

4 May, 2023

General Manager  
Byron Shire Council  
P.O. Box 219 Mullumbimby 2481

**Objection to Amendment of Four (4) Lot Subdivision  
D.A. 10.2011.524.4  
Alter Condition 20(d) Building Envelope  
Lot 7 DP 255770 No 384 Coopers Shoot Road Coopers Shoot.**

This submission has been commissioned by the owner of No. 398 Coopers Shoot Road, to formally object to D.A. 10.2011.524.4 which seeks to vary a very significant planning control from the previously approved Lot 1, within the Four (4) Lot Subdivision approved on adjacent Lot 7 DP 255770 No 404 Coopers Shoot Road, Coopers Shoot, by Consent 10.2011.524.2.

**Existing Condition 20(d) Requires:-**

20) Section 88B Instrument A Section 88B Instrument and one (1) copy are to be submitted with the application for a subdivision certificate. The final plan of subdivision and accompanying Section 88B Instrument are to provide for:

d) Building Envelope The building envelope to proposed Lot 1 shall be located in the south-east quarter of that allotments to ensure that views from that dwelling on Lot 1 DP 572897 to the north-east are retained.

**APPROXIMATION OF S.E.CORNER, COMPRISING APPROX 2,000m<sup>2</sup> OF LAND ■■■■**



### Proposed Amended Condition 20(d)



- (c) to promote the orderly and economic use and development of land,
- (g) to promote good design and amenity of the built environment,

**The amendment of the Building Envelope Restriction is totally at odds with these EPA Act Objectives as it is likely to MAXIMISE adverse impacts on SCENIC QUALITY, not promote the social and economic welfare of the community, not be responsive to social considerations in decision making, not promote the orderly and economic use and development of land, and not promote good design and amenity outcomes by permitting ridgeline development and permitting development subject to bushfire threat. For all of these reasons, the proposal is totally at odds with these Statutory EPA Act Objectives, and on this basis it cannot be supported by Council.**

The retention of Condition 20(d) as is, also satisfies the underlying Objectives of the R5 Zone within which the development is located.

#### **Zone R5 Large Lot Residential**

##### **1 Objectives of zone**

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.

**The removal of the Building Envelope Restriction is totally at odds with this Zone Objective as it is likely to MAXIMISE impacts on SCENIC QUALITY, by permitting ridgeline development in the south west of the site, and as such it is totally at odds with this Statutory Zone Objective, and on this basis it cannot be supported by Council.**

- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.

##### **Not Applicable.**

- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.

##### **Not Applicable.**

- To minimise conflict between land uses within this zone and land uses within adjoining zones.

**The amendment of the Building Envelope Restriction is totally at odds with this Zone Objective as it is likely to MAXIMISE conflicts between landuses within adjoining zones, as it will detract from the visual amenity of the adjoining property to the south west, within the adjacent Rural Zone.**

**Also it will be permitting ridgeline development in the elevated South West of Lot 1, and it will be permitting development subject to bushfire threat in the North East of Lot 1 adjacent to down slope mapped bushfire threat.**

**As such it is totally at odds with this Statutory Zone Objective, and on this basis it cannot be supported by Council.**

It is considered that the impact of this request to amend Condition 20(d) from the Consent Conditions of the current subdivision approval, will result in significant adverse impacts on the amenity, privacy and views of my clients dwelling on the adjacent Lot 1 DP 572897 No 398 Coopers Shoot Road Coopers Shoot, and it will be permitting ridgeline development in the elevated South West of Lot 1, and it will be permitting development subject to bushfire threat in the North East of Lot 1 adjacent to down slope mapped bushfire threat.

As such, the amendment of this previously imposed restriction will be so significant, that it is contrary to Statutory EPA Act and Zone Objectives, and as the resultant amendment will most likely have adverse impacts, then this warrants the refusal of the request to amend Condition 20(d) via this Sec 4.55 application.

The proposal to amend Condition 20(d) invokes significant potential loss of amenity to my clients, in particular in relation to the loss of privacy, views, and rural amenity, and privacy.

Expansion of the Building Envelope could also place a dwelling so close to the existing SW dwelling, and across relatively flat ground from it, thus also detracting from aural privacy, and the rural amenity of the site will be significantly detracted from.

This current application before Council seeks approval for future poor design outcomes, which totally ignore the significant adverse impacts on this adjacent property to the south west, its closest and most affected neighbour.

It also ignores the bushfire threat to the north, from the adjacent grasslands, proposing a possible dwelling location into an area well above the BAL 29 limit for a new subdivision. Further to this the proposed expansion of the building envelope to the west includes no geotechnical assessment of the suitability of that site, or the potential visual impact on the amenity of the local rural area from ridgeline development, and again imposes a significant amenity impact on the adjoining dwelling to the west by proposing a new dwelling proximate to the western neighbour. These adverse impacts are amplified by the fact that the existing 2,000m<sup>2</sup> building envelope provides more than adequate area for the construction of a large dwelling.

**PROPOSED BUILDING ENVELOPE**

**PROPOSED EXPANSION OF BUILDING ENVELOPE INTO DOWNSLOPE BUSHFIRE BUFFER WITHOUT ANY BUSHFIRE THREAT ASSESSMENT**



**PROPOSED EXPANSION OF BUILDING ENVELOPE ONTO RIDGELINE WITHOUT GEOTECHNICAL ASSESSMENT OR VISUAL IMPACT ASSESSMENT.**

As the significant impact on this adjacent property to the South West has been ignored, and as the expansion of the building envelope has ignored bushfire threat, geotechnical and ridgeline development visual impact issues, then it is imperative that Council take into account the major impact this Sec 4.55 application will have on my clients views, privacy and rural amenity, and thus take action to ensure that the rural amenity of my client is not permanently eroded. On this basis Council should refuse the Sec 4.55 application.

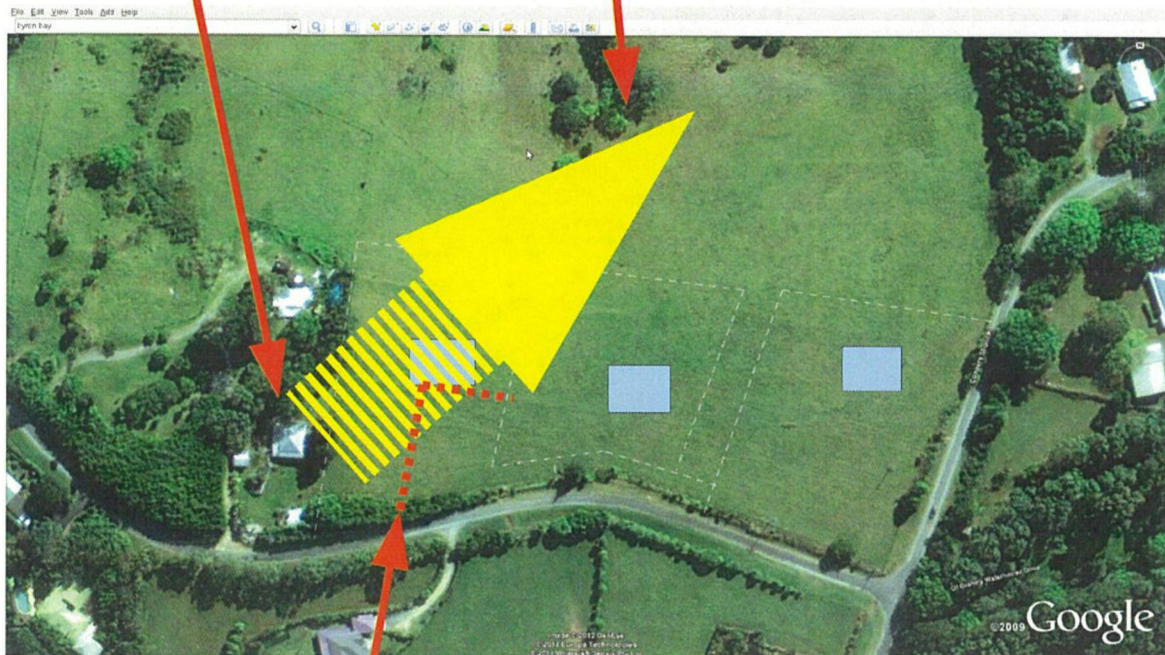
On this basis it is considered that the relaxation subdivision design controls as requested, are at odds with the Statutory Objectives of the R5 Zone.

The following depiction of sight lines relating to views from my clients home, reinforces the fact that removal of the current Condition 20(d) restriction is likely to have long term adverse amenity impacts.



No 398 Coopers Shoot Road. Objector.

Line of View to Light House and Ocean



**Required Building Envelope in S.E. quarter of the site**  
**Four (4) Lot Subdivision of Lot 7 DP 255770 No 404 Coopers Shoot Road, Coopers Shoot. Previously Nominated House Sites Shown as Blue Rectangles.**

This proposal not only fails to maintain rural character, but will result in a significant loss of rural character. This is particularly so as the design proposed will obliterate "Iconic" ocean and lighthouse views, and permit the placing of a house so proximate to the existing dwelling to the SW, that its aural amenity and privacy will also be lost.

The current Condition 20(d) ensures that future development will not intrude on these significant views, and will assist in maintaining privacy, and aural amenity.

These factors are required to ensure that future development on approved Lot 1 will MAINTAIN the planned and expected RURAL CHARACTER of the area, and as such the expansion of the Building Envelope onto a dominant ridgeline to the south west, and into a bushfire buffer to the north east, is contrary to the primary zone objectives against which any such application must be tested.

On this basis, the proposal in its current form, is an abomination to these statutory objectives, both EPA Act Objectives, and Byron LEP 2014 Objectives.



**View to North East to Pacific Ocean and Light House**



***Rural View from house to South East across ridge to Piccadilly Hill Road***



### **Sec. 4.15(1)(a) ZONING OF LAND**

The objectors property is Zoned RU2 Rural Landscape.

The site sits adjacent and to the west of the subdivision site, which is zoned R5 (Large Lot Residential) under the provisions of Byron Shire Local Environmental Plan 2014.

As previously detailed, the proposed amendment of Condition 20(d) is totally at odds with the Statutory Objectives of the R5 Zone within which the subdivision is located.

Objectives of the R5 Zone within which the development is located.

Zone R5 Large Lot Residential

#### **1 Objectives of zone**

- To provide residential housing in a rural setting while preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.

**The expansion of the Building Envelope Restriction is totally at odds with this Zone Objective as it is likely to MAXIMISE impacts on SCENIC QUALITY by permitting Ridgeline development in the South West of Lot 1, and as such it is totally at odds with this Statutory Zone Objective, and on this basis it cannot be supported by Council.**

- To ensure that large residential lots do not hinder the proper and orderly development of urban areas in the future.

**Not Applicable.**

- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.

**Not Applicable.**

- To minimise conflict between land uses within this zone and land uses within adjoining zones.

**The expansion of the Building Envelope Restriction is totally at odds with this Zone Objective as it is likely to MAXIMISE conflicts between landuses within adjoining zones, as it will detract from the visual amenity of the adjoining property to the south west, within the adjacent Rural Zone.**

**Also it will be permitting ridgeline development in the elevated South West of Lot 1, and it will be permitting development subject to bushfire threat in the North East of Lot 1 adjacent to down slope mapped bushfire threat.**

**As such it is totally at odds with this Statutory Zone Objective, and on this basis it cannot be supported by Council.**



## **BUSHFIRE**

Since the original approval of the 4 Lot Subdivision, the site has become mapped as a Bushfire Threat Area.

This could significantly impact on the ability to expand the Building Envelope restriction from the SE quarter of the site.

Development options outside the required SE development area, could place future dwellings at a risk of Bushfire Threat greater than BAL 29, as a large area of Grassland and a patch of Rainforest exist in the adjoining property, down slope to the north.

On this basis alone, following the Precautionary Principle, it would not be prudent to abandon the restrictions imposed by Condition 20(d) of the Consent, as this could place future dwellings at risk of bushfire impact.

The Sec 4.55 Application therefore lacks sufficient information to discard the restriction on future development to the SE quarter of the site.

**(Bushfire Map – Byron Shire Council) Bushfire Threat Down Slope and North of Lot 1.**



## **ECOLOGICALLY SUSTAINABLE DEVELOPMENT**

The cumulative social and environmental impacts of the request to amend Condition 20(d) from this subdivision Consent, as previously detailed, are at odds with the principals of Ecologically Sustainable Development, and as such it should be refused.

The conclusion is that this development is not an ecologically sustainable development in its current form.

## **Sec. 4.15(1)(c) SUITABILITY OF THE SITE**

As stated previously, the request to amend Condition 20(d) and expand the building enveloped within this subdivision Consent onto the Ridgeline to the south west, and into a Bushfire Buffer to the north east, is beyond reasonable development assessment criteria, and it is unable to satisfy the basic design objectives set within both the EPA Act and those of the R5 Zone within LEP 2014.



This takes the proposal beyond acceptable development limits in terms of visual impact, aural impact, potential bushfire attack levels, and environmental impact.

It is thus inconsistent with the character of the area in terms of its scale, design, and lack of consideration for the precautionary principle.

As such, the proposed amendment of Condition 20(d) will most likely detract from the character of the area, and represents an inappropriate development direction for the site.

Adequate area is available within the approximate 2,000m<sup>2</sup> area specified in existing Condition 20(d), in the designated South East development area, to permit the full range of permissible landuses under the R5 Zone, and as such its retention within the Consent will not Prejudice the Proper Future Planning of the area.

#### **Sec. 4.15(1)(e) PUBLIC INTEREST**

Due to the fundamental design problems raised by this submission, my clients urge Council to refuse this Sec 4.55 application to amend Condition 20(d) by allowing the expansion of the Building Envelope, as it is not only contrary to the public interest, but it also represents an over development of this site, and it has taken no heed of the recent Bushfire Mapping which may in any case prevent development outside the required SE building area from being approved, and it disregards the local visual impact from permitting the Building Envelope to be expanded west into more elevated areas along the southern ridgeline.

In addition to this, the proposal threatens the residential amenity of existing residents in terms of loss of "iconic" views, privacy, noise and visual impact, and poses a significant visual and environmental impact on the rural character and environmental integrity of the area.

As such public interest will **not** be served by the approval of this Sec 4.55 proposal.

#### **CONCLUSIONS**

It is considered that the proposed amendment of the Development, being a (4) Lot Subdivision of Lot 7 DP 255770 No 404 Coopers Shoot Road, Coopers Shoot., by the amendment of Condition 20(d) to expand the building envelope into a bushfire threat area to the north, and into the elevated ridgeline in the south west, thus creating ridgeline development issues in the west, proposes development options on this constrained site, which are irresponsible, and are contrary to the Objectives of the EPA Act, the Objectives of the R5 Zone.

In terms of the requirements of the Precautionary Principle, and the potential for future Bushfire Impact from the down slope areas to the north, and significant local impacts from ridgeline development, then the expansion of the Building Envelope cannot be supported.

The social and amenity consequences of approving this poorly designed development are great, and the proposal is likely to significantly erode the quality of life of my clients, the visual amenity of the local area, and increase the potential for Bushfire threat.

In general, my client considers that this conflicting development will detract significantly from the visual and environmental integrity of the area, and reduce rural residential amenity, and as such it is requested that the amendment of Condition 20(d) be refused.

4<sup>th</sup>. May 2023.

