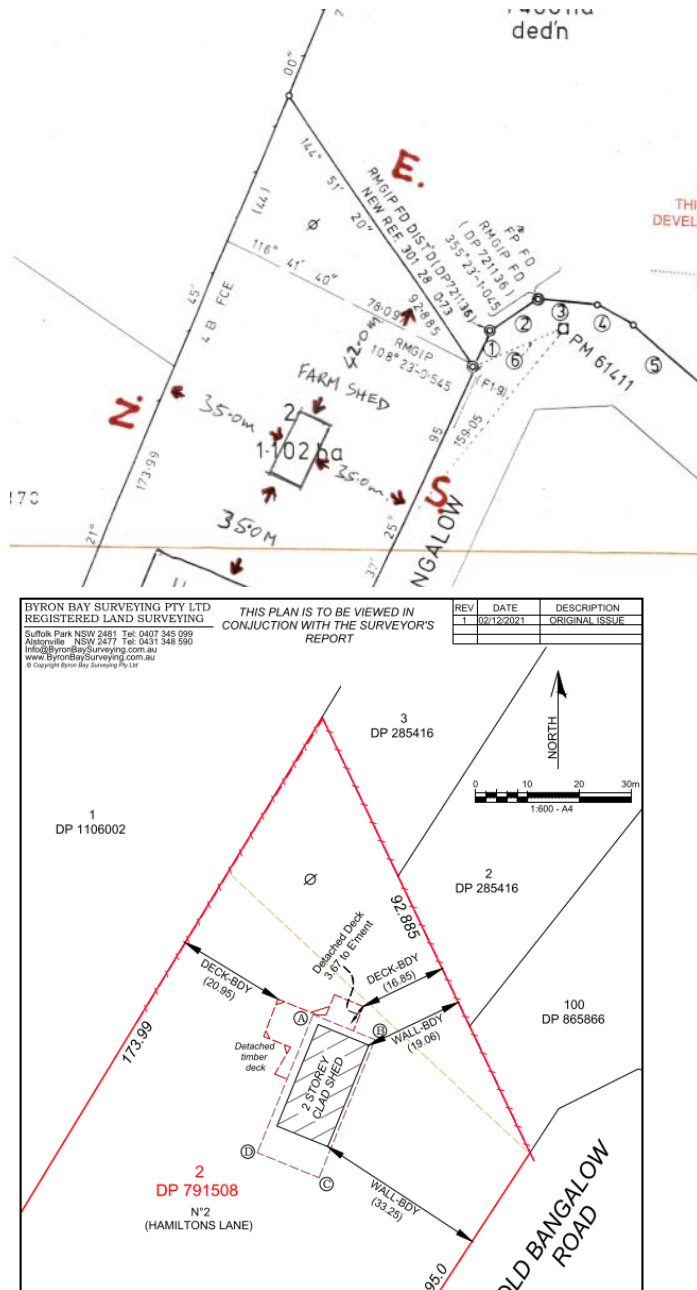
**4.4B Byron Shire Development Control Plan 2010 (DCP 2010)**

**C2.7 Extent of earthworks**

- 5 No consent for earthworks is sought under this application. it is noted otherwise that earthworks that exceed the maximum depth/ height of cut and fill has been undertaken that does not have any valid development consent issued. Notably as the original development consent DA 10.2016.776.1 did not require or show any earthworks required.

**Reasoning of S8. Review Recommendation:**

- 10 The applicant's reference to approval under DA 10.2016.766.1 of the shed the subject of this 8.2 Review is incorrect. DA 10.2016.766.1 approved a different, smaller shed design and not in the location of the shed the subject of this 8.2 Review. This approval did not require any clearing of vegetation.



Approved location under 10.2016.776.1 compared to actual location of current shed

The total floor area of the approved shed is 205m<sup>2</sup> at ground level plus a small mezzanine loft space to increase storage area and a 50m<sup>2</sup> open sided covered area for parking tractors, machinery etc. It is noted that DA 10.2016.766.1 is still a valid consent and does not lapse until January 2024 due to Ministerial Covid provisions under S4.53 (1) (c) of the Act.

The shed and other unapproved works therefore must be considered on its own merits under this Section 8.2 Review of the determination of refusal of DA 10.2021.693.1.

The use of the shed in the unapproved location refused under DA 10.2021.693.1, the subject of this Section 8.2 Review raises substantial environmental planning issues never assessed under DA 10.2016.776.1.

The unapproved works and additions include:

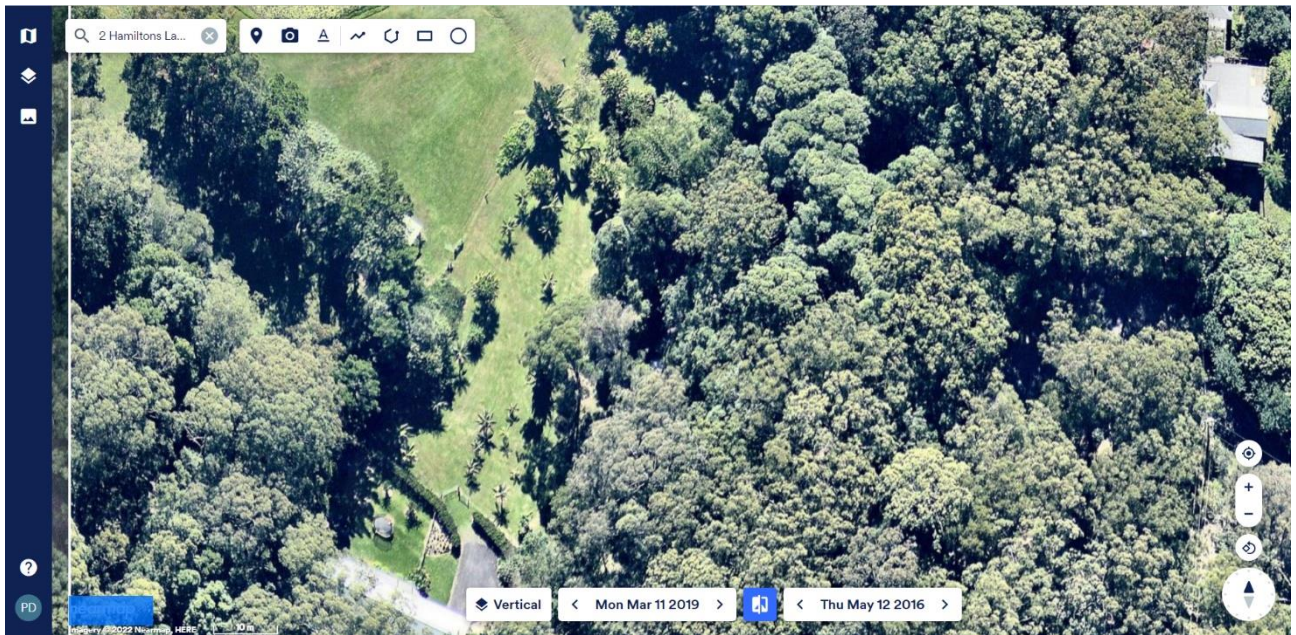
- 5
  - Removal of native vegetation.
  - Shed location closer to mapped koala habitat, biodiversity values land.
  - 103m<sup>2</sup> of decking constructed on the ground floor.
  - 22m<sup>2</sup> of decking constructed on the first floor mezzanine area
  - 45m<sup>2</sup> of mezzanine extension
- 10
  - New stairs to access mezzanine area.
  - A significant number of windows and doors have been installed of varying sizes
  - Changes to the roof pitch and overall height of the structure to 9.042m
  - Retaining wall approximately 1.9m in height and varying
  - Unapproved earthworks varying in height / depth
- 15 New works proposed under the DA 10.2021.693.1 application include:
  - Removal of unapproved internal walls within the shed on both floors.

- It is considered, the use of the unlawful shed relocation, the addition of decking, change in roof pitch, fenestration including windows and doors and the addition of ablutions (shower and WC) and increased floor space at the upper mezzanine, presents significant environmental planning impacts and issues summarised under the following headings:
- 20

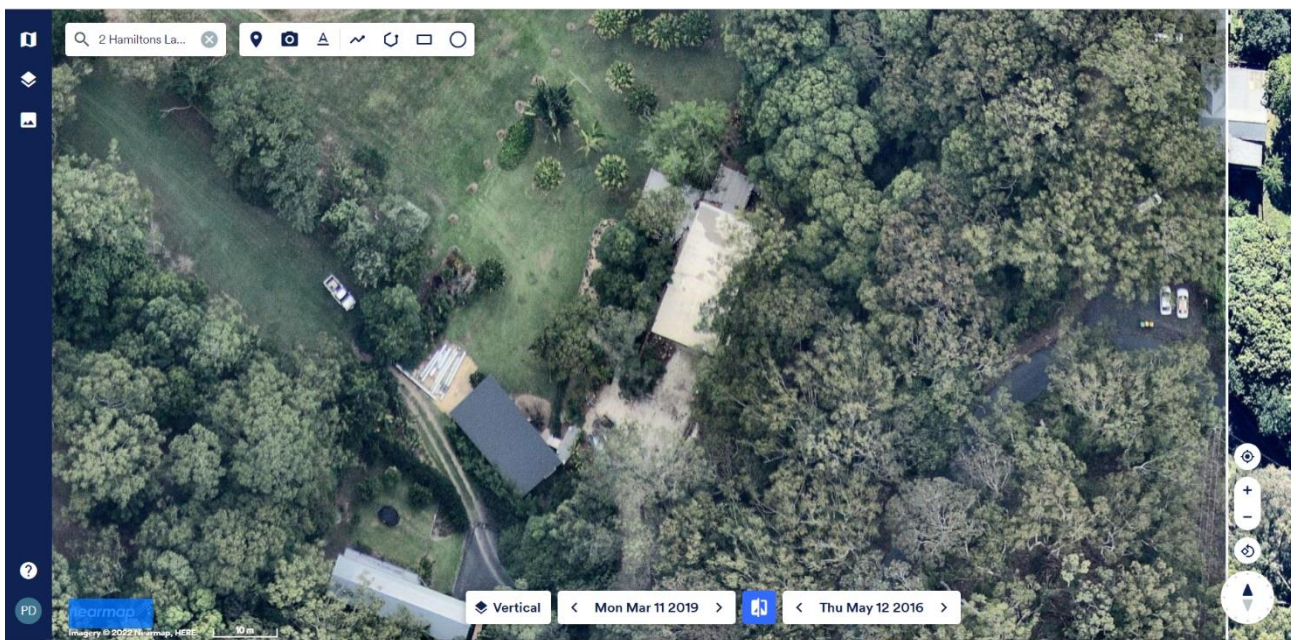
### **Biodiversity Impacts**

No tree removal has been approved on the land and it is evident from time sequence aerial imagery on *nearmap*, that substantial clearing of tree canopy has been undertaken for the purposes of the construction of the unapproved structures.





Canopy cover 12/05/2016



5 Canopy cover 11/03/2019

This represents unacceptable and avoidable biodiversity impacts arising from the scale and use of the larger shed in a location closer to existing habitat, which is further exacerbated by the extent of installed decks and windows with potential for disturbance to native fauna on land mapped Koala Habitat under Council's Comprehensive Koala Plan of Management. Extensive reflective windows also present a risk of bird strike.

10

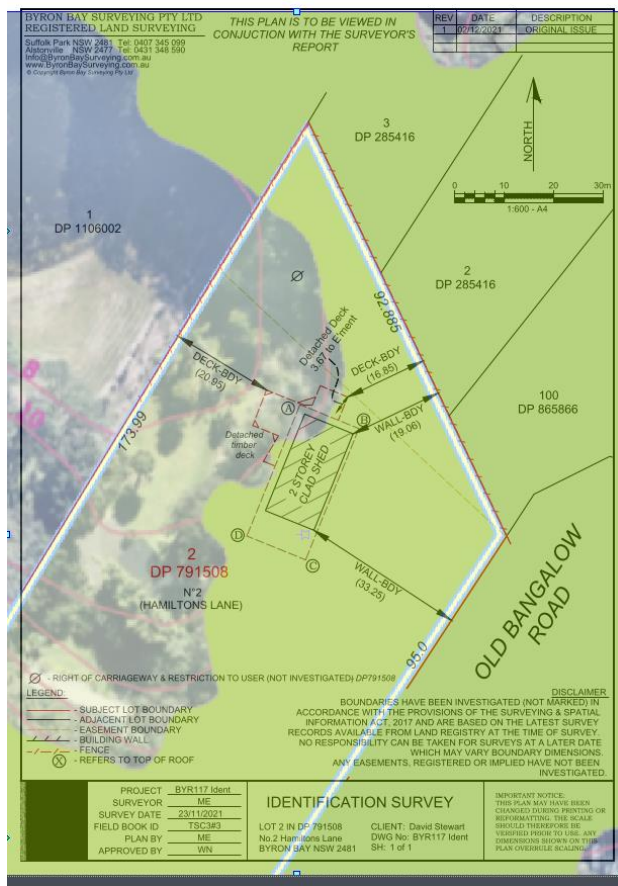


Note, the site was added to the NSW Biodiversity Values map following gazettal of the Byron Comprehensive Koala Plan of Management. These changes to the Biodiversity Values map came into force on the 27/12/21.

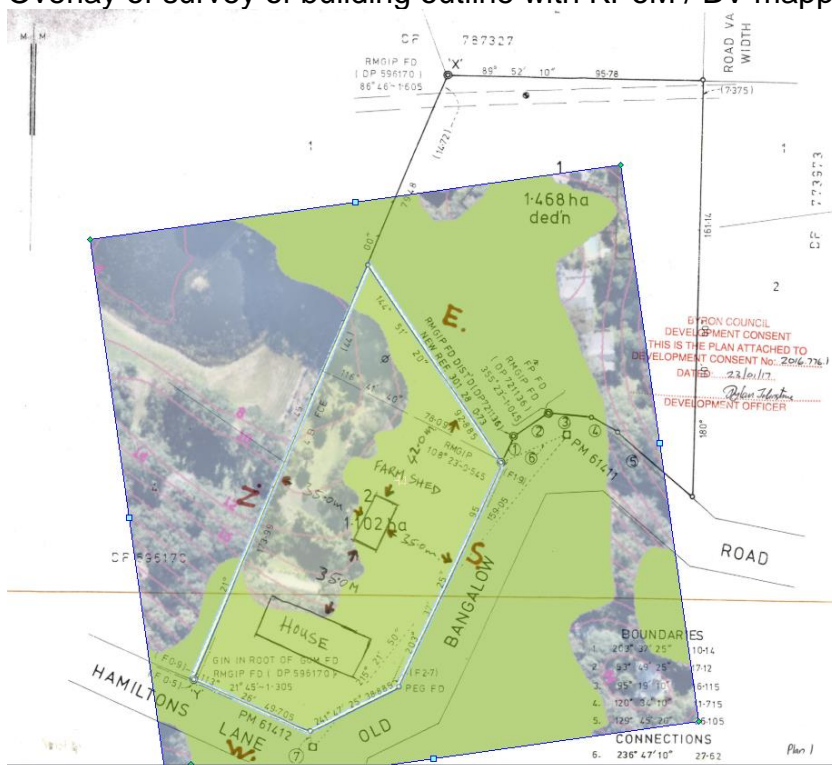
- 5 Note these images also demonstrate additional structures constructed to the south west of the shed without development consent and the scale of the recent development relative to the small dwelling to the south.



S 8.2 Review Site plan with KPOM /BV Mapped overlay



Overlay of survey of building outline with KPoM / BV mapped area



Overlay of original determination with KPoM / BV Mapped area.

Council's Ecologist has assessed this as follows:

The site contains a wet sclerophyll vegetation community that is identified under several biodiversity mapping layers. Some of this vegetation was cleared without approval following May 2016 (see Fig 6) and the shed that is subject to the present 8.2 Review was constructed in its place.

### BSC vegetation mapping

Native vegetation on the site is mapped as representative of the Keith vegetation class North coast wet sclerophyll forest (Fig 2). It is further described under Council's vegetation mapping as PCT 2226 – *Tallowood-Blackbutt moist shrubby tall open forest*. This PCT is now outdated, and the NSW State Vegetation Type Map classifies native vegetation on the site as PCT 3147 – *Far north brush box-bloodwood wet forest*.



BSC vegetation mapping.

### Byron Coast Comprehensive Koala Plan of Management (CKPoM) mapping

The site is mapped within the CKPoM:

- Koala Planning Area, and;
- West Byron – St Helena Koala Management Precinct



Furthermore, the CKPoM maps *potential koala habitat* across most of the site (Fig 3). In accordance with the CKPoM, *potential koala habitat* within a Koala Management Precinct is considered to meet the definition of *core koala habitat*. Therefore, the site contains *core koala habitat* according to the definition in the CKPoM. The shed that is subject to the present 8.2 Review has been constructed within the mapped area of *core koala habitat*.



*Core koala habitat* mapped under the CKPoM.

#### Biodiversity Values Map (BV Map)

Following the adoption of Version 12 of the BV Map, areas of *core koala habitat* mapped under approved KPoMs were added to the Map. As a result, most of the subject site is identified on the BV Map (Fig 4). The shed that is subject to the present 8.2 Review has been constructed within the area identified on the BV Map.



Biodiversity Values Map

High Environmental Value (HEV) mapping

All mapped vegetation on the site is identified as HEV (Fig 5).



**Fig 5** HEV vegetation mapping.

### **Vegetation removal**

- 5 It is evident that vegetation clearing was undertaken without approval (see Fig 6) to facilitate the construction of the unapproved shed. As the clearing was not carried out through the required assessment pathway, it was not subject to any compensatory/offset conditions and as such the resulting biodiversity loss has not been addressed in any way. Notwithstanding, it is considered that if the clearing and construction of the shed had been proposed through the required assessment pathway, it would not have been supported
- 10 due to the resulting biodiversity impacts.





**Fig 6** Above: the site on May 12, 2016. Below: the site on December 5, 2019.

## 5 ***Biodiversity Conservation Act 2016 (BC Act)***

It must be demonstrated that the development complies with the requirements of Part 7 of the BC Act. The development footprint is located on land that is identified on the Biodiversity Values Map. Therefore, if the proponent had sought development approval prior to constructing the building, a Biodiversity Development Assessment Report (BDAR) would have been required to accompany the application in accordance with s7.7 of the BC Act. This BDAR would have been required to demonstrate that adequate measures have been taken to avoid and minimise biodiversity impacts, and would have included an offset obligation for all residual impacts that have not been avoided and minimised. It is considered that the development as constructed would not have been able to demonstrate adequate avoidance of biodiversity impacts as required under Sections 1.3 and 6.4 of the BC Act. This is particularly evident given that the shed approved under DA 10.2016.766.1 would not have required any vegetation removal.

As the impacts have already occurred, it is considered that the development cannot demonstrate compliance with Part 7 of the *Biodiversity Conservation Act 2016*, and Council cannot approve the development.

**5 State Environmental Planning Policy (Koala Habitat Protection) 2021, Byron Coast Comprehensive Koala Plan of Management (CKPoM)**

The CKPoM applies to the proposal for the following reasons:

- The site has an area of greater than 1 hectare
- The site is within the Koala Planning Area as defined in the CKPoM

10 Furthermore, the site is within a Koala Management Precinct and the unapproved building is located within koala habitat mapped under the CKPoM. As per the CKPoM, mapped koala habitat within a Koala Management Precinct is taken to be *core koala habitat*. Pursuant to Section 12 of the CKPoM, the development application is therefore required to be accompanied by (at minimum) a Koala Habitat Assessment Report. Furthermore, as  
15 *core koala habitat* was cleared to construct the building, a Koala Habitat Restoration Plan would have been required detailing compensation at the ratios shown in either Table 1 (if <0.1 ha) or Table 2. It is considered unlikely that there is sufficient space outside of the proposed development footprint to achieve adequate compensation.

**Table 1 Replacement ratio for single tree removal**

Food tree size class (dbh)	Replacement ratio (loss:gain)	
	<i>preferred koala food trees</i>	<i>other native vegetation</i>
<200 mm	1:15	1:10
200-500 mm	1:20	1:15
>500 mm	1:30	1:20

**Table 2 Compensation multiplier for removal of areas of vegetation**

		Multiplier
Class of koala habitat to be impacted	Primary	12
	Secondary	10
	Any other native vegetation within a localised koala corridor or mapped wildlife corridor	6

20

The development would also have needed to demonstrate compliance with all development standards listed in Section 12.3 of the CKPoM. The application did not address the CKPoM in any capacity. Notwithstanding, it is considered that the development does not comply with the requirements of the CKPoM because it:

- did not assess the impacts of the development on koala habitat before clearing the habitat and constructing the building, and;
- did not replace the loss of habitat values by restoring an area of habitat at the ratios set out in Tables 1 and 2.

5

### Byron Shire DCP Chapter B1 Biodiversity

The unapproved building is located within an ecologically significant area(s) ('red flags') as defined in Section B1.2 of the Byron DCP, including:

- High Environmental Value Vegetation (not a TEC) – 20 metre setback required
- Threatened and significant species (koala) – 20 metre setback required

Pursuant to Section B1.2.1, development must be designed such that it avoids impacts to ecologically significant areas and incorporates the required setbacks to these areas. It is emphasized that these constraints are to be identified prior to designing the proposed development to ensure the proposal complies with the DCP.

- 15 Additionally, pursuant to Section B1.2.1 and Biodiversity Planning Principle P13 of Section B1.1.5, development must demonstrate compliance with the biodiversity mitigation hierarchy which requires biodiversity impacts to be avoided and minimised, with priority given to avoiding all potential impacts. For context, Chapter B1 is written in part to address the purposes and provisions of the *Biodiversity Conservation Act 2016* (BC Act) including
- 20 the requirement for avoidance of biodiversity impacts (Section 1.3, Section 7.13(6)).

The application did not address Chapter B1 in any capacity. It is considered that the development does not comply with these Objectives for the following reasons:

- Ecologically significant areas (red flags) and their setbacks were not identified prior to designing the development, and the development was not designed with
- 25 consideration of these.
- 'No net loss of biodiversity' cannot be achieved because the remaining space outside of the proposed development footprint is insufficient to achieve adequate compensation for vegetation removal.
- The proposal cannot demonstrate it has sufficiently taken steps to avoid and
- 30 minimise biodiversity impacts.

### Not Ancillary and Subservient

- 35 The shed the subject of the 8.2 Review involving the addition of decking, roof changes, fenestration including windows and doors and the addition of ablutions (shower and WC) is not ancillary or subservient to the dwelling house located on the site.

- [Hornsby Shire Council v Trives \[2014\] NSWLEC 171](#) (at [23]):
  - "Development that is "ancillary" to other development is a concept that is well understood in planning law. It identifies a structure or use, the purpose of

- 5 which is subservient to some other development purpose against which it must be measured and which it must be seen to subserve. That is, it must be subordinate to the purpose against which it is being considered, in this case an existing dwelling house (*Foodbarn Pty Ltd v Solicitor-General* (1975) 32 LGRA 157 per Glass JA at 161)."

### Accuracy of Height of Building Measurement

The site has been significantly disturbed to erect the building in a location that has never been approved. The survey submitted with the application has therefore estimated the pre-construction ground levels.

- 10 The height of building derived from interpolation of contours on site does not satisfactorily take into account the level of disturbance of ground levels to establish the true height of the building. This estimate does not demonstrate the height of the building against an accurate survey of the existing ground i.e. pre construction/earthworks.

- 15 It follows that the overall height of building is not demonstrated to comply with the Byron Local Environmental Plans Clause 40 and Clause 4.3 requirement to be not more than 9 metres when measured from existing ground level.

### Submissions of Objection - Amenity Impacts

- 20 DA 10.2021.693.1 was publicly exhibited - Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications. Exhibition period: 16 November 2021 to 29 November 2021. One (1) Submission of objection was received. Issues raised below:

#### Part 1 - General overview comments and observations

- 1.1. The original approval was for a shed. No decks, no internal rooms, no mezzanine, no bespoke windows and folding doors and no ablutions or the like have ever been approved.
- 1.2. The building is situated on a side slope and not on flat terrain. Hence a large amount of earth moving was required to allow access and the "parking". Even with all this work, we respectfully submit that the site is not suitable to any "earthmoving use" or 'landscaping business'.
- 1.3. If a landscaping business was/is to be constructed in such close proximity to the adjoining land owner and on a scale requiring such a large shed then there would have been a proper application made, including a Statement of Environmental Effects, which, inter alia, would have required the consideration of potential impacts such as chemical and other runoff into adjacent water course.
- 1.4. There has been no ameliorating landscaping to stop the intrusion into the adjoining land owner. Indeed, the structure has been built and marketed to maximise views over the adjoining [REDACTED] property.
- 1.5. We ask that Council carry out an inspection to include examining the impact from the adjoining owners property and make appropriate Orders to ensure that the building reverts to the original approval.



**Part 2 - Comments concerning the Survey**

- 2.1. The survey information is misdirected as it refers to an "interpolated natural surface" level rather than a measurement, as required under Council's Local Environmental Plan, to the "existing ground level".
- 2.2. The survey report says that the surveyor has interpolated information from the existing contours, but no contours are shown.
- 2.3. The survey does not show all aspects of the building, eg no entrance portico is shown.
- 2.4. The survey describes the decking as detached but shows no substantial supporting poles and the like.
- 2.5. The survey plan is potentially misleading as shows hatched area of shed but clearly shows much greater roof area than approved.

**Part 3 - Notes concerning specific aspects of the review request written submission**

Many of the comments and observations contained in the Review Request Report are unsupported.

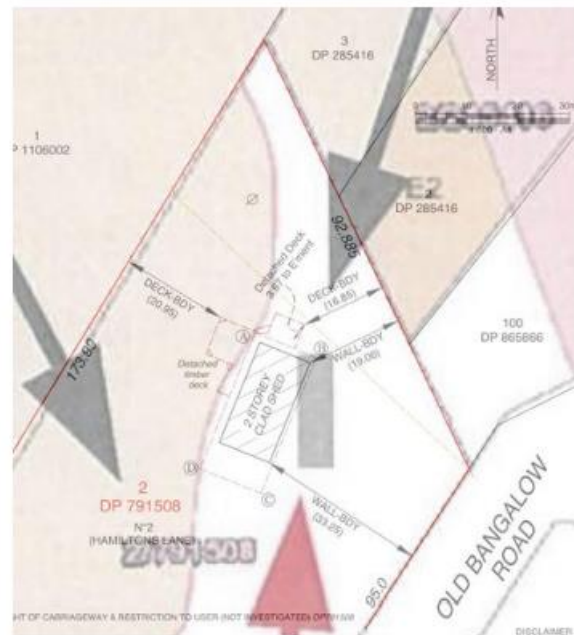
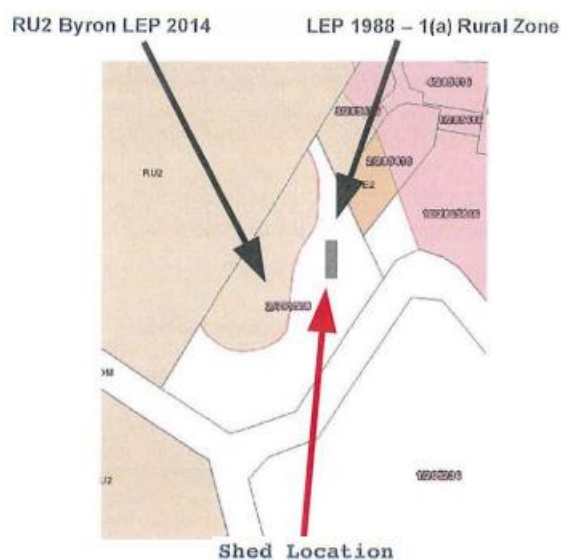
This part raises the following additional points:

*Site location plan is inaccurate as to scale and orientation.*

- 5 *Survey plan submitted with the application illustrates different location and size for the shed.*

*The survey report that is submitted with the application does not provide existing ground levels and does not provide detailed information about how the "natural ground levels" were discerned.*

**Page 3.**



*This graphic shows the site plan provided with the Review Report overlaying the survey submitted with the application. Please note the difference in size, shape and location of the building.*



*Review request does not discuss significant alterations - extensive decking and ablutions installed.*

- 5 *If the shed had been erected in its approved location, it would have been located well away from the [adjoining] property and would not have had anywhere near the amenity impacts that it currently exhibits. The approved "shape, form and character of the shed" has not been retained. The new, enhanced and dwelling like shape, form and character of the structure is proposed to remain.*

*We submit that the unequivocal statement the "survey report shows clearly the structure does not exceed the Statutory 9m maximum height:" cannot be sustained.*

- 10 *In evaluating the veracity of the proponents undertaking to remove internal dividing walls, Council is requested to reflect on the past conduct of this proponent who has chosen to alter the roof pitch, change the fenestration, add doors and windows, add a mezzanine floor, add grand decks and install ablutions without obtaining Development Consent.*

- 15 *We are instructed that no business has been conducted from the property or this building at any time. Further, we understand that the sale contract discloses no business activity, rural, agricultural or landscaping use or sale as a going concern.*

*The property is being sold! has been sold and the building has been marketed in the style of a dwelling house. The below photographs from the advertising campaign clearly indicate the "dwelling house" character advertised for the site.*

- 20 *Comment: The relevant matters for consideration raised in the submission of objection have been considered in the S8.2 Review Assessment. The use of any building for the purposes of a landscaping business is not relevant to the unauthorised use of the shed and the reasons for refusal. No change of use has ever been sought and certain types of home business or the sale of property and how it is marketed is not a planning matter, and*  
25 *the onus is on any purchaser to undertake due diligence with a 'buyer beware'. This is beyond the powers of a DA.*

### **Conclusion**

- 30 *It is considered that pursuant to Section 8.4 of the Environmental Planning & Assessment Act 1979, it is recommended that the refusal be upheld, and additional reasons now be included in terms of environmental impacts not previously specified in the original determination notice.*

**Report No. 13.6 PLANNING - Section 4.55 Modification 10.2014.743.4 to require Stage 4 to be carried out before Stage 3, modification to the design of the Stage 4 residential development and completion of the Stage 5 driveway as part of Stage 4**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Greg Smith, Team Leader Planning Services

**File No:** I2022/962

**Proposal:**

<b>Modification No:</b>	10.2014.743.4			
<b>Proposed modification:</b>	Section 4.55 Modification to require Stage 4 to be carried out before Stage 3, modification to the design of the Stage 4 residential development and completion of the Stage 5 driveway as part of Stage 4			
<b>Original Development:</b>	Proposed five (5) lots into three (3) lot consolidation, two boundary adjustments, construction, and strata subdivision of thirty (30) multi dwelling houses, and detached dual occupancy over four (4) stages			
<b>Type of modification sought:</b>				
<b>Property description:</b>	LOT: 2 DP: 1243658, LOT: 3 DP: 1243658, PT: 3 DP: 1243658, PT: 2 DP: 1243658, LOT: 1 DP: 1243658, LOT: 954 DP: 241073, LOT: 12 DP: 1128095, LOT: 9 DP: 1046566, LOT: 892 DP: 241810, LOT: 893 DP: 241810, LOT: 944 DP: 241810			
	43 Matong Drive OCEAN SHORES, 41 Matong Drive OCEAN SHORES, 2 Kulgun Court OCEAN SHORES, Pacific Highway OCEAN SHORES			

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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<b>Parcel No/s:</b>	269482, 269483, 269529, 269528, 269526, 269527, 269481, 40340, 240483, 238921, 51340, 51360, 119840
<b>Applicant:</b>	Northpoint Advisory
<b>Owner:</b>	Mr P R Babb & Status Anxiety Pty Ltd & Mr M N Tree & Others
<b>Zoning:</b>	R2 Low Density Residential Zone 7(k) (Habitat Zone)
<b>Date received:</b>	19 March 2021
<b>Original DA determination date:</b>	29 October 2015
<b>Integrated Development:</b>	Yes
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"><li>– Level 2 advertising under the Byron Shire Council Community Participation Plan.</li><li>– Exhibition period: 30 March 2021 to 12 April 2021</li><li>– Submissions received: 1</li></ul>
<b>Planning Review Committee:</b>	7/10/2021 – application to be determined by Council
<b>Issues:</b>	<ul style="list-style-type: none"><li>• Acid Sulfate Soils (small portions of land in Class 5)</li><li>• Bush fire prone land</li><li>• High environmental value vegetation</li></ul>

### Summary:

The approved development can be broadly summarised as a total of 31 dwellings, associated driveway / access / car parking and other works, and associated subdivisions in a total of 7 stages.

- 5 Stage 3 as approved includes 8 dwellings as does Stage 4 with Stage 5 comprising 6 dwellings. The section 4.55 application seeks to modify the development consent by

amending the design of the 8 dwellings in Stage 4, to enable Stage 4 to be carried out before Stage 3, and completion of the Stage 5 driveway as part of Stage 4.

5 One submission was received raising issues of privacy, noise impacts and dust from construction. It is noted the dwellings have been approved in 2014 with a setback of around 3- 3.3 metres from the rear south-eastern boundary. This lack of spatial separation to the neighbour's boundary for such a development is partly responsible for these amenity impacts. The submission has requested tightening of the development consent to limit these impacts with construction of the remainder of the development. Conditions of consent have been recommended to increase the setback to a minimum of 4 metres to the rear boundary for dwellings in stage 4 and 5 whilst other measures are proposed to address noise, privacy, and dust during construction.

The proposal is satisfactory having regard to relevant matters for consideration and the Section 4.55 application is recommended for approval subject to conditions in the modified consent in Attachment 1.

15 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:**

25 **That pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2014.743.4, for S4.55 Modification to require Stage 4 to be carried out before Stage 3, modification to the design of the Stage 4 residential development and completion of the Stage 5 driveway as part of Stage 4, be approved by modifying Development consent number 10.2014.743.1 in accordance with the recommended Modifications to Consent in Attachment 1.**

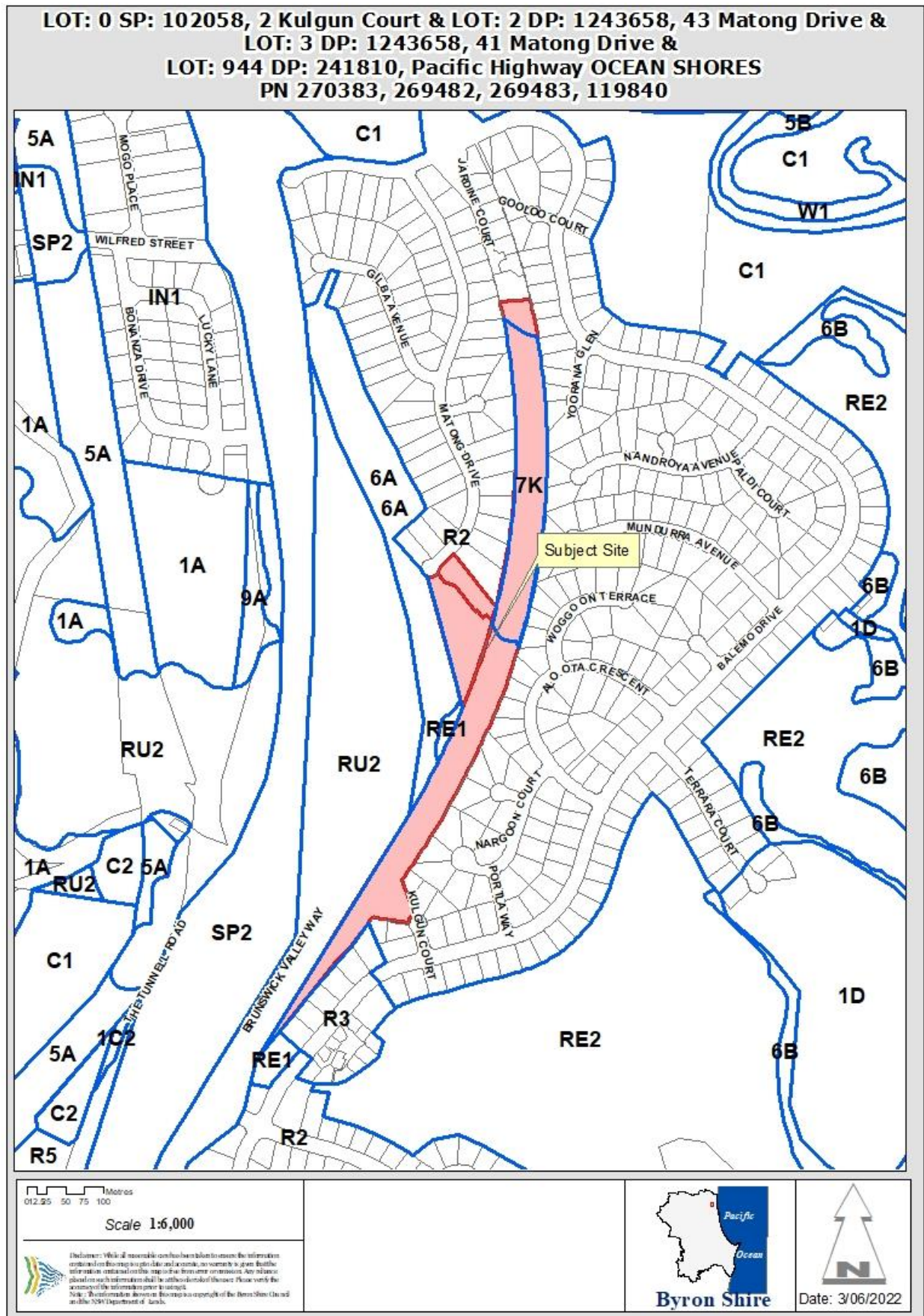
**Attachments:**

- 1 10.2014.743.4 - Modifications to Consent, E2022/73318   
2 10.2014.743.4 - Plans, E2022/73319   
35 3 10.2014.743.4 - BASIX Certificate, E2022/73320   
4 10.2014.743.4 - NatHERS Certificate, E2022/73321   
5 10.2014.743.4 - NatHERS Stamped Plans, E2022/73322   
6 10.2014.743.4 - Submission Received, E2022/79825 

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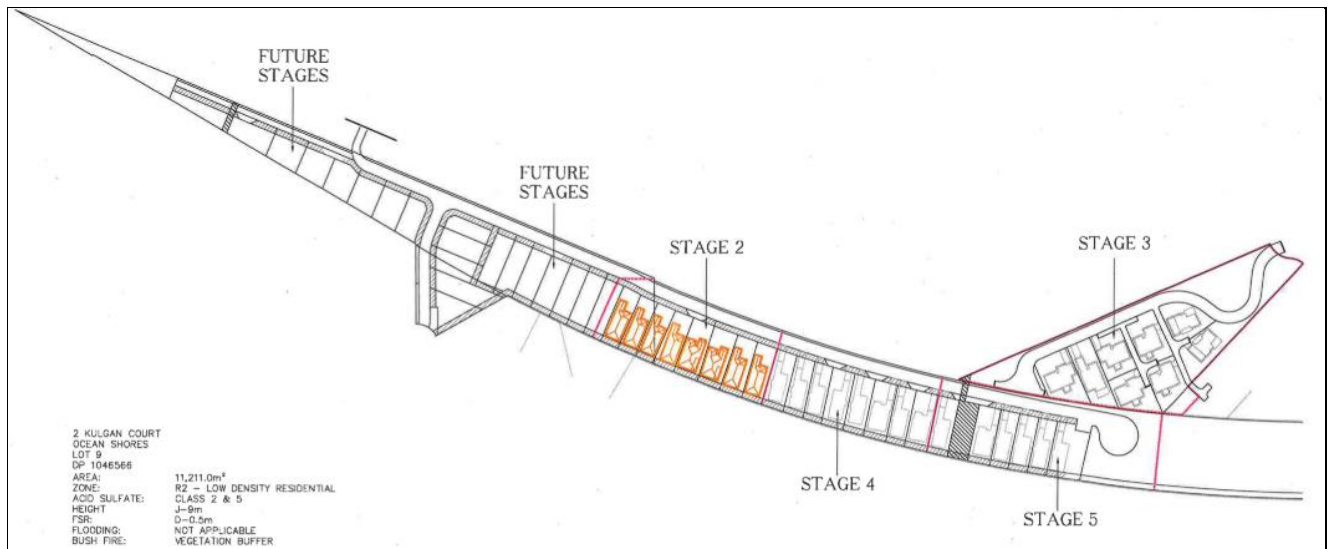
## **Assessment:**

### **1. INTRODUCTION**

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

- 5 The applications lodged which essentially relate to the development site, as outlined in the report relating to the below mentioned Application No. 10.2014.743.3, are as follows:

10.2008.757.1	Seniors living 94 units in 3 stages  (It appears that this consent has lapsed)	Approved 10/06/2010
10.2014.608.1	30 Residential Units, Dual Occ, strata sub	Rejected 23/10/2014
10.2014.743.1	Consolidation of five (5) lots into three (3) lots, two boundary adjustments, construction and strata subdivision of thirty (30) of multi dwelling houses, and a detached dual occupancy over four (4) stages	Approved 29/10/2015
10.2014.743.2	S96 to reconfigure approved Torrens Title allotments and construct the development in 7 Stages.	Approved 15/02/2017
10.2014.743.3	Revise the design of the eight (8) dwellings approved as Stage 2;	Approved  23/8/2017



**Figure 1: The above extract shows the currently approved staging**

Section 4.55 Application No. 10.2014.743.4 (which is the subject of this report) was submitted on 19/3/2021.

## 5 1.2. Description of the proposed development

This application seeks approval for a S4.55 Modification to amend the design of the dwellings in Stage 4 and to enable those stage 4 dwellings and the driveway cul-de-sac head in stage 5 be constructed prior to Stage 3.

The current approved staging is as indicated in Figure 1 above.

- 10 No objections have been raised by assessment staff to Stage 4 being carried out before Stage 3. The staging of the development is prescribed in 2 locations in the consent. The Part A and Part B Recommendations of this Report are that these include a specification that Stage 4 must be carried out before Stage 3.

### Modification to the design of the Stage 4 residential development

- 15 The Part C recommendation of this Report is that condition 1 of the consent be modified to reference the modified plans for the stage 4 part of the development, and that condition 32 be modified to reference the BASIX Certificate. The modified Stage 4 plans are included in Attachment 2 to this Report. The modified BASIX Certificate and related NatHERS Certificate and NatHERS stamped plans are included in Attachments 3, 4 and 5 to this
- 20 Report, respectively. The modified Stage 4 results in the same number of dwellings as the approved Stage 4.

### Other Referrals

The NSW RFS has provided modified General Terms of Approval and Bush Fire Safety Authority, which are included in the Recommendation Part F of this Report.

- 25 Council's Environmental Health Officer raised no objection to the proposed modifications.

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Council's Development Engineer raised no objection to the proposal, and the modifications recommended are included in Recommendation Parts A, B, C and E of this Report.

Council's ET Engineer raised no objection to the proposal, subject to amended section 64 contributions tables in the Notes of the consent. These are included in the

5 Recommendation Part G of this Report.

Council's Contributions Planner raised no objection to the proposal, subject to amended section 7.11 contributions tables for Stages 3 and 4 in the Notes of the consent. These are included in Recommendation Part G of this Report.

#### 10 **1.3. Description of the site**

The site was inspected on 19 October 2021.

Land is legally described as: LOT: 954 DP: 241073, LOT: 12 DP: 1128095, LOT: 9 DP: 1046566, LOT: 892 DP: 241810, LOT: 893 DP: 241810, LOT: 944 DP: 241810

Property address is: 2 Kulgun Court OCEAN SHORES, 41 Matong Drive OCEAN SHORES, 43 Matong Drive OCEAN SHORES, Pacific Highway OCEAN SHORES

Land is zoned: R2 Low Density Residential Zone  
7(k) (Habitat Zone)

Property is constrained by:

- Acid Sulfate Soils (small portions of land in Class 5)
- Bush fire prone land
- High environmental value vegetation



Figure 2: View of through northern part of Stage 4

Figure 3: View of the southern part of Stage 4

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

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

### 5 Section 4.55 of the EPA Act 1979

The proposed development is considered to be substantially the same development and satisfies the provisions under S4.55 of the EPA Act 1979.

#### 2.1. State/Regional Planning Policies, Instruments, EPA Regulations 2021

- 10 Proposed amendments raise no issues under the relevant SEPPS, Policies or clauses of the EPA Regulations 2021

#### 2.2. Byron Local Environmental Plan 2014

- 15 No change to the approved Stage 3 is proposed under this application, with the only modification relating to Stage 3 being to reverse the order of the carrying out of that stage with Stage 4 – Stage 4 before Stage 3. There are no LEP 2014 provisions which prevent the reversal of the order of staging.

The relevant provisions of LEP 2014 are considered with reference to the proposed modified design for Stage 4 as follows:

#### Clause 2.3 Zone Objectives and Land Use Table

- 20 Stage 4 is located within the R2 Low Density Residential Zone. The modified multi dwelling housing development is permitted with consent in the R2 Zone and is satisfactory having regard to the zone objectives. It is noted that the Strata Title subdivision is permitted with consent in accordance with clause 2.6.

**Clause 4.1E Minimum lot sizes for certain residential accommodation**

Stage 4 exceeds the minimum lot area development standard for multi dwelling housing in the R2 Zone of 1000m<sup>2</sup>.

**Clause 4.3 Height of buildings**

- 5 The modified buildings are significantly less than the 9m maximum height of buildings development standard.

**Clause 4.4 Floor space ratio**

The site is large, and the modified development is significantly less than the 0.5:1 maximum floor space ratio development standard.

10 **Clause 5.21 Flood planning**

Part of Stage 4 is located within flood liable land. No change was recommended by Council's Development Engineer in relation to the existing flood related conditions on the consent.

**Clause 6.1 Acid sulfate soils**

- 15 Part of Stage 4 is located within acid sulfate soils Class 5 – Works within 500 metres of adjacent Class 1, 2, 3 and 4 land that is below 5 metres AHD and by which the watertable is likely to be lowered below 1 metre AHD on adjacent Class 1, 2, 3 and 4 land. The modified development is unlikely to disturb acid sulfate soils in this regard. The location of the modified Stage 4 development approximates the location of the approved  
20 development. Council's Environmental Health Officer raised no objection to the proposal.

**Clause 6.2 Earthworks**

Modified Stage 4 appears to require reduced earthworks compared to approved Stage 4 and is more in keeping with the lay of the land, including construction on bearers where appropriate rather than slab on ground.

25 **Clause 6.6 Essential services**

Modified Stage 4 maintains access to essential services in the same way that the approved Stage 4 has access.

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

- 30 This clause requires that prior to granting consent to development on land zoned R2 Low Density Residential, the consent authority has considered (a) the need for providing, maintaining, or retaining affordable housing, and (b) the need for imposing conditions relating to providing, maintaining, or retaining affordable housing including, but not limited to, imposing covenants and the registration of restrictions about users.



While the modified proposal does not provide for affordable housing as defined by the clause, it instead seeks to respond to this clause through provision of new supply and diversity of housing stock in the Ocean Shores area. It is understood that the dwellings will be offered for purchase and or long-term rental over short term holiday letting. A condition was not imposed on the original development consent on the use of dwellings to preclude holiday letting, but such a condition is now recommended.

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

No draft EPIs affect the proposal.

**2.4. Development Control Plans**

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

Similar to LEP 2014, there are no DCP 2014 provisions which prevent the reversal of the order of Stages 3 and 4.

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
<p><b>B14.2 Excavation and Fill in All Zones</b></p> <p>The proposed depth of filling is up to approximately 2.087m deep, which exceeds the maximum 1m requirement. However the filling is provided as part of the construction of the concrete floor of the garage of each dwelling and the remainder of the building is raised floor construction. The filling is contained within the structure of the building and not visible outside of the walls of the building from the perspective of neighbouring properties.</p>	<p>The proposed development complies with the Objectives of the Section because:</p> <ol style="list-style-type: none"> <li>1. The residential proposal maintains overall compatibility with the Shire's natural features and historical built character. The extent of excavation is similar to that of the existing dwelling, and is generally contained behind the proposed building.</li> <li>2. The extent, character, bulk and scale of the proposed earthworks will not detract from the existing and desired future character of the immediate locality and surrounding area.</li> <li>3. The proposed earthworks will not detract from the</li> </ol>	<p>The proposed development complies with the Performance Criteria of this Section because:</p> <ol style="list-style-type: none"> <li>1. The proposed earthworks will be compatible with the low rise, low to medium density form, scale and desired future character of the locality and immediate surrounds. Excavation is limited to ensure that: <ol style="list-style-type: none"> <li>a) Adverse visual impacts, bulk and scale of both the proposed earthworks and the resultant overall development are minimised;</li> <li>b) Significant overshadowing of adjoining land is avoided;</li> <li>c) The scale and character of the resultant landform and</li> </ol> </li> </ol>

	existing and desired future character of the immediate locality and surrounding area.	<p>buildings remains compatible with the surrounds and desired future character of the locality;</p> <p>d) Drainage characteristics and systems will not be significantly affected;</p> <p>e) The need for engineering and support works is minimise;</p> <p>f) Risk of geotechnical instability and/ or landslip is minimised;</p> <p>2. The proposed earthworks do not relate to improving thermal sustainability or insulation.</p> <p>3. The proposal is not in a commercial area.</p> <p>4. Filling is not proposed to mitigate flooding and stormwater issues.</p> <p>5. The site is not mapped as having stability problems.</p>
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### **D1.2.1 Building height plane**

5 The proposed dwellings encroach into the building height plane as projected from the existing rear south-eastern boundary of Stage 4. It is noted the approved plans have similar encroachment into the building height plane. Notwithstanding the amended plans provide an opportunity to improve spatial separation to the residential properties to the south-east and to bring the development into compliance. Conditions of consent are recommended to increase the setbacks to a minimum of 4 metre from this boundary. This will improve afternoon solar access whilst also assisting with general privacy and overlooking issues that have been raised during the exhibition period. Additional conditions of consent also recommended in relation to screening and noise attenuation measures.

The proposed development raises no other issues under the DCP.

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

The proposed amendments do not generate any impacts that have not been previously considered.

**2.6. The suitability of the site for the development**

The proposed amendments do not affect the Sites Suitability.

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

5 The application was publicly exhibited. 1 public submission was received. The issues raised in the submission are commented on as follows:

Issues	Comment
<p><i>The dwellings are of a “poor cheap construction” and lack suitable noise insulation impacting on neighbours</i></p> <p><i>My home is also extremely overlooked, I am writing to ensure no-one else suffers this fate. More screening is required for privacy. When stage 3 proceeds a further 2 homes will back onto my property which will, once again, cause privacy issues.</i></p>	<p>Noted – the proposal as approved by council had small setbacks of approximately 3 metres to the rear boundary. This lack of spatial separation to neighbours also results in additional noise and privacy issues arising. The amended proposal has setbacks varying from 3 metres to 3.366 metres. Conditions of consent are recommended to a minimum of 4 metres along with requirements to include additional noise attenuation and privacy screening measures to improve amenity outcomes for residents adjoining the development to the south, for dwelling in future stage 4 and 5.</p>
<p><i>Dust was not adequately controlled on the site during construction impacting on neighbour’s amenity health, laundry outdoor areas etc</i></p>	<p>Condition 20 of the consent requires the submission of a Sediment and Erosion control plan and Condition 55 also requires maintenance of such measures. This should also include dust control.</p> <p>Notwithstanding it is recommended that condition 20 be amended to strengthen up dust control measures on the site and Condition 55 also be amended to ensure such measures are in place for the remainder of the development.</p>

**2.8 Public interest**

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

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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#### 3. DEVELOPER CONTRIBUTIONS/ WATER AND SEWER CHARGES

There is no nexus to levy additional contributions.

#### 4. CONCLUSION

- 5 The proposed modifications to the staging including driveway construction, and the house design are considered acceptable. Amended conditions of consent are recommended to address matters raised during the exhibition period to lessen amenity impacts on neighbours to the south-east of the site. The proposed S4.55 application is recommended for approval.

#### DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No
Provide Disclosure Statement register details here:	Not applicable

5

**Report No. 13.7      PLANNING - 10.2020.568.1 - Use of the site for the operation of a Landscaping Material Supplies business including an amenities building and use of shed - 320 McAuleys Lane MYOCUM**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Dylan Johnstone, Development Investigations Lead  
**File No:** I2022/1076

**Proposal:**

**DA No:** 10.2020.568.1

**Proposal description:** Use of Land and Existing Shed for Landscaping Material Supplies

**Property description:** LOT: 342 DP: 755692  
320 McAuleys Lane MYOCUM

**Parcel No/s:** 238148

**Applicant:** Town Planning Studio Pty Ltd

**Owner:** Mr M K Archibald

**Zoning:** RU1 Primary Production

**Date received:** 19 November 2020

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



## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.8

**Concurrence required** No

**Public notification or exhibition:**

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 1/12/20 to 14/12/20
- Submissions received: 5 (includes one petition)
- Submissions acknowledged: ☒ Yes ☐ No ☐ N/A

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

Other:

**Variation request** Not applicable

**Assessing Officer** The application has been assessed by consultant Town Planner Kelly Shapland.

**Delegation to determine** Council

**Issues:**

- Existing shed built without approval
- Business operating on-site without consent
- Large sand stockpile on site that does not form part of the current development application
- Visual impact of shed

### Summary:

5 The application seeks consent for the use of an existing landscaping material supplies business operating from the site. The application also seeks consent for the construction of an amenities building and for the use of an existing shed as an ancillary component of the development.

The existing landscaping material supplies business and existing shed have been carried out without the necessary development consent. The application has been submitted in response to compliance action taken by staff for unauthorised development.

10 The proposal is permissible with consent, but a number of elements on the site need to be finalised under deferred commencement consent conditions. This includes removal of concrete batching plant and equipment, unauthorised signs, illegal fill material on site (being a large sand mound), obtaining a building information certificate for the shed and carrying out the landscaping as per the submitted landscape plan.

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.8

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

#### NOTE TO COUNCILLORS:

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



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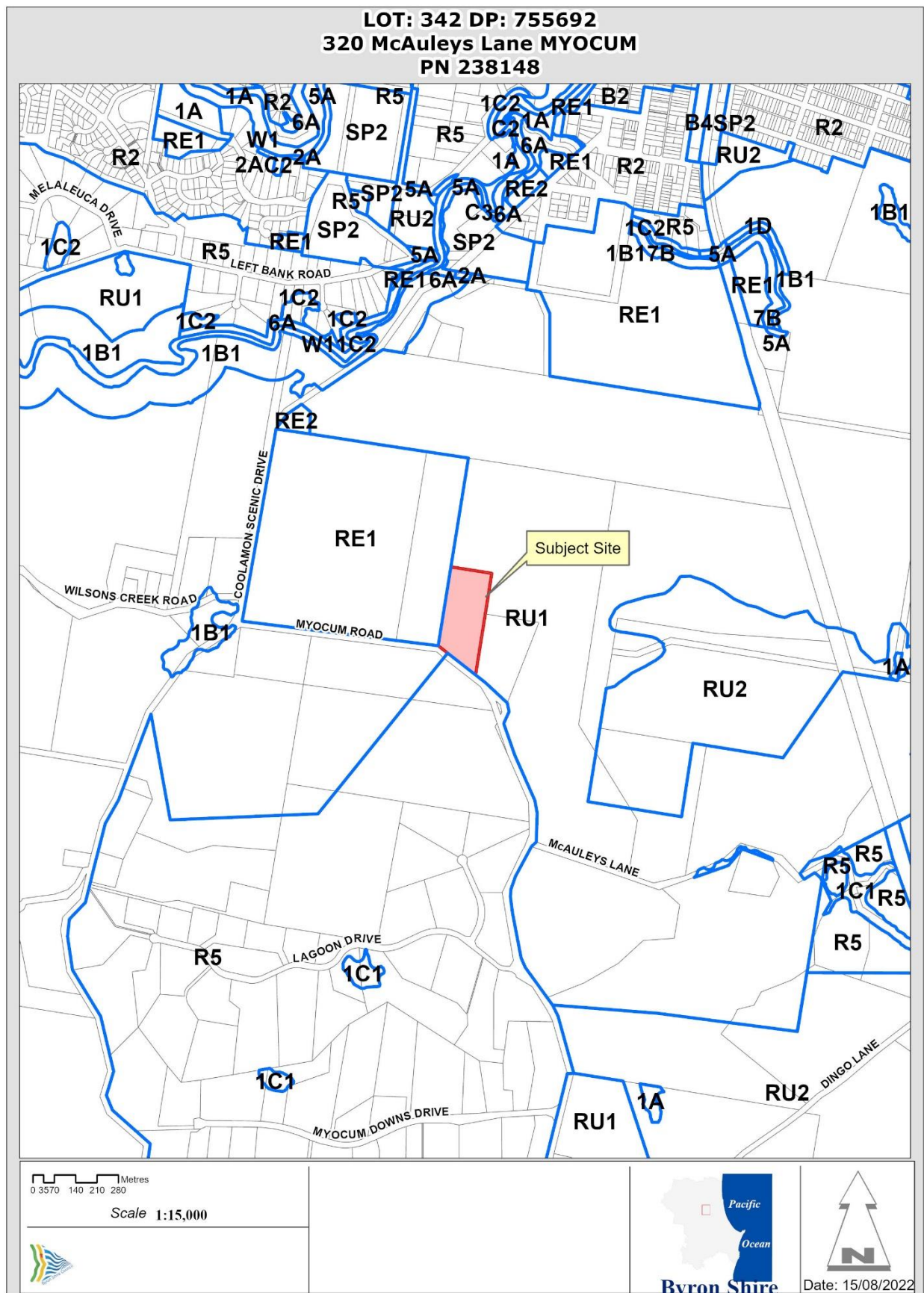
#### RECOMMENDATION:

- 15 **That, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2020.568.1 for use of land and existing shed for landscaping material supplies, be granted consent subject to the recommended conditions of approval in Attachment 2 #E2022/78130.**

20 **Attachments:**

- 1 Attachment 1 - 10.2020.568.1 - plans, E2022/78654   
2 Attachment 2 - 10.2020.568.1 - Conditions of consent, E2022/78130   
3 Confidential - Attachment 3 - 10.2020.568.1 - Submissions, E2022/78334

25



## Assessment:

### 1. INTRODUCTION

#### 1.1. History/Background

Recent DA history on the site:

10.2004.567.1 – Removal of one tree from the site- Approved

10.2017.694.1 - Subdivision (Boundary adjustment between two (2) Lots)- Approved

10.2018.259.1 – Use of site as a landscaping material supplies business – Council officers identified various issues with this application. The application was subsequently withdrawn with advice provided by the applicant that a new development application would be lodged. The application the subject of this report is the new development application.

#### Background

The land is currently used for “*landscaping material supply*” activities. This use is unauthorised. It includes the stockpiling of sand and gravel which have been placed on the site since late 2016 without Council approval.

Over time the site has had stockpiles of sand and gravel of various sizes (and other landscape and construction materials) on it. The sand stockpile was up to approximately 6m in height which is being gradually removed as material is sold. The plans and historical photos also show a gravel stockpile which has largely been removed. The stockpiles do not form part of the Development Application. The application proposes that that landscape material be placed in purpose-built landscape bays as part of this Development Application.

Enforcement Officers have been in contact with the owners regarding the unauthorised activities. In response the applicant lodged DA 10.2018.259.1 which was subsequently withdrawn to enable the applicant to address outstanding issues identified by Council officers as part of a new development application. A shed has also been constructed on the site without the required approvals.

The current development application seeks approval for the use of the site as a landscape material supplies business including use of the existing shed. The current application varies from the application that was withdrawn. The main changes are:

- Constructed landscape material bays are now proposed for the storage of materials instead of open stockpiles
- The existing open sand stockpile is not included in the application.
- The use of the existing shed constructed without consent (this shed was not on site when DA 10.2018.259.1 was being assessed).



An aerial photograph of the site is provided in Figure 1 below and various images of the site in Figures 2 – 4.



Figure 1 – Aerial Photograph



5 Figure 2 – Photograph (May 2022) – Existing Stockpiles with a concrete batching plant in the background.





Figure 3 – Photograph (May 2022) – View of shed from Myocum Road



5 Figure 4 – Photograph (May 2022)– View of shed – Photograph taken from within the site

**1.2. Description of the proposed development**

This application seeks approval for Use of Land and Existing Shed for a Landscaping Material Supplies business and construction of an amenities building. The proposal includes:

- 5 • The storage and sale of sand, gravel, soil and mulch of various sizes and mixes. The application indicates that between 1,000 and 2,000 cubic metres of landscape materials will be moved in and out of the site per annum. Landscaping products will include:
  - 10 - 10mm, 20mm & 30mm aggregate
  - White Sand
  - Metal dust
  - Road Base
  - Sand/gravel mixes
  - Garden Soils
  - 15 - Garden Mulches

The proposed site layout plan is shown on Figure 5.
- The construction of 46 storage bays. These will be divided by 200mm thick concrete tilt slabs with a height of 1.3 metres. The material to be stockpiled within each bay will have a height of up to 3.0 metres.
- Use of an existing shed that has been constructed on the site. The shed measures 14 m x 7m (floor area 98m<sup>2</sup>) and is 4.27 metres high (refer to photographs above). The shed will be used to store landscape materials that require protection from the weather. The applicant indicates that: *The landowner has recently constructed a steel framed shed within the site in consideration of the 'exempt development' provisions from State Environmental Planning Policy (Exempt & Complying Development Codes) 2008.*

25

The construction of the shed was not 'exempt development' and required development consent. This issue will be discussed later in this report.

30
- Provision of landscaping along the site frontage, adjacent to the shed and along part of the eastern boundary (refer to Figure 6).
- Construction of a unisex amenities building with one (1) WC and a handbasin. It is elevated off the ground and has an overall total height of 4.01 m (2.4 x 3.2 m overall size) plus a deck and stairs, with provision for a future disabled access ramp if required.
- 35 • An on-site wastewater management system (OSMS) which includes:
  - Water Conserving Devices to be installed on the hand basin and tank water supply of 4L/person/day equating to 20 L/day total.
  - 40 - Composting toilet a dry composting toilet (Clivus Multrum) for collection and treatment of all wastewater flow.
  - An Evapotranspiration/ Absorption Bed (ETA) Disposal Area (15m<sup>2</sup>).



- Both retail sales from the site and a bulk delivery service. Stored material is to be delivered by a heavy rigid vehicle to customers off site. The application estimates that the development will generate approximately 50 trips per day comprising 4 staff trips, 20 retail customer trips, 20 wholesale and delivery trips and 6 trips for landscape materials supply to the site.
- Driveway design to allow a 19 m articulated (semi) vehicles and regular service with 12.5 heavy rigid vehicles.
- Hours of operation 7am-5pm Monday to Friday and 7am-2pm Saturday

The application indicates that the business will be almost entirely operated by the landowner. A staff member will be hired to deliver sand and gravel material depending on demand.

The adjoining property to the east also contains a landscape materials supply business. The application indicates that: *The proposal differs to the adjoining landscape supplies business in that it also provides a bulk delivery service. Orders will be received by the business owner by telephone. The delivery vehicle is loaded following receipt of an order and material is transported to customers off site. The proposed business is capable of handling larger orders than the adjoining landscape supplies business (between 5 and 10 cubic metres per delivery) – catering for both residential and commercial customers. The site will also be open for retail sales to members of the public who attend the property using their own vehicle.*

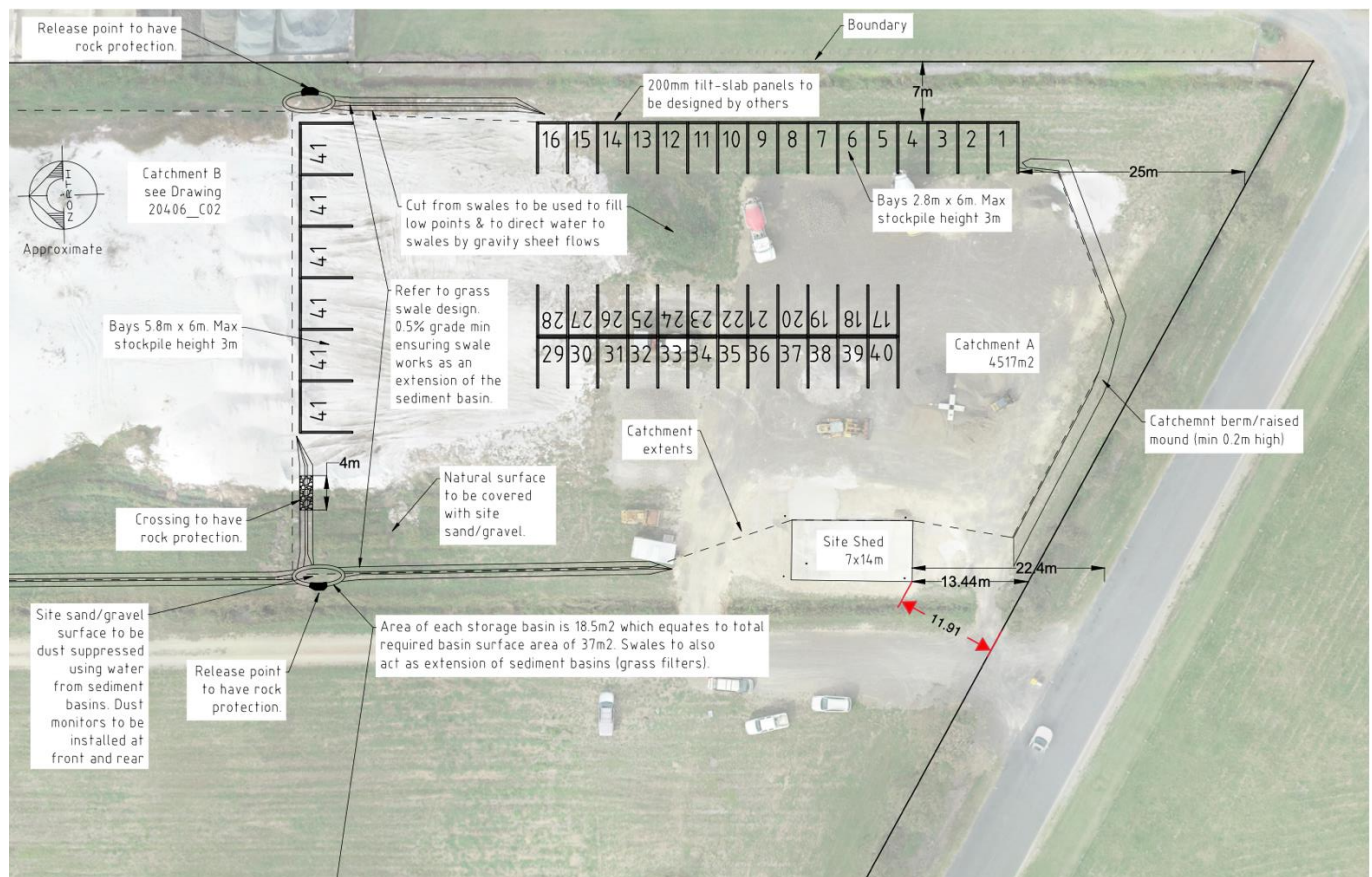


Figure 5 – Site Layout Plan (Source: Greg Alderson & Associates) -This plan covers part of the site – refer to Figure 1 for the aerial photograph which shows the extent of the site

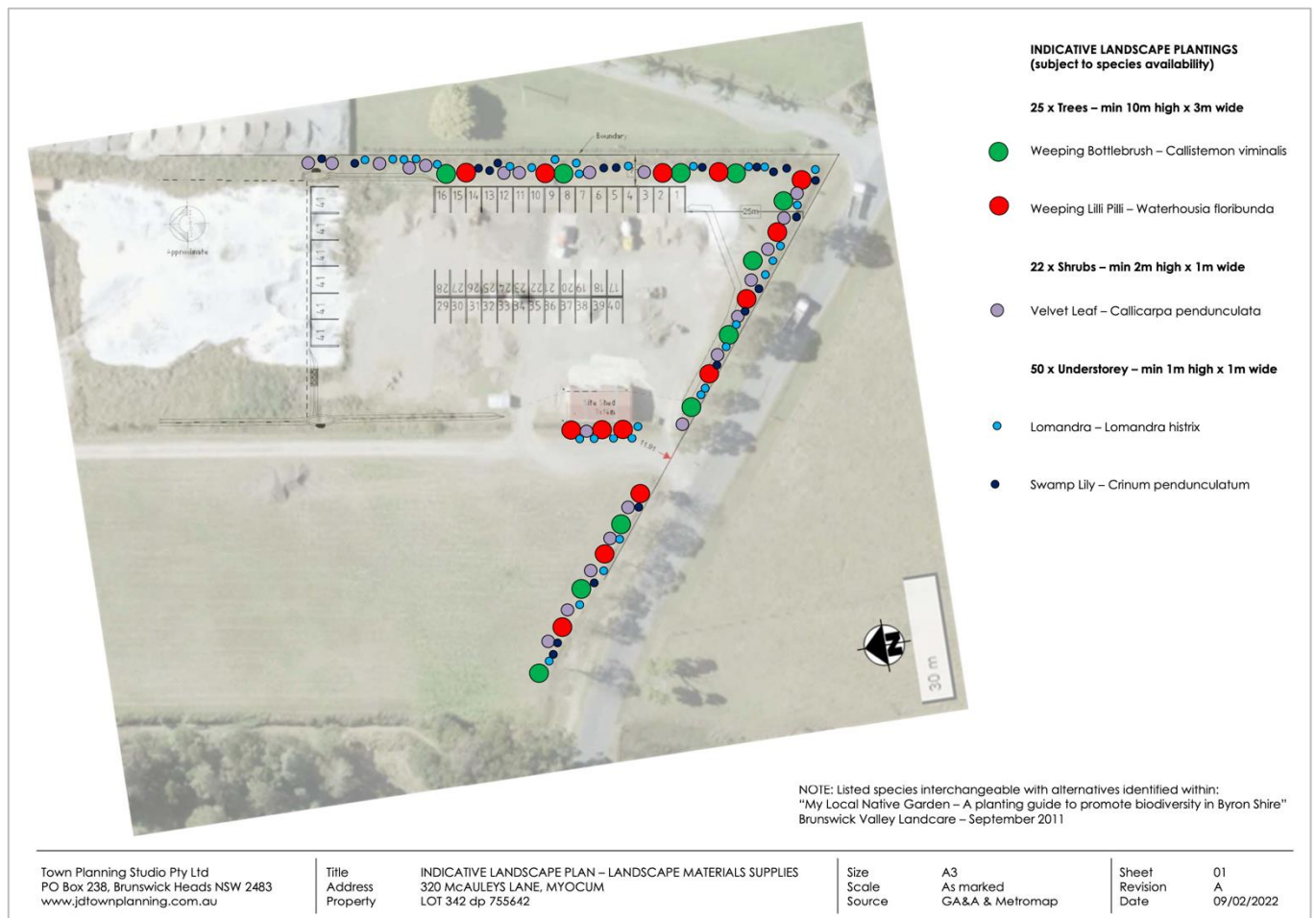


Figure 6 – Indicative Landscape Plan

### 5 1.3. Description of the site

Land is legally described	LOT: 342 DP: 755692	
Property address	320 McAuleys Lane MYOCUM	
Land is zoned:	RU1 Primary Production	
Land area is:	4.047 m <sup>2</sup>	
Property is constrained by:	Flood Liable Land	
	Acid Sulfate Soils Class 4	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No





Figure 7 – Zoning – Byron LEP 2014

The property is described as LOT: 342 DP: 755692, 320 McAuleys Lane MYOCUM 2482. It is noted that although Council's property description refers to the address being 320 McAuleys Lane, the subject site only has frontage to Myocum Road, not McAuleys Lane.

The site has an area of 4.047 Hectares.

The land is zoned. RU1 Primary Production under the Byron Local Environmental Plan 2014 (refer to Figure 7 above).

The development envelope occupies the south-eastern portion of the property. A formed drainage channel runs from west to east through the allotment. A waterway also runs along the western boundary, which is adjacent to the Mullumbimby Golf Course.

The property does not contain any significant vegetation.

The property has a dwelling entitlement. There is presently no dwelling on the property.

Lot 342 contains the existing unapproved shed, a gravel driveway, various stockpiles and other materials and plant and equipment such as a concrete batching plant, train carriage, a caravan and some concrete agitator trucks.

The adjacent neighbour to the east contains an approved landscape material supplies facility known as 'Wards Landscaping Supplies' with an existing residence. North of the



subject site is sugar cane farming land. Across the road from the subject site is land used for rural and rural housing purposes however, part of the land is zoned R5 Large Lot Residential (refer Figure 7).

- 5 It is noted that Council's Geocortex mapping shows Key Fish Habitat running through the property (refer Figure 8). This appears to follow a historical waterway which has been altered by agricultural drainage work many years ago. Water Management (General) Regulation 2018 hydroline spatial data showing mapped watercourses and waterbodies is shown in Figure 9. The development envelope is outside of the mapped waterways (refer to Figure 10).



10

Figure 8 – Key Fish Habitat – Councils Geocortex Mapping



Figure 9 - Water Management (General) Regulation 2018 hydroline spatial data (NSW Department of Planning & Environment – Water)



5

Figure 10 – Setbacks to waterways (Source: Greg Alderson & Associates)

**2. SUMMARY OF REFERRALS**

<b>Referral</b>	<b>Issue</b>
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
Building Surveyor	No objections subject to conditions.
Transport for NSW	Refer to discussion following this Table
Department of Primary Industries –NRAR	NRAR advised that a Controlled Activity Approval is not required.

**Issues**

**Development Engineer:**

5      *Access:* The existing access driveway is to be upgraded. The proposed access is to be constructed to meet the requirements of AS2890.2 Figure 3.1, with a minimum width at the boundary line of 12.5m to cater for all vehicle sizes up to and including 19m Articulated Vehicles and 12.5m Heavy Rigid Vehicles. No engineering objections raised subject to conditions.

10     *On-site manoeuvring* is satisfactory to enable a 19m long vehicle to enter and leave the site in a forward direction.

*Parking:* The site is in a rural setting which contains a very large area to cater for customer parking and commercial vehicles. On-street spillage of parking is not anticipated.

*Traffic:*

Sight distances are in excess of the requirements of AS2890.

15     It is recommended that BAL(Basic-Left-turn) treatment be provided for left turn treatment.

It is recommended that BAR treatment be provided for the right turn treatment.

*Stormwater Management:* The flows coming from the site are proposed to be controlled using the principles in NSW Blue Book. No engineering objections subject to conditions.

20     *Flooding:* The flood level impact on the surrounds were assessed during a 1 in 5, 20 and 100 Annual Exceedance Probability (AEP) events. The results show that the proposed development has a negligible impact on the surrounding area and that offsite impacts are within ±0.02 m or 20mm of the base case flood levels for all design events.

No engineering objections subject to conditions.

**Environmental Health Officer:**

25     *Contaminated land:* The site is considered to be suitable for the intended commercial use. Should the land use increase in sensitivity (e.g. residential) a subsequent detailed contaminated and assessment will be required.

Conditions are recommended restricting the importation of landscape materials into the site to be certified clean and free of contamination.



Figure 11 – Proposed location of toilet

- 5 *On-site sewage management:* The On-site Wastewater Management Report No. 19043\_ww prepared by Greg Alderson & Associates dated 24 August 2018 demonstrates that wastewater generated from the development can be adequately managed via an On-site Sewage Management Facility. Councils Environmental Health Officer commented that the location of the proposed facilities (remote from the existing/unapproved shed as shown on Figure 11) is not supported and it is recommended that the toilet facility be located in close proximity to the shed.

The applicant has advised that it is preferred to leave the toilet building in the proposed location. Although it is remote from the shed, workers will be working over the entire landscape yard. This is considered satisfactory as it is essentially a decision of the owner as to where to locate the toilet to best suit their operational requirements, as long as it does not create adverse external impacts.

*Waste management:* A Site Waste Minimisation Management Plan has been submitted in support of the development. However, a detailed Environmental Management Plan (EMP) will be required, and this can be imposed as a consent condition.

- 20 *Land Use Conflicts:* The Land Use Conflict Risk Assessment (LUCRA) prepared by Joe Davidson Town Planning dated 21/09/2020 concludes that there is LOW likelihood of land use conflicts arising from the proposed development in relationship with the surrounding land uses. Neighbouring land uses include sugar cane farming, cattle grazing, a golf course and existing landscape materials supplies business with residence.

The LUCRA does not include potential noise generated by traffic associated with the operational phase. Generally operational noise can be managed by the imposition of consent conditions limiting hours of operation and an EMP.

- 5 *Other impacts:* Dust generation can be managed by limiting the volume of materials contained on the subject site and storing material within suitable containers (such as the bays proposed).

- 10 In terms of construction and operation of the landscape supplies, an Environmental Management Plan (EMP) must be submitted to Council for approval prior to any works commencing. The EMP must be prepared by a suitably qualified professional and contain details of measures to be undertaken to ensure that construction and operation of the development do not result in any on and off-site impacts that could interfere with neighbourhood amenity by reason of noise, vibration, smell, fumes, smoke, dust, wastewater or otherwise. All works must be in accordance with NSW WorkCover Authority requirements.

- 15 The EMP must be approved as part of the application for a construction certificate for building works.

**Building Surveyor:**

- 20 The change of use from a shed to a commercial building will require a Building Information Certificate as the building is not considered exempt development. This is required to be addressed by way of a deferred commencement consent condition.

The proposal also seeks consent to install an accessible bathroom which will require a construction certificate.

- 25 The building is required to be upgraded to its new Class in accordance with BCA. The building should fully comply with the BCA for its new building class. A construction certificate will be required for the construction of the new facilities. A clause 93/94 upgrade with full compliance with the BCA shall be supplied to the Principal Certifying Authority.

**Transport for NSW:**

Transport for NSW advised that:

- 30 • The Consent Authority should be satisfied that the impact of through and turning traffic has been adequately addressed. Please refer to Austroads Guide to Traffic Management Part 6: Intersections, Interchanges and Crossings and Australian Standard 2890.1 – Off Street Car Parking.
- 35 • Service vehicles should enter and leave the site in a forward manner. The design should cater for the turning paths of the largest vehicle requiring access to the site. Please refer to Australian Standard 2890.2 – Off Street Commercial Vehicle Facilities.
- Any regulatory signs and / or devices will require the endorsement of the Local Traffic Committee prior to Council approval. Please refer to A guide to the delegation to councils for the regulation of traffic.



- Consideration should be given to connectivity for public transport facilities and active transport modes such as walking and cycling.

Councils' development engineer has assessed access, traffic and parking aspects of the proposal and no objections raised subject to conditions.

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

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

**10      3.1      State Environmental Planning Instruments**

Consolidated SEPPs 2021

Considerations	Satisfactory	Unsatisfactory
<i>Biodiversity and Conservation SEPP 2021</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Koala Habitat Protection – The proposal does not involve the removal of any native vegetation. Further consideration of the provisions of this SEPP is not required.		
<i>Resilience and Hazards SEPP 2021</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: <u>Chapter 2 Coastal management</u> - This chapter applies to land within the coastal zone. Coastal management areas comprise: <ul style="list-style-type: none"> <li>• <i>the coastal wetlands and littoral rainforests area</i> – The subject land is not mapped as coastal wetlands or littoral rainforest. The land is not within a 'proximity' area to coastal wetlands or littoral rainforest.</li> <li>• <i>the coastal vulnerability area</i> – no areas mapped at this time</li> <li>• <i>the coastal environment area</i> – the subject site is within the coastal environment area</li> <li>• <i>the coastal use area</i> – the subject site is within the coastal use area.</li> </ul> Part 2 Division 3 – Coastal Environment Area – Section 2.10 requires that: <p>(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—</p>		

Considerations	Satisfactory	Unsatisfactory
<p>(a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,</p> <p>(b) coastal environmental values and natural coastal processes,</p> <p>(c) the water quality of the marine estate (within the meaning of the <a href="#">Marine Estate Management Act 2014</a>), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,</p> <p>(d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,</p> <p>(e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</p> <p>(f) Aboriginal cultural heritage, practices and places,</p> <p>(g) the use of the surf zone.</p> <p>(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—</p> <p>(a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or</p> <p>(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</p> <p>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</p> <p>The proposal is considered satisfactory in relation to the relevant considerations as:</p> <ul style="list-style-type: none"> <li>• Conditions will be placed on any consent requiring the management of soil and water in accordance with relevant engineering standards.</li> <li>• No native vegetation will require removal.</li> <li>• The site is not adjacent to the foreshore and there is no public open space that the proposal will affect.</li> <li>• An Aboriginal Heritage Information Management System search indicates that there are no Aboriginal sites or places recorded or declared within 50m of the site.</li> </ul> <p>Part 2 Division 4 – Coastal use area – Section 2.11 requires that:</p> <p>(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—</p> <p>(a) has considered whether the proposed development is likely to cause an adverse impact on the following—</p> <p>(i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,</p>		

Considerations	Satisfactory	Unsatisfactory
<p>(ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,</p> <p>(iii) the visual amenity and scenic qualities of the coast, including coastal headlands,</p> <p>(iv) Aboriginal cultural heritage, practices and places,</p> <p>(v) cultural and built environment heritage, and</p> <p>(b) is satisfied that—</p> <p>(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or</p> <p>(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</p> <p>(iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and</p> <p>(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.</p> <p>The proposal is considered to be consistent with Section 2.11 provisions of the SEPP.</p> <p>Part 2.2 Division 5 relates to development in coastal zone generally and requires that the consent authority must be satisfied that development will not increase risk of coastal hazards and any certified coastal management programs that apply to the land.</p> <p>The location of the site is sufficiently distant from the active coastal zone and there are no coastal management programs applying to the land.</p> <p><u><i>Chapter 4 – Remediation of land</i></u></p> <p>The development will not result in an increased sensitivity of land use. Councils Environmental Health Officer has recommended that a Unexpected Findings Protocol (UFP) be prepared to ensure management of any unexpected findings are managed appropriately.</p> <p>Conditions are recommended requiring the importation of landscape materials into the site to be certified clean and free of contamination.</p>		
<i>Transport and Infrastructure SEPP 2021</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Consideration:</p> <p>The proposal is not a defined traffic generating development however the application was referred to Transport for NSW. Comments provided have been discussed above.</p>		

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

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

- 5 (a) The proposed development is defined in the LEP 2014 Dictionary as landscaping material supplies which is: **landscaping material supplies** means a building or place used for the storage and sale of landscaping supplies such as soil, gravel, potting mix, mulch, sand, railway sleepers, screenings, rock and the like;
- (b) The land is within the RU1 Primary Production according to the Land Zoning Map;
- (c) *Landscaping material supplies* are permitted with consent; and
- 10 (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base	The proposal includes landscape bays which could be removed in the future if the land was to revert to agricultural uses. The business occupies part of the site with the remainder being available for agricultural uses. The proposal will not have any significant impact on the agricultural viability of the site.
To encourage diversity in primary industry enterprises and systems appropriate for the area	
To minimise the fragmentation and alienation of resource lands.	
To minimise conflict between land uses within this zone and land uses within adjoining zones	The proposal will not result in the fragmentation or alienation of resource lands.
To encourage consolidation of lots for the purposes of primary industry production	Subject to compliance with conditions, the proposal is not anticipated to create any significant land use conflict.
To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality	The shed is rural in character, similar to what would be found in other rural locations in the shire. Presently, the shed is highly visible when driving along Myocum Road. Landscaping is proposed along the site frontage and adjacent to the shed. With the establishment of this landscaping the proposal will not have a significant impact on the existing scenic value of the locality.
To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality	

Clause 4.3 Height of buildings

The height limit for the site is 9 metres. The existing shed and proposed amenities building comply with this requirement.

Clause 5.21 Flood planning

- 5 The application was accompanied by a Flood report prepared by BMT WBM Pty Ltd. Following a request for additional information a Reassessment of Flood Impacts was lodged.

10 The report indicates that the results of modelling show that the proposed development has a negligible impact on the surrounding area and that offsite impacts are within  $\pm 0.02$  m of the base case flood levels for all design events.

Based on these findings, the report concludes that the addition of the proposed infrastructure is not considered to generate a significant flood impact for the events assessed off-site.

- 15 The proposal has been assessed as being satisfactory with respect to potential flood impacts and clause 5.21 considerations.

Clause 6.1 Acid Sulfate Soils

- 20 The site is mapped as Class 4 Acid Sulfate Soil land. Works more than 2 metres below the natural ground surface or where the water table is likely to be lowered more than 2 metres below the natural ground surface require acid sulfate soil investigation and where required, the preparation of an acid sulfate soil management plan. The proposal does not include any work below 2m below the natural ground level. No further investigation or actions are required in this regard.

Clause 6.2 - Earthworks

- 25 Minor earthworks are required to install the proposed landscape bays and implement the proposed stormwater management system. Subject to the implementation of suitable conditions of consent, these works can be undertaken without having an unacceptable impact on adjoining properties, local drainage patterns or waterways.

Clause 6.4 Floodplain risk management

The objectives of this clause are as follows—

- 30 (a) *in relation to development with particular evacuation or emergency response issues, to enable evacuation of land subject to flooding above the flood planning level,*
- (b) *to protect the operational capacity of emergency response facilities and critical infrastructure during extreme flood events.*

- 35 Subclause 3 nominates a variety of land uses for which development consent must not be granted unless the consent authority is satisfied that the development will not, in flood



events exceeding the flood planning level, affect the safe occupation of, and evacuation from the land.

A landscape material supplies business is not a nominated land use.

5 Flooding considerations are discussed below in relation to Byron DCP 2014 Chapter C2 – Areas Affected by Flood.

Clause 6.6 Essential services

This clause requires that:

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

*(a) the supply of water,*

*(b) the supply of electricity,*

*(c) the disposal and management of sewage,*

15 *(d) stormwater drainage or on-site conservation,*

*(e) suitable vehicular access.*

In relation to these matters it is commented that:

- 20 • The application states that: The subject property has access to a reticulated water supply. Water tanks are to be installed within the site to capture rainwater. A spring supply within the site can also be activated if required by the landowner.
- Overhead electricity is available to the site.
- 25 • The proposal contains a new amenities building containing a composting toilet for staff. The proposed on-site sewage management system has been assessed as being satisfactory subject to conditions. An application under Section 68 of the Local Government Act will be required for its installation.
- The development plans include storage basins to accommodate runoff from the development site before it is released into the local drainage system. Surface water disperses to existing drainage lines within the site. The proposal has been assessed by Councils Development Engineer and conditions recommended in this regard.
- 30 • Access – Access has been assessed as being satisfactory subject to conditions.

The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development complies with all clauses of LEP 2014 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

35

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

None relevant to the proposal.

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

5 B6 - Buffers and Minimising Land Use Conflict

The proposed facility seeks approval for a similar operation as the adjoining Wards landscaping. The adjoining property also contains a dwelling.

10 A Land Use Conflict Risk Assessment (LUCRA) was lodged with the application which concluded that there was LOW likelihood of land use conflicts. This was assessed by Councils Environmental Health Officer and conditions recommended with respect to noise control.

C2 – Areas Affected by Flood

The Flood Impact Assessment included the following:

*Developed Case Updates*

- 15 *The hydraulic model was simulated for the developed case (i.e. post-developed Site) scenario. The hydraulic model was updated in the developed case scenario to include current site details and proposed site details. These updates include adjusting model details (topography and materials) as described below:*
- 20 *• The level of the loading area was raised to an elevation of 3.1m AHD from the current site levels of between 2.70m AHD and 3.03m AHD (based on 5 surveyed points across the stockpile loading area).*
- 25 *• The concrete slab of shed in the loading area was raised to 3.56m AHD (based on a survey point at the shed). The shed was included in the hydraulic model by application of a high hydraulic roughness as typically applied for buildings of this nature.*
- The loading stalls were raised above the stockpile loading area by 2m (i.e. to above the 1 in 100 year AEP level). It is assumed that all stalls are full of materials.*
- A berm at the front (south) of the stockpile loading area was included. The area was raised above the loading area by 0.2m to a level of 3.3m AHD.*
- 30 *• The internal road was included in the model using 5 collected survey points. The lowest point in the road elevations is 2.67m AHD, located at the bend of the internal road (back of the site). The internal road raises from the lowest point to the entrance of the site to 2.77m AHD and at the end of the road (east of the end) to 2.78m AHD.*

- 3 bulk material deposits were included based on survey provided by Bennett + Bennett.

5 The flood level impact in the surrounds were assessed during a 1 in 5, 20 and 100 AEP events. The results show that the proposed development has a negligible impact on the surrounding area and that offsite impacts are within  $\pm 0.02$  m or 20mm of the base case flood levels for all design events.

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

This Chapter applies to visually prominent development on a visually prominent site on land subject to Byron LEP 2014.

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

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

The land is at a level of less than 60m AHD (approximately 2.6 – 3.1m AHD). However, as the site is within the SEPP (Resilience and Hazards) 2021 mapped coastal management area it is defined as a visually prominent site.

20 The existing shed that has been located on the site is the most visually prominent aspect of the proposal (refer photos). Although it would have been more desirable to locate this shed with a greater setback to the road, the shed is characteristic of rural development and with the proposal to provide landscaping along the frontage of the site and along the side of the shed, it will be substantially screened. On this basis, visual impacts will be satisfactory as long as the landscaping is retained and maintained.

25 There is unauthorised signage on the site which is not included in the development application and will need to be removed.

### D2 – Residential Accommodation and Ancillary Development in Rural Zones

30 This Chapter does not apply to commercial development in the RU1 zone however it is useful to consider the provisions relating to setbacks of farm buildings and dwellings to determine the appropriateness of the setback of the shed to Myocum Road. Setback requirements may be flexible provided they are demonstrated to achieve the objectives and performance criteria of the chapter.

35 The prescriptive measures in the DCP identifies that dwellings and farm buildings are to have a minimum setback of 15 metres to the front property boundary. The existing shed has a setback of 11.91m. Given the proposed landscaping, the shed will be adequately screened and it is considered that the 11.91m is satisfactory. It is important that the landscaping is established early and maintained. Appropriate conditions are recommended. Requiring a larger setback to 15 metres would not result in a significant improvement to visual impacts once the landscaping has established.

**D4 – Commercial and Retail Development**

*Design Detail and Appearance*

5 As discussed, the shed is setback 11.91 metres from Myocum Road. The proposed landscape material containment bays will be setback 25m. The bays will have a maximum height of 1.3m with materials to be stored within the bays having a stockpile height of up to 3m. The existing unauthorised large stockpiles will be required to be removed.

10 The shed style is typical of rural development and the containment bays are sufficiently setback from Myocum Road. Given the low-lying nature of the land, the low height of the structures (existing and proposed) on the site and the landscaping proposed, the overall visual impact is considered generally satisfactory.

A condition of consent will require the landscaping to be maintained.

*Vehicle Access and Parking*

A recommended condition will require existing access to be upgraded and plans submitted with the application indicate manoeuvrability to be satisfactory.

15 ***Setbacks***

There are no specific setbacks prescribed for commercial development in the RU1 zone.

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

20 **4.5 Environmental Planning & Assessment Regulation 2000 Considerations**

<b>Clause</b>	<b>This control is applicable to the proposal:</b>	<b>I have considered this control as it relates to the proposal:</b>	<b>If this control is applicable, does the proposal comply?</b>
<b>92 - Additional matters that the consent authority must consider</b>	No	N/A	N/A
<b>93 – Fire safety and other considerations</b>	Yes – change of classification of building from a shed to a commercial building	Yes, advice provided by Council's Building Surveyor is that the building will be required to be upgraded to its new class.	Yes, as a deferred condition of consent.
<b>94 – Consent authority</b>	Yes – change of	Yes, advice provided	Yes, as a

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Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
may require buildings to be upgraded	classification of building from a shed to a commercial building	by Council's Building Surveyor is that the building will be required to be upgraded to its new class.	deferred condition of consent.
94A – Fire safety and other considerations applying to erection of temporary structures	No	N/A	N/A

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

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

Impact on:	Likely significant impact/s?
Natural environment	No. Subject to the implementation of recommended conditions, the proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	No. Subject to the implementation of recommended conditions, the proposal will not have a significantly adverse impact on the built environment of the locality.  The primary issue of concern is the visual impact of the unauthorised shed. As discussed, this can be suitably screened by landscaping.
Social Environment	No. The proposal will not have a significant social impact on the locality.
Economic impact	No. The proposal will not have a significant economic impact on the locality.
Construction Impacts	The development will generate minor impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.



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

<b>Council Policy</b>	<b>Consideration</b>
Building Certificates Policy	A condition is recommended requiring a Building Information Certificate to be obtained.
Enforcement Policy	<p>The Enforcement section of Council have been involved in the history associated with the transportation of materials to the site without approval.</p> <p>Conformation was sought obtaining advise that the material on the site is not contaminated.</p> <p>If this DA is not approved for deferred commencement conditions not satisfied within the required timeframe, further Council enforcement action may be required.</p>

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

- 5 The site is a serviced property that subject to the implementation of recommended conditions of consent is suitable for the proposed development.

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

The development application was publicly exhibited.

- 10 There were **5** submissions objecting to the development including a petition with 176 signatures. This submission states: *'Do you think that Council should allow a 'Landscape yard' right next door to an existing business that has been established nearby for nearly 30 years? If not, please sign.'*

The applicant made a request under the Government Information (Public Access) Act 2009 (GIPA) to access the submissions and subsequently provided a response to the issues raised.

- 15 The following Table outlines the issues raised in the objections, the applicant's response and comments regarding the objection/issue raised.

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<b>Submission 1</b>		
Council is aware that the property has been developed without approval. The shed has been erected without approval and with Council's knowledge. Object to Council's reluctance to remedy these breaches. I strongly object to the subject DA on the following grounds – see below:	The shed within the property is almost entirely compliant with the exempt development provisions for a farm building. The front setback is the only item that is inconsistent with these controls. This was a minor misunderstanding during construction, but approval can be obtained as part of this Development Application.	As the shed is part of a commercial development (that wasn't approved) and not a farm building, it does not fall under the exempt development category, regardless of any compliance or otherwise with the farm building provisions. If the shed is considered satisfactory on merit, then this can be remedied by way of a Building Information Certificate (as a deferred commencement condition). The shed will need to be upgraded and certified.
The manner in which the development has been progressively and illegally constructed and operated sets a precedent that undermines the integrity of the planning system in Byron Shire	No comment provided	Noted. Council has an adopted Enforcement Policy (2020) which sets out how enforcement matters are dealt with.
The subject land is within the flood plain and any material placed on the property will have an impact on flood behaviour in the immediate area. Has not been adequately address in the SEE	The updated Flood Assessment comprehensively addresses flooding in the locality. It is noted that development consent has been granted for a similar land use in the same flood plain within the adjoining property to the east.	The updated flood assessment has been reviewed by Councils development engineer and is considered satisfactory. It indicates negligible impact.
The existing shed is located in a very prominent part of the site and is highly visible to all passing traffic. Byron DCP 2014 requires consideration be given to location and design of building in a rural setting to ensure landscape qualities are not detrimentally impacted. The shed represents a prominent eyesore.	It is proposed to add landscaping to the site to reduce visual impacts.	This matter has been addressed in the body of this report. Landscaping will be required to be established and maintained to minimise visual impacts.
The current use of the property appears to be for the sale of a limited range of landscape supplies such as concrete mix and sand. A significant stockpile of sand has been placed on the site and is located near to a	It is not proposed to operate a concrete batching plant.	A condition of any consent will require that the facility operate as a landscape material supplies business only and not to be used as a concrete batching plant.

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gantry and other equipment such as concrete trucks that appear to be more relevant to a concrete batching plant rather than the sale of landscaping materials.		
Earthmoving machinery is also stored on the property. Examples of other existing landscape suppliers in the shire are either located in an industrial setting (Byron, Bilinudgel) or a rural context (Wards) and their presentation to the public domain is well considered and satisfactory. The subject proposal exhibits none of these features - storage of materials, vehicle movements, advertising are all poor.	It is proposed to add landscaping to the site per the attached plan. This will reduce visual impacts. Note that the subject landowner has previously dealt with Byron Shire Council's Compliance Department regarding the temporary storage of sand and gravel within the site. This arrangement was resolved without a requirement for the material to be removed. In any case, the material will be removed gradually as landscape materials sales proceed under the subject Development Application.	It is agreed that improvements to the appearance of the site are required. The provision of landscaping, removal of unauthorised stockpiles, removal of unauthorised signage and removal of plant and equipment such as the concrete plant and disused trucks that are stored on the site is required.  Any consent will be conditioned accordingly.
<b>Submission 2</b>		
The applicant states that: <i>Note that this submission was made in support of xxxxxxx who, at the time, owned the adjoining landscape yard to the east of the site. They have since sold their business and their property to a new operator. The owner of the subject property has a good neighbourly relationship with the new owners.</i>		
The adjoining property, Wards Landscaping, is affected by the proposed development.	It is noted that the former adjoining landowners operated a landscape materials supplies business. The new owners will have competition from the business operations within the subject site. Competition in business is not considered to be a necessary Planning consideration for this Development Application.	Agreed, competition between businesses is not a relevant planning consideration.
Wards Landscape Supplies commenced on the adjoining property in 1984 and since that time has served the district with landscape supplies from a neat and tidy site.	The landscape materials and supplies business within the adjoining property to the east traded since 1984 without development consent. In 2020, the landowners submitted a Development Application and received a Deferred Commencement Consent for a landscape materials supplies business. The subject property and the adjoining property to the east share the same zoning and similar land use planning constraints (eg. flooding).	Noted
The operation that continues at this site (Lot 342) without approval is an embarrassment to Byron Shire, particularly in this	The landowner welcomes Byron Shire Council's feedback with regards to visual impact considerations and is open to providing landscape plantings to reduce any potential impacts arising from the	Visual impact issues have been discussed in the preceding assessment and is considered satisfactory subject to the proposed landscape

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scenic Myocum district .	proposed landscape materials supplies business.	screening, removal of unauthorised signage and other plant and equipment.
Errors in the description of the proposed development within the SEE.	The incorrect description of the site within Section 2.0 of the Town Planning Report is rightfully corrected in Section 3.0. The fact that the submission makes note of this error is welcomed.	Noted.
<p>Since 2018 the owner has erected this “ancillary shed structure” without Byron Shire Council approval. On page 5 of the Planning Report, it is contended that this shed was erected under the provisions of the SEPP (Exempt and Complying Development Codes).</p> <p>It does not meet exempt development criteria. The shed is not a farm building. The required setback to a farm building is 20m for exempt development. The shed is setback 11.91m.</p>	<p>Page 5 of the Town Planning Report actually states: “The landowner has recently constructed a steel framed shed within the site <b>in consideration of</b> the ‘exempt development’ provisions from State Environmental Planning Policy (Exempt &amp; Complying Development Codes) 2008.” It is not implied that the shed structure meets the provisions of SEPP (Exempt &amp; Complying Development Codes) 2008. It is confirmed that the use of the existing shed forms part of the Development Application.</p> <p>The shed structure is not a form of residential development nor a building that is ancillary to / associated with residential development. Subsequently, the setback controls within Chapter D2 of Byron Development Control Plan 2014 do not apply.</p> <p>Byron Development Control Plan 2014 does not appear to include any setback controls for a shed structure that is to be used as part of a materials and landscapes supplies business.</p> <p>It is noted that Myocum Road is not identified as a ‘classified road’. If a dwelling or ancillary development was proposed on this site, a 15 metre setback is nominated as a prescriptive measure. If this 15 metre setback did apply to the subject development, only the south-western corner of the shed structure would encroach into this setback (by less than 3.1 metres).</p> <p>The landowner is open to the provision of landscaping to reduce any potential visual impacts that Byron Shire Council has concerns with. Sufficient area is available on the southern property boundary and on the western side of the shed structure to accommodate screen plantings.</p>	<p>The issue of setbacks is discussed in the preceding assessment. As mentioned, there is no setback requirement specified for a shed associated with a landscape supply business. This is a merit consideration which in the circumstances is considered satisfactory subject to the nominated landscape plantings occurring.</p>
I have video evidence that the site is operating as a concrete works which is prohibited in the RU1 Primary Production zone	The subject Development Application does not include the operation of a concrete batching plant.	Any consent would be conditioned prohibiting the operation of the site as concrete works and the storage of plant and equipment

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under the Byron LEP 2014. There are clearly two (2) concrete agitator trucks on the site. Sand from the large stockpile (previously stockpiled on the site from Tandys Lane) and blue metal are mixed in the concrete agitator trucks at the site, then the trucks move to a site on McAuleys Lane for cement to be provided before delivery to the customer. I have attached a video of excess concrete being discharged to the ground on the development site and of the agitator being cleaned with water.		associated with concrete works, including concrete agitator trucks.
Confirming the fact that the site is being used as a concrete batching plant is the signage attached showing that a concrete mix is available from this site. Additionally both the roadside signage and the larger sign on the development site have not been approved by Council and are not addressed in the Planning Report for this Development Application	The subject Development Application does not include the operation of a concrete batching plant. A mix of sand and gravel is a common product offered from a landscape materials supplies business. The business operating within the adjoining property to the east advertises "Concrete Mix" at \$100 per cubic metre within their website:	The development application does not include any signage. The signs that are installed on the site are unauthorised and therefore will need to be removed, unless it can be demonstrated that they are exempt development.
The site has been operating since 2017 at least, as a storage for extractive material and over the recent period as a concrete batching works which is prohibited in the zone. There is no mention in the Planning Report of this use as a concrete works. Section 4.15 of the Environmental Planning and Assessment Act requires that in determining an Application that Council consider: b) the likely impact of the development c) the suitability of the site e) the public interest It is obvious from the current operation at the site that the proposal is detrimental to the	With a setback of between 4 and 7 metres to the western property boundary the positioning of the proposed landscape materials supplies business allows room for screen plantings to be provided if considered appropriate by Byron Shire Council staff. The subject Development Application does not include the operation of a concrete batching plant. The proposed use of the site for a landscape materials supplies business is the same land use planning definition for which development consent was recently granted within the adjoining property to the east which shares the same land use zone and similar Town Planning constraints (eg. flooding).	On merit, the proposal is considered satisfactory subject to conditions. Various issues can be addressed by way of consent conditions therefore there are not considered to be justifiable reasons to refuse the application.  Conditions will include the reinforcement that the site is only to be used as a defined 'landscaping material supplies' business.



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neighbouring house and business at Wards Landscape Supplies. It is also detrimental from a visual impact assessment to this area of Myocum and the adjacent Mullumbimby Golf Club. While Landscaping Materials Supplies is a permissible use in the zone RU1 Primary Production, that is not the use occurring on the site, it is being used for a concrete works and extractive materials storage without Council approval. Council cannot approve a concrete works in the RU1 zone. It is not in the public interest to approve this application and it should be refused.		
<b>Submission 3</b>		
A Development Application was lodged on the 29th May 2018 for "Use of site as landscaping material supplies". The Development application was subsequently withdrawn by the applicant on the 9th July 2019. Considering that works that have continued on the subject block of land and the growth of the business including construction of buildings that are now considered to be existing by the new application, this application should be refused for reasons identified throughout this submission.	It is noted that this submission has been made by relatives of the former adjoining property owners to the east. Section 4.30 of Byron Shire Council's Enforcement Policy 2020 provides: "Council may use its discretion to suspend enforcement action whilst a development application to correct the unauthorised development is lodged and determined. This discretion may extend to the unauthorised activity continuing during the course of the development assessment process". Given that Byron Shire Council applied this discretion to the adjoining property to the east, an equitable arrangement should rightfully be expected for the subject property. A landscape materials supplies business operated and grew within the adjoining property without development consent for over 35 years.	Noted. No additional matters to be considered.
The driveway does not appear to have been constructed to council specifications as part of a prior subdivision.	It is appropriate that Byron Shire Council staff consider the suitability of access to the site as part of the assessment of the Development Application.	Access arrangements have been assessed by Council's development engineer and considered appropriate subject to conditions.
Consistency with zone objectives - Whilst landscaping yards are considered permissible under the zoning, the proposed	A comparison of the two adjacent properties indicates that each contain a landscape materials supplies business of a similar footprint on land parcels of a similar size. The subject property retains	This issue has been addressed in the preceding assessment and considered satisfactory. Opportunities for primary production remain.

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development does not consider any primary production unlike the landscape yard next doors (Ward's Landscape Supplies) which has a home and farmland more visible from Myocum Road, rather than the Landscape business, as compared throughout the application.	extensive land area that can be allocated to primary production at the discretion of the landowner. A recently approved boundary adjustment provides approval to increase the size of the subject property even further. The objectives of the zone are addressed within the Town Planning Report that was been submitted with the Development Application.	
Visual impact of a large, bright, newly constructed shed, concrete trucks, caravans and massive stockpiles of sand and soils visible from the road. It can only be considered an eyesore.	Refer to comments above in relation to opportunities to provide screen landscaping within the site.	Visual impact issues have been addressed in the preceding report.
Visual Impact comments in relation to setbacks and exempt development criteria – comments raised similar to submission 2	The subject Development Application does not include the operation of a concrete batching plant. Refer to comments above in relation to opportunities to provide screen landscaping within the site. Refer to comments below in relation to the shed structure. Refer to comments above in relation to opportunities to provide screen landscaping within the site.	Refer to previous comments.
Traffic impact- The SEE and the Traffic Impact statement contradict each other. The SEE has clearly stated that the landscape yard will be bulk deliveries as well as retail sales also substantiated with the number of staff that would be on site. The engineer in considering traffic movement has only included the trucks entering and exiting the site for the landscape wholesale and omitted the inclusion of the retail customers.	Feedback from Byron Shire Council is welcomed with respect to any inconsistencies regarding vehicle movements to/from the site. In accordance with Byron Shire Council Policy "Appropriate Dispute Resolution of Development Proposals", it is anticipated that issues will be identified and negotiations may be required prior to the determination of the Development Application".	A revised traffic assessment was reviewed by Councils Development Engineer and no objections raised subject to conditions.
Social and amenity impacts- The proponent has stated that he will cover materials that can be spread by wind with shade cloth. It would be reasonable to consider that it	The author's opinion on the use of the word "impossible" is considered an overstatement. In any case, the existing sand and gravel piles have been the subject of separate consideration by Byron Shire Council's	The existing sand and gravel stockpiles will be required to be removed. Materials will be required to be stored in the containment bays. Appropriate conditions are recommended.

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is impossible to cover the hundreds of cubic metres of white sand that already sand blasts visitors to the residence to the east during westerly winds.	Compliance team.	
Impacts on the built environment- The proponent mentions a proposed mixing plant, which has been on site for several years. The proposal mentions screening this from Myocum Road yet not from the private residence to the east. The subject concrete batching plant should not be approved as this will be a noise, dust and visual impact on the adjoining neighbours.	The subject Development Application does not include the operation of a concrete batching plant. In accordance with Byron Shire Council Policy "Appropriate Dispute Resolution of Development Proposals", it is considered appropriate that negotiations be entered into to include screen planting adjacent to the eastern property boundary. These negotiations may also result in screen plantings being provided by the adjoining landowner within their own property.	The existing concrete plant on the site will be required to be removed as a condition of any consent.
Land Use conflict The document has failed to identify a third house within the 500m radius. There is a dwelling situated within 40 m of the proposed development and whilst this house is identified as being in the neighbouring landscape yard, it is situated to the south of the existing landscape yard so that the residents are not impacted by dust/dirt etc from the yard. The proposed landscape yard runs the entire length of the eastern boundary and work around and on the large piles of sand already impact the occupants of the home at Wards Landscape yards.	It is anticipated that Byron Shire Council would impose strict conditions of consent regarding the operation of the landscape materials supplies business. Such would include requirements for hours of operation and dust management.	Appropriate conditions of consent are recommended to address this matter.
The land use conflict document again contradicts the application by stating there will be fewer traffic movements as there will be no retail however the SEE includes retail customers. Dust generation will be more likely as the existing Wards Landscapes yard has a sealed bitumen driveway past the residence to the business situated at the rear of the allotment. Dust	It is submitted that the operation of a landscape materials supplies business adjacent to an existing landscape materials supplies business does not create land use conflicts.	Appropriate conditions of consent are recommended to address this matter.

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generation from the proposed development on the dwelling at Wards Landscape yards will be greater as the proposed development runs the length of the boundary between the two allotments and is already situated on the boundary adjacent to the dwelling.		
Google maps image identifying how Wards Landscapes have situated the yard to be visually less intrusive from Myocum Road and to the north of the dwelling compared to the proposed development which has been stockpiling along the entire eastern boundary adjacent to the neighbouring house. This photo identifies the impact drift from sand and dust impacts the home occupants.	It is proposed to provide landscaping within the property to improve visual impacts. Refer to plans attached.	It is agreed that Wards landscaping is less intrusive. Consent conditions are recommended to reduce the visual impacts of the proposal and to control sand and dust impacts.
<p>Conclusion</p> <p>Given the reasons above it is requested that Council refuse the proposed development. The proposal will have an impact on residents within 40m of the stockpiles and buildings and development continues despite the previous DA being withdrawn. The application fails to fully cover the business that is trading on the block omitting all of the concrete trucks that batch on site along the eastern boundary.</p> <p>Whilst the economics of such a development is not assessable, it seems unethical to allow an identical business to start beside a business that has been operating since the 1980's. The size of the proposed development is already a visual impact from Myocum Road.</p>	<p>It is proposed to provide dust suppression through the covering of materials. Visual impacts are proposed to be reduced with the provision of on site landscaping. Competition does not constitute a valid planning reason to refuse the subject Development Application. It is not proposed to operate a concrete batching plant.</p> <p>The formalisation of a farm shed within the site and its use as part of the proposed landscape materials supplies business can be appropriately dealt with as part of the subject Development Application.</p>	<p>Consent conditions are recommended to reduce the visual impacts of the proposal and for dust suppression.</p> <p>Refer to previous comments regarding concrete works.</p>

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<b>Submission 4</b>		
The new DA claims that all the development footprint will be over 40m from the 3rd order watercourse a large stockpile of gravel and sand still exists within 40m of the watercourse. This existing large stockpile is never discussed anywhere in the DA.	The subject Development Application relates to the operation of a landscape materials and supplies business within the south-eastern corner of the rural property. The development plans confirm that this area is located over 40 metres from a watercourse.	<p>The existing sand and gravel stockpiles do not form part of the Development Application. These have been slowly being removed as material is sold. Nonetheless, these are unauthorised and will need to be removed.</p> <p>All work associated with the DA is over 40m from the water course. NRAR has confirmed that a Controlled Activity Approval is not required.</p>
A sediment, soil and water management plan has only been developed for 50% of the development site. It is clear from the new DA that the south section of the site are will be used for bays created by tilt slab panels. This is the area that is covered by the soil and water management plan. Yet 50% of the proposed site area has no sediment and stormwater modelling carried out. This is the area of the site which will have the tall and wide sand and gravel stockpiles. This is the section of the site which is closest to the 3rd order stream and is most at risk of flooding and pollution run off.	The Soil & Water management Plan prepared by Greg Alderson & Associates deliberately relates to the area of the property that has been nominated for use as a landscape materials and supplies business.	As discussed, the DA does not relate to the existing stockpiles
It should also be a condition of consent that the development and stockpiles which exist outside of the development footprint must be fully rehabilitated before a construction certificate is issued. The business MUST cease trading until a site occupancy certificate is issued.	<p>The existence of sand and gravel piles within the site is a separate matter to the Development Application that is currently before Byron Shire Council. The subject Development Application relates to the south-eastern corner of the allotment. The landowner has had previous dealings with Byron Shire Council's compliance team in regards to the sand and gravel piles that are located outside the area of the proposed landscape materials supplies business.</p> <p>It is noted that the adjoining property to the east was allowed to trade as a landscape materials supplies business for over 35 years without development consent an occupation certificate or a rehabilitation plan.</p>	<p>It is agreed that the stockpiles should be removed and rehabilitated, and that the business should cease trading until all pre-requisite conditions of the consent are complied with.</p> <p>The issue of trading until consent conditions are complies with is a matter for Council to determine.</p>

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<p>The proponent was seeking retrospective approval for a landscaping supplies business. Due to the inherent problems with the DA it was withdrawn by the proponents on 09/07/2019.</p> <p>The main issue is that this and other similar types of DAs is the proponent is able to run their business illegally for over five years with impunity. They are still operating their landscaping supplies business without authorisation to this very day.</p>	<p>It is noted that "the main issue" that is put forward in the submission is that business activity has occurred from the property without consent. Section 4.30 of Byron Shire Council's Enforcement Policy 2020 provides: "Council may use its discretion to suspend enforcement action whilst a development application to correct the unauthorised development is lodged and determined. This discretion may extend to the unauthorised activity continuing during the course of the development assessment process".</p> <p>Given that Byron Shire Council applied this discretion to the adjoining property to the east, an equitable arrangement should rightfully be expected for the subject property.</p>	<p>Noted. This is a matter for Council to consider with respect to the adopted Enforcement Policy..</p>
<p>How are legitimate business who follow the rules and do the right thing able to compete with business that are operating illegally with no enforcement or repercussions.</p>	<p>Reference is again made to Section 4.30 of Byron Shire Council's Enforcement Policy 2020. The adjoining property has operated a landscaping materials supplies business without development consent for over 35 years. They were allowed to continue to trade whilst their Development Application was assessed and determined by way of a deferred commencement approval. It is not clear whether the deferred commencement conditions have since been completed, yet the adjoining business continues to trade.</p> <p>A similar approach from Byron Shire Council's compliance team is expected and appropriate for the subject site.</p>	<p>This is a matter for Council to consider</p>
<p>Archibalds Landscaping supplies is an illegal business operating brazenly without council development consent and has continued to operate without consent for over three years. Now they even have unauthorised signs advertising their business at the front of the property.</p>	<p>The landowner of the subject property rightfully expects fair and equitable application of Byron Shire Council's Enforcement Policy 2020.</p> <p>Although no signage is proposed as part of the subject Development Application, it is noted that SEPP (Exempt &amp; Complying Development Codes) 2008 does allow for a building identification sign to be erected within the site. It is appropriate that conditions of consent would be applied which acknowledge these provisions and any signage is brought into compliance as part of the business operations.</p> <p>Alternatively, the business owner has the right to seek development consent for signage after development consent is obtained for the proposed land use.</p>	<p>Refer to previous discussion regarding signage.</p>
<p>Complaints were made to Council back in 2016 and 2017 about the illegal sand</p>	<p>Any historic activities at Tandy's Lane have no relevance to the assessment of the subject Development Application.</p>	<p>This development application needs to be assessed on its merits under the</p>



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Issue	Applicants Response	Comment
quarry which was being operated by Archibalds at the end of Tandys Lane. Council negotiated with Archibalds for these illegal sand quarry to be decommissioned and rehabilitated. But the huge stockpile of illegally quarried sand has remained at 320 McAuleys Lane and has continued to be sold to customers. We object to illegal businesses continuing to operate for many years without Council Development consent and we object to retrospective approvals to these illegal developments.	Byron Shire Council's Compliance team have previously investigated the sand and gravel piles at 320 McAuleys Lane and resolved their issues. Reference is again made to Section 4.30 of Byron Shire Council's Enforcement Policy 2020. The adjoining property has operated a landscaping materials supplies business without development consent for over 35 years. The landowner of the subject property rightfully expects fair and equitable application of this Policy. Refer to comments made above. The business owner has the right to seek development consent for signage after development consent is obtained for the proposed land use.	considerations contained in Section 4.15 of the EP & A Act. Refer to the assessment contained in this report.
Question the actual proposed uses of the Landscaping Supplies business despite the claims in the DA. An unused concrete batching plant remains disused on the site and all of the plant and Equipment on the site point to the actual use being as a concreting batching plant.	The subject Development Application does not include the operation of a concrete batching plant.	Refer to previous comments in this regard.
Photos taken show that there are four to five concrete mixer trucks on site along with the concrete batching plant to the rear of the property. They also advertise concrete mix and cement for sale. It will be very easy for them to simply start selling ready mix concrete once their DA is approved.	As above.	Refer to previous comments in this regard. Conditions are recommended to reinforce the use of the site as a defined landscape materials supply business only.
We note that the proposed development is within 40m of a Key Fish Habitat and consequently it is a controlled activity under the Fisheries Act and requires integrated approval. The proponents argument that the current key fish habitat mapping is outdated does not mean that the new key fish habitat is not within 40m of the proposed development.	The subject Development Application relates to the operation of a landscape materials and supplies business within the south-eastern corner of the rural property. The development plans confirm that this area is located over 40 metres from a watercourse. The Key Fish Habitat shown within NSW Government mapping is out of date. The original water course that once ran through the property was realigned to the western edge of the allotment as part of agricultural activities some decades ago.	Mapping shows that the work is not within 40m of the mapped watercourses.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Issue	Applicants Response	Comment
Petition-		
This submission states: <i>'Do you think that Council should allow a 'Landscape yard' right next door to an existing business that has been established nearby for nearly 30 years? If not, please sign.'</i>		This is a matter of competition between businesses which is not a planning consideration.

### 4.9 Public interest

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

## 5 5. DEVELOPER CONTRIBUTIONS

The proposal provides no nexus to levy developer contributions or water and sewer headworks charges.

### 6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

Provide Disclosure Statement register details here: Not applicable

## 10 7. CONCLUSION

The DA proposes Use of Land and Existing Shed for Landscaping Material Supplies. Subject to Conditions of consent including deferred conditions the proposal is considered acceptable and is recommended for approval.

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20



## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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**Zoning:** B2 Local Centre

**Date received:** 17 May 2022

**Original DA determination date:** 19 April 2018 - Council Refusal  
27 June 2019 - Approval by Land and Environment Court [2019] LEC 1297

**Integrated Development:** No

**Public notification or exhibition:**

- Level 2 advertising under the Byron Shire Council Community Participation Plan.
- Exhibition period: From: 27 May 2022 To: 9 June 2022
- Submissions received: Nil

**Delegation to determination:** Council

**Issues:**

- Section 4.56 application is recommended for refusal.
- Original DA approved by Land and Environment Court with car parking discount of some 25 spaces.
- Proposal increases number of patrons and increases the floor area.
- Parking shortfall of at least 1.5 spaces not capable of being accommodated on site.

### **Summary:**

An application has been received pursuant to Section 4.56 for modification of Court approval of DA 10.2014.588.1 to expand the area of ground floor hotel restaurant and delete one shop tenancy in an approved mixed-use development.

- 5 The proposal seeks consent to increases the number of patrons by an additional 20 persons, whilst also increasing the floor area of the approved development by approximately 30 m<sup>2</sup>. The increase in floor area is considered to generate a further 1.5 spaces. The submitted plans have also removed a number of bike rack which were an integral part of the development. It is also pertinent to note the original DA generated a
- 10 demand for 43 spaces, however on appeal, the Land Environment Court (2019 NSW LEC 1297) only required the developer to provide 18 spaces for this development. The further shortfall in parking will only exacerbate this parking deficiency.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Requests to resolve the matter with the applicant have failed who has indicated that he has been instructed to lodge an appeal with the Land and Environment Court.

The proposal is not satisfactory having regard to relevant matters for consideration in relation to increased demand for on-site parking of cars and bicycles and the section 4.56 application is recommended for Refusal.

### 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 4.55 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2017.588.2, for Section 4.56 Modification of Court approval to expand area of ground floor hotel restaurant and delete one shop tenancy in an approved mixed-use development, be refused for the reasons :**

- 1. Pursuant to section 4.15 (1) (iii), the application is not satisfactory with consideration for Byron DCP 2014 Chapter B4 of the Byron Shire Councils DCP 2014, Parking Supply and Design, and Bicycle Parking Supply and Design**
- 2. Pursuant to section 4.15 (1)(b)(c) &(e), the application is not satisfactory with consideration for the likely impacts of the development arising from the shortfall in on-site parking for cars and bicycles required to meet additional demand. As a result. the site is not suitable for the proposed development and approval of the proposed s4.56 modification to the development would not be in the public interest.**

### Attachments:

- 1 10.2017.588.2 Combined Floor Plans submitted, E2022/82912 
- 2 10.2017.588.1 - Court approved plans, E2022/40126 
- 3 10.2017.588.1 [2019] NSWLEC 195 Conditions of Consent 77727.18 Smithson C Annexure A, E2020/9945 
- 4 Land and Environment Court Judgement of 10.2017.588.1 [2019] NSWLEC 1297, E2020/9945 





## Report

### Assessment:

#### 1. INTRODUCTION

##### 1.1. History/Background

5.1993.135.1 – Change of use - Approved 28/04/1993

5.1998.99.1 – Commercial development – addition to treatment room - Approved 15/05/1998

6.1993.2185.1 – Alteration of dwelling to consulting room - Approved 06/05/1993

6.1997.2678.1 – Addition/alteration to dwelling - Approved 09/07/1998

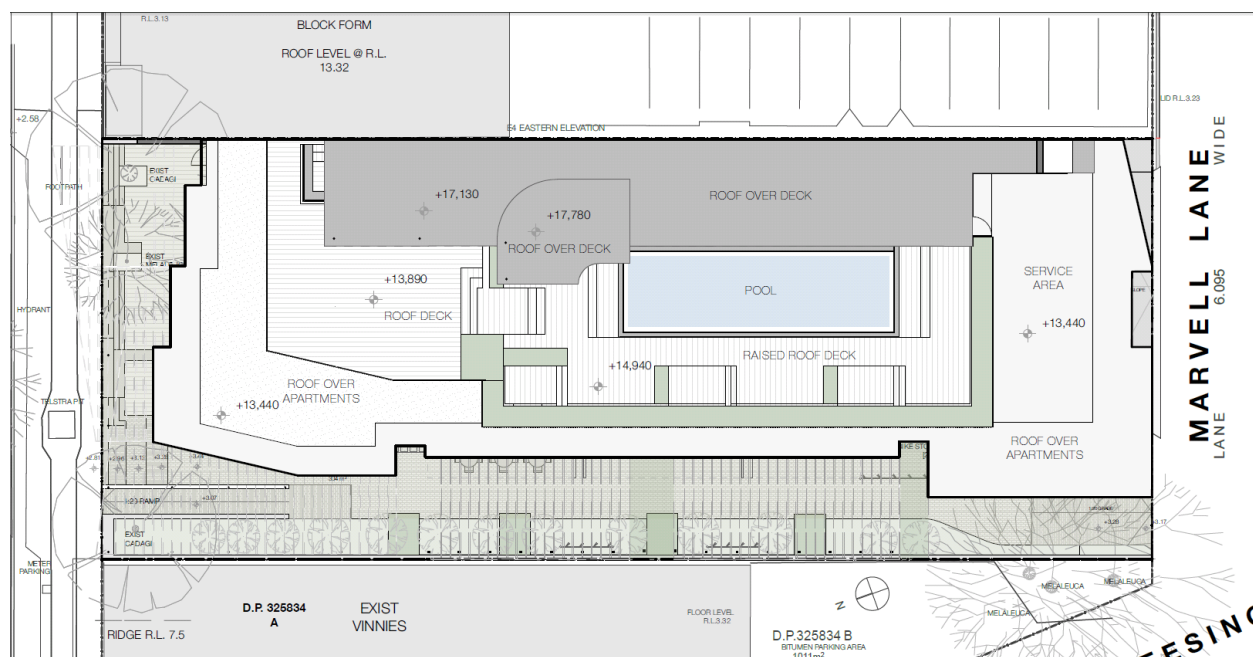
22.2017.15.1 – Development advice panel 15/08/2017 - proposal the subject to this assessment report. (Refer to minutes at Trim Doc #A2017/20894)

10.2017.588.1 Demolition of existing building and construction of a four (4) storey mixed use development comprising of restaurant, bar, shops, motel accommodation, roof top pool, bar and amenities block with basement car parking. Refused by Council, 19/04/2018. Approved by Land and Environment Court [2019] LEC 1297, 27/06/2019

##### 1.2. Description of the proposed development

This application pursuant to Section 4.56 seeks approval for modification of Court approval to expand area of ground floor hotel restaurant and delete one shop tenancy in an approved mixed-use development.

The original application approved by the Land and Environment Court was for demolition of an existing building and construction of a four (4) storey mixed use development comprising of basement parking, restaurant, bar, shops, 24 hotel rooms, roof top pool, bar and amenities block. All five (5) levels accessible by lift.



**Figure 2:** Extract of Site Plan Drawing 1.0 Revision G, Prepared by Harley Graham Architects Dated 1 March 2018

The Court approved development plans proposed the following:

Level 0	Basement car parking, storage, 36 m <sup>2</sup> dewatering station. The entrance to basement car park off Marvel Lane is designed to the flood planning level and a flood gate barrier proposed to be activated in the event of flooding; to prevent water entering the basement levels of the proposed building. Gross floor area on this floor is nil.
Level 1	Ground floor retail, hotel lobby, bar and restaurant, manager residence, toilets and outdoor dining in an onsite 'public space area', connecting Marvel Street and Marvel Lane. Access to a loading/waste area and basement car park off Marvel Lane. Bicycle store (28 bikes) in the onsite 'public space' area. Gross floor area on this level is 360 m <sup>2</sup>
Level 2	12 Hotel Rooms with balconies. Gross floor area on this level is 465 m <sup>2</sup>
Level 3	12 Hotel Rooms with balconies. Gross floor area on this level is 465 m <sup>2</sup>
Level 4	Roof top pool, bar and amenities block. Gross floor area on this level is 57 m <sup>2</sup>





approved plans have been authorised by the private principle certifying authority under the construction certificate (CC). This includes increase in gross floor area beyond the Court approved Clause 4.6 variation to Floor Space Ratio development standard. The CC approved ground floor plan is as follows:

5

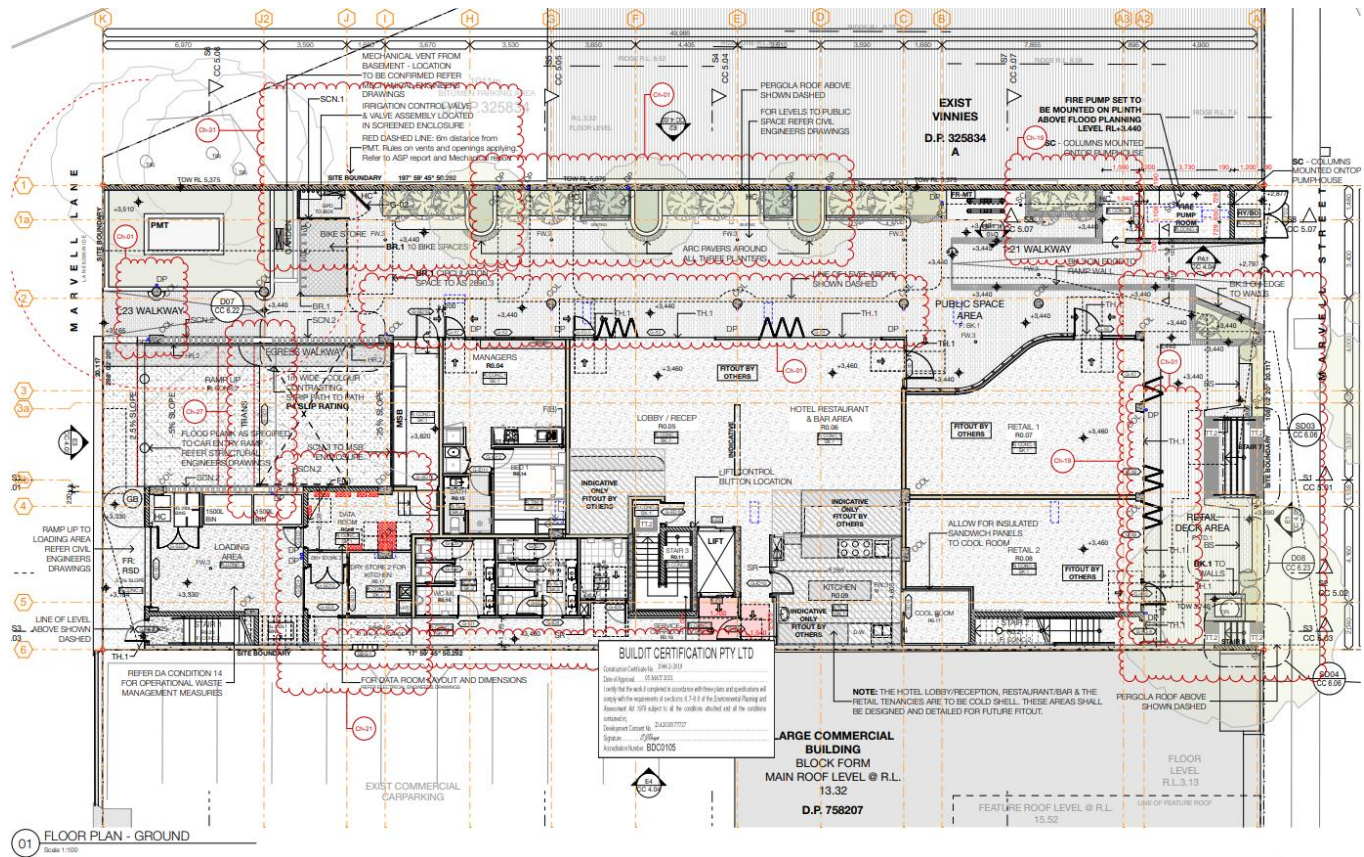
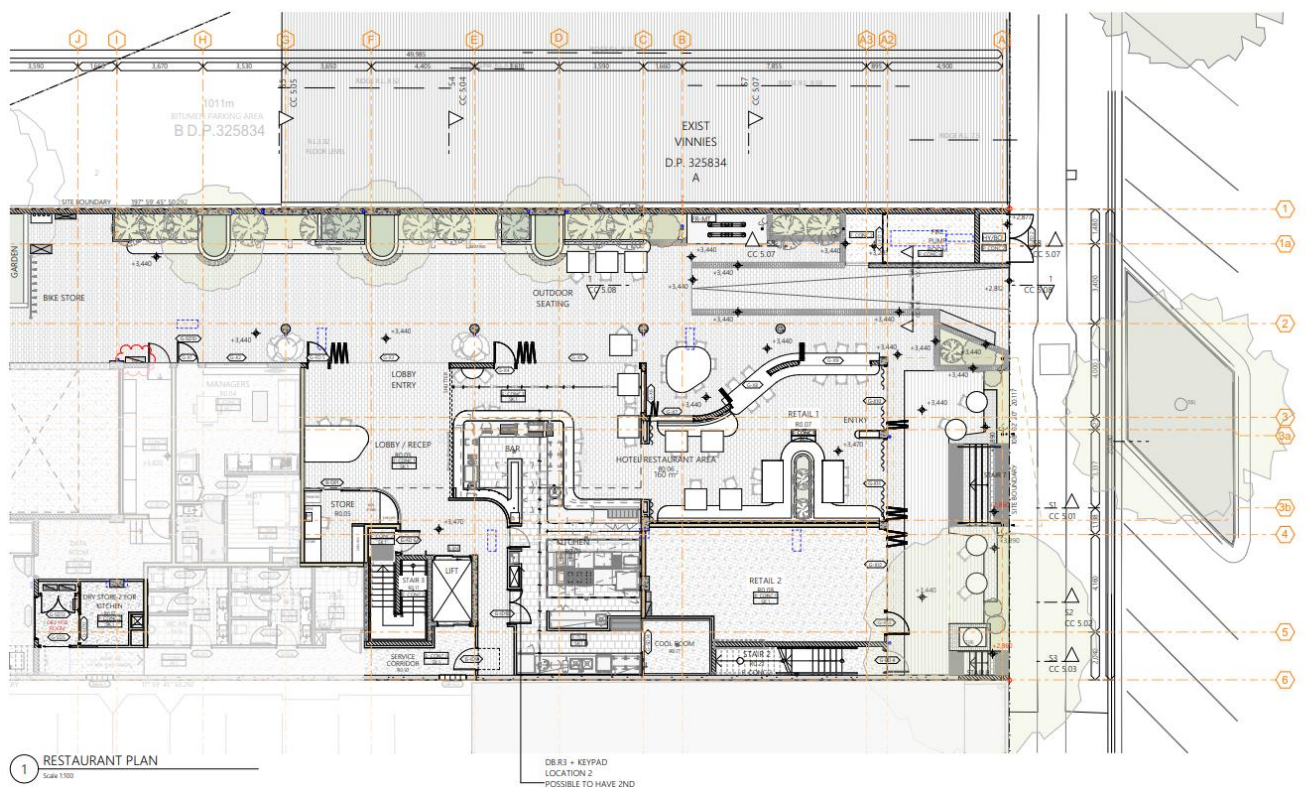


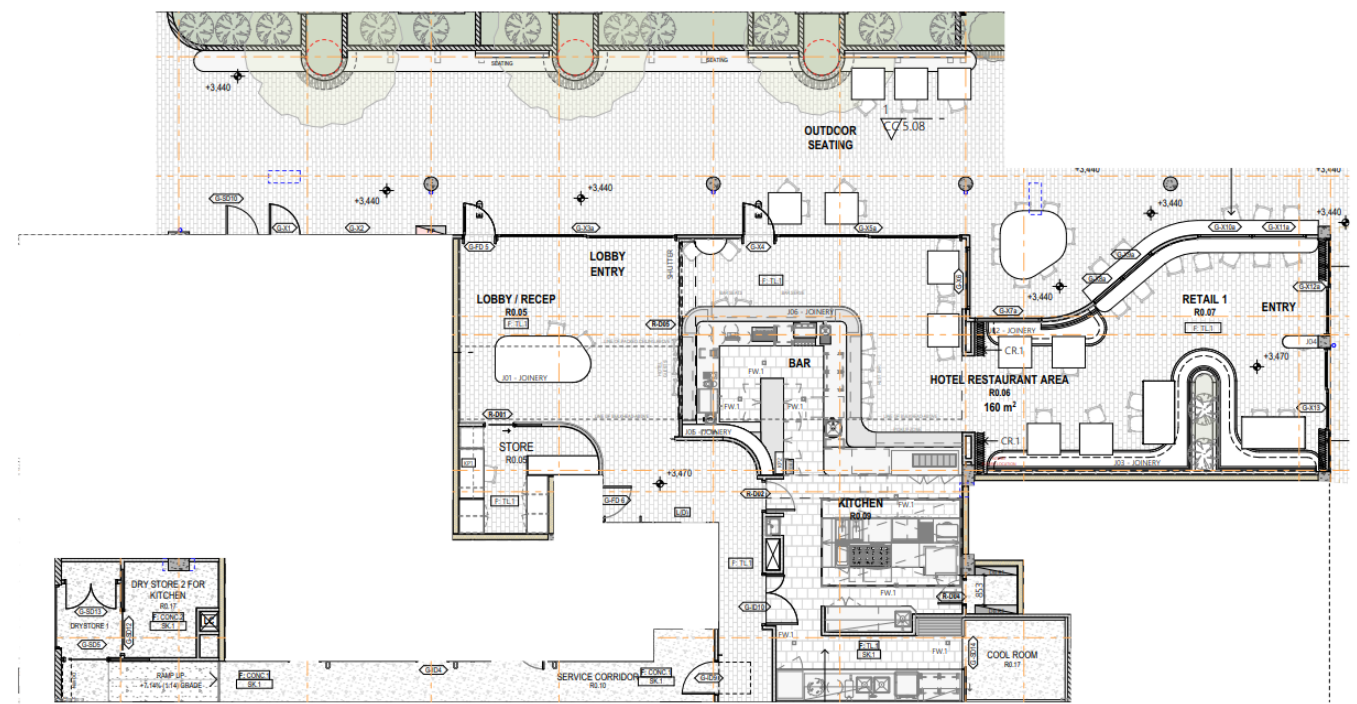
Figure 5: Approved CC plan of ground floor

The proposed S4.56 ground floor plan increases the floor area of the restaurant by extending into one of the approved shops and increases patrons by an additional 20 persons. The plan submitted for approval with the S4.56 application is as follows:

10



**Figure 6:** s4.56 proposed ground floor



**Figure 7:** S4.56 partial plan by applicant to specify areas associated with expanded restaurant.

**1.3. Description of the site**

Land is legally described as                      LOT: B DP: 325834

Property address is                      4 Marvell Street BYRON BAY

Land is zoned:                              B2 Local Centre

Land area is:                              1,012m<sup>2</sup>

Property is constrained by:              Acid Sulfate Soils (Class 3) – The proposed development involves works more than 1 metre below the natural ground surface.

Flood Prone Land - The 2050, 100yr storm event, Flood Planning Level for this site is 3.44m AHD.





Figure 7: Site boundary of subject lot

**1. SECTION 4.56 Modification by consent authorities of consents granted by the Court (cf previous s 96AA)**

<b>Section 4.56(1)</b>	<p>(1) A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if—</p> <p>(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and</p> <p>(b) it has notified the application in accordance with—</p> <p>(i) the regulations, if the regulations so require, and</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent,</p>
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	<p><i>and</i>  <i>(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and</i>  <i>(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be sought under this Act.</i></p> <p><b>Consideration:</b></p> <p>The applicant is a person who is entitled to act on the consent which was issued by the Court. The development to which the consent as modified relates is substantially the same as the originally approved development. Public notification of the application, including consideration of any submissions received if applicable, is discussed elsewhere in this report. Council has notified, or made reasonable attempts to notify, each person who made a submission in respect of the original development application of the proposed modification by sending written notification to the last address known to Council. Public notification of the application, including consideration of any submissions received if applicable, is discussed elsewhere in this report.</p>
<p><b>Section 4.56(1A)</b></p>	<p><i>In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.</i></p> <p><b>Consideration:</b></p> <p>The following matters have been taken into consideration as are of relevance to the development:</p> <p><i>(a) the provisions of—</i></p> <p align="center"><i>(i) any environmental planning instrument, and</i></p> <p align="center"><i>(iii) any development control plan, and</i></p> <p align="center"><i>(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),</i></p> <p align="center"><i>that apply to the land to which the development application</i></p>

# BYRON SHIRE COUNCIL

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	<p><i>relates,</i></p> <p><i>(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,</i></p> <p><i>(c) the suitability of the site for the development,</i></p> <p><i>(d) any submissions made in accordance with this Act or the regulations,</i></p> <p><i>(e) the public interest.</i></p> <p>Pursuant to section 4.15 (1) (iii), the application is not satisfactory with consideration for Byron DCP 2014 Chapter B4 of the Byron Shire Councils DCP 2014.</p> <p>a. Parking Supply and Design</p> <ul style="list-style-type: none"> <li>• The new proposal generates a demand for at least 1.5 additional parking spaces</li> <li>• The proposal did not offer measures to address additional parking requirement</li> <li>• No available space/area within the development footprint to accommodate the additional parking spaces</li> </ul> <p>b. Bicycle Parking Supply and Design</p> <ul style="list-style-type: none"> <li>• There are 36 bicycle parking spaces shown in the approved LEC drawing</li> <li>• The supporting amended plan deleted the 36 bicycle parking spaces and replaced with 8 spaces</li> <li>• The proposal did not offer measures to address the bicycle parking deficiency</li> <li>• The proposal is deficient by 28 bicycle parking spaces</li> </ul> <p>Pursuant to section 4.15 (1)(b)(c)&amp;(e), the application is not satisfactory with consideration for the likely impacts of the development arising from the shortfall in on-site parking for cars and bicycles required to meet additional demand. As a result. the site is not suitable for the proposed development and approval of the proposed s4.56 modification to the development would not be in the public interest.</p> <p>Note. No submission have been made.</p>
<p><b>Section 4.56(1C)</b></p>	<p><i>The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.</i></p> <p><b>Consideration:</b></p>

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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	The modification to the development consent is not the granting of a consent. The modified consent becomes the consent.
<b>Section 4.56(2)</b>	<p><i>After determining an application for modification of a consent under this section, the consent authority must send a notice of its determination to each person who made a submission in respect of the application for modification.</i></p> <p><b>Consideration:</b></p> <p>A copy of the notice of determination is required to be sent to each person who made a submission in respect of the application. No submissions have been received.</p>
<b>Section 4.56(3)</b>	<p><i>The regulations may make provision for or with respect to the following—</i></p> <p><i>(a) the period after which a consent authority, that has not determined an application under this section, is taken to have determined the application by refusing consent,</i></p> <p><i>(b) the effect of any such deemed determination on the power of a consent authority to determine any such application,</i></p> <p><i>(c) the effect of a subsequent determination on the power of a consent authority on any appeal sought under this Act.</i></p> <p><b>Consideration</b></p> <p>The references to the provisions of the Regulation are noted but not applicable in this instance.</p>

### 3. ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021 - PART 5 MODIFICATION OF DEVELOPMENT CONSENTS—THE ACT, SS 4.55, 4.56 AND 4.57

- 5 The proposed modification application can be considered having regards to the relevant provisions applicable under the regulations.

### 4. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions if approved
Development Engineer	Not supported - the proposal did not demonstrate compliance to Chapter B4 of the Byron Shire Councils DCP 2014.
Building Surveyor	No objections subject to condition for an amended construction certificate being required if approved
S64 / Systems Planning Officer	No objections subject to conditions for additional water & sewer load of modification if approved.

Chapter B4 – DCP 2014 Summary

The proposal seeks to increase the number of patrons by an additional 20 persons, whilst also using one of the shops as a restaurant which merges into the existing approved restaurant areas. The submitted plans for approval also show an increase in floor area of the approved development by approximately 30 m<sup>2</sup>. The increase in floor area is considered to generate a further 1.5 spaces. The increase in patron numbers was also considered to generate a further demand especially if it was to be utilised as a small bar which has different rates compared to a restaurant, and or if RMS Guide to traffic Generating development was employed

The shortfall in car parking was raised with the applicant who advised:

*“If Council are going to illegally consider parts of the existing approved development that do not relate to this application, then I will have no option but to lodge an appeal and go to court for a third time for this development.*

*As I stated last week, this is a planning matter not an engineering matter. If I was seeking consent to change the entire ground floor of the development then your assessment would have relevance, however I must reiterate (and will do for cost purposes) that this application only relates/seeks consent to the change of use of retail unit 1 to restaurant seating.*

*Please be advised that if Council resolves to include parts of the development that do not relate to this application that we will be lodging a costs appeal immediately upon obtaining a successful Court resolution”.*

Staff again attempted to mediate with the applicant raising issues pertaining to the bike racks, floor area, characterisation of the development having regards to patron numbers and use. (i.e. is it a small bar or restaurant.) The applicant does not believe the loss of bike racks or the change in floor area is of relevance, however the submitted plans for approval clearly show a change in floor area and the loss of the bike parking. When the matter was originally determined the number of bike racks provided was not a contention and the LEC (2019 NSW LEC 1297) judgment states:

*6 The restaurant and hotel foyer open onto an area designed to provide a public ‘through site link’ for pedestrians and cyclists between Marvell Street and the lanes to the road. This area is to be landscaped with additional tree planting along the western boundary, described as green link, and contain bicycle parking facilities*

There are 36 bicycle parking spaces shown in the approved LEC drawing. The supporting amended plan now only show 8 spaces. The proposal did not offer measures to address the bicycle parking deficiency. Under the DCP 2 bike spaces per accommodation unit plus 1 space per 25m<sup>2</sup> of restaurant is required. Based on the development proposed this equates to approximately 56 bike spaces. The rate seems overly high, but at the very least it would seem not unreasonable for the applicant to provide the 36 spaces as approved.

These are not matters that can be ignored, and in effect what the applicant is seeking Council to do is to approve development creep without appropriate assessment or

scrutiny. The applicant has advised that the floor area changes are already approved by the Private Certifier and should not be included in the assessment, but the plans submitted for approval have removed the bike parking whilst there “assessment or scrutiny” by staff indicate an increase in gross floor area to be allocated for the restaurant.

- 5 In terms of the characterisation/patron numbers the applicant indicates the shop is now to be used as a restaurant and that “there is no intent or request to have this area as a small bar”. It is considered the increase in patron numbers could be supported if additional parking is provided for the increase in floor area allocated to the restaurant.

- 10 The applicant was invited to enter into a planning agreement to make up this shortfall in car parking but has not taken up this offer. The applicant also has advised that he has now been instructed to lodge an appeal with the Land and Environment Court (LEC). As to Court costs should Council lose the case this would be a matter for the LEC to decide.

- 15 Considering the variation granted already by the Land and Environment Court (a reduction in parking by 25 spaces) when the application was originally approved, a further variation of a minimum of 1.5 spaces and a reduction in bike racks is not supported and the application is recommended for refusal.

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

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

**4.2. The suitability of the site for the development**

The site is a serviced property, constrained by flooding and acid sulfate soils. The property is not suitable for the proposed development the subject of section 4.56 modification due to insufficient parking provided.



**4.3. Submissions made in accordance with this Act or the regulations**

The application was publicly exhibited. There were no submissions made on the application.

**4.4. Public interest**

- 5 The proposal, if approved, is likely to prejudice the public interest and create an undesirable precedent.

**5. CONCLUSION**

- 10 An application has been received pursuant to Section 4.56 for modification of Court approval of DA 10.2014.588.1 to expand the area of ground floor hotel restaurant and delete one shop tenancy in an approved mixed-use development.

The proposal increases the number of patrons by an additional 20 persons and the floor area by 30m<sup>2</sup>. It is concluded the amendments result in a shortfall in parking of 8.2 spaces. The application is recommended for refusal.

**Report No. 13.9      Update - Resolution 22-374 - PLANNING -  
10.2021.114.1 - 'Fed Sheds' Light Industry  
Excluding Artisan Food & Drink Premises at  
467 Federal Drive, Federal**

5    **Directorate:**                      Sustainable Environment and Economy

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

**File No:**                            I2022/1101

**Summary:**

10    Council considered a Report No 13.11 - PLANNING - 10.2021.114.1 - 'Fed Sheds' Light  
Industry Excluding Artisan Food & Drink Premises at 467 Federal Drive, Federal at the  
[Ordinary \(Planning\) Meeting held on Thursday, 11 August 2022](#) and resolved as follows:

**Resolved 22-374:**

- 15    1.    *That a decision on the DA be deferred in the public interest, given the extent of  
community opposition, the need to consider social impact and specific queries raised  
with the proposal (consistent with section 4.15 of the EPAA 1979 - old section 79C),  
and that the developer be requested to conduct a workshop with invited  
representatives from the Federal community and the Federal Village Masterplan  
Committee.*
- 20    2.    *That a report come back to Council within 28 days to consider the Development  
Application including any modifications.*
3.    *That Infrastructure Services staff assess the drainage system in Coachwood Court in  
the next 4 weeks.*

25    This report responds to Resolution **22-374**.

**RECOMMENDATION:**

**That Council:**

- 30    1.    **Notes that points 1 and 3 of Resolution 22-374 are being progressed.**
2.    **Notes a report as per points 2 and 3 of Resolution 22-374 will be presented to  
Council at the next available meeting following their completion.**

## Report

Resolution **22-374** deferred Development Application 10.2021.114.1 and requested the developer to hold a workshop with invited representatives from the Federal community and the Federal Village Masterplan Committee to discuss their concerns about the proposal.

- 5 The meeting agenda deadline for 8 September Council Planning Meeting passed before the above workshop was held.

The investigation work by Infrastructure Services on point 3 was also not complete in time.

- 10 As such a report to Council on this development application and the drainage system in Coachwood Court will be presented to the next available meeting following points 1 and 3 being completed.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
<b>4: Ethical Growth</b> We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.1: Development assessment - Manage development through a transparent and efficient assessment process	4.1.1.1	Assess and Determine DA's accordance with the relevant legislation

## Recent Resolutions

- 22-374

## 15 Legal/Statutory/Policy Considerations

Not applicable.

## Financial Considerations

Not applicable.

## Consultation and Engagement

- 20 As discussed in the report.

## **Report No. 13.10 PLANNING - Use of zipline ancillary to a primitive camping ground**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Ivan Holland, Planner

5 **File No:** I2022/684

### **Proposal:**

**DA No:** 10.2021.683.1

**NSW PP** PAN-36736

**Proposal description:** Use of Zipline Ancillary to a Primitive Camping Ground

**Property description:** LOT: 2 DP: 1154966  
1156 Main Arm Road UPPER MAIN ARM

**Parcel No/s:** 241281, 117330

**Applicant:** Mr N Satz

**Owner:** Mr D W McIlrath

**Zoning:** RU2 Rural Landscape /1(a) General Rural / 7(k) Habitat

**Date received:** 26 October 2021

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

**Concurrence required** No

**Public notification or exhibition:**

- Level 2 advertising under Council's Community Participation Plan.
- Exhibition period: 5 to 18 November 2021
- Submissions received: Nil (0)
- Submissions acknowledged: ☐ Yes ☐ No ☒ N/A

**Variation request to Development Standards under an EPI (eg clause 4.6)**

Clause 64A

**Estimated cost**      \$2,500.00

**Delegation to determine**      Council

**Issues**      • Variation to development standard - Height of building (structure)

## Summary:

The DA proposes Use of Zipline Ancillary to a Primitive Camping Ground. The zipline (and campground) is located near the southern boundary of the property and Main Arm Road. The zipline runs from a 11.2m high platform, attached to a tree, for ~100m to a terminus ~3m above ground. The zipline is not to be used for commercial purposes and conditions of consent recommended accordingly. The application appropriately addresses the relevant constraints applying to the site and is recommended for approval as a deferred commencement consent and subject to the conditions attached to this Report.




NOTE TO COUNCILLORS:

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

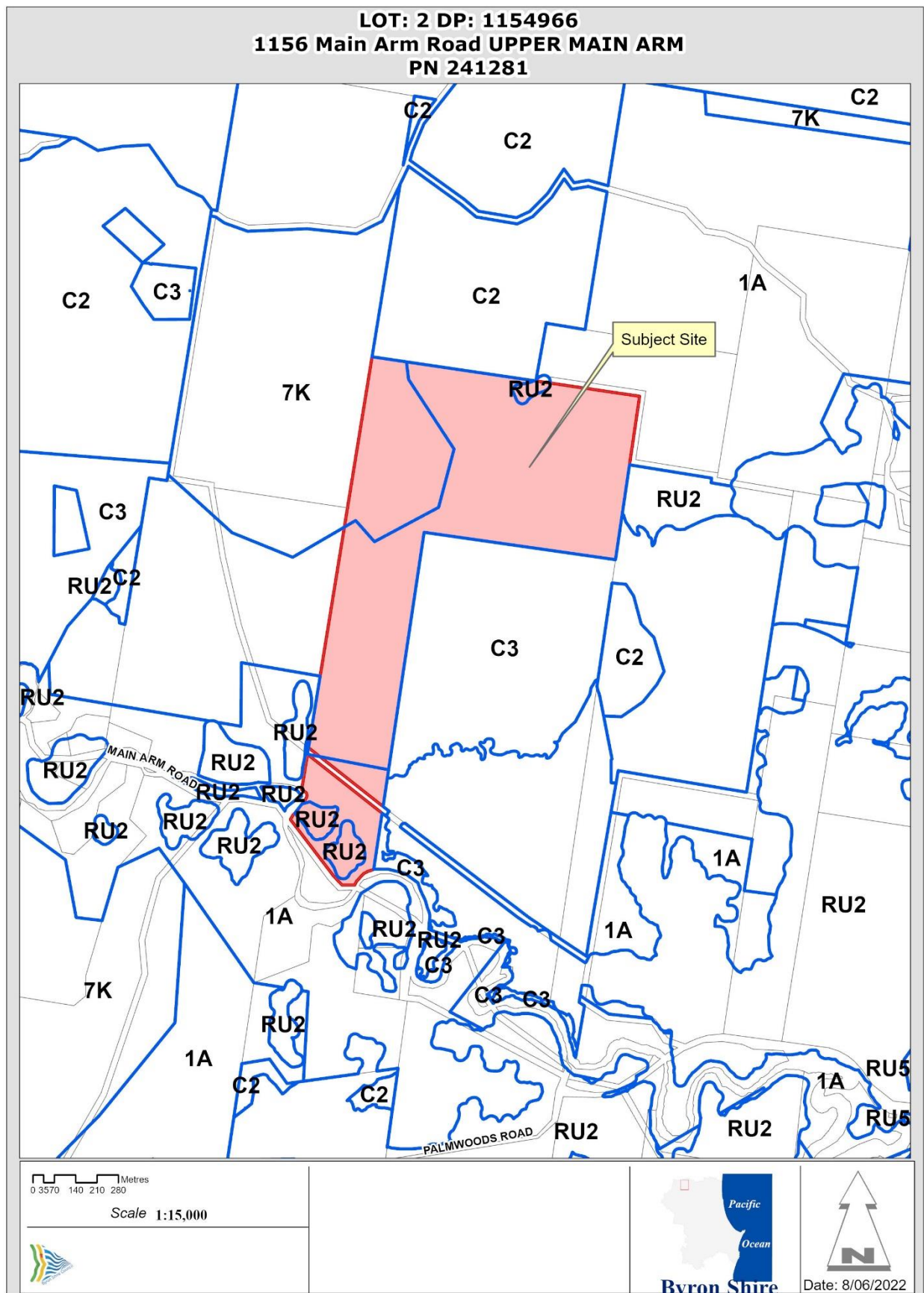
## RECOMMENDATION:

**That Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.683.1 for Use of Zipline Ancillary to a Primitive Camping Ground, be granted as a deferred commencement consent subject to the conditions in Attachment 3.**

## Attachments:

- 1 DA 10.2021.683.1 - Site plan, E2021/133471 
- 2 DA 10.2021.683.1 - Variation request, E2022/53474 
- 3 DA 10.2021.683.1 - Recommended conditions, E2022/54860 

# BYRON SHIRE COUNCIL





# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.10

### Assessment:

#### 1. INTRODUCTION

#### History/Background

Council records show the following development approval history for the property:

<u>Application / Register No</u>	<u>Description</u>	<u>Status</u>	<u>Date</u>
<u>10.2019.620.1</u> DevelopmentApplication	Subdivision of Two (2) Lots	APPR	07/10/2020
<u>5.1994.498.1</u> DevelopmentApplications	Tourist Facility	REFD	16/02/1995
<u>10.2007.801.1</u> DevelopmentApplication	Boundary Adjustment	WITH	10/03/2008
<u>10.2009.45.1</u> DevelopmentApplication	Rural Subdivision (Boundary Adjustment) to create 2 lots of	REFU	04/06/2009
<u>10.2019.620.1</u> DevelopmentApplication	Subdivision of Two (2) Lots	APPR	07/10/2020
<u>10.2021.683.1</u> DevelopmentApplication	Use of Zipline Ancillary to a Primitive Camping Ground	Pending	

<u>Module</u>	<u>Memo Type</u>	<u>Date</u>	<u>Nbr</u>	<u>Comments</u>
Property	BA pre Munics		1	BA Number 912165 BA Type AMENITIES Determined By LRJ Application Date 18/04/1991 Determination Date 17/09/1991 Value 52000 ? 0
<u>Module</u>	<u>Memo Type</u>	<u>Date</u>	<u>Nbr</u>	<u>Comments</u>
Property	DA pre Munics		1	DA Number 890173 Type CAM Determined by MPR Determination Type C Application Date 31/03/1989 Determination Date 07/07/1989 Application Fee 205 Value of Development 0 CAMPING GROUND
...	..	-	...	-

Of key relevance to this application is DA 5.1989.173.1 being the original approval for the primitive campground on the property (Lot 5 DP 588313). Only a site plan could be located in the records for this DA (see Figure 1).

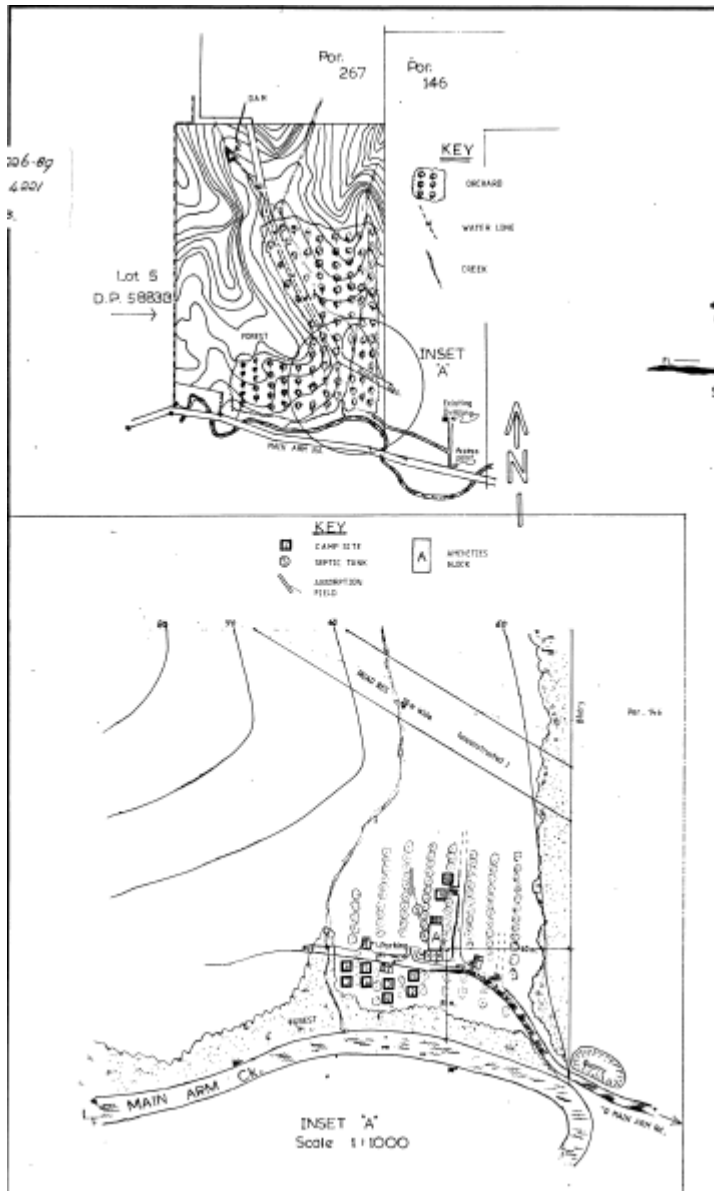


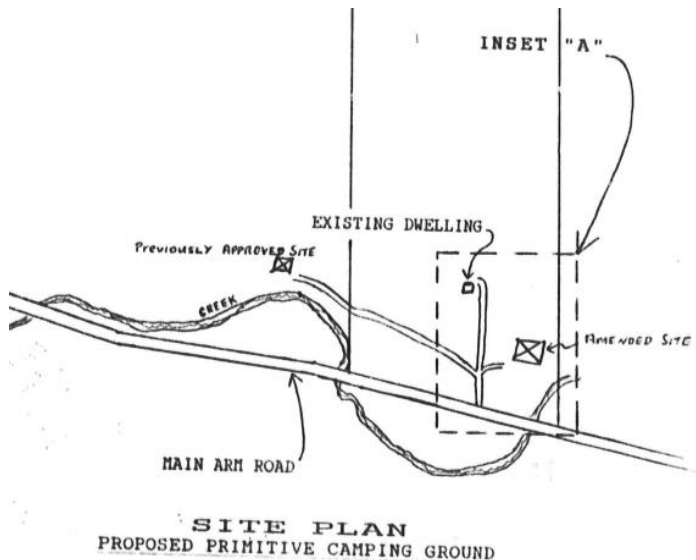
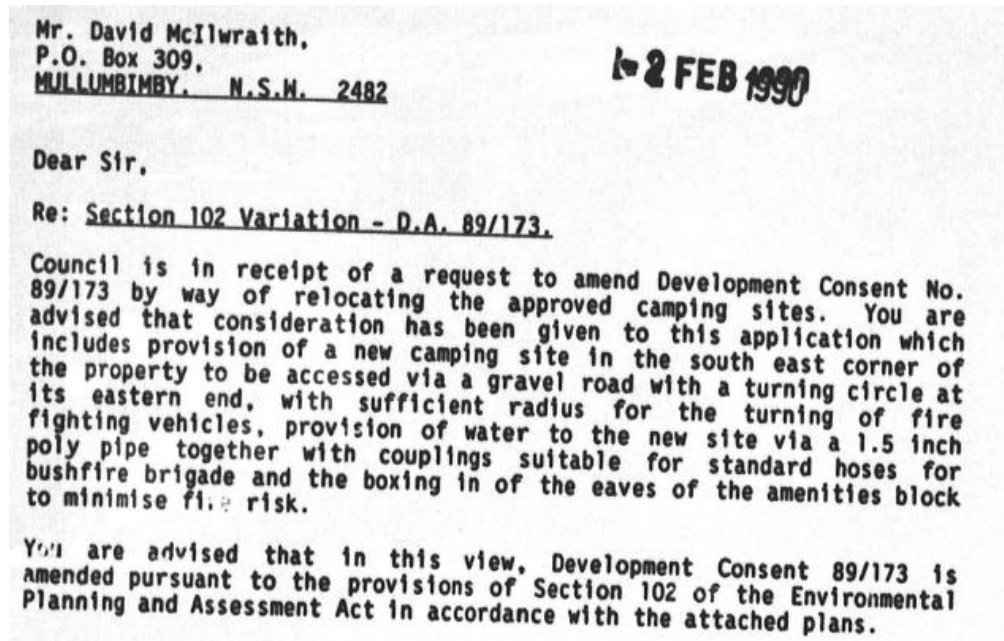
Figure 1. Site plan for DA 5.1989.173.1 – Primitive Camping Ground

- 5 The site plans (Figure 1) and file correspondence indicate that the campground is set-up and operating further east to the originally approved location and that this amended location (i.e., the current location) was approved (see extracts below).

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An AHIMS search for 1156 Main Arm Road did not identify any aboriginal sites or places.

5

### Description of the proposed development

This application seeks approval for Use of Zipline Ancillary to a Primitive Camping Ground. The zipline (and campground) is located near the southern boundary of Lot 2 DP 1154966 and proximate to Main Arm Road (see Figure 2).

10

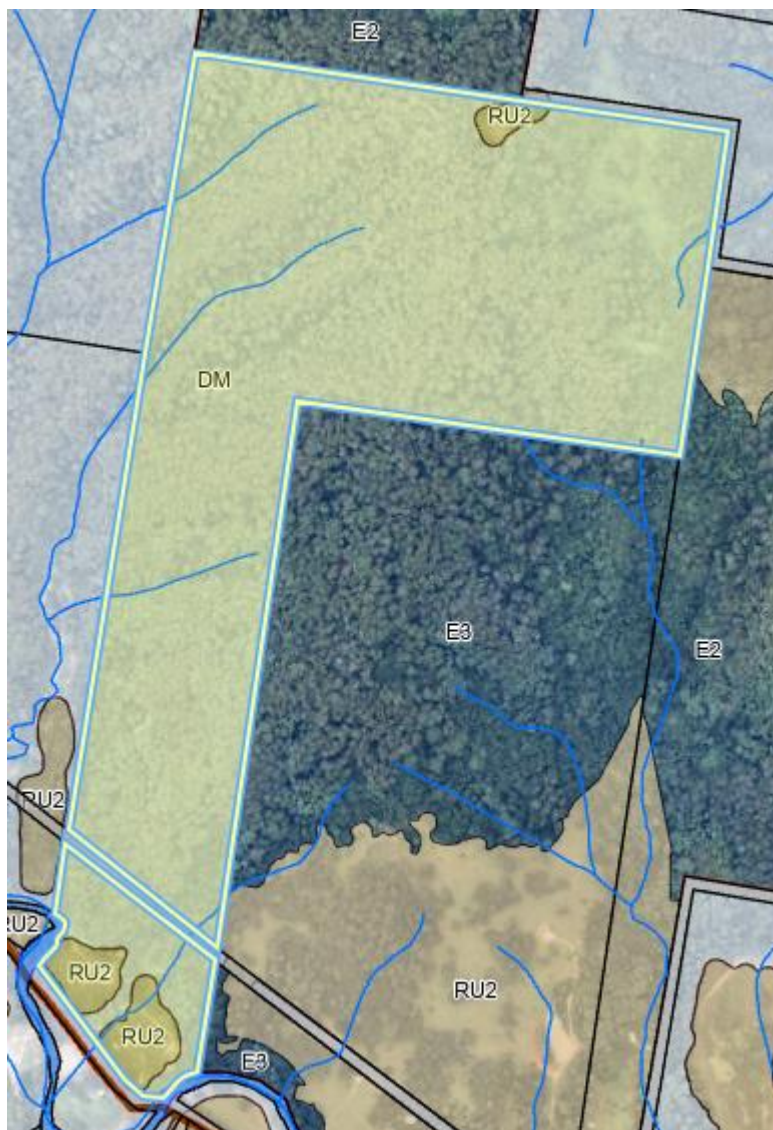


Figure 2. Site plan showing location of the zipline.

## Description of the site

5





**Figure 3. Aerial photo with land zoning overlay. Subject property is identified by yellow polygon.**

Land is legally described	<u>LOT: 2 DP: 1154966</u> , LOT: 5 DP: 588313
Property address	1156 Main Arm Road UPPER MAIN ARM
Land is zoned:	RU2 Rural Landscape / PART 1A General Rural / 7K Habitat Zone Byron LEP 1988
Land area is:	78.49ha
Property is constrained by:	<ul style="list-style-type: none"> <li>• Bushfire prone land</li> <li>• High Environmental Value vegetation</li> <li>• Powerlines</li> </ul>

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	<ul style="list-style-type: none"><li>• Biodiversity values/key fish habitat</li><li>• Koala potential habitat</li><li>• Coastal wetland buffer</li></ul>	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

The property has biodiversity values mapped land however no works/use within mapped lands are proposed. Accordingly, there is no requirement for a BDAR to be prepared for this application.

#### 5 2. SUMMARY OF REFERRALS

Referral	Issue
Building Surveyor	No objections subject to conditions.

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

- 10 Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document '*Planning for Bush Fire Protection 2019*'. The site is bush fire prone land. The development application is for a Class 10 structure (8.3.2) and there no specific requirements for the subject development.
- 15 Effect of 10/50 rule on significant vegetation: Nil. The property is not within an area where the 10/50 clearing code applies and the code would not apply to a zipline.





Photo 1 – Campground access from Main Arm Road



Photo 2 – Zipline. View east from low-point to high-point



Photo 3 – Zipline low-point (western end)



Photo 4 – Zipline high-point (eastern end)

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

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

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### State Environmental Planning Policies (SEPP)

Consolidated SEPPs 2021

Considerations	Satisfactory	Unsatisfactory
<p><i>Biodiversity and Conservation SEPP 2021</i></p> <p>Consideration: Council's GIS shows some areas of the property are mapped as potential koala habitat however none of the property is mapped as 'preferred' koala habitat and no koala sighting have been recorded. On the basis of this information, the property is not considered to be core koala habitat and the DA may be granted under this SEPP.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>Resilience and Hazards SEPP 2021</i></p> <p>Consideration: The zipline is not within the coastal wetland or associated proximity area. Significant impacts on the listed matters will not result from the use of the zipline.</p> <p>The subject property is not mapped as contaminated in Council's GIS and no works are proposed by this application.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

### 5 4.2A Byron Local Environmental Plan 2014 (LEP 2014)

Note: The zipline is predominantly within the RU2 zone with the eastern end of the zipline marginally encroaching into the 1(a) zone.

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

Part 1	<input checked="" type="checkbox"/> 1.1   <input checked="" type="checkbox"/> 1.1AA   <input checked="" type="checkbox"/> 1.2   <input checked="" type="checkbox"/> 1.3   <input checked="" type="checkbox"/> 1.4   <input checked="" type="checkbox"/> Dictionary   <input checked="" type="checkbox"/> 1.5   <input checked="" type="checkbox"/> 1.6   <input checked="" type="checkbox"/> 1.7   <input checked="" type="checkbox"/> 1.8   <input type="checkbox"/> 1.8A   <input checked="" type="checkbox"/> 1.9   <input type="checkbox"/> 1.9A
Part 2	<input checked="" type="checkbox"/> 2.1   <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table   <input type="checkbox"/> 2.4   <input type="checkbox"/> 2.5   <input type="checkbox"/> 2.6   <input type="checkbox"/> 2.7   <input type="checkbox"/> 2.8
Part 3	<input type="checkbox"/> 3.1   <input type="checkbox"/> 3.2   <input type="checkbox"/> 3.3

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Part 4	<input type="checkbox"/> 4.1   <input type="checkbox"/> 4.1A   <input type="checkbox"/> 4.1AA   <input type="checkbox"/> 4.1B   <input type="checkbox"/> 4.1C   <input type="checkbox"/> 4.1D   <input type="checkbox"/> 4.1E   <input type="checkbox"/> 4.1F   <input type="checkbox"/> 4.2   <input type="checkbox"/> 4.2A   <input type="checkbox"/> 4.2B   <input type="checkbox"/> 4.2C   <input type="checkbox"/> 4.2D   <input checked="" type="checkbox"/> 4.3   <input type="checkbox"/> 4.4   <input type="checkbox"/> 4.5   <input type="checkbox"/> 4.6
Part 5	<input type="checkbox"/> 5.1   <input type="checkbox"/> 5.2   <input type="checkbox"/> 5.3   <input type="checkbox"/> 5.4   <input type="checkbox"/> 5.6   <input type="checkbox"/> 5.7   <input type="checkbox"/> 5.8   <input type="checkbox"/> 5.10   <input type="checkbox"/> 5.11   <input type="checkbox"/> 5.12   <input type="checkbox"/> 5.13   <input type="checkbox"/> 5.14   <input type="checkbox"/> 5.15   <input type="checkbox"/> 5.16   <input type="checkbox"/> 5.17   <input type="checkbox"/> 5.18   <input type="checkbox"/> 5.19   <input type="checkbox"/> 5.20   <input type="checkbox"/> 5.21   <input type="checkbox"/> 5.22
Part 6	<input type="checkbox"/> 6.1   <input type="checkbox"/> 6.2   <input type="checkbox"/> 6.4   <input type="checkbox"/> 6.5   <input checked="" type="checkbox"/> 6.6   <input type="checkbox"/> 6.7   <input type="checkbox"/> 6.8   <input type="checkbox"/> 6.9   <input type="checkbox"/> 6.11   <input type="checkbox"/> 6.12   <input type="checkbox"/> 6.13   <input type="checkbox"/> 6.14   <input type="checkbox"/> 6.15

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

- 5
- (a) The proposed development is not expressly defined in the LEP 2014 Dictionary, however, is considered as an ancillary activity to the previously approved *primitive camping ground* as defined within the BLEP 1988 (Note: Camping Grounds are permissible in zone RU2).
  - (b) The land is within the RU2 Rural Landscape according to the Land Zoning Map;
  - (c) The proposed development is permitted with consent; and
  - (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
• To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	The zipline will not hinder this objective
• To maintain the rural landscape character of the land.	The zipline does not impact on the landscape character
• To provide for a range of compatible land uses, including extensive agriculture.	The zipline will not hinder this objective
• To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.	The zipline is complimentary, and ancillary, to the approved primitive camping ground
• To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.	The zipline does not impact on the scenic quality of the locality.

**4.3 Height of buildings**

The zipline termini are structures and fall within the definition of 'buildings'. The western zipline terminus is within zone RU2 but is ~3.2m above ground and less than the 9m height limit.

5

The remaining underlined clauses have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development complies with all of these clauses (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to Clause 4.3 Height of buildings which is considered further as follows:

10

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

BLEP 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:

15

Part 1	<input checked="" type="checkbox"/> 1   <input checked="" type="checkbox"/> 2   <input checked="" type="checkbox"/> 2A   <input checked="" type="checkbox"/> 3   <input checked="" type="checkbox"/> 4   <input checked="" type="checkbox"/> 5   <input checked="" type="checkbox"/> LEP 1988 Dictionary   <input checked="" type="checkbox"/> 7
Part 2	<input checked="" type="checkbox"/> 8   <input checked="" type="checkbox"/> 9
Part 3	<input type="checkbox"/> 10   <input type="checkbox"/> 11   <input type="checkbox"/> 11A   <input type="checkbox"/> 11B   <input type="checkbox"/> 12   <input type="checkbox"/> 13   <input type="checkbox"/> 14   <input type="checkbox"/> 15   <input type="checkbox"/> 16   <input type="checkbox"/> 17   <input type="checkbox"/> 17A   <input type="checkbox"/> 17B   <input type="checkbox"/> 18   <input type="checkbox"/> 19   <input type="checkbox"/> 20   <input type="checkbox"/> 22   <input type="checkbox"/> 23   <input type="checkbox"/> 24   <input type="checkbox"/> 25   <input type="checkbox"/> 27   <input type="checkbox"/> 29   <input type="checkbox"/> 29AA   <input type="checkbox"/> 29A   <input type="checkbox"/> 30   <input type="checkbox"/> 31   <input type="checkbox"/> 32   <input type="checkbox"/> 33   <input type="checkbox"/> 34   <input type="checkbox"/> 35   <input checked="" type="checkbox"/> 36   <input type="checkbox"/> 37   <input type="checkbox"/> 38   <input type="checkbox"/> 38A   <input type="checkbox"/> 38B   <input type="checkbox"/> 39   <input type="checkbox"/> 39A   <input type="checkbox"/> 39B   <input type="checkbox"/> 39C   <input checked="" type="checkbox"/> 40   <input type="checkbox"/> 41   <input type="checkbox"/> 42   <input type="checkbox"/> 43   <input type="checkbox"/> 44   <input checked="" type="checkbox"/> 45   <input type="checkbox"/> 46   <input type="checkbox"/> 47   <input type="checkbox"/> 47AA   <input type="checkbox"/> 47A   <input type="checkbox"/> 48   <input type="checkbox"/> 48A   <input type="checkbox"/> 49   <input type="checkbox"/> 51   <input type="checkbox"/> 52   <input type="checkbox"/> 53   <input type="checkbox"/> 54   <input type="checkbox"/> 55   <input type="checkbox"/> 56   <input type="checkbox"/> 57   <input type="checkbox"/> 58   <input type="checkbox"/> 59   <input type="checkbox"/> 60   <input type="checkbox"/> 61   <input type="checkbox"/> 62   <input type="checkbox"/> 63   <input type="checkbox"/> 64   <input checked="" type="checkbox"/> 64A   <input type="checkbox"/> 64B   <input type="checkbox"/> 64C   <input type="checkbox"/> 64D

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

- (a) The proposed development is ancillary to "primitive camping ground" as defined in the LEP 1988 Dictionary;
- (b) The land is within the LEP1988 1(a) General Rural 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:

20

<b>Zone Objective</b>	<b>Consideration</b>
(a) to encourage and permit a range of uses creating a pattern of settlement, at a	The use of the zipline is associated with an approved tourism use and is not

<p>scale and character that maintains or enhances the natural, economic, cultural, social and scenic amenity of the rural environment of the Shire of Byron,</p> <p>(b) to encourage and permit a pattern of settlement which does not adversely affect the quality of life of residents and visitors and maintains the rural character,</p> <p>(c) to ensure development only occurs on land which is suitable for and economically capable of that development and so as not to create conflicting uses,</p> <p>(d) to allow the use of land within the zone for agricultural purposes and for a range of other appropriate purposes whilst avoiding conflict between other uses and intensive agriculture,</p> <p>(e) to identify lands (shown hatched on the map) which in the opinion of the council possess a limited capability for more intensive uses or development,</p> <p>(f) to restrict the establishment of inappropriate traffic generating uses along main road frontages other than in roadside service areas,</p> <p>(g) to ensure sound management of land which has an extractive or mining industry potential and to ensure that development does not adversely affect the potential of any existing or future extractive industry,</p> <p>(h) to enable the provision of rural tourist accommodation and facilities only where such facilities are compatible with the form and density of the nature of the locality, and</p> <p>(i) to permit the development of limited light industries which do not pose any adverse environmental impact, (e.g., software manufacture and film processing), and</p> <p>(j) to ensure that the development and use of land shown cross-hatched on the map adjacent to areas of significant vegetation and wildlife habitat do not result in any</p>	<p>contrary to the relevant zone objectives</p>
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degradation of that significant vegetation and wildlife habitat, and that any development conserves and protects and enhances the value of the fauna and flora.	
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#### 40 Height

- 5 The zipline termini are structures and fall within the definition of 'buildings'. The eastern zipline terminus is within zone 1(a) and the platform is ~11.2m above ground and exceeds than the 9m height limit (see Photo 4). The application states that "*The use of the platform is entirely cosmetic. It is not required for either safety of structural purposes*". Following a request by Council, the applicant provided a written request to vary the development standard with respect to height of the structure on 5/6/2022 (E2022/53251) which is considered below.
- 10 The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development complies with all of these clauses (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to Clause 40 Height which is considered further as follows:



**Clause 64A Exceptions to Development Standards**

Applicant has sought a variation to the Height (clause 40) development standard by proposing a zipline platform with a height of 11.2m (~24% variation to the standard).

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

- A reduction in height for the zipline platform would lead to a “reduction in the margin of safety for users”.
- 10 • There will be “no discernible or detrimental environmental effect” associated with the height of the zipline platform
- A lower platform height “would detract from the novelty, excitement and enjoyment of the ride”.

15 It is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental grounds to vary the development standard for the following reasons:

- the height and scale of the zipline platform does not conflict with the location, surrounding development or environmental characteristic of the land.
- the development standard is primarily targeted towards buildings, rather than a small (~6m<sup>2</sup>), open platform in a tree.
- 20 • the minor scale and obscured location (within and surrounding a tree) of the structure are such that visual impacts of the development are negligible

25 Further the proposal is in the public interest having regards to the relevant objective of the development standard being “*to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land*” as the structure is relatively small in area (~6m<sup>2</sup>), is open (without walls or roof) and located in a tree.

The concurrence of the Planning Secretary is not required. Concurrence may be assumed by Council (but not a delegate of Council) under Planning Circular PS 20-002.

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

- 30 a) The development is satisfactory having regard to the requirements outlined in clause 64A;
- b) The development is satisfactory having regard to applicable Department of Planning, Infrastructure and Environment Circulars;
- c) The development is satisfactory having regard to relevant caselaw;

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- d) The DA demonstrates that compliance is with the development standard is unreasonable and unnecessary;
- e) The DA demonstrates that there are sufficient environmental planning grounds to justify contravening the standard;
- 5 f) The DA demonstrates that that the development in the public interest;
- g) The DA demonstrates that the development is consistent with the objectives of the standard and the zone; and
- h) The DA demonstrates the grounds of the request are particular to the proposed development on this site, and that there is something particular to the development on this site to justify the variation.
- 10

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

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

15

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

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

20

Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input checked="" type="checkbox"/> B1   <input type="checkbox"/> B2   <input type="checkbox"/> B3   <input type="checkbox"/> B4   <input type="checkbox"/> B5   <input type="checkbox"/> B6   <input type="checkbox"/> B7   <input checked="" type="checkbox"/> B8   <input type="checkbox"/> B9   <input type="checkbox"/> B10   <input type="checkbox"/> B11   <input type="checkbox"/> B12   <input checked="" type="checkbox"/> B13   <input type="checkbox"/> B14
Part C Chapters:	<input type="checkbox"/> C1   <input type="checkbox"/> C2   <input type="checkbox"/> C3   <input type="checkbox"/> C4
Part D Chapters	<input type="checkbox"/> D1   <input type="checkbox"/> D2   <input checked="" type="checkbox"/> D3   <input type="checkbox"/> D4   <input type="checkbox"/> D5   <input type="checkbox"/> D6   <input type="checkbox"/> D7   <input type="checkbox"/> D8   <input type="checkbox"/> D9
Part E Chapters	<input type="checkbox"/> E1   <input type="checkbox"/> E2   <input type="checkbox"/> E3   <input type="checkbox"/> E4   <input type="checkbox"/> E5   <input type="checkbox"/> E6   <input type="checkbox"/> E7   <input type="checkbox"/> E8   <input type="checkbox"/> E9   <input type="checkbox"/> E10

#### B1: Biodiversity

The zipline and associated structures encroach areas of vegetation mapped as high environmental value vegetation (subtropical rainforest), key fish habitat and koala potential habitat. Consequently, the development does not meet ecological setbacks to 'red-

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flagged' areas (B1.2.1). However, a variation to the ecological setbacks is reasonable in the circumstances as:

- no tree removal is required or proposed;
- the scale and impact of the development is minimal;
- 5 • the development does not require a managed bush fire setback;
- the development does not trigger clearing entitlements under other mechanisms (e.g., NSW RFS 10/50 Vegetation Clearing Code);
- there will be no net loss of biodiversity; and
- 10 • an arborists report was provided with the application that states "... all the anchor and support trees are adequate and suitable in terms of their use for the zipline both as anchor trees and support trees".

#### D3: Tourist Accommodation

Although this chapter is applicable to the zipline (particularly D3.3.3 Caravan Parks and Camping Grounds), as ancillary development to the campground, there are no provisions that are directly relevant to the proposal.

These checked Parts/Chapters 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 all relevant Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

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

DCP 2010 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because its purpose is to provide planning strategies and controls for various types of development permissible in accordance with LEP 1988. The DCP 2010 Chapters/Parts that are checked below are of relevance to the proposed development:

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

#### Chapter 1: Part C – Residential Development

Although this chapter is applicable to the zipline (particularly C10. Caravan Parks and Camping Grounds), as ancillary development to the campground, there are no provisions that are directly relevant to the proposal.

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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).

5

#### 4.5 Environmental Planning and Assessment Regulation 2000 considerations

	Applicable to the proposal:	Considered the control as it relates to the proposal:	If this control is applicable, does the proposal comply?
Clause 92 - Additional matters that consent authority must consider	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> NA	<input checked="" type="checkbox"/> NA
Clause 93 Fire safety and other considerations	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> NA	<input checked="" type="checkbox"/> NA
Clause 94 - Consent authority may require buildings to be upgraded	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> NA	<input checked="" type="checkbox"/> NA
Clause 94A - Fire safety and other considerations applying to erection of temporary structures	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input checked="" type="checkbox"/> NA	<input checked="" type="checkbox"/> NA

10

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

Impact on:	Likely significant impact/s?
<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.

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<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.

No Council Policies that are applicable to the proposed development were identified.

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

The site is suitable for the proposed development.

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

The development application was publicly exhibited

There were **no** submissions made on the development application.

#### 4.9 Public interest

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

### 5. DEVELOPER CONTRIBUTIONS

#### 5.1 Water & Sewer Levies

No Section 64 levies will be required.

#### 5.2 Developer Contributions

No Developer Contributions will be required.

### 6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

**7. CONCLUSION**

The DA proposes Use of Zipline Ancillary to a Primitive Camping Ground (known as 'Macca's Campground) at 1156 Main Arm Road, Upper Main Arm. The zipline has already been constructed and a building information certificate is recommended as a deferred commencement requirement. The starting platform for the zipline is 11.2m high and above the 9m building height limit however the platform is relatively small and is located such that visual impacts are minimal. The application appropriately addresses the relevant constraints applying to the site and is recommended for approval as a deferred commencement consent and subject to the conditions attached to this Report.

10



## **Report No. 13.11 Place Planning Collective Expression of Interest Candidate Selection**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Kristie Hughes, Place Liaison Officer

5 **File No:** I2022/872

### **Summary:**

10 In February 2022 Council resolved to commence an Expression of Interest (Eoi) process to appoint new community representatives to the Place Planning Collective (PPC) replacing members who have reached the end of their term (Res **22-059**). This process has now been completed. 32 applications were received in total.

As stipulated in the Place Planning Charter, “the collective will be made of up to twelve community members and up to three nominated Councillors” with members being appointed for a two-year term.

15 The Eoi specifically sought applicants to represent the Bangalow, Mullumbimby and Byron Arts and Industry Estate communities. There are currently nine places available with four allocated to Mullumbimby, three places available for Bangalow and two for the Byron Arts and Industry Estate.

20 Previously the Place Planning Collective monthly meetings were held during business hours, which has been a barrier for some Councillors and community members to attend. The Eoi surveyed applicants about suitable meeting times and consequently, meetings are now scheduled at a later timeslot with the aim of accommodating and engaging a broader spectrum of the community.

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### **RECOMMENDATION:**

30 1. That Council appoints nine Place Planning Collective members from the following: Attachment 1 (E2022/65420 CONFIDENTIAL Place Planning Collective applicant summary 2022), Attachment 2 (E2022/63168 CONFIDENTIAL Place Planning Collective Eoi submission forms).

2. That selected members are distributed as follows:

Four members representing Mullumbimby are: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_.

Three members representing Bangalow are: \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_.

35 Two members representing Byron Arts & Industry Estate are: \_\_\_\_\_ and \_\_\_\_\_.

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.11

### **Attachments:**

- 1 Confidential - Place Planning Collective Eol applicant summary 2022, E2022/65420
- 5 2 Confidential - Place Planning Collective Eol submission forms 2022, E2022/63168

## **Report**

### **The Place Planning Collective**

5 The PPC is a group of community members, staff and Councillors who guide and manage the implementation of the Mullumbimby, Bangalow, Federal, and Byron Arts and Industry Estate masterplans.

The Place Planning Collective Charter provides guidelines for the working group. The charter was endorsed by Council in May 2020 (Res **20-217**).

Further information on the Place Planning Collective, its charter, members, and meeting minutes can be found on Council's website here:

10 <https://www.byron.nsw.gov.au/Community/Place-planning/Place-Planning-Collective>

### **Expression of Interest Process**

In February 2022 Council resolved to commence an expression of interest process to recruit additional community representatives as multiple members have reached the end of their initial tenure (Res **22-059**).

15 As stipulated in the Place Planning Charter, "the collective will be made of up to twelve community members and up to three nominated Councillors" with members being appointed for a two-year term.

The appointed Councillors are: Cr Lyon, Cr Ndiaye and Cr Swivel as members of the Place Planning Collective and Cr Dey as an alternate.

20 The expression of interest was advertised on Council's website for five weeks (May 25 2022 to July 3 2022). In addition to advertising the Eol on Council's website and in the Echo, the invitation was extended to local community groups, business chambers, schools and preschools, along with previous participants of relevant masterplan working groups. This was to target a local cohort, more likely to be interested in participating in the PPC.

25 As per the Eol criteria new appointments are required to be affiliated with the Mullumbimby, Bangalow and Byron Arts and Industry Estate communities and masterplans. As the PPC is oriented around masterplans and managing their actions previous experience has shown that members without a direct interest in one of the relevant masterplans have been disengaged. It should be noted that five expressions of  
30 interest received during this process appeared to be unlinked to an existing Masterplan.

Previously the Place Planning Collective monthly meetings were held during business hours, which has been a barrier for some Councillors and community members to attend. The Eol surveyed applicants about suitable meeting times and consequently, meetings are now scheduled at a later timeslot (monthly, Tuesdays 3.30 to 5.30pm) with the aim of  
35 accommodating and engaging a broader spectrum of the community.

In total 32 submissions were received, five of those are from existing members wishing to continue their membership. There are positions available for nine members to join the Collective with three positions already filled by newer members.

## **Strategic Considerations**

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

<b>CSP Objective</b>	<b>L2</b>	<b>CSP Strategy</b>	<b>L3</b>	<b>DP Action</b>	<b>L4</b>	<b>OP Activity</b>
Community Objective 4: We manage growth and change responsibly	4.1	Support the visions and aspirations of local communities through place-based planning and management	4.1.1	Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.1.2	Continue to implement actions from Our Mullumbimby Masterplan, Bangalow Village Plan and Byron Arts and Industry Estate Plan

## **Recent Resolutions**

- **22-059:** Council meeting February 24 2022 – PPC update and EOI for upcoming vacancies
- **21-188:** Council Meeting 10 June 2021 – additional community members
- 10 • **20-703:** Council Meeting 17 December 2020 – end of 2020 update
- **19-690:** Council meeting 12 December 2019 – initial EOI nominations
- **19-451:** Council Meeting 19 September 2019 – resolution to establish the Collective

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

Nil

### **15 Consultation and Engagement**

As described within the report.

**Report No. 13.12 PLANNING - Quarter 2 SEPP Variations April to June 2022**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Chris Larkin, Manager Sustainable Development

5 **File No:** I2022/903

**Summary:**

This report is provided as a requirement of the NSW Department of Planning Circular PS17-006, for reporting on exceptions to development standards for applications made under clause 4.6 of the Standard Instrument LEP and Clause 6 of SEPP 1.

10 **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:**

20 **That Council adopts the report on exceptions to development standards for the period April to June 2022.**

# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.12

### Report

This report is provided as a requirement of the NSW Department of Planning Circular PS17-006, for reporting on exceptions to development standards for applications made under Clause 4.6 of the Standard Instrument LEP and Clause 6 of SEPP 1.

5 SEPP 1 applies to development applications submitted under Byron Local Environmental Plan 1988. Clause 4.6 applies to development applications submitted under Byron LEP 2014.

10 The period of reporting is for the April to June 2022 Quarter for the following DAs:

#### Quarter 2 April to June 2022

DA No.	10.2021.384.1
Development	Mixed
Property:	90-96 Jonson Street BYRON BAY
Lot and DP:	LOT: 5 DP: 619224
Zoning:	B2 Local Zone
Development Standard being varied:	<b>Clause 4.3 Height of building</b>
Justification Summary	<p>"The height of the proposal is generally compliant with the 11.5m except for the swimming pool, pool terrace fence, stairs, lift core and lift lobby which have varying non-compliances with the 11.5m of up to a maximum height of 14.58m. 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.</p> <p>Notably, it is the lift core that mostly exceeds the height limit in excess of 10%."</p>
Extent of variation	Varies – max 27%
Concurrence	Northern Regional Planning Panel
Determined Date	27/5/2022
Determined By	NRPP
DA No.	10.2021.364.1
Development	Bioenergy Facility
Property:	45 Wallum Place BYRON BAY
Lot and DP:	LOT: 2 DP: 706286
Zoning:	"RU2 Residential Zone / t DM Deferred Matter under Byron LEP 1988"
Development Standard being varied:	<b>Clause 4.3 Height of building</b>



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Justification Summary	<p>"- No alternative design solution will allow the BEF to operate successfully without exceeding 9m in height from the existing ground level.</p> <p>- The proposed BEF is set back over 200 metres from Wallum Place, behind the BBSTP, and 2.5 metres below the BBSTP ground level. The proposed BEF buildings will be compatible with the character of the water and waste treatment infrastructure already located on the lot.M9</p> <p>- Topography and existing vegetation character screen the BEF from all visual receptors. This conclusion is further supported a Visual Impact Assessment of the proposed BEF (Appendix L of the EIS).M11"</p>
Extent of variation	50.7%
Concurrence	Northern Regional Planning Panel
Determined Date	26/05/2022
Determined By	NRPP
<b>DA No.</b>	<b>10.2021.411.1</b>
Development	Community Title Subdivision consisting of Three (3) Community Title Lots and One (1) Neighbourhood Property
Property:	139 Broken Head Reserve Road BROKEN HEAD
Lot and DP:	LOT: 2 DP: 1246381
Zoning:	C2 Environmental Conservation / SP3 Tourist - Byron LEP 2014, 7(f1) Coastal - Byron LEP 1988
Development Standard being varied:	<b>Minimum lot size (clauses 4.1 and 4.1AA Byron LEP 2014 and clause 11 Byron LEP 1988)</b>
Justification Summary	The community title subdivision will not create any new development opportunities, the community title subdivision ensures the existing tourist development pattern on the land remains in perpetuity and it [the subdivision] allows a form of ownership where all the owners can share equally in the value of the restored bushland on the property and use their collective resources to ensure the ongoing conservation of the land
Extent of variation	Varies - max. 97.9%
Concurrence	Council
Determined Date	23/06/22
Determined By	Council
<b>DA No.</b>	<b>10.2021.451.1</b>
Development	Alterations and Additions to Existing Dwelling House and Tree Removal Six (6) Trees
Property:	31 Pacific Vista BYRON BAY
Lot and DP:	LOT 140 DP: 731315
Zoning:	R2 Low density Residential

## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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<b>Development Standard being varied:</b>	<b>Clause 4.3 Height of building</b>
Justification Summary	variation is minor, restricted to rear of the dwelling, results from previous development that lowered the ground level, negligible visual impacts on street front
Extent of variation	7.7%
Concurrence	
Determined Date	11/05/2022
Determined By	Council (delegate)

## Strategic Considerations

### *Community Strategic Plan and Operational Plan*

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CSP Objective	CSP Strategy	DP Action	Code	OP Activity
<b>4: Ethical Growth</b> We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.1: Development assessment - Manage development through a transparent and efficient assessment process	4.1.1.1	Assess and Determine DA's accordance with the relevant legislation

### *Legal/Statutory/Policy Considerations*

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The report is provided as a requirement of [NSW Department of Planning circular PS 17-006](#).

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

**Report No. 14.1      Report of the Local Traffic Committee  
Meeting held on 12 August 2022**

5    **Directorate:**                      Infrastructure Services

**Report Author:**               Shelley Flower, Executive Assistant IS

**File No:**                         I2022/1045

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10   **Summary:**

The attachment to this report provides the minutes of the Local Traffic Committee (LTC) Meeting held on 12 August 2022 for determination by Council.

Council's action on the LTC advice will be:

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

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

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**RECOMMENDATION:**

- 5    1.    **That Council notes the minutes of the Local Traffic Committee Meeting held on 12 August 2022.**
2.    **That Council adopts the following Committee Recommendation:**
- Report No. 6.1 Proposed Accessible Parking Bay - Jonson St, Byron Bay**  
      File No: I2022/916

**RECOMMENDATION:**

**That the Local Traffic Committee endorses the installation of an accessible parking space adjacent 103 Jonson Street, Byron Bay as per Attachment 1.**

3.    **That Council notes the following Committee Recommendations:**

**Report No. 6.2 Byron Writers Festival 2022 - TMP**  
      File No: I2022/984

**RECOMMENDATION:**

1.    **That Council endorse the submitted Traffic Management Plan and considers the Traffic Guidance Scheme to be fit for purpose for the Byron Bay Writers Festival on 26-28 August 2022.**
2.    **That the approval is subject to:**
- a)    **Separate approvals by NSW Police and Transport for NSW being obtained.**
  - b)    **The Traffic Guidance Scheme is to operate Thursday 25th August to Sunday 28<sup>th</sup> August.**
  - c)    **The Traffic Guidance Scheme be amended to include west bound event traffic arriving from Byron Town Centre is to be directed down Sunrise Blvd, as a contingency, if east bound traffic on Ewingsdale Rd is queued back to the Hospital Roundabout.**
  - d)    **The Traffic Management Plan be amended to document, the persons who are authorised to change the TGS on the day for unforeseen circumstances.**
  - e)    **The Traffic Guidance Scheme to be implemented by those with**

## BYRON SHIRE COUNCIL

### REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

14.1

- relevant and current Transport for NSW training and accreditation.
- f) That the speed limit be amended from 10kph to 40kph from north of the car park entry to the end of Bayshore Drive.
3. That the event organiser must:-
- a) Advertise the impact of the event via a notice in the local weekly paper a minimum of one week prior to the operational impacts taking effect. The notification must include the event name, specifics of any traffic impacts or road closures and times, alternative route arrangements, event organiser, a personal contact name and a telephone number for all event related enquiries or complaints,
  - b) Notify the public of event details on Council's webpage. Details to be supplied to Council by the event organisers,
  - c) Undertake consultation with community and affected businesses including adequate response/action to any concerns raised,
  - d) Undertake consultation with emergency services and any identified issues addressed including emergency vehicle access,
  - e) Hold \$20m public liability insurance cover which is valid for the event.
4. That the signs and devices necessary to affect the traffic management changes (including all regulatory signage) also be approved.

#### Management Comment:

This item has been approved by Council's General Manager under his Council delegated authority (refer Attachment 2).

4. That Council adopts the following Committee Recommendations:

**Report No. 6.3 DA10.2021.827.1 - Byron Bay Markets (Proposed Road Closures for Monthly Sunday Market)**

File No: I2022/1020

#### **RECOMMENDATION:**

**That the Local Traffic Committee recommend that Council support:**

- 1. The temporary road closure in principle to facilitate the Byron Community Markets and to allow the Development Application to be considered.
- 2. Further reporting to the Local Traffic Committee prior to first event and annually thereafter.

**Attachments:**

- 1 Minutes 12/08/2022 Local Traffic Committee Extraordinary, I2022/1009 

5 **Report**

The attachment to this report provides the minutes of the Local Traffic Committee Meeting of 12 August 2022 for determination by Council. The agenda for this meeting can be located on Council's website at:

[https://byron.infocouncil.biz/Open/2022/08/LTC\\_12082022\\_AGN\\_1559\\_AT\\_EXTRA.PDF](https://byron.infocouncil.biz/Open/2022/08/LTC_12082022_AGN_1559_AT_EXTRA.PDF)

- 10 This report contains the recommendations of the Local Traffic Committee (LTC) meeting held on 12 August 2022.

**Committee Recommendation**

As per the Reports listed within the Local Traffic Committee Meeting of 12 August 2022.

**Financial Implications**

- 15 As per the Reports listed within the Local Traffic Committee Meeting of 12 August 2022.

**Statutory and Policy Compliance Implications**

As per the Reports listed within the Local Traffic Committee Meeting of 12 August 2022.



QUESTIONS WITH NOTICE

**Question with Notice No. 15.1 A Lesser Landslip on Federal Drive**

5     **File No:** I2022/1103

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Cr Dey asks the following questions:

- 10     1.     Is Council aware of the additional landslip that parallels the roadway on its eastern side, immediately above the residence at 532 Federal Drive?
2.     Has a geotechnical assessment been made of this landslip, which is 200m south of the dominant landslip between #532 and the Kings Road intersection?
- 15     3.     If so, does that geotechnical assessment consider causes of the landslip and therefore ways in which future similar landslips can be avoided, or at least ways in which the risk of future landslips can be minimised?
4.     If it does consider such causes, has it considered the impact of long-term land-clearing and recent earthmoving including redirecting water flows on uphill properties immediately west of the site?

20     **Response Director Infrastructure Services:**

Council's Works team are aware of this landslip issue in this locality.

Staff and Geotechnical consultant have met with residents on site and discussed the proposed way forward which staff understand have the residents support.

- 25     Whilst geotechnical assessments have been carried out on Federal Drive and monitoring is continuing in this locality, for this specific slip, the first action requires removal of dense lantana covering the slip area to enable a proper geotechnical assessment to be undertaken. Once that happens the Geotechnical consultant will be in a better position to
- 30     understand the extent and nature of the slip and what remediation works may be required.

- This action has commenced and will inform the bigger remediation design work currently being carried out to remediate the site and adjoining properties where required to provide road support and will include consideration of drainage impacts and future management of
- 35     water flows. Once the Geotechnical results are received, staff will be in a better position to address the individual questions above more specifically.

## Question with Notice No. 15.2 Peer Review of Lot 22 Planning Proposal.

File No: I2022/1108

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Cr Dey asks the following question:

10 A letter of 24 December 2021 from Brett Whitworth of the NSW *Department of Planning, Industry and Environment* was attached to Report 13.3 in the Agenda for Council's meeting of 9 June 2022. On page 1 of the letter, DPIE describes the content of a final peer review report for Council's Lot 22 Planning Proposal by Judith Stubbs and Associates. That report was completed on 24 August 2021 and is attached to the letter.

1. Has the Stubbs peer review report been made public?
2. If not, can it be please?

15 **Response Director Sustainable Environment and Economy:**

Council received a Report No. 13.3 Residential Strategy and Lot 22 Update [Agenda of Ordinary \(Planning\) Meeting - Thursday, 9 June 2022 \(infocouncil.biz\)](#)

20 The Peer Review Report by Judith Stubbs and Associates (as stated above) was referenced in the materials presented to Council, but the full report was inadvertently not attached to the agenda report.

A copy of the report will be made available with all other relevant material relating to the Lot 22 Planning Proposal on the project web page as updated to reflect recent resolutions of Council.