

Agenda Ordinary (Planning) Meeting

Thursday, 13 April 2023



BYRON
SHIRE
COUNCIL

Agenda Ordinary (Planning) Meeting

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

Public access relating to items on this agenda can be made between 9:00am and 9:30am on the day of the meeting. Requests for public access should be made to the General Manager or Mayor no later than 12:00 midday on the day prior to the meeting.

A handwritten signature in black ink that reads "Mark Arnold". The signature is written in a cursive style with a horizontal line at the end.

Mark Arnold
General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

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

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

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.

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BUSINESS OF ORDINARY (PLANNING) MEETING

1. PUBLIC ACCESS
2. APOLOGIES
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 4.14 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

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

MAYORAL MINUTE

Mayoral Minute No. 8.1 Feros Care Village

File No: I2023/511

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I move that Council requests the Board of Feros Care to:

1. Abandon plans to close the Feros Care Village in Byron Bay indefinitely.
- 10 2. Provide a full set of financials for the last three years and the forecast for the current year with line-by-line details of income and expenditure relating to the Byron Bay facility, including projections into the future.
3. Detail any improvements required in order for the facility to maintain accredited in its current form.
- 15 4. Work with residents and their families and interested members of the community to address any funding shortfalls, including by dialogue with State and Federal Governments if there is a systemic issue that is making the facility financially unviable.
- 20 5. Provide an explanation of the “security of tenure” provisions of the Aged Care Act and how that impacts on the future viability of facilities such as Feros Village.

25 **Background Notes:**

Facts:

As the situation surrounding the Feros aged care facility has unfolded over the last 6 weeks, it has become apparent that the decision by the Feros Board to close the facility is premature and has lacked proper process and appropriate consultation. Residents were
30 informed on a Tuesday evening in late February that there would be a meeting on Wednesday morning at 11am to discuss the future of the facility. This did not provide residents any notice to allow their families to attend and they were told at this meeting that the facility would be closing and that everyone would need to be relocated. Given that this was the flagship facility of the Feros organisation and the unique history relating to its
35 inception, this sudden decision is out of order. Proper consultation and collaboration with residents and the local community to understand any potential threats to the viability of the village would seem a minimum requirement before any decision like this is taken. It is a

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MAYORAL MINUTE

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matter of respect to the history of the facility and to the residents and their families there that they be involved in a conversation about any threat to the ongoing viability of the facility before any decision is made.

5 Several speakers spoke passionately at a rally in favour of saving the facility on the 12 March 2023, calling on the Board to shelve the plans and apologise for the hurt caused. To date, the Board has not indicated any change in position and has instead taken out full page ads in the local paper to attempt to explain their decision. A better approach, in my view, would be to abandon any plans to close the facility for the time being until a full and frank disclosure around the financials is had with interested parties so that all people affected can be privy to the information that the Board has and to understand their reasoning to date. This will give interested parties the ability to understand and potentially look for ways to improve the viability of the facility with a view to keeping it open and respecting the legacy of those that were instrumental in raising the funds to open it.

15 One particularly disturbing story relates to how up to three residents were recently moved to the facility from Sydney and elsewhere even though the decision to close the facility had already been made. There has been a complaint lodged recently with the regulator regarding the conduct of Feros Care and this will need to be heard as well to ensure due process has been followed at all times. It is also very distressing to hear that one of the residents who moved recently following the decision to close the facility has taken their own life.

25 History relating to George Feros (thanks to Maree Eddings): George was a humble, eccentric and lovable Greek immigrant who spent most of his 78 years in Byron Bay. His passion was to establish a care home for the aged. This passion was born from needing to support his aging parents and he dreamed up a place where people could grow old gracefully. George first started his fundraising in 1976, becoming a legend by ringing his bell and riding the streets of Byron collecting \$182,000 through the generosity of the community to make his dream a reality. George Feros passed away in 1981. To keep his dream alive, committees were then set up, led by the Matron of the Byron Bay Hospital, Shirley Nelson. The fundraising continued to make this dream a reality with a total of \$620,000 raised by the local Byron Bay community. This combined with the \$182,000 George had raised, the Council donated \$100,000, the State Government \$30,000 and the Federal Government matching the combined donations. This has led to the beautiful Feros Byron Bay Village Home opening its doors in 1990. George was a beacon that shined a light on the need in the community to care for aging Byron Bay residents and it is now up to us to continue the legacy and to keep alive the dream and passion of the remarkable George Feros.

40 Picture of George Feros below that has pride of place in the Byron Bay facility, along with his bell and the collection box he used:



Signed: Cr Michael Lyon

NOTICES OF MOTION

Notice of Motion No. 9.1 Alternative Flowpath Bayshore Drive

File No: I2023/490

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I move that Council receives a Report at the 25 May 2023 ordinary meeting outlining the progress of the additional/alternative flow path including:

- 10
1. How often it is used and in what conditions, i.e. wet weather and dry weather.
 2. The amount of water transferred down it from the STP under various conditions, including as a percentage of total out flows.
 3. Any filling that has been done to grade the drain toward west Byron and its effectiveness.

15

 4. Performance relative to initial project objectives.
 5. Impact on the amount of water leaving the STP through the drain on the Flick's property.

20 **Signed: Cr Michael Lyon**

Councillor's supporting information:

I attended a visit on-site with Councillor Hunter and local farmer Tony Flick recently to view the drainage system on the corner of Banksia Drive and Bayshore Drive, pictures attached. Apparently, the drain has recently been filled to create fall through to Ewingsdale Rd, however it does not appear from the photos that this water is moving at all. Tony expressed concern that the alternative flowpath is not working and that the water ends up backing up in to the industrial estate drain or elsewhere. One of the purposes of the project, as I understood it, was to enable water volumes from the STP to be transferred down the alternative flowpath so that water down the drain through the Flick's property could be reduced in dry conditions.

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30

I would like a Report outlining the success of the project, whether the initial criteria have been met and how it works currently.



Staff comments

by Cameron Clark, Manager Utilities, Infrastructure Services.

Staff are able to bring a further Report to Council on the Additional Flow Path. Attached below is some preliminary advice in relation to the current project.

5 How often it is used and in what conditions, i.e. wet weather and dry weather.

10 The BBIWMR (Byron Bay Integrated Water Management Reserve) Operational Management Plan was recently reviewed and updated. Subsequent to this, the Additional flow path has been constructed and commissioned. Operations staff have recently met onsite to discuss the operational context for the additional flow path in conjunction with the revised BBIWMR requirements. The intention is that the additional flow path is to be operated as a dry weather flow release. However, the conditions that define a dry weather flow for the additional flow path need to be defined based on weather information, the needs of the treatment wetland system and the 24ha Melaleuca regeneration area.

15 The operational context for the additional flow path is being developed in response to available information and the communication of that information. One monitoring location has been established in the Industrial Estate drain. In order to finalise the operational context of the additional flow path additional telemetrised monitoring is required in the 24ha Melaleuca regeneration area and the treatment wetland cells. A number of technical issues have arisen that are currently being resolved. These include data communication and automated logging in areas that are not currently serviced by mains power.

20 The amount of water transferred down it from the STP under various conditions, including as a percentage of total out flows.

25 This is to be determined based on a hierarchy of use including maintaining the treatment performance and health of the wetlands and effluent irrigation within the 24ha Melaleuca regeneration area.

Any filling that has been done to grade the drain toward west Byron and its effectiveness

No filling has been undertaken

Performance relative to initial project objectives.

30 The water level sensors and associated automation is still in the commissioning phase of the project. The system is currently being used manually while the automation system is being commissioned and tested in the field.

Impact on the amount of water leaving the STP through the drain on the Flick's property.

35 The amount of water leaving the STP is largely influenced by rainfall. It is possible that there may be conveyance issues within and downstream of the Flick's property this requires further investigation.

DELEGATES' REPORTS

**Delegate's Report No. 10.1 Far North Coast BFMC meeting
14 March 2023**

5 **File No:** I2023/384

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- 10 We dealt with many issues including some within Byron Shire, one of the three Shires in this Bush Fire Management Committee's area. I attended in person, in Murwillumbah:
1. Fire Trails are now Fire Access and Fire Trail (FAFT) listed. The list is updated regularly with changes of fire trail Name; Category (Strategic, Tactical, Other); Capacity (truck size, eg "Cat 7"); Notes; etc. The category 'Strategic' means the asset must be maintained. There is no funding for category 'Other'.
 - 15 2. The FAFT sub-committee will meet on 18 April to consider more fire trail changes, especially in the west of Byron Shire.
 3. Concern was raised about fire trail maintenance (slashing) being a source of weeds into weed free areas. Washdown procedures for contractors are often not followed. Simple measures should be considered, like starting slashing in less weedy areas to
20 finish in worse areas, and then wash down. Soil Conservation standards for managing such machinery appear on the RFS website.
 4. Funding is now available and RFS expects Council to manage construction of a new shed for the Main Arm Brigade. This project is decades behind schedule - the
25 current truck has to swing its mirrors in before delicately entering or leaving the current shed. A similar rebuild for Lennox Head is at DA stage, awaiting assessment by Ballina Council.

The next Committee meeting is scheduled for 13 June, in Murwillumbah.

Signed: Cr Duncan Dey

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STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 11.1 Growing Regional Economies Fund - project nomination

5 **Directorate:** Corporate and Community Services
Report Author: Donna Johnston, Grants Coordinator
File No: I2023/482

Summary:

10 The NSW Government's Growing Regional Economies Fund is seeking Expressions of Interest (EOI) applications. The program seeks to facilitate the delivery of transformational infrastructure projects that will enable economic growth and prosperity in regional communities.

The following report considers three potential applications: Lot 12 Bayshore Drive, former Mullumbimby Hospital Site, and the Byron Bioenergy Facility.

15 EOI applications close 23 May. Only one application can be submitted.

RECOMMENDATION:

20 **That Council endorses an application for Lot 12 Bayshore Drive under the NSW Government's Growing Regional Fund.**

Report

[Growing Regional Economies Fund | NSW Government](#)

5 The \$175 million Growing Regional Economies Fund is part of the NSW Government's \$3.3 billion Regional Growth Fund and is designed to deliver economic growth and productivity across regional NSW.

10 The Growing Regional Economies Fund support projects that have a strong alignment with the [Regional Economic Development Strategies](#) (REDS) and increase infrastructure investment and economic activity within regional [NSW's Functional Economic Regions](#) (FERs). It will facilitate the delivery of the NSW Government's [20-year Economic Vision for Regional NSW](#) by co-funding transformational projects that enable economic growth and prosperity in regional communities.

The funding program is a two-step process, with the first step being an Expression of Interest which closes on 23 May 2023. Detailed Applications close 17 October 2023 and successful applicants are notified from January 2024.

15 Projects need to be completed by 30 June 2026.

Council can only submit ONE (1) application with funding from \$2 million to \$30 million available. Projects that are assessed as having a benefit to cost ratio greater than 1.0 will be preferred, however, it is not a requirement for funding.

Examples of eligible projects include:

- 20
- enabling infrastructure such as roads, bridges and services to develop investment precincts and housing that can be linked to economic growth and employment
 - education, research and development facilities to drive innovation in engine industries
 - airport upgrades and expansions
- 25
- enabling infrastructure that will support increased investment, land activation and employment opportunities.

Focus Area

Build enabling infrastructure that will support investment in regional housing projects.

Project Review

30 Three projects have been reviewed against the grant criteria and comments provided on suitability.

Project 1. Lot 12 Bayshore Drive, Byron Bay	
	<p><u>Project Description:</u> Roundabout access off Bayshore Drive to Lot 12.</p> <p><u>Background:</u> Lot 12 Bayshore Drive - Byron Shire Council (nsw.gov.au) Council-owned 5.8 hectare block of land in the Byron Arts and Industry Estate, opposite the Sunrise Shopping Centre.</p> <p>Council's vision is for Lot 12 to be an innovation precinct, a place to learn, collaborate and connect.</p> <p>In December 2022, the site received approval to be subdivided into three lots (#10.2022.107.1).</p> <ul style="list-style-type: none"> • Lot 1 - Will potentially be sold to and developed by Creative Capital. Creative Capital was the successful applicant from an Expression of Interest (EOI) process relating to development and planning for the remainder of the site. • Lot 2 - Owned by Council – part of this site is leased to TAFE for a Connected Learning Centre. Work has started and the facility is expected to open mid 2023. The remainder of Lot 2 will be development/commercial opportunities for Council. • Lot 3 - Owned by Council and retained because of environmental values – no development potential.
Total cost	<p>\$2,500,000 to \$3,000,000</p> <p>Concept design has been completed.</p>
Co-contribution (25%)	<p>Provided via loan funds or other grant funding.</p>
Strategic Alignment (35% weighting)	<ul style="list-style-type: none"> ✓ the project is aligned with the relevant Regional Economic Development Strategy and/or other NSW Government strategies and plans = supports the development of a skilled workforce ✓ the project is of regional significance and has the potential to deliver benefits to two or more LGAs = will attract students from throughout Northern NSW and support local students to learn locally. <p align="center">Northern Rivers Regional Economic Development Strategy –</p>

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Project 1.	Lot 12 Bayshore Drive, Byron Bay
	<p>2023 Update</p> <p><i>Health Care and social Services Opportunities</i></p> <ul style="list-style-type: none"> • <i>A focus on achieving closer engagement of the health sector with local education institutions, including the local TAFE network and the university sector, can help develop the pipeline of skilled workers needed to meet growing demand across the health and care economy. (P.29)</i>
<p>Economic outcomes (35% weighting)</p>	<ul style="list-style-type: none"> ✓ road access will support access to TAFE and enable a skilled workforce ✓ enable additional development on Lot 1 and 2 and support private sector investment ✓ the project has the potential to contribute towards job creation over a 5-year period following completion.
<p>Deliverability and affordability (15% weighting)</p>	<ul style="list-style-type: none"> ✓ a detailed project budget and cost estimates, including: all margins and overheads. Currently being prepared as part of the project development. ✓ a detailed operating model including any ongoing governance arrangements for the infrastructure such as access agreements ✓ estimated maintenance costs and evidence that the asset owner has the capability and resources to meet these costs over the life of the asset. ✓ previous project management experience and the credentials of key personnel ✗ a detailed and realistic project management plan, including a risk assessment (can be developed in time for the EOI.) ✓ confirmation that all appropriate approvals are in place such as development applications, landowners' consent and environmental approvals, or confirmation that they can be secured within 6 months of being notified of the outcome.
<p>Community impact (15% weighting)</p>	<ul style="list-style-type: none"> ✓ a project design that considers the impact on the environment and sustainability ✓ opportunities for disadvantaged members of the community to participate and benefit as an outcome of the project during construction and operation.
<p>Business Case</p>	<ul style="list-style-type: none"> ✗ Will need to be prepared. This is not required until the full

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Project 1.	Lot 12 Bayshore Drive, Byron Bay
	application stage
Concept Design	✓ Yes
Detailed Design	✓ In progress
Community Engagement	<ul style="list-style-type: none"> ✓ The development of Lot 12 is guided by the recommendations of Byron Arts and Industry Estate Precinct Plan and Site Strategy Urban Design Protocol. ✓ Creative Capital site Masterplan completed and endorsed by Council
Project Maturity	<p>Mature project that meets the funding program EOI criteria.</p> <p>Project has development consent 10.2021.234.1. Detailed design of the roundabout is imminent.</p>
Approval Pathway	Part 4 EPA & Act. Development Consent is required and has been granted. Roads Act s138 approval is required.
Risks	<ol style="list-style-type: none"> 1. Council will need to fund the 25% co-contribution (via a loan) should other grant funding not become available.

Project 2.	Former Mullumbimby Hospital Site
	<p><u>Project Description:</u></p> <p>Roundabout off Coolamon Scenic Drive to Left Bank Road and road access into site.</p> <p><u>Background:</u></p> <p>Future use of the former Mullumbimby Hospital Site - Byron Shire Council (nsw.gov.au)</p> <p>The Mullumbimby Hospital Site Strategy and Urban Design Protocol was endorsed by Council on 15 December 2022.</p>
Total cost	\$6,000,000+
Co-contribution (25%)	\$600,000 available from Mullumbimby urban roads developer contributions. The remainder would need to be loan funded.
Strategic Alignment (35% weighting)	<ul style="list-style-type: none"> ✓ the project is aligned with the relevant Regional Economic Development Strategy and/or other NSW Government strategies and plans = alleviates current housing shortages and affordability ✓ the project is of regional significance and has the potential to

Project 2.	Former Mullumbimby Hospital Site
	<p>deliver benefits to two or more LGAs = will provide additional housing land development for people to access jobs within Northern NSW.</p> <p>Northern Rivers Regional Economic Development Strategy – 2023 Update</p> <p>Vulnerabilities</p> <ul style="list-style-type: none"> • <i>Attracting skilled professionals to move to the region, from medical practitioners and nurses to carers and aides is a central challenge to meet the growing demand for healthcare and social assistance. The region also competes with other parts of regional NSW for access to skilled workers. (p.29)</i>
<p>Economic outcomes (35% weighting)</p>	<ul style="list-style-type: none"> ✓ the project has the potential to support investment from the private sector that will lead to economic growth and development through the development of an aged care facility ✓ the project has the potential to contribute towards job creation over a 5-year period following completion.
<p>Deliverability and affordability (15% weighting)</p>	<ul style="list-style-type: none"> ✗ a detailed project budget and cost estimates, including: all margins and overheads; project management costs; and an appropriate amount of contingency for the project ✗ a detailed operating model including any ongoing governance arrangements for the infrastructure such as access agreements ✗ estimated maintenance costs and evidence that the asset owner has the capability and resources to meet these costs over the life of the asset (can be developed by application stage) ✗ a detailed and realistic project management plan, including a risk assessment (can be developed by application stage) ✗ confirmation that all appropriate approvals are in place such as development applications, landowners' consent and environmental approvals, or confirmation that they can be secured within 6 months of being notified of the outcome (likely this can be achieved if successful at the full application stage) ✓ previous project management experience and the credentials of key personnel

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Project 2. Former Mullumbimby Hospital Site	
Community impact (15% weighting)	<ul style="list-style-type: none"> ✓ a project design that considers the impact on the environment and sustainability ✓ opportunities for disadvantaged members of the community to participate and benefit as an outcome of the project during construction and operation.
Business Case	✗ Will need to be prepared. This is not required until the full application stage
Concept Design	✓ Yes
Detailed Design	✗ No
Community Engagement	✗ Additional engagement required with properties located on the intersection.
Project Maturity	In development. Preliminary concept plan developed.
Approval Pathway	Part 5 EP & Act. REF required. State Environmental Planning Policy (Transport and Infrastructure) 2021.
Risks	<ol style="list-style-type: none"> 1. Land negotiations for access may delay the project and not enable a full application (if successful at Expression of Interest stage). 2. High Voltage underground power on site. 3. Council will need to fund \$1.5 million in co-contribution. 4. Requires amendment to Byron Local Environmental Plan.

Project 3. Bioenergy Byron	
	<p><u>Project Description:</u></p> <p>The proposed facility will convert local organic green waste into renewable energy and a compost product; it's known as a closed-loop carbon cycle, because the carbon created will end up as plant matter and stays within the system.</p> <p><u>Background:</u></p> <p>Bioenergy facility - Byron Shire Council (nsw.gov.au)</p> <p>DA approved. Site secured. The project creates:</p> <ul style="list-style-type: none"> • Local jobs created in the construction, operations and maintenance. • Local processing facility for agricultural and commercial

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Project 3.	Bioenergy Byron
	<p>organic waste.</p> <ul style="list-style-type: none"> • Local solution to waste management, reducing truck movements and distances travelled across the region. • Improved management of sewage biosolids. • Savings of approximately 3,402 tonne/CO2 per year for Council. The equivalent of keeping approximately 1,030 cars off the road each year. • A case study for others to follow in the search for future energy solutions while helping Byron Shire Council, NSW State and Australian Federal Governments meet renewable energy targets.
Total cost	>\$25 million
Co-contribution (25%)	Council contribution of \$10+ million via loan funds.
Strategic Alignment (35% weighting)	<ul style="list-style-type: none"> ✓ The project is aligned with the relevant Regional Economic Development Strategy and/or other NSW Government strategies and plans = supports emerging renewable energy industry ✓ the project is of regional significance and has the potential to deliver benefits to two or more LGAs = will support waste management from neighbouring shires ✓ the project is strategically aligned with the needs of the local community and is supported by key stakeholders as demonstrated through letters of support.
Economic outcomes (35% weighting)	<ul style="list-style-type: none"> ✓ the project supports the growth of engine or emerging industries identified within the relevant Functional Economic Region = supports emerging renewable energy industry (identified within the Regional Economic Development Strategy 2023) ✓ the project has the potential to support investment from the private sector that will lead to economic growth and development = will enable statewide facilities to be replicated ✓ the project has the potential to contribute towards job creation over a 5-year period following completion = project life of over 20 years+. Plus, will enable other facilities

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Project 3.	Bioenergy Byron	
		through approvals pathway.
Deliverability and affordability (15% weighting)	<ul style="list-style-type: none"> ✓ a detailed project budget and cost estimates, including: all margins and overheads; project management costs; and an appropriate amount of contingency for the project ✓ a detailed operating model including any ongoing governance arrangements for the infrastructure such as access agreements ✓ estimated maintenance costs and evidence that the asset owner has the capability and resources to meet these costs over the life of the asset. ✓ previous project management experience and the credentials of key personnel ✓ a detailed and realistic project management plan, including a risk assessment ✓ confirmation that all appropriate approvals are in place such as development applications, landowners' consent and environmental approvals, or confirmation that they can be secured within 6 months of being notified of the outcome. 	
Community impact (15% weighting)	<ul style="list-style-type: none"> ✓ a project design that considers the impact on the environment and sustainability ✓ a project design that goes above and beyond the baseline compliance standards for accessibility and inclusion ✓ opportunities for disadvantaged members of the community to participate and benefit as an outcome of the project during construction and operation. 	
Business Case	✓	Yes. Has a BCR greater than 1.
Concept Design	✓	Yes
Detailed Design	✓	No
Community Engagement	✓	Advanced engagement
Project Maturity		Mature project Development consent 10.2021.364.1 approved.
Approval		Part 4 EPA & Act. Development Consent is required and has

Project 3.	Bioenergy Byron
Pathway	been granted. Construction Certificate is required.
Risks	1. Does not support key focus area to support investment in regional housing projects.

Recommendation

It is recommended that Lot12 is the project nomination for an Expression of Interest (EOI) application under the Growing Regional Economies program for the following reasons:

- 5 1. The project is considered mature and meets the funding program EOI criteria.
- 2. If successful, the funding support will enable Council to deliver the access requirements (ie roundabout) to the site with considerable costs savings versus having to borrow loan funds for the project.
- 3. Site access improvements will support the proposed sale to Creative Capital.
- 10 4. The TAFE facility is nearing completion and will be open mid-year.

The former Mullumbimby Hospital site is still in development and is not as strong an application. The project requires engagement with neighbouring properties and amendment to the LEP.

- 15 The Bioenergy project does strongly support the key focus area to build enabling infrastructure that will support investment in regional housing projects to meet demand generated by growth in employment and economic activity.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
2: Inclusive Community We have an inclusive and active community where diversity is embraced and everyone is valued	2.4: Enrich lifelong learning and education and support services to help young people thrive	2.4.4: Vocational training - Support development of a vocational training precinct to provide high quality educational and vocational training in the Byron Shire	2.4.4.1	Progress Lot 12 Bayshore Drive Byron Bay future use

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STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

11.1

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.3: Town / Village Masterplans - Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.3.4	Implement actions from the Byron Arts and Industry Estate Precinct Plan

Financial Considerations

If successful at the full application stage of Growing Regional Economies Fund, Council may need to borrow the 25% co-contribution.

- 5 If loan borrowings become necessary, a further Report will be provided to Council to authorise the borrowing.

Staff will continue to seek grant funding for the co-contribution.

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

5

Report No. 11.2 PLANNING – Development Application No. 10.2022.159.1 – Subdivision of Land being a Boundary Adjustment between Two (2) Lots – 14 Kendall Street and 25 Cavvanbah Street Byron Bay

Directorate: Sustainable Environment and Economy

Report Author: Greg Smith, Team Leader Planning Services

10 **File No:** I2023/321

Proposal:

Proposal description:	Subdivision of Land being a Boundary Adjustment between Two (2) Lots		
Property description:	LOT: 101 DP: 1263764, LOT: 0 SP: 63960		
	14 Kendall Street BYRON BAY, 25 Cavvanbah Street BYRON BAY		
Parcel No/s:	270230, 232750		
Applicant:	Transport Asset Holding Entity of New South Wales		
Owner:	Transport Asset Holding Entity of NSW		
Zoning:	W1 Natural Waterways / SP2 Infrastructure / 7(f2) (Urban Coastal Lands Zone)		
Date received:	6 May 2022		
Integrated / Designated Development:	<input checked="" type="checkbox"/> Integrated	<input checked="" type="checkbox"/> Designated	<input type="checkbox"/> Not applicable
Concurrence required	No		
Public notification or exhibition:	– Designated Development advertising under Council’s Community Participation Plan.		

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

11.2

	– Exhibition period: 19/5/2022 to 15/6/2022 – Submissions received: Nil – Submissions acknowledged: <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A				
Other approvals	<input checked="" type="checkbox"/> N/R	<input type="checkbox"/> W & S (68)	<input type="checkbox"/> OSMS (68)	<input type="checkbox"/> ST (68)	<input type="checkbox"/> RA (138)
	Other:				
Estimated cost	\$0.00				
Issues	Bush Fire Prone Land – Integrated Development – Rural Fire Service General Terms of Approval and Bush Fire Safety Authority Coastal Wetlands under the Coastal Management SEPP – Designated Development – Environmental Impact Statement Cattle Dip Buffer Flood liable land Coastal Erosion Precinct 2 Acid Sulfate Soils High Environmental Value Vegetation				

Summary:



- 5 The DA proposes Subdivision of Land being a Boundary Adjustment between Two (2) Lots. The purpose of the development is to incorporate approximately 261m² of the Casino to Murwillumbah Railway Land (known as 14 Kendall Street) into the adjoining residentially occupied land at 25 Cavvanbah Street to create proposed Lot 1 in the subdivision.
- 10 Proposed Lot 2 in the subdivision would be the remaining part of the Casino to Murwillumbah Railway land and this allotment is close to 1.5km long. Proposed Lot 2 includes a small area of mapped “coastal wetlands” under the SEPP. Even though the “coastal wetland” is more than 700m from the land that is affected by the boundary adjustment, the proposal is designated development because one of the proposed lots contains mapped “coastal wetlands” under the Resilience and Hazards SEPP 2021. The development will not have a significant impact on the mapped coastal wetland.
- The application has been initiated by TAHE who have identified this land as being surplus to requirements.
- 15 The application appropriately addresses the relevant constraints applying to the site and is recommended for approval subject to the conditions in Attachment 1.

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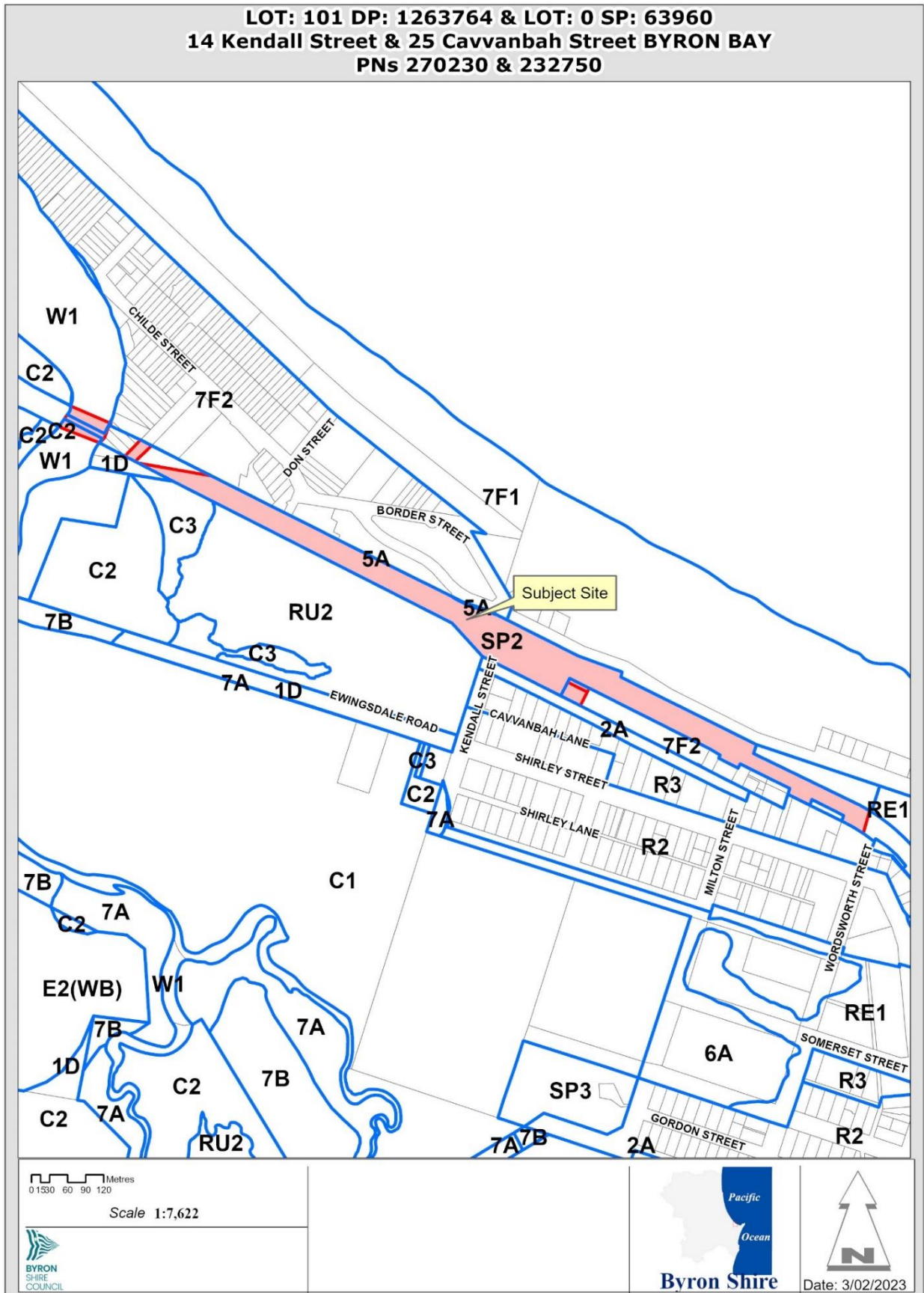
RECOMMENDATION:

5 That, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.159.1 for Subdivision of Land being a Boundary Adjustment between Two (2) Lots, be granted consent subject to the recommended conditions in Attachment 1 (E2023/22601) to this Report.

Attachments:

- 10
- 1 10.2022.159.1 - Recommended Conditions, E2023/22601 
 - 2 10.2022.159.1 - Proposal Plans, E2023/22600 

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Assessment:

1. INTRODUCTION

History/Background

14 Kendall Street

- 5 14 Kendall Street is part of the “Casino to Murwillumbah Railway Land”.
Development Application 10.2018.73.1 for a Boundary Adjustment between Two (2) Lots (included 19 Shirley Street) was approved on 13/6/2018. The approved subdivision was registered on 18/6/2020, creating 14 Kendall Street.

25 Cavvanbah Street

- 10 Approvals relating to this address are as follows:
- Building Application 6.1972.2037.1 for a dwelling.
 - Building Application 6.1987.2460.1 for additions to a garage was approved on 9/9/1987.
 - Development Application 5.1992.132.1 for Subdivision was approved on 16/6/1992.
 - 15 • Development Application 5.1994.234.1 for Dwelling additions was approved on 21/7/1994.
 - Development Application 5.1996.436.1 for a Residential Flat Building (4) Units was approved on 8/4/1997 and modified via Section 102 Application 17.1998.7044.1 on 11/12/1998.
 - 20 • Development Application 10.1999.780.1 for Demolition of a house was approved on 14/12/1999.

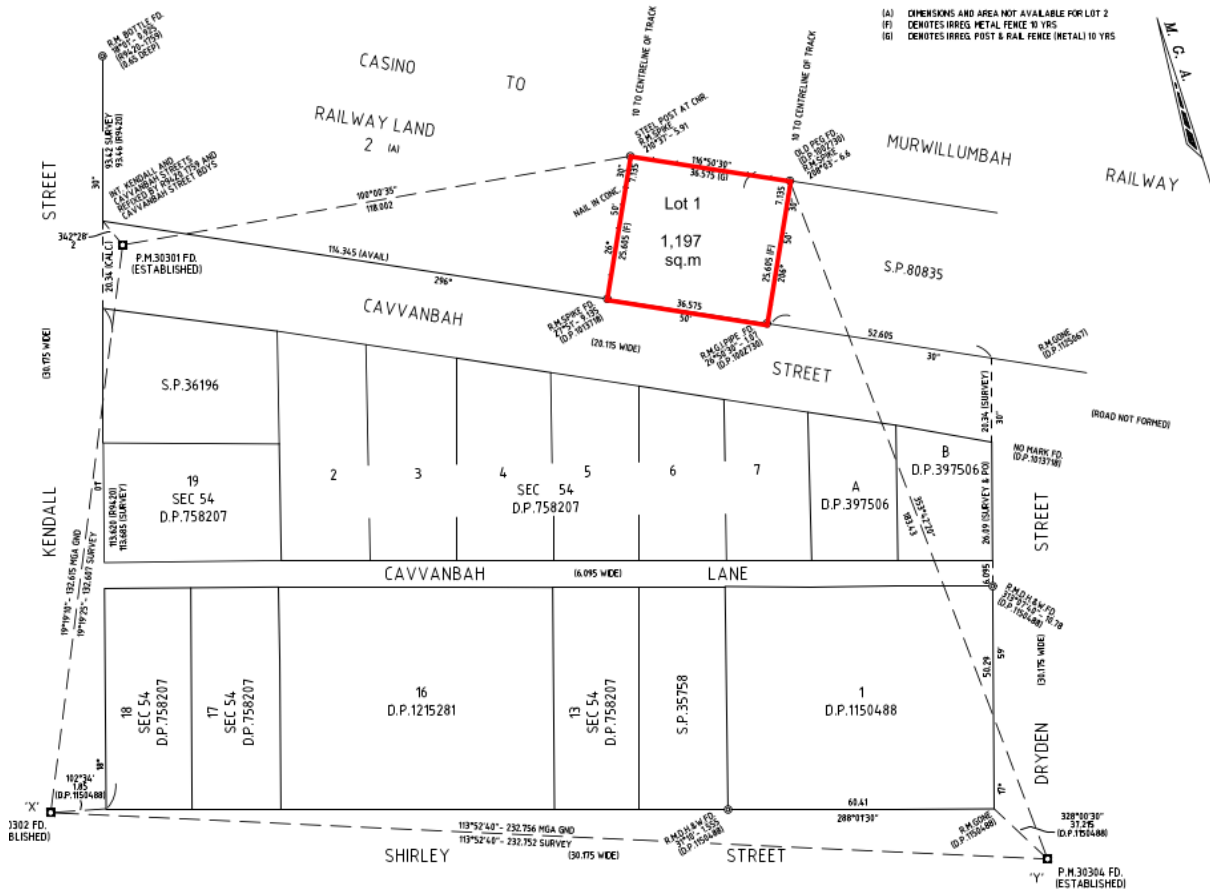
14 Kendall Street & 25 Cavvanbah Street

A previous Development Application 10.2020.224.1 for Subdivision of Land being a Boundary Adjustment between Two (2) Lots was withdrawn by the Applicant.

25 **Description of the proposed development**

This application seeks approval for Subdivision of Land being a Boundary Adjustment between Two (2) Lots. The plans (refer to Attachment 2 of this Report) boundary adjustment subdivision results in 261m² of 14 Kendall Street being attached to the rear northern side of 25 Cavvanbah Street. Proposed Lot 1 has an area of 1197m² and
30 incorporates the land that is subject of the boundary adjustment (approximately 261m²) into 25 Cavvanbah Street. Proposed Lot 2 is the remainder of 14 Kendall Street minus the land that is the subject of the boundary adjustment. The proposal is designated development as discussed below.

35



Proposed Lot 1 outlined in Red

Description of the site

Land is legally described	LOT: 101 DP: 1263764, LOT: 0 SP: 63960
Property address	14 Kendall Street BYRON BAY, 25 Cavvanbah Street BYRON BAY
Land is zoned:	W1 Natural Waterways SP2 Infrastructure 7(f2) (Urban Coastal Lands Zone) <u>Note:</u> the location of the land immediately affected by the boundary adjustment is entirely within the 7(f2) Zone.
Land area is:	6.144 hectares
Property is constrained by:	Bush fire prone land

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	<p>Coastal Wetlands under the Coastal Management SEPP</p> <p>Cattle Dip Buffer – no objections raised by Council’s Environmental Health officer in this regard and no further consideration is required.</p> <p>Flood liable land – no objections raised by Council’s Development Engineer in this regard and no further consideration is required.</p> <p>Coastal Erosion Precinct 2 – no objections raised by Council’s Development Engineer in this regard and no further consideration is required.</p> <p>Acid Sulfate Soils – no objections raised by Council’s Environmental Health officer in this regard and no further consideration is required.</p> <p>High Environmental Value Vegetation</p>	
	Is a BDAR required due to the location of the proposed development? The BDAR is discussed below.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to a condition.
Ecologist	No objections subject to conditions.
Rural Fire Service (100B)	No objections subject to the General Terms of Approval and Bush Fire Safety Authority, both of which are included in the Recommendation of this Report.

Issues:

The DA is accompanied by a Biodiversity Assessment Report (BDAR). Council’s Ecologist advises as follows in this regard:

5 *“The proposal does not seek to remove any vegetation, rather just to acquire land which already appears utilised for gardens/landscaping and which appears to be already fenced. On this basis, there are no direct impact to biodiversity as no formal use or management of the area to be acquired (260m²) will change.*

Regardless, the BDAR assessed any potential future impacts which may result from additional development of the site (vegetation clearance) – refer below.

10 *Section 6 of the BDAR states that direct impacts to native vegetation and threatened species habitat may include:*

- *0.04 ha of PCT 751 Brush Box – Tuckeroo littoral rainforest on coastal headlands of the NSW North Coast Bioregion*
- *0.04 ha of habitat for the Swift Parrot.*

15 *Section 7.5 of the BDAR identifies that a single credit of each entity is required Refer Tables 34 & 35 – overleaf.*

Table 33: Ecosystem credits required

Vegetation Zone	PCT ID	PCT Name	Credit Class	Direct impact (ha)	Credits required
751	1064	Brush Box – Tuckeroo littoral rainforest on coastal headlands of the NSW North Coast Bioregion	Ecosystem (No HBT) Littoral Rainforest in the New South Wales North Coast, Sydney Basin and South East Corner Bioregions This includes PCT's: 670, 751, 910, 1275, 1534, 1536, 1537, 1832, 1833	0.04	1

Table 34: Species credit summary

Species	Common Name	Direct impact number of individuals / habitat (ha)	Credits required
<i>Lathamus discolor</i>	Swift Parrot	0.04 ha	1

The BDAR notes that other impacts of the proposal are likely to be low. This conclusion is supported.”

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

25 Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document ‘Planning for Bush Fire Protection 2006’. The site is bush fire prone land. The development application was referred to the NSW Rural Fire Service, which provided its General Terms of Approval and Bush Fire safety Authority and these are included in the Recommendation of this Report.

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.

State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><i>Resilience and Hazards SEPP 2021</i></p> <p><u>Chapter 2 Coastal Management</u></p> <p>In accordance with clause 2.7 in so far as it relates to the circumstances of the case, certain development (such as the proposal) carried out on land identified as “coastal wetlands” on the <i>Coastal Wetlands and Littoral Rainforests Area Map</i> may be carried out only with development consent. Such development is declared by the Resilience and Hazards SEPP to be designated development.</p> <p>Proposed Lot 1 is part of the Casino to Murwillumbah Railway and this allotment is close to 1.5km long. Proposed Lot 1 includes a small area of mapped “coastal wetlands” under the SEPP. Even though the “coastal wetland” is more than 700m from the 261m² of land that is affected by the boundary adjustment, the proposal is designated development because one of the proposed lots contains mapped “coastal wetlands”. The Applicant obtained the Secretary’s Environmental Assessment Requirements and the DA is accompanied by an Environmental Impact Statement. The DA has been publicly exhibited for 28 days.</p> <p>The development is satisfactory having regard to the provisions of clauses 2.8, 2.10 and 2.11 for the following reasons:</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>2.8 Development on land in proximity to coastal wetlands or littoral rainforest</p> <p>The development is on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” and is unlikely to significantly impact on—</p> <p>(a) the biophysical, hydrological or ecological integrity of</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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Considerations	Satisfactory	Unsatisfactory
<p>the adjacent coastal wetland or littoral rainforest, or</p> <p>(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.</p>		
<p>2.10 Development on land within the coastal environment area</p> <p>The development is on land that is within the coastal environment area is unlikely to cause a significantly adverse impact on the following—</p> <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 <i>Marine Estate Management Act 2014</i>), 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, and</p> <p>(g) the use of the surf zone.</p> <p>The development is designed and sited to avoid any of the adverse impacts referred to in (a) to (g) above.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>2.11 Development on land within the coastal use area</p> <p>The development is on land that is within the coastal use area and is unlikely to cause a significantly adverse impact on the following—</p> <p>(i) existing, safe access to and along the foreshore,</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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Considerations	Satisfactory	Unsatisfactory
<p>beach, headland or rock platform for members of the public, including persons with a disability,</p> <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.</p> <p>The development is designed and sited to avoid a significantly adverse impact referred to in (i) to (v) above.</p> <p>The development is unlikely to have a significant impact in relation to the surrounding coastal and built environment, and it's scale and size.</p>		
<p><u>Chapter 4 Remediation of Land</u></p> <p>Council received the report Preliminary SEPP55 Investigation: Submission to John Holland Rail, 25 Cavvanbah Street, Byron Bay prepared by Ardill Payne & Partners dated December 2012.</p> <p>From the Preliminary Investigation provided (including photos) and a desktop analysis of Council's archive, no point sources of contamination have been identified and the site is deemed suitable for the proposal. No further investigation or action warranted.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>Transport and Infrastructure SEPP 2021</i></p> <p>The proposal is satisfactory having regard to the provisions of the Transport and Infrastructure SEPP.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:

5

- (a) The proposed development is defined by the Act as subdivision of land;
- (b) The land is within the W1 Natural Waterways / SP2 Infrastructure according to the Land Zoning Map;

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- (c) The proposed development is permitted with consent in accordance with clause 2.6; and
- (d) Regard is had for the Zone Objectives as follows:

SP2 Infrastructure Zone Objective	Consideration
<ul style="list-style-type: none"> • To provide for infrastructure and related uses. 	<p>The 261m² area of land affected by the boundary adjustment is not within the part of the land which is within the SP2 Zone, and on this basis the proposal does not prevent the opportunity to provide for infrastructure and related uses.</p>
<ul style="list-style-type: none"> • To prevent development that is not compatible with or that may detract from the provision of infrastructure. 	<p>The proposal is not expected to be incompatible with or detracting from the provision of infrastructure.</p>

W1 Natural Waterways Zone Objectives	Consideration
<ul style="list-style-type: none"> • To protect the ecological and scenic values of natural waterways. 	<p>The 261m² area of land affected by the boundary adjustment is not within the part of the land which is within the W1 Zone, and on this basis the proposal is not expected to have a significant impact in relation to the protecting the ecological and scenic values of the applicable natural waterway.</p>
<ul style="list-style-type: none"> • To prevent development that would have an adverse effect on the natural values of waterways in this zone. 	<p>The development is not expected to have a significantly adverse effect on the natural values of waterways in the W1 Zone.</p>
<ul style="list-style-type: none"> • To provide for sustainable fishing industries and recreational fishing. 	<p>The proposal would not reduce the opportunities for sustainable fishing industries and recreational fishing in the W1 Zone.</p>

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

4.2B Byron Local Environmental Plan 1988 (LEP 1988)

LEP 1988 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. In accordance with LEP 1988 clauses 5, 8 and 9:

- 5 (a) The proposed development is defined in the Act as subdivision of land;
- (b) The land is within the 7(f2) (Urban Coastal Lands Zone) according to the map under LEP 1988;
- 10 (c) The proposed development is permitted with consent in accordance with clause 10; and
- (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

Zone Objective	Consideration
(a) to identify urban land likely to be influenced by coastal processes,	The subject urban land is zoned as being likely to be influenced by coastal processes.
(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,	Council’s Development Engineer has raised no objection to the proposal in relation to coastal processes.
(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	Council’s Development Engineer has raised no objection to the proposal in relation 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
(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.	Council’s Development Engineer raised no objection to the proposal in relation to Development Control Plan provisions.

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

In relation to Clause 32 Development within Zone No 7 (f2) (Urban Coastal Land Zone), the proposal raises no issues in terms of:

- 5 (a) the likelihood of the proposed development adversely affecting, or being adversely affected by, coastal processes,
 - (b) the need to relocate buildings in the long term,
 - (c) the need for the development consent to be limited to a particular period,
 - (d) the form, bulk, intensity and nature of the development, and
 - (e) continued safe public access to the site.
- 10 Council may consent to the subdivision of the land within Zone No 7 (f2) because it is a subdivision that is only a boundary adjustment where no additional lots are created.

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

- 15 There are no proposed instruments of significant applicability to the proposed development.

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

- 20 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 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).

25 **4.4B Byron Shire Development Control Plan 2010 (DCP 2010)**

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

4.5 Environmental Planning and Assessment Regulation 2021 considerations

The proposed boundary adjustment raises no issues in terms of the relevant EPA Regulations.

5 4.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

4.6.1

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

4.7 The suitability of the site for the development

10 The site is a serviced, unconstrained property and is suitable for the proposed development. The application has been initiated by TAHE who have identified this land as being surplus to requirements.

4.8 Submissions made in accordance with this Act or the regulations

15 The development application was publicly exhibited.No submissions were received. 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. The application has been initiated by TAHE who have identified this land as being surplus to requirements.

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

Council's ET Engineer has recommended a condition requiring a Certificate of Compliance under Section 307 of the Water Management Act 2000.

5.2 Developer Contributions

- 10 No additional lots are created, and no conditions are required for consolidation of lots or payment of contributions.

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

- 15 The DA proposes Subdivision of Land being a Boundary Adjustment between Two (2) Lots.

The application appropriately addresses the relevant constraints applying to the site and is recommended for approval subject to the conditions listed in Attachment 1.

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Report No. 11.3 **PLANNING – Development Application No. 10.2022.247.1 – Torrens Title Subdivision of One Lot into Two Lots – 135 Jonson Street Byron Bay**

5 **Directorate:** Sustainable Environment and Economy
Report Author: Greg Smith, Team Leader Planning Services
File No: I2023/329

Proposal:

Proposal description:	Torrens Title Subdivision of One Lot into Two Lots				
Property description:	LOT: 30 DP: 829895				
	135 Jonson Street BYRON BAY				
Parcel No/s:	187820				
Applicant:	Town Planning Studio Pty Ltd				
Owner:	Apex Outdoor Property Pty Ltd				
Zoning:	B2 Local Centre / R2 Low Density Residential				
Date received:	6 June 2022				
Integrated / Designated Development:	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable		
Concurrence required	No				
Public notification or exhibition:	<ul style="list-style-type: none"> – Level 1 advertising under Council’s Community Participation Plan. – Exhibition period: 16/6/2022 to 29/6/2022 – Submissions received: Nil – Submissions acknowledged: <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A 				
Other approvals	<input checked="" type="checkbox"/> N/R	<input type="checkbox"/> W & S (68)	<input type="checkbox"/> OSMS (68)	<input type="checkbox"/> ST (68)	<input type="checkbox"/> RA (138)

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11.3

	Other:	
Variation request to Development Standards under an EPI (eg clause 4.6)	Clause 4.6	
Estimated cost	\$44,800.00	
Delegation to determine	Council	
Issues	Minimum lot size, Clause 4.6 Request for Variation, Lot boundaries match the boundary between the Residential and Business Zones, Request for Variation is Supported Acid Sulfate Soils – Class 5	



Summary:

- 5 Development consent is sought to subdivide an existing 1191m² lot/property known as 135 Jonson Street, Byron Bay into 2 Torrens Title lots. The subject lot was created in 1993 and contains an existing dwelling house. The subdivision of the site is sought to separate the areas of the property that have different zones.
- 10 Proposed Lot 1 fronting Jonson Street is Zoned B2 Local Centre under Byron LEP 2014 and has an area of 803 m². Proposed Lot 2 at the rear has an area of only 388 m² and is zoned R2 Low Density Residential under Byron LEP 2014, with access from the rear of Ruskin Lane.
- 15 Lot 1 is assessed as having a satisfactory shape and size in terms of the planning controls. However proposed Lot 2 (the rear residential lot) is under size and does not meet the 600m² minimum provisions under Clause 4.1 of Byron LEP 2014.
- 20 The Applicant has sought a variation to the minimum lot size provisions under Clause 4.6 of the LEP. The plans provide a 15m x 12m building envelope within proposed Lot 2 in accordance with Council's DCP 2014 Chapter D6, demonstrating that sufficient space is available to fit a reasonable sized dwelling on that allotment. The containment of the residential development within one lot and business development within the other lot ensures that compatible uses can occur within each respective area.
- 25 It is considered there are sufficient environmental planning grounds to vary the development standard under Clause 4.6 of the Byron LEP 2014 and strict compliance with the 600 m² minimum is unreasonable and unnecessary having regards to the zoning of the land.
- The application appropriately addresses the relevant constraints applying to the site and is recommended for approval subject to the conditions listed in the Recommendation of this Report.

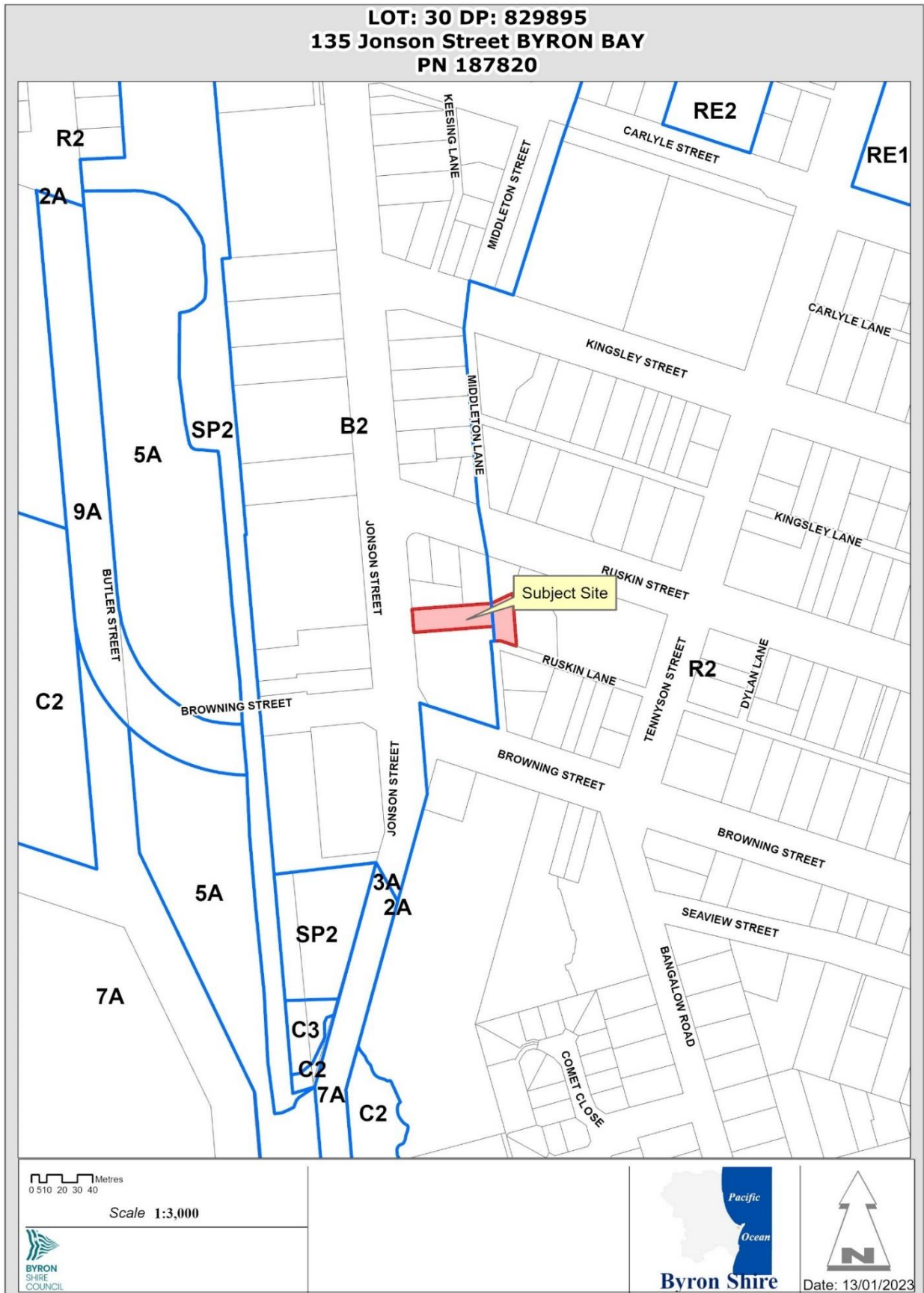
RECOMMENDATION:

5 That, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2022.247.1 for Torrens Title Subdivision of One Lot into Two Lots, be granted consent subject to the conditions in Attachment 1 (E2023/23526) to this Report:

Attachments:

- 10 1 10.2022.247.1 - Recommended Conditions, E2023/23526 
- 2 10.2022.247.1 - Plan of Proposal, E2023/23527 

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Assessment

1. INTRODUCTION

History/Background

<u>Module</u>	<u>Memo Type</u>	<u>Date</u>	<u>Nbr</u>	<u>Comments</u>
Property	BA pre Munics		1	BA Number 79/2082 BA Type STORE SHED Application Date 05/03/1979 Determination Date 28/03/1979 Value 800 ? 0
Property	BA pre Munics		2	BA Number 78/2103 BA Type DWELLING Application Date 13/04/1978 Determination Date 10/05/1978 Value 25800 ? 0
Property	BA pre Munics		3	BA Number 82/2634 BA Type ADDITIONS Application Date 03/11/1982 Determination Date 09/12/1982 Value 1050 ? 0

<u>Application / Register No</u>	<u>Description</u>	<u>Status</u>	<u>Date</u>
5.1992.447.1 DevelopmentApplications	Subdivision- Boundary Adjust	APPD	11/12/1992
5.1993.421.1 DevelopmentApplications	Residential Flat Building	APPD	12/01/1994

5

Description of the proposed development

This application seeks approval for a Torrens Title Subdivision of One Lot into Two Lots. Refer to **Attachment 2** of this Report for the plan of the proposed subdivision.

10 Proposed Lot 1 has an area of 803m², contains all of the B2 zoned part of the site, accommodates the existing dwelling and has frontage to Jonson Street on the western side. A 1.2m wide easement for access, underground electricity, water & telecommunication services runs along the southern side of proposed Lot 1 to serve proposed Lot 2.

15 Proposed Lot 2 has an area of 388m², contains all of the R2 zoned part of the site, would be vacant and has frontage to Ruskin Lane on the southern side.

Description of the site

A site inspection was carried out on 8 November 2022.



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Photo 1: The above photo shows the
Jonson Street view of the site

Photo 2: The above photo of the site
is taken from the NE corner

Land is legally described	LOT: 30 DP: 829895	
Property address	135 Jonson Street BYRON BAY	
Land is zoned:	B2 Local Centre / R2 Low Density Residential	
Land area is:	1191m ²	
Property is constrained by:	Acid Sulfate Soils – Class 5	
	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, no conditions.
Development Engineer	No objections subject to conditions.
Building Surveyor	No objections, no conditions.
S64 / Systems Planning Officer	No objections subject to conditions.
S7.11 / Contributions Planner	Referral retracted and contributions calculated by Planning Services Team.
Design Excellence Panel	Referral retracted due to being for subdivision rather than a new building works, having regard to the provisions of

Referral	Issue
	clause 6.13 Design excellence – Byron Bay town centre of LEP 2014.

3. SECTION 4.14 – BUSH FIRE PRONE LAND

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document ‘*Planning for Bush Fire Protection 2019*’. The site is not bush fire prone land.

5 **Effect of 10/50 rule on significant vegetation:** Not applicable

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

10 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)

Considerations	Satisfactory	Unsatisfactory
<p><i>Resilience and Hazards SEPP 2021</i></p> <p>Consideration: Council’s Environmental Health Officer confirmed that the proposal is satisfactory in relation to potential for contamination.</p>	☒	☐
<p><i>Transport and Infrastructure SEPP 2021</i></p> <p>Consideration: The proposal is satisfactory having regard to the provisions of the Transport and Infrastructure SEPP.</p>	☒	☐

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

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

- (a) The proposed development is defined as subdivision of land in the Environmental Planning and Assessment Act 1979;
- (b) The land is within the B2 Local Centre and R2 Low Density Residential Zones according to the Land Zoning Map;

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- (c) The proposed development is permitted with consent in accordance with clause 2.6 of LEP 2014; and
- (d) Regard is had for the Zone Objectives as follows:

R2 Low Density Zone Objective	Consideration
<i>To provide for the housing needs of the community within a low density residential environment.</i>	The subdivision does not prevent development on the residential zoned part of the site which contributes towards providing for the housing needs of the community within a low density residential environment.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The subdivision does not prevent development on the residential zoned part of the site which that provide facilities or services to meet the day to day needs of residents.

B2 Local Centre Zone Objective	Consideration
<i>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.</i>	The subdivision does not prevent development on the business zoned part of the site within the range of retail, business, entertainment and community uses serving the needs of people who live in, work in and visit the local area.
<i>To encourage employment opportunities in accessible locations.</i>	The subdivision does not prevent development on the business zoned part of the site that encourages employment opportunities in accessible locations.
<i>To maximise public transport patronage and encourage walking and cycling.</i>	The subdivision does not prevent development on the business zoned part of the site which maximises public transport patronage and encourages walking and cycling.
<i>To encourage vibrant centres by allowing residential and tourist and visitor accommodation above commercial premises.</i>	The subdivision does not prevent development on the business zoned part of the site which encourages vibrant centres by allowing residential and tourist and visitor accommodation above commercial premises.

In relation to clause **4.4 Floor Space Ratio**:

- the residential zoned eastern part of the site corresponds to the maximum FSR development standard of 0.5:1, and future development on the matching proposed Lot 2 can be designed to comply with the requirement; and
- 5 • the business zoned western part of the site corresponds to the maximum FSR development standard of 1.3:1, and the existing building on the matching proposed Lot 1 would have an estimated floor space ratio of approximately 0.3:1 maximum.

10 In relation to clause **6.1 Acid Sulfate Soils**, a small section of the lot on the western side is mapped as being within the class 5 area. The application is for subdivision only and any issues in relation to acid sulfate soils are able to be dealt with when future development is proposed if applicable.

Clause 4.6 Exceptions to Development Standards

15 The Applicant has sought a variation to clause 4.1 of Byron Local Environmental Plan 2014 which establishes a minimum lot size development standard of 600m² applicable to the rear eastern R2 zoned part of the site. The plans submitted by the Applicant demonstrate that proposed Lot 1 will contain all of the 803m² of B2 zoned part of the land and complies with the 200m² minimum lot size development standard applicable to that
20 part of the site. However whilst proposed Lot 2 will contain all of the 388m² of R2 zoned part of the land, this is less than the applicable minimum 600m² lot size development standard. The extent of the requested variation to the development standard is approximately 35%.

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

30 *The proposed lot layout is intended to provide two separate allotments with only one land use zone applying to each of the resulting lots. The current arrangement has a single allotment of land that is made up of both the R2 Low Density Residential Zone and the B2 Local Centre Zone. The zone boundary does not follow the title boundary of the existing lot. However, it does follow the title boundaries of the adjoining properties to the north and south.*

35 *The original proposal that was put to Council would have created two lots with the western lot located entirely within the B2 Local Centre Zone and the eastern lot made up of both the B2 Local Centre Zone and the R2 Low Density Residential Zone. This would have created an unusual land use arrangement for the eastern lot. Should a commercial use be proposed within the B2 Local Centre Zone, vehicle access would need to be taken through the R2 Low Density Residential Zone (where commercial uses are prohibited). The revised lot layout creates a clean separation between the B2 Local Centre Zone in the west and the R2 Low Density Residential Zone in the east. This arrangement will remove future complications with regards to permitted and prohibited land uses, including incidences where vehicle access for a
40 commercial use is required to be taken through the R2 Low Density Residential*

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Zone. It is noted that the land use table does allow for some common uses over both the adjoining zonings, these are limited.

5 *It is submitted that because the proposal seeks to match the alignment of the lot boundaries with the zone boundary and maintain consistency with the adjoining properties to the north and south, it is unreasonable and unnecessary to apply the minimum lot size to the eastern lot. The creation of separate Torrens title lots for each zone is consistent with all other lots to the north and south and aligns with Byron Shire Council's strategic direction for the locality. Each of the proposed lots will have its own street frontage and can easily be provided with water, sewer, electrical, communications and stormwater services.*

10 *It is noted that prior to the submission of the Development Application, an enquiry was made to Byron Shire Council's Senior Strategic Planner with respect to changing the zoning to enable the entirety of Lot 30 DP 829895 to fall within the B2 Local Centre Zone. In their response, Byron Shire Council staff noted that a proposal to change the zoning is not endorsed under the Council's Business and Industrial Lands Strategy nor the Byron Town Centre Master Plan. It was concluded from this response that a planning proposal would unlikely be supported.*

The objectives of Clause 4.1 of Byron Local Environmental Plan 2014 are discussed below:

20 (a) *to ensure that lot sizes are compatible with local environmental values and constraints.*

25 *Figure 1 within this document demonstrates a clear line that separates the B2 Local Centre Zone and the R2 Low Density Residential Zone. The proposed lot sizes are submitted as being compatible with the desired land use zones. The proposal does not compromise any environmental values and is not obstructed by land use constraints.*

(b) *to facilitate efficient use of land resources for residential and other human purposes.*

30 *The proposed lot layout will allow for the efficient use of both the R2 Low Density Residential Zone and the B2 Local Centre Zone in their current arrangements. The proposal will create a clear division between the two zones by way of a title boundary. The proposal will eliminate confusion of permissibility where land uses are proposed within one zone and access is taken through another.*

35 *It is noted that Proposed Lot 2, with an area of 388 square metres, could potentially support a dwelling with a gross floor area of up to 194 square metres (per the current maximum floor space ratio of 0.5:1). This is considered to be very reasonable sized dwelling within the Byron Bay town centre.*

40 *In addition, it is noted that Proposed Lot 1, with an area of 803 square metres, could potentially support a commercial development with a gross floor area of up to 1,043.9 square metres. This is a far more reasonable arrangement than that which could be*

supported under a subdivision proposal with a compliant allotment size for each proposed lot.

5 The proposed reduced allotment size (Lot 2) is contained to the R2 Low Density Residential Zone under Byron Local Environmental Plan 2014. The objectives of the R2 Low Density Residential Zone are discussed below.

The Objectives of the zone are:

- To provide for the housing needs of the community within a low density residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- 10

15 The proposed eastern lot (Lot 2), with an area of 388 square metres, will be subject to the existing maximum floor space ratio control of 0.5: 1 provided under Clause 4.4 of Byron Local Environmental Plan 2014. Accordingly, a dwelling with a maximum gross floor area of 194 square metres is a possible development outcome. The subject allotment is below the minimum 1,000 square metres nominated for multi-dwelling development and below the minimum 800 square metres nominated for dual occupancy development under Clause 4.1 E of Byron Local Environmental Plan 2014. With these Local Environmental Plan controls in place, the density of any housing development occurring within the proposed 388 square metre lot will be aligned with a low density environment. It is submitted that the proposed development does not compromise the objectives of the zone.

20

The following items are considered as part of the assessment of the proposal:

- a) whether the contravention of the development standard raises any matter of significance for State or regional environmental planning: and

25 The proposed variation to Byron Shire Council's 600 square metre development standard does not create any concerns with respect to state or regional environmental planning. The site is unique in that it has a split zoning. The proposal provides a solution to secure appropriate lot sizes to support both commercial development within an 803 square metre allotment and housing in a 388 square metre allotment. The variation to the development standard is appropriately dealt with at a local level.

30

- b) the public benefit of maintaining the development standard: and

35 In this case there is little or no public benefit in maintaining the development standard as it would result in an allotment that continues to have a split zoning. As is the case with the adjoining lots to the north and south of the development site, the common boundary between the two proposed allotments follows the zone boundary between the B2 Local Centre Zone and the R2 Low Density Residential Zone. If the development standard was maintained, the proposed allotment boundary would be misaligned with the zone boundary and would continue to complicate new development proposals. Whilst it is noted that it is possible to propose development

40

within a site that has split zones, Byron Shire Council staff have indicated their preference to have the proposed subdivision set out with each lot containing one zone only.

- 5 c) *any other matters required to be taken into consideration by Council before granting consent.*

10 *The Town Planning Report / Statement of Environmental Effects that was submitted with the Development Application provides consideration of relevant environmental planning matters for the assessment of the Development Application. Although this report references a slightly altered allotment layout, the same environmental considerations apply. The revised lot layout is submitted in direct response to Byron Shire Council staff's advice that they prefer the two proposed lots to each contain only a single land use zone.*

15 *It is formally submitted that compliance with the 600 square metre development standard is unreasonable and unnecessary in the circumstances of the case and that a better planning outcome can be achieved by applying flexibility to the clause.*

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:

20 *The proposed lot layout is intended to provide two separate allotments with only one land use zone applying to each of the resulting lots. The current arrangement has a single allotment of land that is made up of both the R2 Low Density Residential Zone and the B2 Local Centre Zone. The zone boundary does not follow the title boundary of the existing lot. However, it does follow the title boundaries of the adjoining properties to the north and south.*

25 *The original proposal that was put to Council would have created two lots with the western lot located entirely within the B2 Local Centre Zone and the eastern lot made up of both the B2 Local Centre Zone and the R2 Low Density Residential Zone. This would have created an unusual land use arrangement for the eastern lot. Should a commercial use be proposed within the B2 Local Centre Zone, vehicle access would need to be taken through the R2 Low Density Residential Zone (where commercial uses are prohibited). The revised lot layout creates a clean separation between the B2 Local Centre Zone in the west and the R2 Low Density Residential Zone in the east. This arrangement will remove future complications with regards to permitted and prohibited land uses, including incidences where vehicle access for a commercial use is required to be taken through the R2 Low Density Residential Zone. It is noted that the land use table does allow for some common uses over both the adjoining zonings, these are limited.*

40 *It is submitted that because the proposal seeks to match the alignment of the lot boundaries with the zone boundary and maintain consistency with the adjoining properties to the north and south, it is unreasonable and unnecessary to apply the minimum lot size to the eastern lot. The creation of separate Torrens title lots for each zone is consistent with all other lots to the north and south and aligns with*

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Byron Shire Council's strategic direction for the locality. Each of the proposed lots will have its own street frontage and can easily be provided with water, sewer, electrical, communications and stormwater services.

5 *It is noted that prior to the submission of the Development Application, an enquiry was made to Byron Shire Council's Senior Strategic Planner with respect to changing the zoning to enable the entirety of Lot 30 DP 829895 to fall within the B2 Local Centre Zone. In their response, Byron Shire Council staff noted that a proposal to change the zoning is not endorsed under the Council's Business and Industrial Lands Strategy nor the Byron Town Centre Master Plan. It was concluded from this*
10 *response that a planning proposal would unlikely be supported.*

The objectives of Clause 4.1 of Byron Local Environmental Plan 2014 are discussed below:

(a) to ensure that lot sizes are compatible with local environmental values and constraints.

15 *Figure 1 within this document demonstrates a clear line that separates the B2 Local Centre Zone and the R2 Low Density Residential Zone. The proposed lot sizes are submitted as being compatible with the desired land use zones. The proposal does not compromise any environmental values and is not obstructed by land use constraints.*

20 *(b) to facilitate efficient use of land resources for residential and other human purposes.*

The proposed lot layout will allow for the efficient use of both the R2 Low Density Residential Zone and the B2 Local Centre Zone in their current arrangements. The proposal will create a clear division between the two zones by way of a title
25 *boundary. The proposal will eliminate confusion of permissibility where land uses are proposed within one zone and access is taken through another.*

It is noted that Proposed Lot 2, with an area of 388 square metres, could potentially support a dwelling with a gross floor area of up to 194 square metres (per the current maximum floor space ratio of 0.5:1). This is considered to be very reasonable sized dwelling within the Byron Bay town centre.
30

In addition, it is noted that Proposed Lot 1, with an area of 803 square metres, could potentially support a commercial development with a gross floor area of up to 1,043.9 square metres. This is a far more reasonable arrangement than that which could be supported under a subdivision proposal with a compliant allotment size for each
35 *proposed lot.*

The proposed reduced allotment size (Lot 2) is contained to the R2 Low Density Residential Zone under Byron Local Environmental Plan 2014. The objectives of the R2 Low Density Residential Zone are discussed below.

The Objectives of the zone are:

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- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

5 *The proposed eastern lot (Lot 2), with an area of 388 square metres, will be subject to the existing maximum floor space ratio control of 0.5: 1 provided under Clause 4.4 of Byron Local Environmental Plan 2014. Accordingly, a dwelling with a maximum gross floor area of 194 square metres is a possible development outcome. The subject allotment is below the minimum 1,000 square metres nominated for multi-*
10 *dwelling development and below the minimum 800 square metres nominated for dual occupancy development under Clause 4.1 E of Byron Local Environmental Plan 2014. With these Local Environmental Plan controls in place, the density of any housing development occurring within the proposed 388 square metre lot will be aligned with a low density environment. It is submitted that the proposed*
15 *development does not compromise the objectives of the zone.*

The following items are considered as part of the assessment of the proposal:

- a) *whether the contravention of the development standard raises any matter of significance for State or regional environmental planning: and*

20 *The proposed variation to Byron Shire Council's 600 square metre development standard does not create any concerns with respect to state or regional environmental planning. The site is unique in that it has a split zoning. The proposal provides a solution to secure appropriate lot sizes to support both commercial development within an 803 square metre allotment and housing in a 388 square metre allotment. The variation to the development standard is appropriately dealt with*
25 *at a local level.*

- b) *the public benefit of maintaining the development standard: and*

30 *In this case there is little or no public benefit in maintaining the development standard as it would result in an allotment that continues to have a split zoning. As is the case with the adjoining lots to the north and south of the development site, the common boundary between the two proposed allotments follows the zone boundary between the B2 Local Centre Zone and the R2 Low Density Residential Zone. If the development standard was maintained, the proposed allotment boundary would be misaligned with the zone boundary and would continue to complicate new development proposals. Whilst it is noted that it is possible to propose development*
35 *within a site that has split zones, Byron Shire Council staff have indicated their preference to have the proposed subdivision set out with each lot containing one zone only.*

- c) *any other matters required to be taken into consideration by Council before granting consent.*

40 *The Town Planning Report / Statement of Environmental Effects that was submitted with the Development Application provides consideration of relevant environmental*

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5 *planning matters for the assessment of the Development Application. Although this report references a slightly altered allotment layout, the same environmental considerations apply. The revised lot layout is submitted in direct response to Byron Shire Council staff's advice that they prefer the two proposed lots to each contain only a single land use zone.*

It is formally submitted that compliance with the 600 square metre development standard is unreasonable and unnecessary in the circumstances of the case and that a better planning outcome can be achieved by applying flexibility to the clause.

10 The proposal is in the public interest having regard to the objectives of the development standard in clause 4.1 for the following reasons:

- (a) the lot sizes are compatible with local environmental values and constraints having regard to zoning boundaries and future intended uses of the land, noting that the outcome will separate potentially incompatible business versus residential uses, and
- 15 (b) the proposal is a more efficient use of the available land resources for residential as distinct from business purposes.

The concurrence of the Planning Secretary is not required.

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

- 20 a) The development is satisfactory having regard to the requirements outlined in clause 4.6;
- 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;
- 25 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;
- f) The DA demonstrates that that the development is in the public interest;
- 30 g) The DA demonstrates that the development is consistent with the objectives of the standard and the zone;
- h) The DA demonstrates how the development produces a better planning outcome than one that strictly complied with the development standard; and
- 35 i) The DA demonstrates what it is about the grounds of the request that are particular to the proposed development on this site, and that there has to be something particular to the development on this site to justify the variation.

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

5 There are no proposed instruments of significant applicability to the proposed development.

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

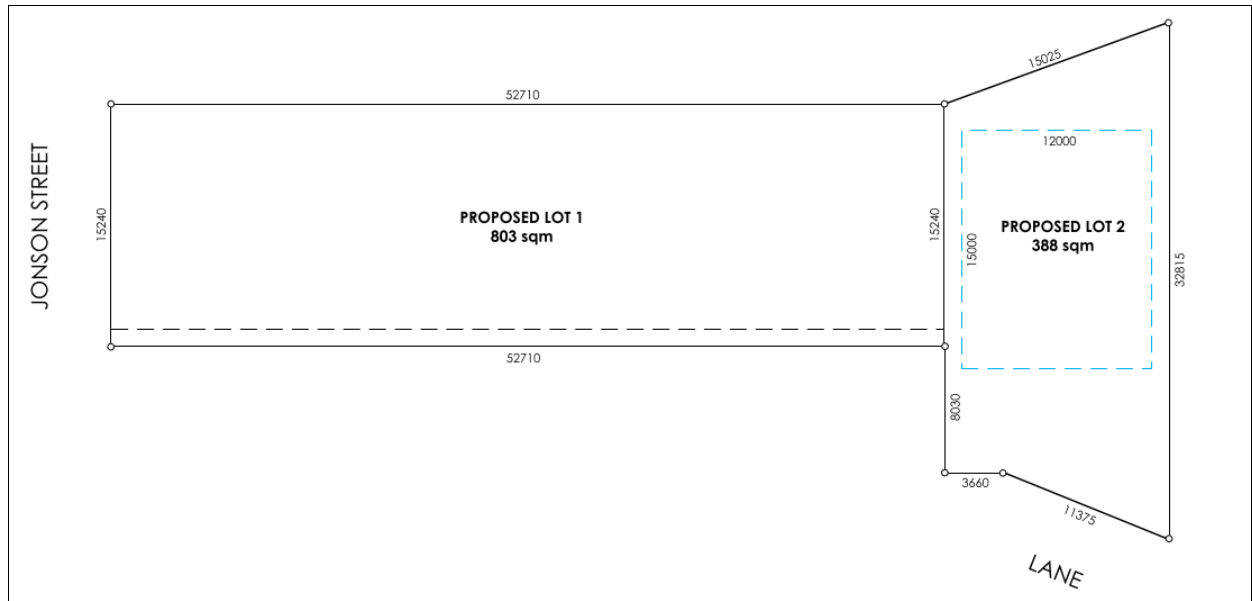
D4.2.11 Building forms (south eastern end of Jonson Street)

10 The provisions indicate a preference for rear land access to car parking. However if this were to be applied to the subject site, commercial development in the western part of the site would have to gain access via the residentially zoned part of the site to Ruskin Lane. Business-related development is generally prohibited in the R2 Zone, and access via the residential part of the site between such development and Ruskin Lane would likewise be prohibited. Access to the front part of the site is currently via an existing driveway as indicated in the Photo 1 above, and no change is proposed in this regard. It is considered
15 that the subdivision as proposed to create this 803 m² commercial lot is acceptable in this instance considering the zoning of the land. Any future development of Lot 1 will need to carefully design its frontage in terms of the relevant planning controls that apply to the site under Byron LEP 2014 including Clauses 6.13 Design Excellence - Byron Town Centre and 6.14 Active Street Frontages. This would include a shared access arrangement with a
20 neighbouring lot and or consolidation as indicated by the applicant as a future possibility.

D6.4.1 Lot Size and shape,

The plans (refer to extract below) show a 15m x 12m building envelope within proposed Lot 2 in accordance with Council's DCP 2014 Chapter D6, demonstrating that sufficient space is available to fit a reasonable sized dwelling on that allotment.

25 The proposal shape of Lot 2 is acceptable in terms of the controls. Conditions of consent to apply in terms of completing the subdivision and provision of services and the like in accordance with Councils standard requirements.



4.5 Environmental Planning and Assessment Regulation 2021 considerations

	Applicable to the proposal:	Considered the control as it relates to the proposal:	If this control is applicable, does the proposal comply?
<p>Clause 92 - Additional matters that consent authority must consider</p> <p>Section 61 - Additional matters that consent authority must consider</p>	<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
<p>Clause 93 Fire safety and other considerations</p> <p>Section 62 - Consideration of fire safety</p>	<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
<p>Clause 94 - Consent authority may require buildings to be upgraded</p> <p>Section 64 - Consent authority may require upgrade of buildings</p>	<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
Section 63 - Considerations for erection of temporary structures			

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

5 4.6.1

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

4.7 The suitability of the site for the development

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

4.8 Submissions made in accordance with this Act or the regulations

10

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

Section 64 levies will be payable.

5.2 Developer Contributions

Section 7.11 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

The DA proposes Torrens Title Subdivision of One Lot into Two Lots.

The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed. The site is a serviced, unconstrained property and is considered suitable for the proposed development.

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

Report No. 11.4 PLANNING - Report of the Planning Review Committee held 2 March 2023

Directorate: Sustainable Environment and Economy

Report Author: Chris Larkin, Manager Sustainable Development

5 **File No:** I2023/318

Summary:

This report provides the outcome of the Planning Review Committee held on 2 March 2023.

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.

15

RECOMMENDATION:

That Council endorses the outcomes of the Planning Review Committee meeting held on 2 March 2023.

20

BYRON SHIRE COUNCIL

Report

The Planning Review Committee meeting was held on 2 March 2023. The meeting commenced at 4:40pm and concluded at 4:45pm.

Councillors: Mayor Cr M Lyon, Cr A Pugh, Cr P Westheimer, Cr D Dey.

5 **Apologies:** Cr C Coorey, Cr S Ndiaye, Cr A Hunter,

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

Conflicts of Interest: Cr Dey declared a “Not Significant Non-Pecuniary interest” on DA 10.2022.545.1,

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

DA No./ Applicant	Property Address/ Proposal	Consultation/ Submissions	Reason/s Outcome
10.2022.545.1 Wentworth Brown Pty Limited	1247 Myocum Road MULLUMBIMBY Dual Occupancy Detached Dwellings with Expanded Dwelling Modules, Resident Carports and Landscaping	Level 1 27/1/20-9/2/23 2 submissions against	Staff Delegation

Council determined the following original development applications. The S.4.55 applications to modify those consents were referred to the Planning Review Committee to decide if the modification applications can be determined under delegated authority with the outcome shown in the final column.

15

DA No. / Applicant	Property Address / Proposal	Consultation / Submissions	Reason/s / Outcome
10.2016.716.3 Mr S B Stewart	27 Marine Parade BYRON BAY Modification to the design of the dwelling	Level 1 Modification to the design of the dwelling 4/10/22-19/9/22	Staff Delegation

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

11.4

DA No. / Applicant	Property Address / Proposal	Consultation / Submissions	Reason/s / Outcome
		1 submission	
10.2017.474.5 Newton Denny Chapelle Pty Ltd	88 Station Street MULLUMBIMBY Modification - Increase affordable unit numbers with corresponding decrease in S7.11 Contributions	Level 0	Staff Delegation

BYRON SHIRE COUNCIL

Report No. 11.5 PLANNING - DA 10.2021.657.1 - Community title subdivision to create sixteen (16) lots inclusive of the neighbourhood management lot of an approved multiple occupancy comprising fifteen (15) dwelling sites – 375 Coorabell Road COORABELL

5

Directorate: Sustainable Environment and Economy

Report Author: Patricia Docherty, Planner

File No: I2023/391

10 **Proposal:**

DA No: 10.2021.657.1

Planning Portal ref PAN-154852

Proposal description: Community title subdivision to create sixteen (16) lots inclusive of the neighbourhood management lot of an approved multiple occupancy comprising of fifteen (15) dwelling sites.

Property description: LOT: 1 DP: 1266052
375 Coorabell Road COORABELL

Parcel No/s: 270342

Applicant: Newton Denny Chapelle

Owner: Tarongo Land Pty Ltd

Zoning: PART C2 Environmental Conservation / PART RU2 Rural Landscape / PART 1a General Rural zone in LEP 1988

Date received: 27 October 2021

Integrated / Designated Development: Integrated
S100B Approval & Activity Approvals Waterfront Land Designated Not applicable

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

11.5

Concurrence required Yes – Enter CNR No. 30790

Public notification or exhibition:

- Level 2 advertising under Council’s Community Participation Plan.
- Exhibition period: From: 9 November 2021 To: 22 November 2021
- No Submissions received

Estimated cost \$20,000.00

Delegation to determine Council

Issues

- Proposal for Community Title (CT) subdivision seeks to modify positioning of some dwelling sites as they differ from that approved under the multiple occupancy consent
- Vegetation Management Plan approved under consent 10.2018.355.1 updated in accordance with the proposed CT – conditions to apply

Summary:

5 The Development Application (DA) proposes Community Title subdivision to create sixteen (16) lots inclusive of the neighbourhood management lot on an approved multiple occupancy comprising of fifteen (15) dwelling sites (inclusive of one (1) existing dwelling and fourteen (14) new dwelling sites). DA plans are at Attachment 1 of this report.

10 The Multiple occupancy was approved under DA10.2018.355.1 on 30 August 2019. Six of the identified house sites are not in the exact location as approved under the MO and two in particular on Lot 8 and 10 are in a different location. Similarly, the internal road layout has been repositioned in the western end of the development where it services Lots 10-15.

10 An existing house is also located on the property and will be located within its own Lot, with the remaining 14 lots being vacant for residential development.

15 The changed house sites and amended road layout raises no issues and can be supported on environmental and engineering grounds. The Rural Fire Service have issued general terms of approval under Section 100B of the NSW Rural fires Act 1997 for the proposed subdivision. An updated Vegetation Management Plan has been included with the application and is recommended for approval subject to conditions of consent.

The application appropriately addresses the relevant constraints applying to the site and is recommended for approval subject to the conditions listed in the Recommendation of this Report in Attachment 2.

20 NOTE TO COUNCILLORS:

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY





11.5

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.

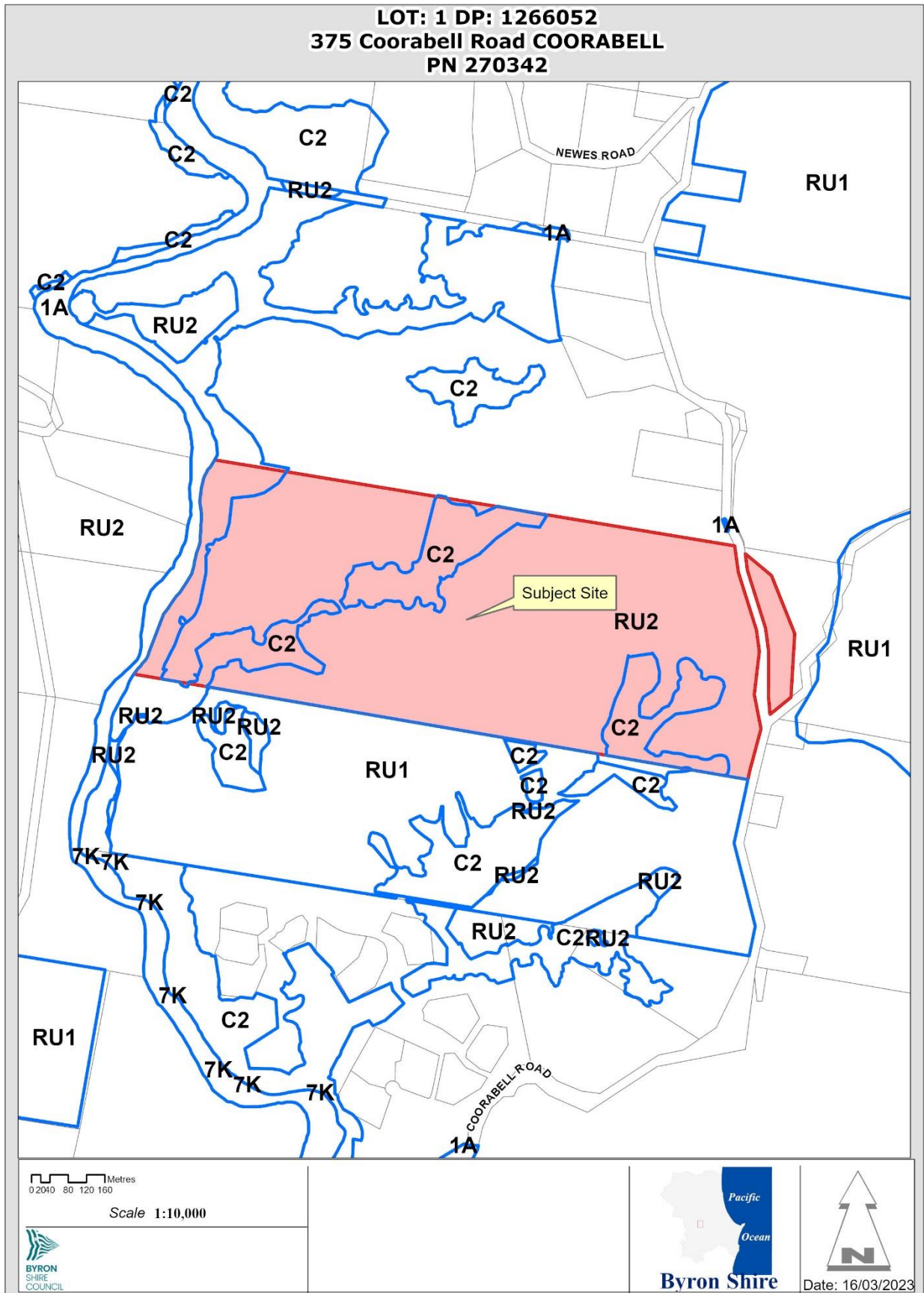
RECOMMENDATION:

10 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.657.1 for Community Title subdivision to create sixteen (16) lots inclusive of the neighbourhood management lot of an approved multiple occupancy comprising of fifteen (15) dwelling sites at 375 Coorabell Road, Coorabell be approved subject to the conditions of consent attached to this Report (Council Document #E2023/27114).**

15 Attachments:

- 1 Attachment 1: 10.2021.657.1 Combined Plans for Approval (Marked in Red by Council), E2023/21722 
- 2 Attachment 2: 10.2021.657.1 Recommended Conditions of Consent, E2023/27114 
- 20 3 Attachment 3: 10.2021.657.1 - Draft Neighbourhood Management Statement, E2021/134168 
- 4 Attachment 4: 10.2021.657.1 - Vegetation Management Plan, E2021/134169 

BYRON SHIRE COUNCIL



Assessment:

1. INTRODUCTION

History/Background

- 5 10.2018.355.1 Development Application Multiple occupancy: fifteen (15) dwelling sites (inclusive of one (1) existing dwelling and fourteen (14) new dwelling sites) associated infrastructure, land management and environmental enhancement - Approved 30/08/2019. Stamped approved plan is in Figure 1.

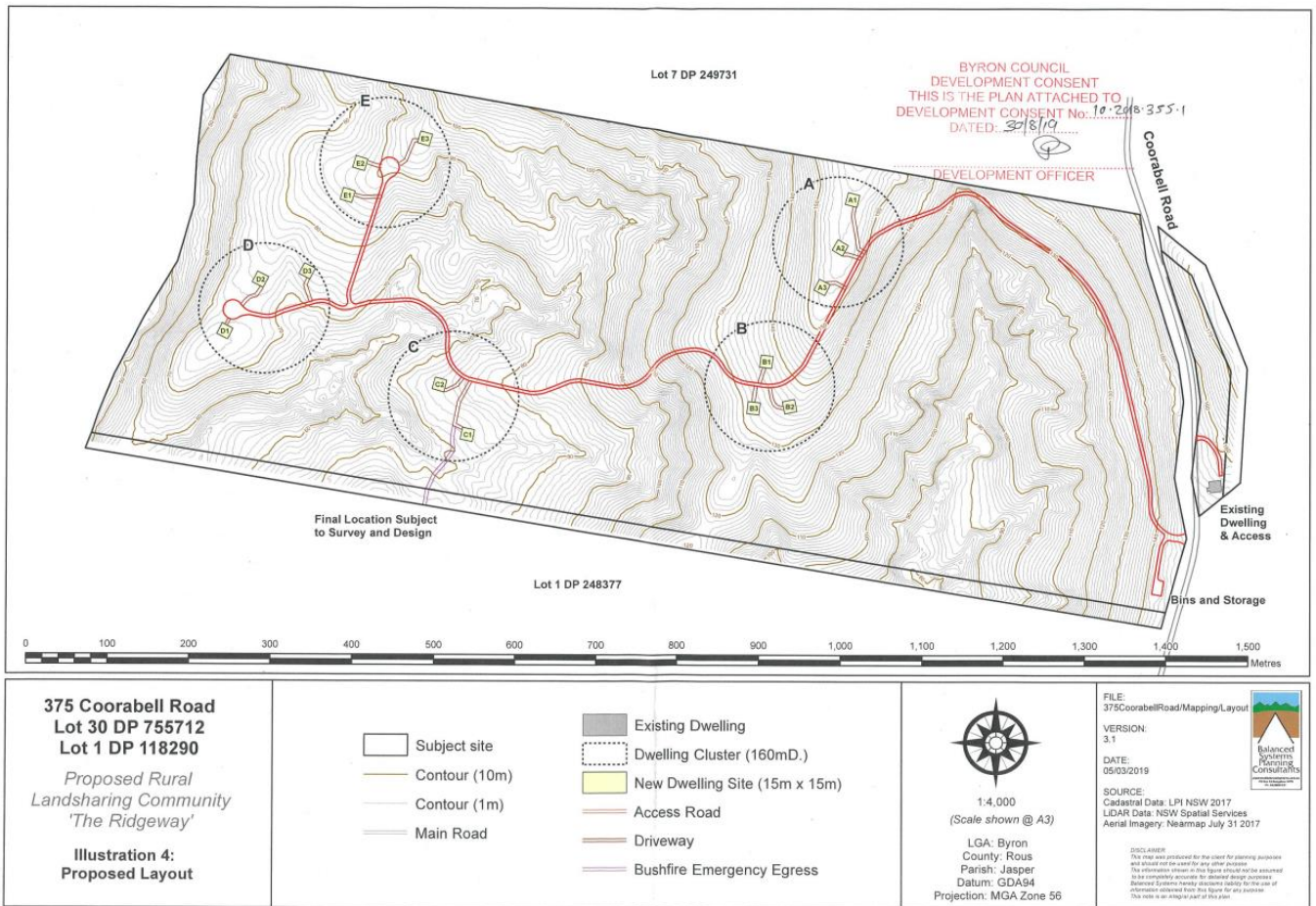


Figure 1: DA 10.2018.355.1 – Approved Layout of Multiple Occupancy

- 10 There is an existing dwelling and access on the eastern side of Coorabell Road on the same current lot and this is approved to remain under the multiple occupancy.

Description of the proposed development

- 15 This application seeks approval for Community Title (CT) subdivision to create sixteen (16) lots inclusive of the neighbourhood management lot of an approved multiple occupancy (MO) comprising of fifteen (15) dwelling sites (inclusive of one (1) existing dwelling and fourteen (14) new dwelling sites).

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

11.5

5 Council is requested by the applicant to impose conditions of consent requiring the modification of consent 10.2018.355.1 in accordance with section 4.17(1)(b) of the Environmental Planning and Assessment Act 1979 and clause 97 of the Environmental Planning and Assessment Regulation 2000 to reflect the repositioning of several dwelling sites and associated vehicular access.

As approved under consent 10.2018.355.1, the 14 proposed dwelling lots and the neighbourhood management lot are located on the western side of Coorabell Road. The existing approved dwelling site on the eastern side of Coorabell Road is to be located on its own lot.

10 Plan 3 in Figure 2 of this report illustrates the proposed community title subdivision plan. It is noted that the previously approved waste bin storage and collection area is not shown on the proposed community title subdivision plan and this is addressed in Section 4 of this report.

15 Dwelling sites are located within clusters with the exception of one dwelling site relocated to an extensively cleared area in proposed lot 8.

20 No other works beyond those approved under DA10.2018.355.1 and illustrated on Plan 3 are required to achieve the community title subdivision. With the exception of land within the rural living management zone for each dwelling, the primary access road and other essential services will be contained within an infrastructure corridor that is to be maintained by the community. Other shared spaces including parkland, walking tracks and community gardens will also be located on community land.

25 It is proposed that an area be dedicated to the creation of regeneration works and community gardens with shared-access and facilities. The community land also includes those areas designated as Habitat, Agriculture and Community/Infrastructure. Management of community land will be undertaken by the community members residing in the rural dwellings in accordance with a Rural Landsharing Management Plan.

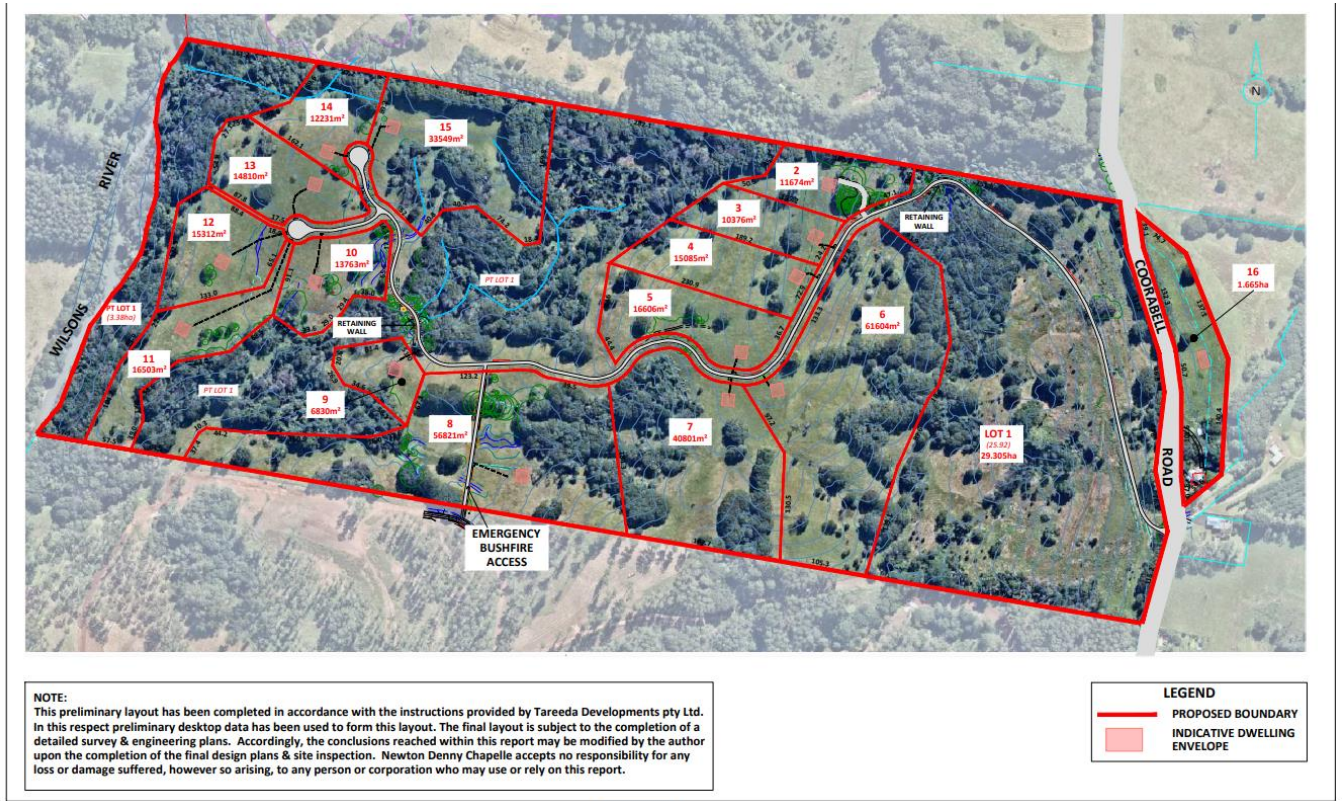


Figure 2: Proposed Community Title Subdivision Neighbourhood Lot Plan 3

5 Proposed site plan overlay with approved MO sites affected by re-siting highlighted yellow and subsequent new site circled in blue ink is shown in Figure 3.

Clustering is similar to that approved with the exception of the dwelling in lot 8 which has been relocated to a cleared paddock to the southeast of the approved MO dwelling site.

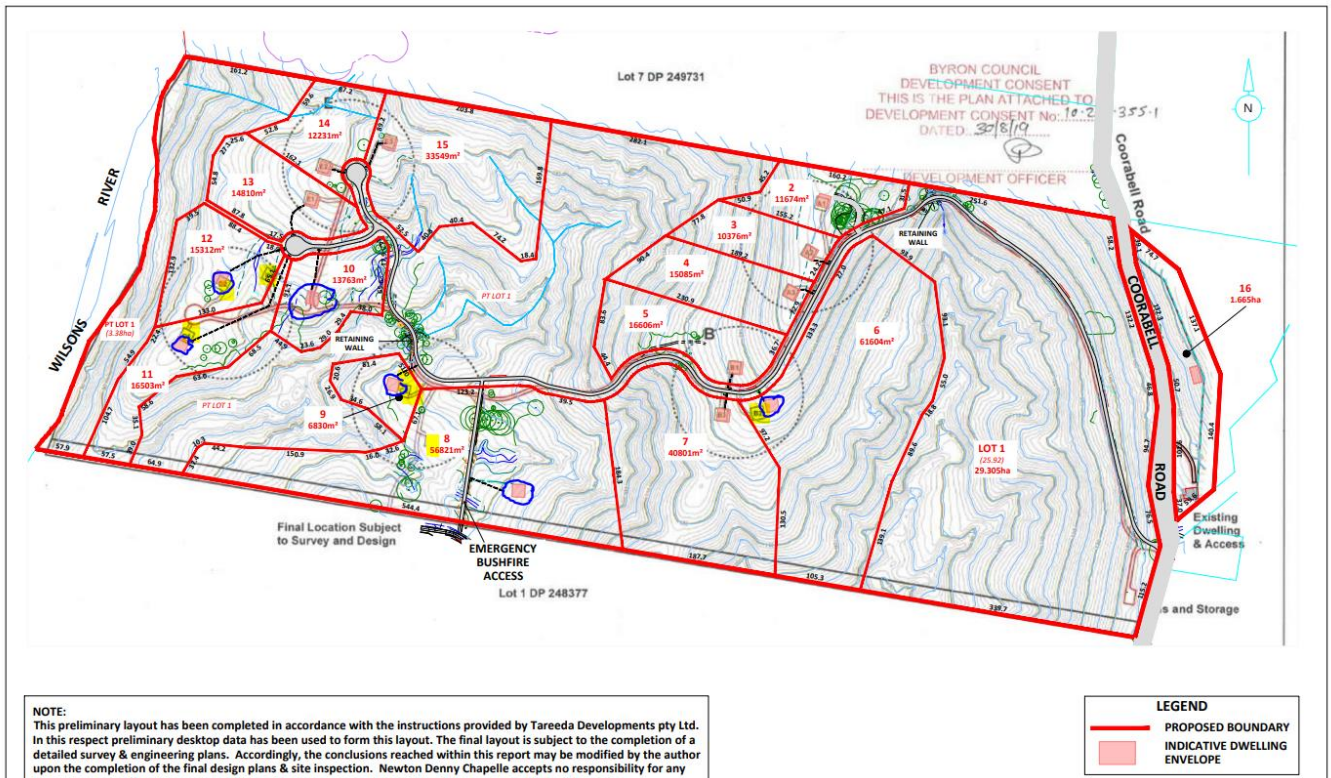


Figure 3: Site overlay comparing approved MO layout with Proposed Community Title Plan

Description of the site

Land is legally described	LOT: 1 DP: 1266052	
Property address	375 Coorabell Road COORABELL	
Land is zoned:	Byron LEP 2014: PART C2 Environmental Conservation / PART RU2 Rural Landscape Byron LEP 1988: PART 1a General Rural Zone Byron LEP	
Land area is:	64.51 hectares	
Property is constrained by:	Bushfire prone land Drinking Water Catchment Waterfront land	
	Is a BDAR required due to the location of the proposed development?	<input checked="" 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

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	Is there a Vegetation Management Plan which might affect the proposal?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

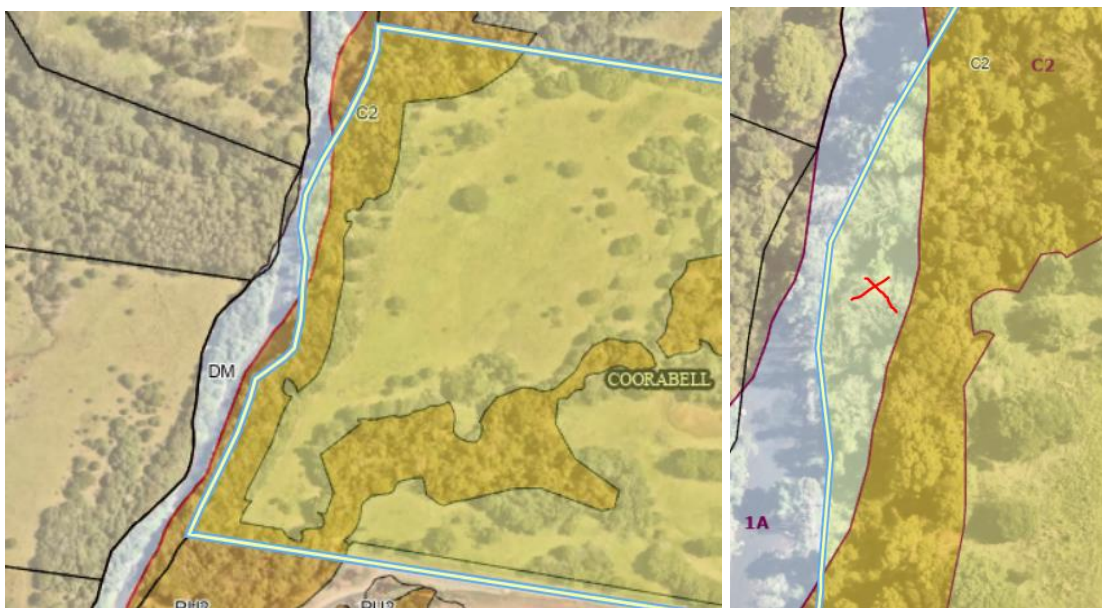
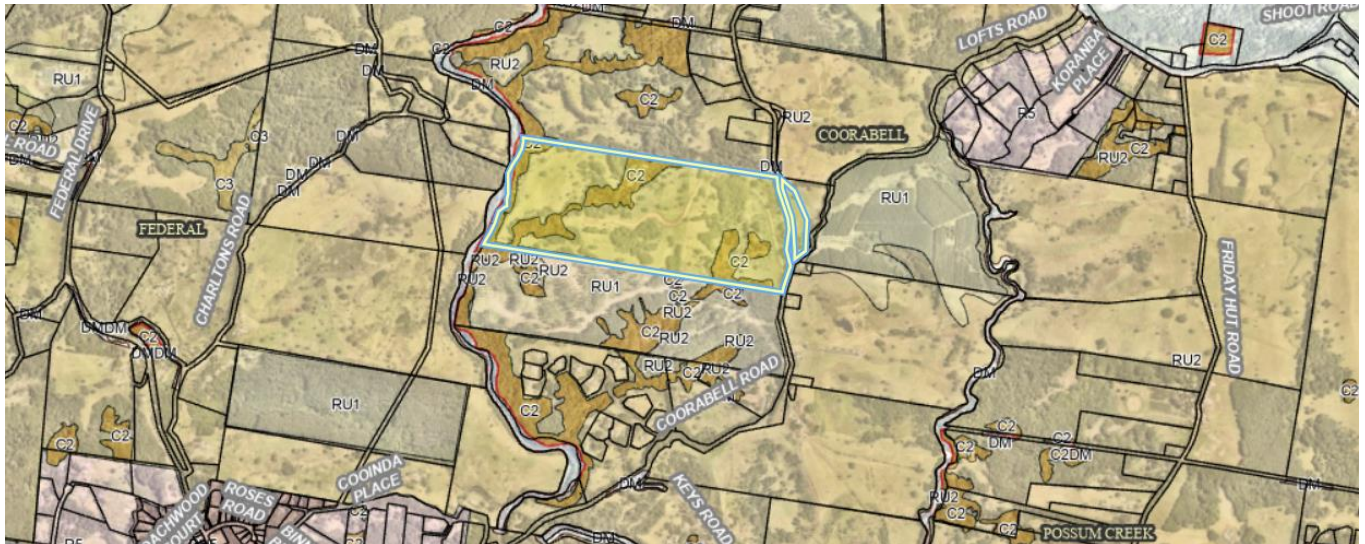


Figure 4: Zoning including part 1a General Rural still zoned under LEP 1988 on the Wilson River.

- 5 A small part of the site on the Wilson River is still zoned 1a General Rural under Byron LEP 1988 (deferred matter under Byron LEP 2014). Generally speaking, the proposal does not affect this part of the site and is not a matter for consideration with regards to the assessment of proposed community title subdivision of an approved MO.

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections or conditions.
S7.11 / Contributions Planner	No objections subject to conditions.
Natural Resource Planner	No objections. Conditions imposed on MO approving the Vegetation Management Plan replicated and updated to include latest version of the Vegetation Management Plan submitted with the application for community tile subdivision.
Resource Recovery	No objections subject to conditions.
Department of Primary Industries – Office of Water	No objections subject to conditions.

3. SECTION 4.14 – BUSH FIRE PRONE LAND

5 Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document 'Planning for Bush Fire Protection 2006'. The site is bush fire prone land. The development application was referred to the NSW Rural Fire Service, which provided general terms of approval in accordance with S100B of the Rural Fires Act 1997, which are reflected in the Recommendation of this Report.

10 Effect of 10/50 rule on significant vegetation – no effect vegetation management plan and conditions of consent protect all high environmental value land.

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

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

State Environmental Planning Policies (SEPP)

Consolidated SEPPs 2021

Considerations	Satisfactory	Unsatisfactory
<p><i>Resilience and Hazards SEPP 2021</i></p> <p>Consideration: Chapter 4 - Remediation of Land</p> <p>Whilst this revised proposal has minor alterations to the locations of several dwelling allotments, the prior assessment included a land use history and composite soils assessment concluded:</p> <p><i>“All of the collected evidence indicates a very high likelihood that there are no previous or current land uses with potential to contaminate the site of the proposal.</i></p> <p><i>The preliminary site investigation concludes that there is insignificant risk of contamination at the site of the proposal and no further detailed investigation or soil testing is warranted. In accordance with the Byron Shire Council Contaminated Sites Guidelines, NSW EPA Guidelines and SEPP55 provisions, the site is suitable for the proposed Rural Landsharing Community development.”</i></p>	☒	☐
<p><i>Transport and Infrastructure SEPP 2021</i></p> <p>Consideration:</p> <p>The application was referred to Essential Energy in accordance with S2.48 of the SEPP. General Comments were received and are included in the notes at the end of this assessment report and conditions of consent. No safety issues were raised.</p>	☒	☐

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

- 5 In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:
- (a) The proposed development is defined in the LEP 2014 as Subdivision (being a subdivision that requires development consent) ;
 - (b) The land is within the PART C2 Environmental Conservation / PART RU2 Rural Landscape according to the Land Zoning Map;

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- (c) The proposed development is Permissible with Consent. Environmental Protection Works are Permissible without consent*; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective RU2	Consideration
<ul style="list-style-type: none"> • To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. 	<p>The proposed community title subdivision of an approved multiple occupancy is permissible in the RU2 zone and is not inconsistent with the objectives of the zone. In particular, the development will maintain the rural landscape character of the land and minimise impacts on the scenic quality of the locality.</p>
<ul style="list-style-type: none"> • To maintain the rural landscape character of the land. 	
<ul style="list-style-type: none"> • To provide for a range of compatible land uses, including extensive agriculture. 	
<ul style="list-style-type: none"> • 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. 	
<ul style="list-style-type: none"> • To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality. 	
Zone Objective C2	Consideration
<ul style="list-style-type: none"> • To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values. 	<p>No dwellings or engineering works are proposed in the C2. The proposal is accompanied by an amended Vegetation Management Plan previously approved under the multiple occupancy development. The environmental restoration areas identified in the VMP will protect, manage and restore areas of high ecological, scientific, and aesthetic values.</p>
<ul style="list-style-type: none"> • To prevent development that could destroy, damage or otherwise have an adverse effect on those values. 	

5 **Environmental protection works means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works.*

10 Figure 5 illustrates that the proposed development and all engineering works are located in the RU2 Zone. No works are proposed within the C2 Zoned land other than environmental protection works detailed in the Vegetation Management Plan (VMP) for environmental repair and enhancement of habitat and vegetation. See Figure 6.

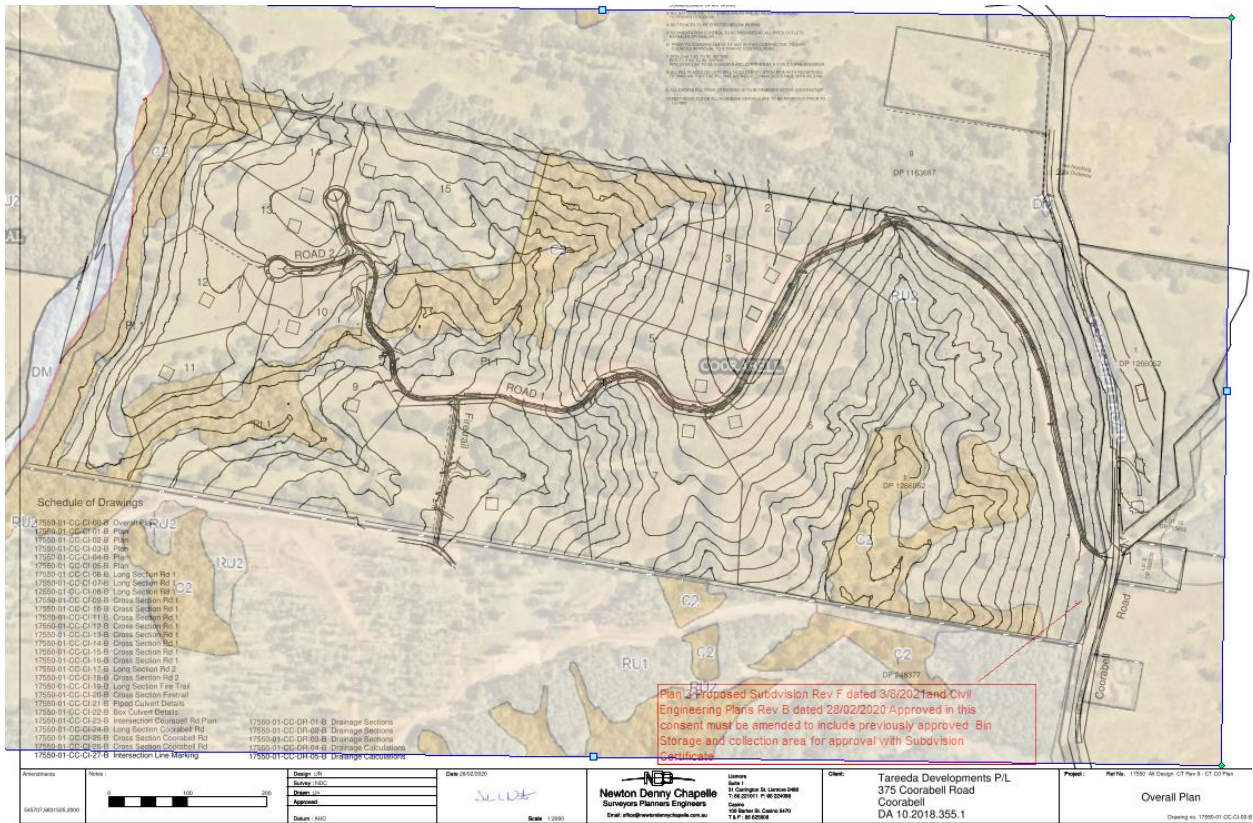


Figure 5: Zoning overlay on proposed subdivision and engineering works overall plan.

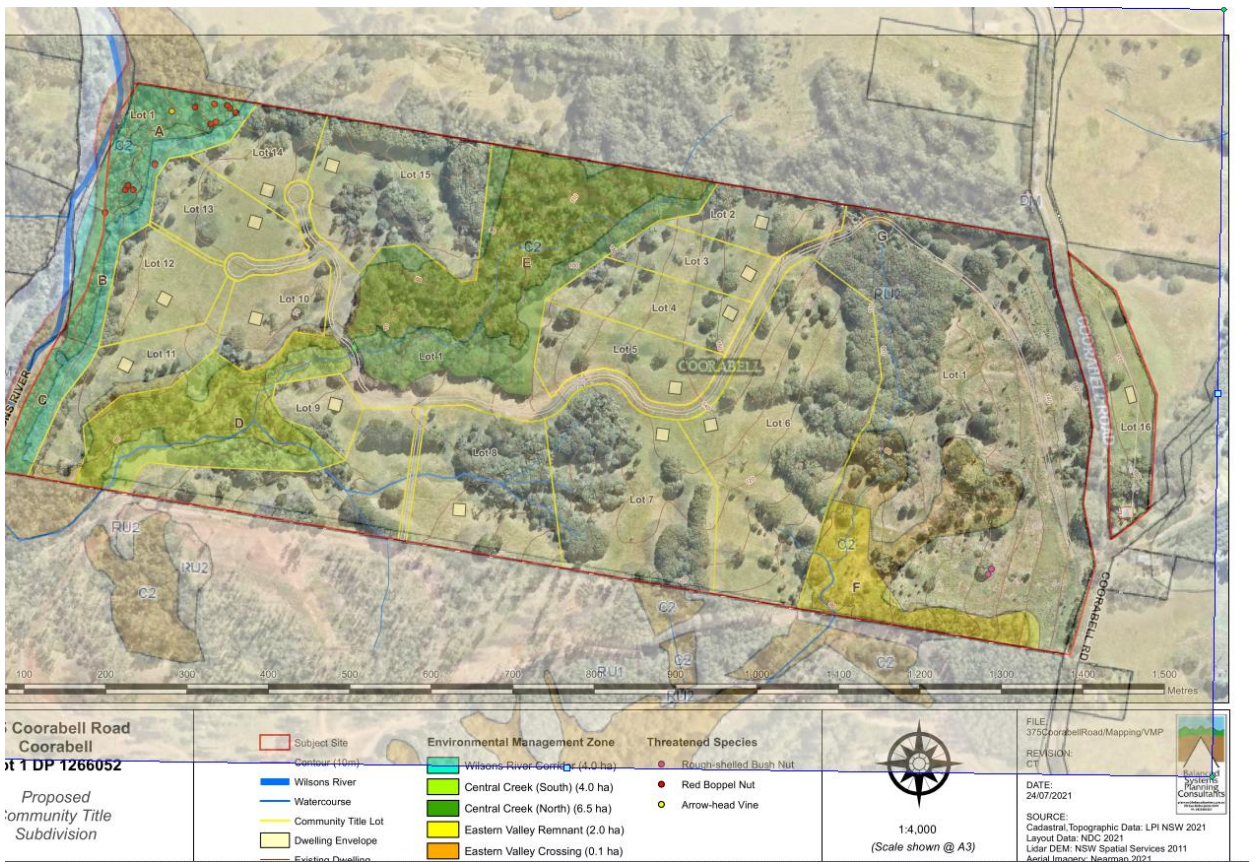


Figure 6: Zoning overlay on proposed Environmental Management Zones in VMP

4.1AA Minimum subdivision lot size for community title schemes

(1) *The objectives of this clause are as follows—*

(a) to ensure that land to which this clause applies is not fragmented by ad hoc subdivisions that would create additional dwelling entitlements.

5 (2) *This clause applies to a subdivision (being a subdivision that requires development consent) under the [Community Land Development Act 2021](#) of land in any of the following zones—*

(a) Zone RU1 Primary Production,

(b) Zone RU2 Rural Landscape,

10 *(c) Zone R5 Large Lot Residential,*

(d) Zone SP1 Special Activities,

(e) Zone SP3 Tourist,

(f) Zone E3 Environmental Management,

but does not apply to a subdivision by the registration of a strata plan.

15 (3) *The size of any lot resulting from a subdivision of land to which this clause applies (other than any lot comprising association property within the meaning of the [Community Land Development Act 2021](#)) is not to be less than the minimum size shown on the [Lot Size Map](#) in relation to that land.*

(4) This clause applies despite clause 4.1.

20 **Consideration:** The proposal is not for subdivision of an existing community scheme.

4.1B Minimum subdivision lot size for multiple occupancy or rural community title developments

(1) *The objective of this clause is to permit the subdivision of land to which this clause applies for a multiple occupancy or a rural community title.*

25 (2) *This clause applies to land—*

(a) outlined by a thick purple line on the [Multiple Occupancy and Community Title Map](#), or

(b) containing an existing approved multiple occupancy or rural community title.

30 (3) *The size of any lot resulting from the subdivision of land to which this clause applies may be less than the minimum lot size shown on the [Lot Size Map](#) in relation to that land if—*

(a) the total number of neighbourhood lots (within the meaning of the [Community Land Development Act 1989](#)) located on the land following the subdivision does not exceed—

35 *(i) the number nominated for that land as shown on the [Multiple Occupancy and Community Title Map](#), or*

(ii) the number of dwelling sites approved under the development consent for the multiple occupancy or rural community title, and

(b) there will be at least one lot comprising association property (within the meaning of that Act) located within that land following the subdivision that comprises land to be used for the purposes of a recreation area, an environmental facility, agriculture or environmental protection works.

5 (c) (Repealed)

(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

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

(c) appropriate mitigation measures are in place to minimise land use conflicts, with existing agricultural and other rural land uses being undertaken on the land or neighbouring land, that may arise from further development on the land.

15 (5) In this clause, **approved multiple occupancy or rural community title** means development for the purposes of a multi dwelling housing or community scheme (being a subdivision within the meaning of the [Community Land Development Act 1989](#)) and for which development consent has been granted.

Note—

20 It is the applicants' responsibility to demonstrate that the development consent has not lapsed.

Consideration: The assessing officer concurs with the following statement contained within the applicant's Statement and Environmental Effects:

25 The proposal is seeking development consent pursuant to Clause 4.1B, being an existing approved rural landsharing community comprising 15 Dwelling Sites (inclusive of the existing dwelling). The proposal is consistent with this requirement, by maintaining the number of Dwelling Sites approved under DA 10.2018.155.1. Accordingly, the community title subdivision will relate to those sites approved on the land, with each lot containing a single Dwelling Site. ...

30 The proposal contains a neighbourhood management lot, that will be used for Environmental Habitat through the approved Vegetation Management Plan and for community use. Pursuant to sub-clause (4), the proposal includes management zones for rural living and ecological enhancement works through the approved Vegetation Management Plan. These areas are overseen by the final Neighbourhood Management Statement ...to ensure the neighbourhood lot is appropriately managed. In regard to sub-
35 clause (5), reference is made to the fact this proposal relates to land the subject of an approved rural landsharing community through development consent 10.2018.355.1.

40 The proposal is undertaken in accordance with this clause enabling the Community Title of the existing rural landsharing community. This report demonstrates that appropriate management measures are in place that will ensure the protection and enhancement of the landscape, biodiversity and rural setting of the land. The report also confirms the proposal will achieve improved social and local economic outcomes.

5.16 Subdivision of, or dwellings on, land in certain rural, residential or conservation zones

BYRON SHIRE COUNCIL

(1) *The objective of this clause is to minimise potential land use conflict between existing and proposed development on land in the rural, residential or conservation zones concerned (particularly between residential land uses and other rural land uses).*

(2) *This clause applies to land in the following zones—*

- 5 (a) *Zone RU1 Primary Production,*
- (b) *Zone RU2 Rural Landscape,*
- (c) *Zone RU3 Forestry,*
- (d) *Zone RU4 Primary Production Small Lots,*
- (e) *Zone RU6 Transition,*
- 10 (f) *Zone R5 Large Lot Residential,*
- (g) *Zone C2 Environmental Conservation,*
- (h) *Zone C3 Environmental Management,*
- (i) *Zone C4 Environmental Living.*

(3) *A consent authority must take into account the matters specified in subclause (4) in determining whether to grant development consent to development on land to which this clause applies for either of the following purposes—*

- 15 (a) *subdivision of land proposed to be used for the purposes of a dwelling,*
- (b) *erection of a dwelling.*

(4) *The following matters are to be taken into account—*

- 20 (a) *the existing uses and approved uses of land in the vicinity of the development,*
- (b) *whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*
- (c) *whether or not the development is likely to be incompatible with a use referred*
25 *to in paragraph (a) or (b),*
- (d) *any measures proposed by the applicant to avoid or minimise any*
30 *incompatibility referred to in paragraph (c).*

Consideration: The proposal is for community title subdivision of land the subject of an approved MO through development consent 10.2018.355.1. The proposal makes minor
30 modifications to the approved layout of dwelling sites and one of the dwelling sites has been relocated further from the dwelling cluster to an area of existing cleared land, with access to the internal road and is further away from vegetation restoration areas or land zoned C2 environmental protection. The proposal satisfactorily considers existing and approved use of land in the vicinity of the development, including adjoining approved
35 community title subdivisions. The proposal is not likely to have a significant impact on the predominant land uses in the vicinity of the development. Each lot will be capable of accommodating at least 1 dwelling with consideration for asset protection zones to ensure bushfire protection and avoids any land use conflicts or need for an overall increase in driveway access works.

Note the application is accompanied by an Ecological Assessment that provides the following recommendation:

- 5 • *Approve the revised Vegetation Management Plan, that will not result in any net loss of ecological works on the site, which will improve the function of the VMP and align Environmental Management Zones with the CT subdivision layout.*
- *Include provisions in the Neighbourhood Management Statement (NMS) for the protection and management of native vegetation within Byron HEV mapped areas located within CT Lots and also within the Community Lot 1.*
- 10 • *CT boundary fences should implement a low impact fence design to be erected along the approved CT boundaries, that should achieve the following:*
 - *Not require the removal of any native vegetation;*
 - *Not impede the movement of native fauna through the property;*
 - *Have a minimum 50cm gap between the ground level and the first rail or strand; and*
 - 15 ○ *Not include gaps of less than 50cm between rails or strands. (Byron Shire Council requirements)*
- *As contained within the existing Multiple Occupancy approval, cats are not permitted to be kept as pets on the overall property to protect native wildlife.*
- 20 • *Native trees within community living lots and nearby to dwelling sites, APZs and infrastructure are to be protected in accordance with AS 4970-2009 Protection of Trees on Development Sites.*
- *All construction workers, site visitors, community lot owners are to possess a copy of the Council approved Vegetation Management Plan*

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

None.

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

B1 Biodiversity

- 30 An assessment of Chapter B1 has been completed by Balanced Planning Systems Consultants Section 3.1.1 of the Ecological Assessment Report submitted with the application (Doc # E2021/134170).

B3 Services

All Dwelling Sites will have access to key service as demonstrated below.

Water: Potable water will be sourced through harvesting of roof water and storage within tanks placed on-site as part of the dwelling house construction;

Sewage: Suitable on-site wastewater systems can be utilised on-site as outlined in the assessment report prepared by Trine Solutions (Doc # E2021/134162)

- 5 Stormwater management: Stormwater management for this subdivision provides for the collection and treatment of stormwater from rooftops through harvesting roof water. No significant civil works are required to deliver this project given the existing road network already exists.

- 10 Vehicular Access: Suitable vehicular access complying with Byron Shire Council and NSW Planning for Bushfire Protection Guidelines 2019 requirements already exists through the development of the road network under existing approvals.

Electricity & Telecommunications: Services are available for each Dwelling Site with opportunity to also access renewable energy systems.

B4 Traffic, Parking, Circulation & Access

- 15 Council's engineer has assessed traffic, parking, circulation and access and the proposal is satisfactory subject to conditions of consent at the end of this report. Further detailed assessment for individual parking arrangements for each dwelling will be required in any future application for development consent.

B6 Buffers and Minimising Land Use Conflict

- 20 The proposal is surrounded by other MO or community title residential land uses. Appropriate buffers have been included in the layout and the design of the Rural Landsharing Community to avoid land use conflicts and protect ecological values and natural resources. The modified layout is substantially the same as that approved under the consent for the rural land sharing community.

- 25 B8 Waste Minimisation and Management

It is noted that the previously approved waste bin storage and collection area is not shown on the proposed community title subdivision plan and this is addressed by recommended conditions of consent.

The statement of environmental effects provides the following statement:

- 30 *The rural landsharing community will implement site waste management provisions through the Neighbourhood Management Statement, including guidelines for the collection, storage and disposal of waste and recyclables from the ongoing community. The key provisions include:*

- 35
 - *The proprietor, lessee or occupier of a Lot must keep any garbage bin on the Lot secure, hidden from view from the outside of the Lot and that it does not emit odours.*
 - *The proprietor, lessee or occupier of a Lot must store used bottles, boxes and containers, wastepaper and other similar items so that they are hidden from view outside the Lot.*

- *The proprietor, lessee or occupier of a Lot shall ensure that all garbage and refuse is separated from recyclable material and organic waste and that all such materials are regularly removed from the Neighbourhood Parcel.*

5 A condition of consent is recommended to require a centralised storage area for bins to be collected by Council refuse collection vehicles, at a location close to the top of the hill near the main entrance to the site. This storage and collection area is to be in generally in the same location as that approved for the MO on land zoned RU2 Rural Landscape. Due to collection vehicles having to enter the community title/private road to collect waste, all residents will be required to sign an indemnity agreement allowing access for the Council collection service provider.

C3 Visually Prominent Sites, Visually Prominent Development & View Sharing

15 The site is zoned RU2 and has a height of 60m AHD or greater, therefore it falls within the definition of a visually prominent site. In this instance, the approved Dwelling Sites) will occur within the maintained paddock area at approx. RL 85m AHD -150m AHD. The proposed subdivision does not modify the visual value of the subject site, which was the subject of a specialist visual impact assessment and assessed under DA10.2018.355.1 (Refer to Doc # E2018/61135)

C4 Development in a Drinking Water Catchment

20 Parts of the subject land are located in a mapped drinking water catchment defined by the Byron LEP. Given the location and nature of the development proposed, it is unlikely to have any adverse impact on the quality and quantity of water entering the drinking water storage.

D2 Residential Accommodation and Ancillary Development in Rural Zones

25 The application comprehensively addresses the provisions of section D2.6.1 Multiple Occupancy Development of Rural Land.

Prescriptive Measures

1. Siting and Clustering of House Sites

a) Dwelling houses must be clustered in three (3) or more houses or future house sites.

30 *Separate clustering must demonstrate that the environmental and social impact or impacts of a number of dwelling houses and building clusters is less than a single clustering of dwelling houses and buildings.*

35 *Clustering is defined to be dwelling houses, community buildings, garages, farm sheds and any other buildings located within close proximity and easy walking distance to each other. The distances apart must average 80 metres in a cluster but not exceeding 160 metres between any two dwelling houses in a cluster.*

40 **Consideration:** The proposal provides for the positioning of all dwelling sites to be within 160m within the clusters except for the proposed amended dwelling site on proposed Lot 8, which is proposed to be located 182 metres to the nearest dwelling. With consideration for the approved layout under the MO, it is considered that this dwelling site is an existing cleared part of land that meets the objectives of this section of the DCP by protecting the environment from removal of native vegetation and does not create an unreasonable demand for the provision of services or a demand for the uneconomic provision of services.

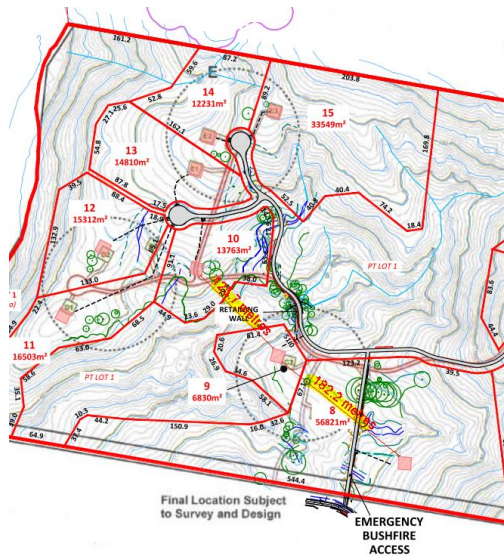


Figure 7: Distance between relocated dwelling site on proposed Lot 8.

5 *b) The Council shall not grant consent where the proposed development is in a dispersed style. A dispersed style is a style in which the dwelling houses are located throughout the developable land resulting in longer than necessary road access arrangements or longer than necessary power supply arrangements or adverse social or environmental impacts.*

10 **Consideration:** The location of the amended Dwelling Sites does necessitate a modified road layout, albeit for a shorter distance than would be required for driveway access to the approved dwelling site. The design will not modify the electricity supply nor require the removal of any native vegetation. The location of the Dwelling Sites ensures connectivity between the residents is achieved via the single internal driveway access linking to Coorabell Road.

15 *c) All dwelling houses, or sites for future dwelling houses to be located with floor levels above the flood planning level of any natural waterbody, watercourse, river, creek or wetland.*

Consideration: The subject land nominated for the amended Dwelling Sites is not mapped as flood prone.

d) No building or future dwelling house site envelope to be within 55 m of a classified road.

20 **Consideration:** Coorabell Road is not a State Classified Road. All proposed dwelling sites are more than 55 metres from the road reserve.

e) Dwelling houses, future house sites, farm sheds and other structures to be sited in accordance with the requirements of Chapter C3 Visually Prominent Sites, Visually Prominent Development & View Sharing.

25 **Consideration:** The proposed subdivision does not modify the visual value of the subject site, which was the subject of a specialist visual impact assessment and assessed under DA10.2018.355.1

2. Environmental Impact Assessment Report An Environmental Impact Assessment Report should be prepared to Council's satisfaction to determine the area and location of developable land. It should address the following matters:

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a) *A full description of the development and the existing environment likely to be affected, including a concept plan and land capability and suitability report which identifies the following:*

- 5 *i) lands subject to bushfire hazards (Vegetation Category 1 and 2), flooding (land affected by 1:100 ARI flood event) and slopes greater than 20 percent;*
- ii) prime agricultural lands, (classes 1, 2 and 3);*
- iii) High environmental value vegetation and habitats and existing habitat areas for flora, fauna or ecological communities listed under the Threatened Species and Conservation Act 1995 and associated buffers;*
- 10 *iv) areas identified for environmental repair, weeding and plantings;*
- v) watercourses, natural drainage lines, permanent creeks, streams, wetlands and associated buffers; vi) areas of visual significance as seen from public roads, parks and elsewhere in the general public domain;*
- vii) land slip areas and soil erosion areas;*
- 15 *viii) adjoining or surrounding land uses, including intensive livestock agriculture, extensive agricultural activities, intensive plant agriculture and extractive industries (including potential areas of extractive resources) which may produce a conflict with the proposed multiple occupancy having regard to the buffers needed to protect future residential amenity;*
- 20 *ix) any contaminated sites such as dip sites, sawmills, quarries or chemical storage dumps and associated buffers;*
- x) directions, distances and standard of roads to local shops, halls, schools, parks and community facilities;*
- xi) school bus services and capacity to meet any likely increase in demand;*
- 25 *xii) internal access roads both existing and proposed;*
- xiii) indicative footprints of all proposed and existing dwelling houses and other building sites including community buildings, sheds and any other farm structures. Note: Any required buffers to be calculated in accordance with Chapter B6 Buffers and Minimising Land Use Conflict.*
- 30 *v) watercourses, natural drainage lines, permanent creeks, streams, wetlands and associated buffers; The proposed setback*
- 35 *b) As a result of the above, an assessment is to be made to calculate the area and location of developable land which is relatively unconstrained and potentially suitable for the location of dwelling houses, community buildings and other buildings. It is this developable land area where Council will expect to see the proposed dwellings clustered. The decision as to whether or not land is unsuitable for development must take into account the combined effect of each of the matters described in Prescriptive Measure 2(a)(i) to (ix) above on all parts of the property, together with any proposed management or impact amelioration measures*
- 40 **Consideration:** The Statement of Environmental Effects report and the associated technical reports accompanying the application *to determine the area and location of developable land* and addresses each of the requirements including bushfire assessment,

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- 5 ecological assessment and suitability of the site. The ecological assessment provides detailed consideration of the site's ecological attributes as it relates to the proposed Community Title subdivision. A vegetation management plan identifies areas for environmental repair, weed management and rainforest planting within designated Environmental Management Zones.
- The proposed subdivision does not modify the visual value of the subject site, which was the subject of a specialist visual impact assessment and assessed under DA10.2018.355.1 for the MO development.
- 10 Dwelling Sites are located on land containing a slope of 5-15%. Council's Engineer has assessed the proposed development and recommended a condition of consent be imposed for a certificate from a practicing Geotechnical Engineer to be provided in conjunction with a Lot Classification Report prepared in accordance with Australian Standard AS2870.1 to certify that all vacant allotments have a building site of adequate size and shape on each lot that is not subject to slip or subsidence.
- 15 The dwelling sites are not located in close proximity to any adjoining land uses which may create land use conflicts for the future residents. A preliminary site assessment assessed the potential for contaminated land through historic or current land uses. No potential land contamination has been identified through this assessment that has been further considered by Councils' Environmental Health Officer.
- 20 The site is in close proximity to Federal Village (2kms), approximately 11 kms from Mullumbimby & 12 kms from Bangalow. Therefore, the proposal should not create an unreasonable or uneconomic demand for the provision of services. The nearest bus service is in Federal Village. The rural public transport service is infrequent and most travel is undertaken in the surrounding areas by private vehicle. School Bus collection areas for
- 25 the rural community is located in Federal Village.
- An internal access driveway will meet the design standards for bushfire vehicles and traffic generated by the proposal and upgrades are to be in accordance with DA 10.2018.355.1 and further required extension to provide for waste collection area on site is recommended by conditions of consent.
- 30 Each of the Dwelling Sites provide a 20mx15m building envelope. All future dwellings or associated structures will be subject to a Development Application with Byron Shire Council.
- The proposed setback of the dwelling sites to Wilsons Creek has been assessed under DA 10.2018.355.1 and the stream crossings already approved under same DA. The proposed
- 35 Community Title Subdivision DA was referred to DPE Water for assessment. The application has also been assessed by the Rural Fire Service. General Terms of Approval are included in the recommended conditions of consent and schedules attached at the end of this report.
- 40 Having regard to the technical reports prepared for the proposed subdivision, which address ecology, and bushfire management, in combination with the existing approval under DA10.2018.355.1, the location for the Dwelling Sites considered suitable.

3. Rural Landsharing Management Plan

Consideration: The Draft Neighbourhood Management Statement in Attachment 3 is recommended for approval subject to amendments required by conditions of consent.

4. Access roads

All internal access roads

- a) must have a minimum width of 4.0m;
- b) gradients in excess of 12% are to be bitumen or concrete sealed;
- 5 c) must be constructed and drained to provide all-weather access for two wheel drive vehicles; and
- d) in bushfire prone areas must be designed and constructed to comply with the requirements of the Rural Fire Service (for further detail see Planning for Bushfire Protection 2006).

10 **Consideration:** All access roads approved under MO consent and have been assessed to the satisfaction of Council and the Rural Fire Service.

5. Bushfire Management

15 **Consideration:** A detailed bushfire hazard assessment submitted with the application was referred to the Rural Fire Service and General Terms of Approval have been granted in accordance with Section 100B of the Rural Fires Act 1997. Each future application for dwellings will be required to comply to the prescribed construction standards under the planning for Bushfire Protection 2019 and vegetation management plans will be in accordance with the approved Vegetation Management Plan.

6. Vegetation Management Plan

20 **Consideration:** Works are to be undertaken in accordance with the *Vegetation Management Plan for Community Title Subdivision at 375 Coorabell Road, Coorabell prepared by Balanced Systems Planning Consultants, dated 27/07/2021 (Council Doc # E2021/134169)* or any other subsequently dated version of the Vegetation Management Plan, approved by Council's Natural Resources Planner or equivalent Council officer.

25 All construction workers, site visitors, community lot owners are to possess a copy of the Council approved Vegetation Management Plan.

7. Water Management Plan

30 **Consideration:** The proposal does not seek to amend the approved water management plan for the approved MO prepared by Balanced Systems Planning Consultants. The DA was referred under the Water Management Act 200 and General Terms of Approval are included in the recommended conditions of consent.

8. Effluent Disposal

35 **Consideration:** The on-site wastewater management report prepared by Trine addresses the requirements of this provisions. refer to prior env heath assessment A2018/23355, the land is capable.

“On-site Wastewater management Report No. TS18513 prepared by Trine Solutions dated 20th March 2018 demonstrates that each vacant site has capability to facilitate wastewater. A wastewater design report will be required with each future dwelling. No further investigation or action required for the vacant sites.”

40

9. *Dwelling houses*

Consideration: Future dwellings will be subject to a separate Development Application with Council and will be required to demonstrate compliance with the relevant provisions of this Chapter.

5 **Chapter D6 – Subdivision**

D6.3.5 Rural Community Title Subdivision

The proposal comprises fifteen rural living lots and one neighbourhood lot, which is consistent with the fifteen dwelling sites approved by consent 10.2018.355.1.

10 The required management plans were submitted with the DA and included the following Plans:

- Vegetation Management Plan (Balanced Planning Systems)
- Bushfire Management Plan (Helen Robinson)
- Onsite Sewage Management Plan (Trine Solutions)
- Water Management Plan (Balanced Planning Systems)
- 15 • Waste Management Plan (Balanced Planning Systems)

The Attachments (with the exception of the latest version of the VMP and Bushfire Management Plan) have all been assessed by Council in association with approved DA 10.2018.355.1

20 The application is consistent with the Community Land Development Act 1989, including but not limited to the following:

- i) provision for bushfire management;
- ii) a prohibition on domestic cats and dogs or provisions providing for their management;
- iii) provision for environmental repair and enhancement;
- 25 iv) provision for waste management;
- v) provision for water management;
- vi) provision for on-site sewage management; vii) provision for design and construction of any new dwellings;
- 30 vii) provision for safe vehicular access and driveways in accordance with Northern Rivers Development and Design Manual.

A draft Neighbourhood Management Statement is required to be in accordance with the DCP.

35 Vehicular access engineering plans are essentially the same as the approved MO plans with minor refinements which reduce the overall length of internal road. Conditions of consent require the reinstatement of the waste bin storage and vehicular access for on-site collection by Council.

The Vegetation Management Plan is to be fully implemented in accordance, including monitoring and reporting to Byron Council.

Byron Rural Settlement Strategy 1998

Consideration: The proposal for community title subdivision of an approved multiple occupancy, with minor variation to clustering, is generally satisfactory with consideration for the Byron Rural Settlement Strategy 1998.

5 D6.3.6 Subdivision Design and Lot Layout on Rural land within the Drinking Water Catchment

Consideration: Nominated building envelopes have been identified taking into consideration the location and characteristics of roads, watercourses and other constraints.

10 Proposed lot boundaries minimise impacts on existing vegetation and sensitive areas such as steep land or highly erosive soils. Watercourses and riparian land are to be predominantly managed collectively within the Community lot.

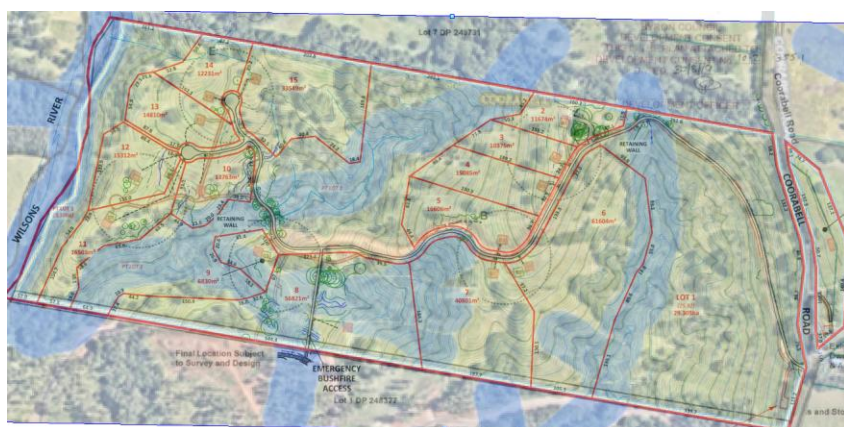


Figure 8: Geocortex Drainage Buffer 40 metres overlay.

15 The DA was referred to NSW Department of Planning and Environment – Water and General Terms of Approval for integrated development are granted in accordance with the Water Management Act 2000 in Schedule 4 of the recommended conditions of consent.

4.5 Environmental Planning and Assessment Regulation 2000

	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 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 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

	Applicable to the proposal:	Considered the control as it relates to the proposal:	If this control is applicable, does the proposal comply?
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

5

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

4.7 The suitability of the site for the development

The site is a serviced, unconstrained property and is suitable for the proposed development subject to conditions of consent. The amended house sites and road layout raises no environmental or site constraint issues

10 4.8 Submissions made in accordance with this Act or Regs.

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 5.1 Water & Sewer Levies

No Section 64 levies will be required.

5.2 Developer Contributions

Section 7.11 Contributions will be payable.

10 Note: Contributions payable under either 10.2018.355.1 or this consent prior to subdivision certificate. The developer should be able to proceed with individual dwellings as approved under 10.2018.355.1 prior to acting on this consent.

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

15 The DA proposes Community Title Subdivision to create Sixteen (16) Lots inclusive of the Neighbourhood Management Lot of an Approved Multiple Occupancy comprising of Fifteen (15) Dwelling Sites.

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

Report No. 11.6 Policy (New) - Conflicts of Interest for Council related development

Directorate: Sustainable Environment and Economy

Report Author: Kylie Grainey, Business Improvement Officer

5 **File No:** I2023/392

Summary:

The NSW State Government has gazetted new requirements into the Environmental Planning and Assessment Regulation 2021 to address potential conflicts of interest in Council-related development.

10 **The amendments took effect on 3 April 2023.**

Council must adopt a policy to manage development applications where Council is the developer or landowner, or where Council holds a commercial interest in the land that is subject of an application.

15 The intent of the policy is to specify how potential conflicts of interest will be identified and managed.

The Department of Planning and Environment (DPE) has issued Guidelines relating to this matter, including a sample policy. The DPE Guidelines are contained in Attachment 1.

20 The purpose of this Report is to introduce a draft policy to meet the new legislative requirements.

RECOMMENDATION:

That Council:

- 25 1. **Notes that the NSW State Government introduced on 3 April 2023, new requirements into the Environmental Planning and Assessment Regulation 2021, to address potential conflicts of interest in Council-related development.**
- 30 2. **Notes that Council must now have an adopted policy to manage development applications where Council is the developer or landowner, or where Council holds a commercial interest in the land that is subject of an application.**
3. **Adopts, as a consequence of 1 and 2, the Conflicts of Interest for Council-Related Development Applications Policy (Attachment 1 #E2023/22323).**




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11.6

- 5
4. **Places the adopted Conflicts of Interest for Council-Related Development Applications Policy (Attachment 1 #E2023/22323) on exhibition for a minimum period of 28 days, with any significant submissions received to be reported back to Council. If no significant submissions are received, then the Policy be adopted, with no further action required.**
 5. **Notes that this is the process followed by other Councils, including Ballina Shire.**

Attachments:

- 10
- 1 Draft Council-related Development Application Conflict of Interest Policy, E2023/22323 
 - 2 Council-related Development Application Conflict Of Interest Guidelines, E2023/27582 
 - 3 Environmental Planning and Assessment Amendment (Conflict of Interest) Regulation 2022, E2023/27583 

15

Councils are development regulators, but they also can be the developer, landowner or hold a commercial interest in relation to the land they regulate. Where Councils have this dual role, an inherent conflict can arise between their interests in the development and their duty as regulator.

- 5 Upcoming amendments to the Environmental Planning and Assessment Regulation 2021 will be introduced to address conflicts of interest in Council-related development. The new requirements include:
- 10 • Councils must have a policy that specifies how conflicts of interest in connection with Council-related development applications will be handled. The policy must comply with the requirements in the DPE Guidelines.
 - Council-related development applications must now be accompanied by either a management strategy statement, which explains how the Council will manage potential conflicts of interest, or a statement that the Council has no management strategy for the application
 - 15 • Councils must record conflicts of interest in connection with each Council-related development application, and the measures taken to manage the conflicts, in their existing DA register.
 - Council-related development applications must be exhibited for a minimum of 28 days to ensure transparency during the assessment process.
 - 20 The changes to the Regulation will include the following new definition: Council-related development application means a development application for which Council is the consent authority, that is:
 - (a) made by or on behalf of the council, or
 - (b) for development on land:
 - 25 (i) of which council is the owner, a lessee, or a licensee, or
 - (ii) otherwise vested in or under the control of the council.

The draft policy also includes a template for the Management Statement that will be required to accompany all Council-related development applications, to create a record of potential conflicts identified and management measures undertaken.

- 30 It has been clarified in a recent notice that Council-related development applications do not include applications which includes development on public roads managed by a Council, such as driveway for a dwelling house across a footpath or other minor works.

Additionally, the policy does not apply to development applications, which were lodged, but not determined, before the commencement date of the policy of 3 April 2023.

35 **Key issues**

Management of Council-related development proposals.

Options

Council can proceed with the exhibition of the policy as presented or with amendment.

It is recommended that the policy be exhibited as presented.

- 5 It is also recommended that if no submissions are received from the exhibition process, the policy be adopted with no further actions required.

Given the legislative requirements to have a policy of this type in place by 3 April 2023, an approach to defer or not proceed with the policy is not recommended.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth 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

10 **Legal/Statutory/Policy Considerations**

The Council-related Development Application Conflict of Interest Policy is required in accordance with [Environmental Planning and Assessment Amendment \(Conflict of Interest\) Regulation 2022](#) and will come into effect on 3 April 2023.

- 15 The Community Participation Plan will be amended in include the requirement for a 28-day exhibition period for Council-related Development Applications.

Financial Considerations

Finalisation of the draft policy can be undertaken within existing staff resources.

Adoption of the policy will help to reduce conflict of interest risks for future Council-related development proposals.

20 **Consultation and Engagement**

The policy will be exhibited for 28 days.

STAFF REPORTS - INFRASTRUCTURE SERVICES

Report No. 11.7 Byron Community Markets Parking Arrangements

5 **Directorate:** Infrastructure Services
Report Author: Malcolm Robertson, Manager Open Space and Facilities
File No: I2023/354

Summary:

Council at its Ordinary meeting held on March resolved via Res: **23-057** as follows:-

- 10 1. *That Byron Community Market stallholders be exempt from permissive and paid parking requirements in Cowper St, north of Carlyle St, for the remainder of the 2023 calendar year.*
2. *That Council receive a report as to the parking options still available to the Byron Market Stall holders.*
- 15 This report seeks to update Council on the parking options still available to the Byron Market Stall holders.
-

20 **RECOMMENDATION:**

That Council receive and note this Report on parking options provided for Byron Community Markets Stallholders.

25

Report

Development consent 10.2021.872.1 has been granted for the relocation of the community markets to part of Jonson Street, South Lawson Street carpark, Railway Park, and the Rail Corridor. The development consent allows for 300 stalls.

- 5 Consideration of parking requirements was undertaken within the DFA for customer and stallholder parking, as well as normal Byron CBD parking.

General Customer Parking

The Markets relocation DA required 750 parking spaces to cater for 300 market stalls based on Council's DCP 2014 parking rates at 1 parking space per 2.5 stalls.

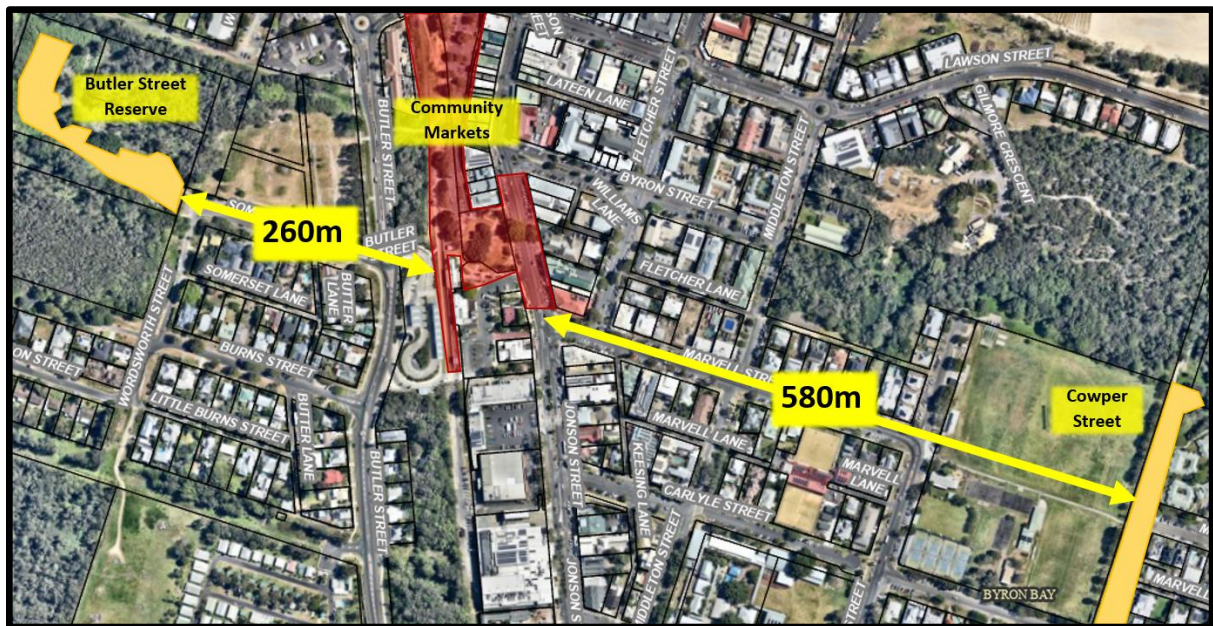
- 10 A parking survey was conducted to verify the availability and utilisation of parking within the surrounds during a Market Sunday and a non-Market Sunday to offset parking requirement of the DA. The peak period surveyed ranged from 8:00-11:00am to all carparks within 800m radius. The survey results found less than a 10% fluctuation in parking demand between market Sunday and non-market Sunday. The total parking spaces available were not utilized.
- 15

Occupancy of approximately 85% or below is ideal for day-to-day operation of a CBD. Typical demand for parking during markets was approximately 60%, leaving 40% availability which complies with the parking supply requirement in Council's DCP.

Stallholder Parking

- 20 Planning for the relocated markets identified that stall holders should park off-site where possible, with allocated parking for the stall holders to be made available nearby.
- The reserve west of the Somerset Street toilet block and Cowper Street north of Carlyle Street have been allocated for free all-day parking for stallholders. This allows options for stallholder to park to the east or west of the market's footprint, depending on which
- 25 provides the most convenient option.

Figure 1 Community Markets Stallholder All-Day Free Parking Areas



Farmers Markets

- 5 The Farmers Markets were permitted to return to Butler Street occupying a restricted area in the lower Butler Street Reserve. As part of this approval stallholder parking is permitted where this is ancillary to a stallholder’s operations only. This equates to around 50 vehicles per market. All other stallholder vehicles are parked in the reserve west of the Somerset Street toilet block.
- 10 The green lawn environment is seen as a core element of the Farmers Markets. Vehicle movements during Farmers Markets set up and pack down are tightly controlled to minimise impacts;
 - Only one route in/out is used
 - No vehicles traversing the markets pedestrian area in a north/south direction
- 15
 - All travel in/out of stalls is in a direct line east/west.
 - No turning or screwing of wheels within pedestrian areas.

No patron parking is currently permitted on the Butler Street Reserve. The Farmers Markets have experienced ongoing demands from community for parking on the reserve and have had to manage community perceptions around parking availability. Numbers attending the weekly Farmers Markets are now like attendances before they originally left Butler Street. All current patrons park on-street and there are no issues with customer parking for this regular market

Community Markets Use of Lower Butler Street Reserve

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11.7

Council assessed the option of allowing either customer and/or stallholder parking for the Community Markets at the lower Butler Street Reserve.

It was found that the risk to the site would be too great to approve for the following reasons;

- 5 • The restricted footprint available for use would not accommodate the Community Markets.
- Expanded use of the site is not recommended until the NSW EPA has agreed to, or ruled out the need for, site remediation.
- 10 • The Butler Street ground is soft sand over uncapped landfill site. The ground is highly susceptible to surface damage and subsidence, especially in wet conditions.
- Where there is regular vehicle traffic significant deterioration occurs.
- Exposure of hazardous landfill waste may result in the site being again closed to all use.

15 The type of controls implemented for the Farmers Markets are considered not feasible for a large-scale market or a car park or where users do not have the same dependence on the sustainability of the surface or overall amenity.

Figure 2 Lower Butler Street Ground Conditions



Next steps

Council will continue to monitor the progress of the relocation into the town centre, including parking, and commit to working with the Markets to make the transition positive for customers and stallholders during the trial period.

5 Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth We manage growth and change responsibly	4.1: Manage responsible development through effective place and space planning	4.1.3: Town / Village Masterplans - Develop, implement and update Place Plans that promote place-based forward planning strategies and actions	4.1.3.9	Relocation of the Byron Community Market to the centre of town

Recent Resolutions

Res: 23-057

- 10
1. *That Byron Community Market stallholders be exempt from permissive and paid parking requirements in Cowper St, north of Carlyle St, for the remainder of the 2023 calendar year.*
 2. *That Council receive a report as to the parking options still available to the Byron Market Stall holders.* *(Westheimer/Dey)*

Consultation and Engagement

- 15 In accordance with Section 47 of the *Local Government Act 1993* interested parties were invited to make submissions about the DA proposal within 28 days from 27 October 2022.

A Traffic Management Plan (TMP) and associated Traffic Guidance Scheme (TGS) were endorsed by the Local Traffic Committee.

REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

Report No. 12.1 Report of the Local Traffic Committee Meeting held on 14 March 2023

5 **Directorate:** Infrastructure Services
Report Author: Shelley Flower, Traffic and Parking Systems Officer
File No: I2023/410

10 **Summary:**

The attachment to this report provides the minutes of the Local Traffic Committee Meeting held on 14 March 2023 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.

RECOMMENDATION:

- 5 1. That Council notes the minutes of the Local Traffic Committee Meeting held on 14 March 2023.

2. That Council adopts the following Committee Recommendation:

Report No. 6.1 Rural Fire Brigade - Authorised Parking
File No: I2023/305

Committee Recommendation 6.1.1

That LTC support the installation of a restricted parking zone adjacent the Rural Fire Service building, Alcorn Street, Suffolk Park as shown by attachment 1 (E2023/21961).

3. That Council adopts the following Committee Recommendations:

Report No. 7.1 Reconnecting Mullumbimby May 2023
File No: I2023/93

Committee Recommendation 7.1.1

1. That Council support Reconnecting Mullumbimby 2023 be held 6 May 2023 3.00pm to 9.00pm.
2. That Council support in Part 1 is subject to:
 - a) separate approvals by NSW Police and TfNSW being obtained;
 - b) the event organiser providing council with an updated Traffic Management Plan and Traffic Guidance Scheme/s for the event;
 - c) development and implementation of a Traffic Management Plan and Traffic Guidance Scheme/s by those with appropriate TfNSW accreditation and the holding of current and appropriate levels of insurance and liability cover;
 - d) the impact of the event be advertised, and charged at cost to the

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REPORTS OF COMMITTEES - INFRASTRUCTURE SERVICES

12.1

organisers, via a notice in the local weekly paper and appropriate variable message signage a minimum of one week prior to the operational impacts taking effect, noting it 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;

e) the event be notified on Council's web page with the event organiser supplying Council with the relevant information.

3. The event organiser to:

a) inform the community and businesses that are directly impacted (e.g. within road closure zones) via written information which is delivered to the property in a timely manner so as to document, consider and respond to any concerns raised;

b) arranging for private property access and egress affected by the event;

c) liaising with bus, taxi and waste operators and ensuring arrangements are made for provision of services during conduct of the event;

d) consulting with emergency services and any identified issues be addressed;

e) holding \$20m public liability insurance cover which is valid for the event;

f) paying Council's Road Event Application Fee prior to the event;

g) not place any signage on the road related area of the Pacific Highway.

4. That provisions are made for safe access for heavy vehicles at the intersections of Stuart Street/Burringbar Street, and Stuart Street/Tincogan Street.

4. That Council adopts the following Committee Recommendations:

Report No. 7.2 Event - Bangalow Billycart Derby May 2023

File No: I2023/55

Committee Recommendation 7.2.1

1. That Council support the Bangalow Billycart Derby to be held on 21 May 2023.

2. That Council support in Part 1 is subject to:
 - a) separate approvals by NSW Police and TfNSW being obtained;
 - b) the event organiser providing council with an updated Traffic Management Plan and Traffic Guidance Scheme/s for the event;
 - c) development and implementation of a Traffic Management Plan and Traffic Guidance Scheme/s by those with appropriate TfNSW accreditation and the holding of current and appropriate levels of insurance and liability cover;
 - d) the impact of the event be advertised, and charged at cost to the organisers, via a notice in the local weekly paper and appropriate Variable Message Signage a minimum of one week prior to the operational impacts taking effect, noting it 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;
 - e) the event be notified on Council's web page with the event organiser supplying Council with the relevant information.

3. The event organiser to:
 - a) inform the community and businesses that are directly impacted (e.g. within road closure zones) via written information which is delivered to the property in a timely manner so as to document, consider and respond to any concerns raised;
 - b) arranging for private property access and egress affected by the event;
 - c) liaising with bus, taxi and waste operators and ensuring arrangements are made for provision of services during conduct of the event;
 - d) consulting with emergency services and any identified issues be addressed;
 - e) holding \$20m public liability insurance cover which is valid for the event;
 - f) paying Council's Road Event Application Fee prior to the event;
 - g) not place any signage on the road related area of the Pacific Highway.

Attachments:

- 1 Minutes 14/03/2023 Local Traffic Committee, I2023/338 

Report

The attachment to this report provides the minutes of the Local Traffic Committee Meeting of 14 March 2023 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 https://byron.infocouncil.biz/Open/2023/03/LTC_14032023_AGN_1682_AT.PDF

This report contains the recommendations of the Local Traffic Committee (LTC) meeting held on 14 March 2023.

Committee Recommendation

As per the Reports listed within the Local Traffic Committee Meeting of 14 March 2023.

10 **Financial Implications**

As per the Reports listed within the Local Traffic Committee Meeting of 14 March 2023.

Statutory and Policy Compliance Implications

As per the Reports listed within the Local Traffic Committee Meeting of 14 March 2023.

QUESTIONS WITH NOTICE

Question with Notice No. 13.1 Bamboo on the bank of the Brunswick River

5 **File No:** I2023/388

Cr Dey asks the following question:

10 *There are several large clumps of mature bamboo on the north bank of the Brunswick River, on public land at the rear of properties located on the ‘bulb’ end of Kamala Court. Bamboo is not native here.*

15 *Pictures below show (1) a large root ball that recently collapsed into the River leaving its culms (the official word for the poles) in the river where they may capture other debris and cause hydraulic resistance to flow; and (2) the bank vacated by that fall, showing that it is being undercut and that more failures are likely.*

20 *My cursory assessment is that this is the first of what will be many collapses over time, and that the right solution is for the bamboo to be removed and replaced with endemic species compatible with the river’s natural functions of flow, flood, fish, for example, and with residential use of the general area.*

1. *to whom should residents report concerns of this nature, for example concerns that flooding will be exacerbated if rehabilitation is not undertaken within a reasonable timeframe?*
- 25 2. *if Council is the agent best equipped to receive such reporting, what is the process from here? Can rehabilitation works on the riverbank be designed with expert assistance, put into a list of works that would assist to keep the river channel free and unimpeded as well as to stabilise the bank, and put forward for the significant amount of funding needed to execute them in a timely manner?*

Picture 1 - large clumps of bamboo on the riverbank with one fallen in and partially blocking the channel:



Picture 2 – further clumps of bamboo ready to fall into the river channel:



Response Director Infrastructure Services:

Response to Question 1

Concerns of this nature are multi-faceted:

- 5
- concern regarding perceived impact of bamboo to flooding of the river and associated impact to adjacent property.
 - concern of bamboo being an environmental weed and needing removal.
 - concern of large bamboo clumps impacting the values of the Brunswick River through de-stabilisation of the riverbank and sedimentation.

10 As such, there are various agencies who residents report concerns to, however mostly these concerns are forwarded back to Council staff. Council is responsible for flood mitigation and development of flood plans; we suggest that Council is the appropriate authority to receive concerns regarding flooding matters.

15 Council has an active Bush Regeneration Team that work within riparian habitats and can provide advice on the priority of bamboo removal and logistics for consideration. We are currently researching alternative methods of eradicating large-scale Bamboo while limiting collateral damage.

The Brunswick River is a Crown Waterway with responsibility and management resting with the Department of Crown Lands, and any works within the river would require a Crown Lands Licence which can take up to 6 months.

20 *Response to Question 2*

25 At present Council is working closely with Local Land Services (LLS) to address priority river erosion sites within the Brunswick Catchment as part of a recent funding allocation under the North Coast Riparian Restoration Program. LLS have an active database of landowners who have lodged requests regarding flood impacts to private property and who receive advice and support from LLS. The database is used to assess and evaluate sites for future funding that improve flood resilience and stabilise sites in an order that reflects their priority and recovery potential within the landscape.

30 Council staff are working closely with LLS staff to deliver priority projects funded under this program before the end of June 2023. As part of the assessment process a Multi-Criteria Analysis Tool has been developed to assess integrated information on the biological and physical characteristics of the waterbody, the potential for integrating agencies and efforts, and the potential success of a site based on landholder compliance, risk of failure and project costs.

35

Question with Notice No. 13.2 Mayor diary and delegate reports

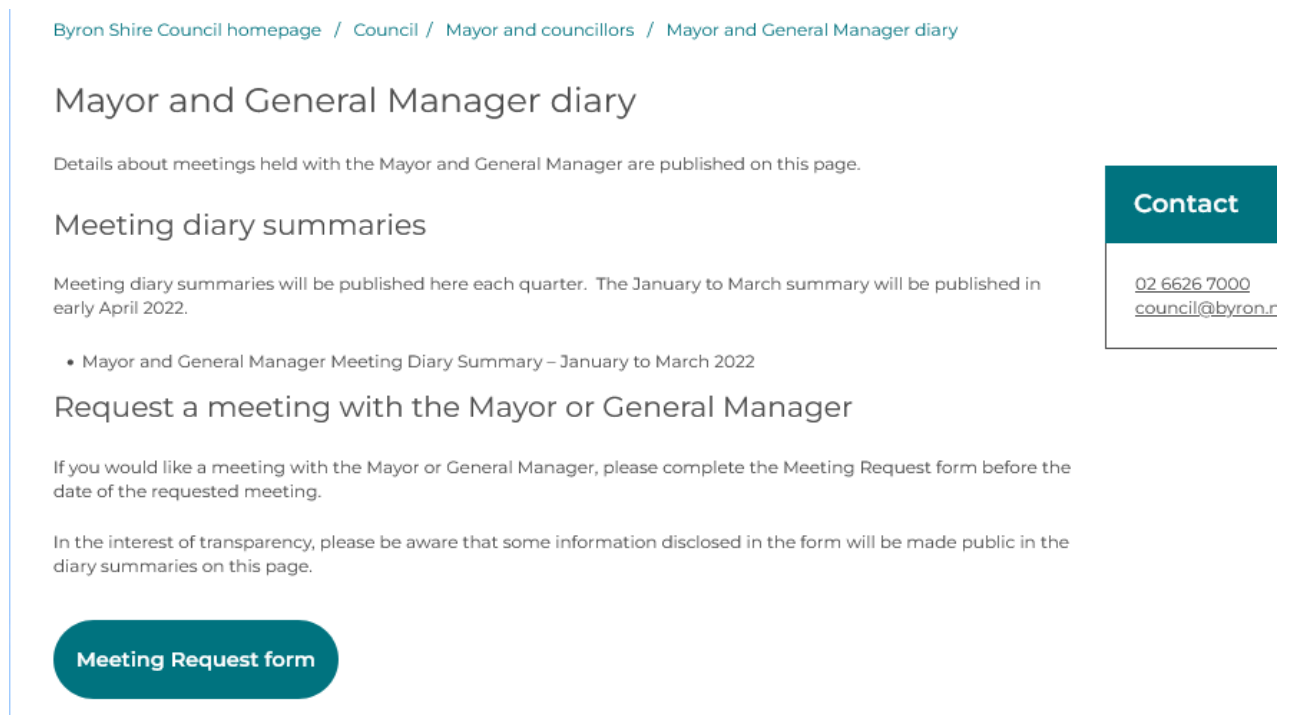
File No: I2023/480

5

Cr Dey asks the following question:

Council's website has a page, as linked and screenshot below, claiming to display the Mayor's diary:

10 <https://www.byron.nsw.gov.au/Council/Mayor-and-councillors/Mayor-and-General-Manager-diary>



I made a similar commitment when running for Mayor in 2021, that my diary would be made public. Reasons for a public diary include:

- 15 (i) *that the office of Mayor is a public office, and*
- (ii) *that this office should represent the views of the elected Council and thereby of the Shire, not the Mayor's personal views.*

Sadly, many bodies and most state government officials think that a chat with the Mayor fulfils their obligations to "consult with the Local Government Area". This is incorrect.

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QUESTIONS WITH NOTICE

13.2

Post flood examples of such consultation include meetings between the Mayor and various Resilience NSW officials, and between the Mayor and the CEO of Northern Rivers Reconstruction Corporation.

5 *An extreme example of representation was the Mayor becoming the main spokesperson presenting a 2022 Flood Impact Assessment on behalf of Resilience NSW. The FIA was about fill placed on rail corridor land at Prince Street Mullumbimby. This fill has no support from the elected Council and yet has the full support of the Mayor.*

10 *As the Shire's only delegate on bodies like Northern Rivers Joint Organisation, the Mayor could be reporting to the Council and hence to the public via a Delegate Report. According to the NRJO's website, it "meets quarterly to address matters of regional significance". Matters that it regards as within its purview include the Incinerator project at Casino. The NRJO publishes Agendas and Minutes at:*

<https://www.northernriversjo.nsw.gov.au/about-us/meetings>


15 *Minutes from the "board meeting" of August 2022 are attached. Those for December are not published, as of 27 March 2023. Byron Shire would benefit from knowing how our Shire's needs are brought to and dealt with by NRJO. As with our own meeting Minutes, the thinking behind the Resolution is not recorded.*

1. *Why is the Mayor's online diary a blank, as above?*
2. *When will the Mayor report on the substance of his meetings with state and other*
20 *officials?*
3. *When will the Mayor report on his representation for our Shire to the NRJO?*

Response General Manager, Mark Arnold

- 25 1. The Mayor and General Manager 2023 diary summaries will be available on Council's website prior to the Council Planning Meeting held on Thursday 13 April 2023. Staff will then work to make the Mayor and General Manager diary summaries from 2022 available as soon as practical.
- 30 2. The Mayor and General Manager diary summaries show the individual/organisation that they met with, the date, and the meeting topic. It is a matter for the Mayor and at his discretion to determine when and how best to report on these meetings.
- 35 3. All NRJO Meeting Minutes and Agendas are publicly available for any other Councillor or members of the public to read. The NRJO Meeting Minutes are uploaded to NRJO's website after they have been adopted. It is at the Mayor's discretion as to how, when and if he provides a Delegates Report to Council on the NRJO Board meetings.

Attachments:

- 40 1 NRJO ordinary board meeting 19 August 2022 minutes, E2023/31227 

Question with Notice No. 13.3 Fill on bank of Marshalls Creek

File No: I2023/483

5

Cr Dey asks the following question:

10 *Residents of The Pocket complained in October 2022 about large quantities of fill being placed with no approval on the northern bank of Marshalls Creek. Council issued a Stop Work Order in November and a Restore Works Order in December. The latter asks the landholder at 295 Pocket Road to restore the area back to its original condition, by 7 April 2023.*

This would include removal of the fill, which appears to be about 2m tall.

15 *The four-month time frame was to enable to the landholder to investigate options if any for retrospective approval of the fill. That period has expired a week before today's Council meeting.*

1. *has the fill been removed?*
2. *has the site been restored?*
3. *if not, what is the status of the site and what is the prognosis for its restoration back to original?*

20

Response Director Sustainable Environment & Economy:

As at 27 March 2023, all of the imported fill had been removed and the flood mound had been restored to its condition prior to the importation of fill (Terms 1, 2 and 3 of the Order have been complied with).

25 Seeding of the area is now being progressed and is to be completed by 7 April 2023.

A final inspection will take place once seeding is completed to ensure full compliance with the Order.