

Agenda Ordinary (Planning) Meeting

Thursday, 1 August 2024



BYRON
SHIRE
COUNCIL

Agenda Ordinary (Planning) Meeting

held at Council Chambers, Station Street, Mullumbimby
commencing at 11.00am

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

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

Mark Arnold
General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

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

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

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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3. ATTENDANCE BY AUDIO-VISUAL LINK

4. REQUESTS FOR LEAVE OF ABSENCE

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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 screen at the meeting.

NOTICES OF MOTION

Notice of Motion No. 9.1 Undetected water leak & water charges

5 File No: I2024/1050

I move that Council:

- 10 1. Recognises that a leak started in about February 2022 as a crack in the pressure pipe within the residential property at 4 Barkala Crescent Ocean Shores, possibly as a result of the property being inundated by the extreme flooding of that month, and grew progressively until it was detected by the property owner and repaired by a licensed plumber early in June 2024;
- 15 2. Acknowledges that water bills for the property rose gradually over a two-year period as shown on the table below, from 'normal' usage of about 240 litres/day in the quarter to February 2022 to huge amounts like 4,455 litres/day for the latest period ending May 2024;
- 20 3. Recognises that the owner has paid eight quarterly bills prior to the quarter ending in May 2024 at an estimated total of \$1,145 above the amount that would have been charged for eight quarters of 'normal' usage;
- 25 4. Accordingly, waives the water bill of \$1,297.52 for the current quarter to May 2024;
5. Estimates consumption for the next quarterly period (May to August 2024) by waiting for readings for the following period (August to November) and charging double that amount at that time to cover those two quarters;
- 30 6. Revises the trigger for issuing a Notice of "Higher than Usual Water Usage" downwards and adopts an approach similar to that used by electricity providers of including on bills a graph of the previous rolling five quarters of consumption.

Signed: Cr Duncan Dey

Councillor's supporting information:

- 35 The owner of this property was supplied with the listing below of their water consumption over the past three years. The first and third readings from the bottom of the table show

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that the property normally uses about 240 litres/day. The reading between those two shows that, when the occupants go away, almost no water is consumed. This indicates there was no leakage prior to February 2022.

- 5 Quarterly readings show a steady increase from May 2022 onwards. From May 2023 the rise starts to look exponential. Usage in the May 2023 quarter was almost three times that of February 2022.

- 10 A few days prior to receiving a Notice of “Higher than Usual Water Usage” from Council, the owner discovered the leak which was by that stage massive. Despite the breakage being most of a metre below ground level, moisture became visible after dry weather began at the end of May this year. The landowner investigated immediately and found the leak was a cracked PVC pressure pipe on the main line supplying the house. The leak was repaired on 1 June.

15

Year	Per	Date	Reading	Cons	Avg Cons
2024	4	17/05/2024	1407	392	4.4545
2024	3	19/02/2024	1015	170	1.7895
2024	2	16/11/2023	845	111	1.2198
2024	1	17/08/2023	734	97	1.0319
2023	4	15/05/2023	637	62	0.6813
2023	3	13/02/2023	575	54	0.5745
2023	2	11/11/2022	521	34	0.3864
2023	1	15/08/2022	487	30	0.3158
2022	4	12/05/2022	457	25	0.2778
2022	3	11/02/2022	432	22	0.2391
2022	2	11/11/2021	410	3	0.033
2022	1	12/08/2021	407	22	0.2366

- 20 On 4 June, the owner received Notice by email that Council was concerned at the “Higher than Usual Water Usage”. The notice explained that consumption in the quarter to May 2024 had increased by 277% over the average for the previous four quarters. Sadly, the notice was too late to save what I estimate to have been 775 kilolitres of water lost over a two-year period.

- 25 Unlike most other Councils in NSW and interstate, Byron Shire Council has no policy or procedure for financial relief in cases of undetected leakage. I brought a proposal as NoM 9.1 to Council’s meeting of 25 August 2022 on that. Sadly, it fell away for want of a seconder. I won’t be pushing that point again.

- 30 However, I believe that Council should update its approach to detecting leaks through meter readings. The Notice of Higher than Usual Water Usage should have been issued a year earlier, after the May 2023 reading where usage had already almost tripled. Part 6 of today’s Motion doesn’t propose a new trigger. It simply asks staff to look into the matter.

Staff comments

by James Brickley, Manager Finance, Corporate and Community Services:

From the outset this Notice of Motion is not supported. This matter had been dealt with by staff as an operational matter and the property owner advised of this that the bill as it stands.

Communication was also provided to Councillors about the matter and the property owner also received a response from the Mayor.

Items 1, 2 and 3 are a matter for Council whether it wishes to recognise the statements made by Cr Dey or not.

Item 4 requesting the bill of \$1,297.52 be waived should not be agreed to. If Council chooses to waive the bill it will create a precedence for future instances of leaks that Council will have to then allow subsidisation for the affected customers plus as in this instance continue to pay Rous County Council for the water lost. As the bulk water supplier to Council, Rous charges a fixed amount for water purchases annually and provides Council no credit for any water that may be lost through leakage. Further if the property owner is certain their consumption is always '240 litres' a day, why was there no effort by them it seems in the last six water bills to query the consumption charged as it started to increase until the last bill? It is unrealistic to expect Council to know what every water consumer is doing with the water metered at their property. Water leaks are unfortunate but the fact remains the water was metered as consumption.

There needs to be a recognition that each quarter Council issues bills for over 13,500 water meters. The billing software is part of Council's overall software package Civica Authority and it has its limitations. Further the current software, available staff resourcing, the current standard of water meters utilised by Council and the scale of the billing does not provide the ability to cater for item 5 and 6. Item 5 is suggesting a special billing practice for one customer and determining a methodology for the rest of this year. That is certainly not supported and in itself is an assumption.

Financial/Resource/Legal Implications:

Should Council approve this Notice of Motion, there will be a loss of revenue to the Water Fund equivalent to the bill in question but also the potential loss of future revenue for leak events yet to occur due to the precedence created. That financial exposure at this point in time is unknown. The latest billing cycle for the information of Councillors has indicated other significant leaks events where water consumption has been metered but property owners may have not maintained their plumbing. The intent of user pays water consumption is to send a price signal that water has a value with a view to conserve water. If Council is to allow leak events where the water was metered to be subsidised by waiving water bills when this occurs then there is reduced incentive to be water conscious and maintain private plumbing. It also creates the expectation that other property owners have to fund any subsidy given through the creation of a precedence.

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Is the proposal consistent with any Delivery Program tasks?

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership	1.3: Ethical and efficient management of resources	1.3.1: Financial Management - Ensure the financial integrity and sustainability of Council through effective financial management	1.3.1.5	Issue annual/quarterly billing of rates and other charges

Notice of Motion No. 9.2 Men's Shed Byron Bay

File No: I2024/1057

5

I move that Council:

1. Acknowledges the importance of Men's Sheds in promoting mental health, well-being, and social inclusion among men in the community;
2. Formally supports the establishment of a Men's Shed for Byron Bay;
- 10 3. Requests staff to collaborate with the Men's Shed executives to identify and secure suitable land for the construction of the Men's Shed; and
4. Considers at the first quarterly review of the 2024/25 budget, a funding allocation for this initiative.

15

Signed: Cr Duncan Dey

Councillor's supporting information:

20 The concept of Men's Sheds originated in Australia and has since become an international movement. Men's Sheds are community-based organisations that provide a safe, friendly, and inclusive environment where men can work on meaningful projects at their own pace, in their own time, and in the company of other men. They provide opportunities for social interaction, skill-sharing, and companionship, which are essential for mental health and wellbeing. The establishment of a Men's Shed for Byron Bay will offer local men a place to connect, engage, and contribute positively to the community.

25 Activities at Men's Sheds:

The Men's Shed supports men's health, especially mental health, by providing a supportive community where members can engage in activities at their own pace. While woodwork is the primary activity, the actual activities at a Men's Shed depend on the background, training, and skills of the members but typically include:

- 30 • Woodworking: Creating furniture, toys, and various wooden items.
- Metalworking: Crafting metal projects, welding, and fabrication.
- Musical Groups: Forming bands, playing instruments, and singing.
- Art Groups: Painting, drawing, sculpture, and other visual arts.
- Exercise Groups: Fitness classes, walking clubs, cycling clubs and physical
- 35 activities.
- Gardening: Planting and maintaining community gardens or vegetable patches.

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- Community Projects: Engaging in local community improvement projects, such as building park benches or playgrounds.
- Computer Skills: Learning and improving computer and technology skills.
- Cooking and Food Preparation: Cooking classes, shared meals, and food preservation.
- Repair and Upcycling: Fixing and repurposing household items and furniture.
- Mentoring and Education: Sharing knowledge and skills with other members and the community.
- Social Activities: Regular gatherings, outings, and social events to build camaraderie.
- Health and Wellbeing Programs: Workshops on mental health, physical health, and general wellbeing.

These diverse activities provide opportunities for members to learn new skills, engage in meaningful projects, and foster a sense of community and belonging.

Proposed Location for the Byron Bay Men's Shed:

The ideal location for the Byron Bay Men's Shed is within 5 km of the Byron Bay Community Centre. This proximity would ensure that the shed is easily accessible to residents of Byron Bay, particularly those who prefer cycling. Notably, a significant number of Byron Bay Men's Shed members are avid cyclists, making this a practical and convenient choice for the community.

There are four other Men's Sheds in the vicinity of Byron Bay:

- Bangalow Men's Shed: approximately 14 km away.
- Mullumbimby Men's Shed: approximately 19 km away.
- Ballina Men's Shed: approximately 30 km away.
- Pottsville Men's Shed: approximately 42 km away.

These sheds have between 80 and 100 active members each, with approximately 25 members attending each day. Travelling to these sheds from Byron Bay is not a feasible option for many residents, highlighting the need for a local Men's Shed within Byron Bay.

The rationale behind Mens Shed includes:

1. **Community Benefit:** The Men's Shed will provide a much-needed community space for men to gather, work on projects, and support each other. This will help reduce social isolation and promote mental health and wellbeing.
2. **Skill Development:** The Men's Shed will offer opportunities for men to learn new skills, share their expertise, and engage in meaningful activities that benefit the wider community.
3. **Council Support:** By directing a dedicated person or team to assist in finding suitable land, the Council will demonstrate its commitment to supporting community initiatives and ensuring the success of the Men's Shed project.

Financing Byron Bay Mens Shed:

The financial implications of this motion are minimal. The primary requirement is the allocation of staff time to assist with site identification and liaison. Further funding

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opportunities for the construction and operation of the Men's Shed will be explored by the Byron Bay Men's Shed committee, through State and Federal grants, fundraising, and community contributions.

5 No further funding from the Council is foreseen. Men's Sheds throughout Australia are well supported by State and Federal grants. Men's Sheds generate their own revenue from various initiatives, including:

- Crafting and selling handmade items.
- Sausage Sizzles and raffles.
- Offering community workshops and classes.
- 10 • Providing repair and maintenance services to the local community.

Ongoing management of the shed is handled by the members of the Men's Shed, as is any maintenance. In fact, community operations in close proximity to Men's Sheds often benefit from the skills of the Men's Shed members for maintenance and repairs.

15 The Byron Bay Men's Shed is incorporated in NSW and is a member of the Australian Men's Shed Association.

Staff comments

by Phil Holloway, Director, Infrastructure Services:

20 A dialogue has been ongoing with Council staff and representatives from the local area Men's Shed Group about a potential site in proximity to the Byron Bay Town Centre.

Various sites have already been identified by the Group but require further site investigation by staff to confirm permissibility and suitability.

The proposed Motion is consistent with the above.

Financial/Resource/Legal Implications:

25 Yet to be determined.

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9.2

Is the proposal consistent with any Delivery Program tasks?

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership	1.5: Empower community leadership through collaboration, capacity building, and cultivating community driven initiatives	1.5.1: Community grant programs - Provide financial assistance and grants to empower community groups and organisations to deliver priority projects	1.5.1.1	Deliver annual Community Initiatives Program and associated funding and support

Notice of Motion No. 9.3 Telstra proposal to install a new mobile phone base station at 161 Broken Head Road, Newrybar

File No: I2024/1052

5

I move:

10 **That Council writes to Telstra asking them to consider resident requests to house their proposed telecommunications equipment on the existing NBN tower in Newrybar rather than build a new tower.**

Attachments:

- 15 1 Confidential - Newrybar Telstra Tower Petition, E2024/83459
2 Newrybar Telstra Tower Petition - July 2024_Redacted, E2024/83461 

Signed: Cr Michael Lyon

Councillor's supporting information:

20 I have received a petition of over 400 people calling on Telstra to respond to their concerns and questions regarding why it is necessary to build a second tower when there is already a tower built nearby. If possible, it would seem logical to house them together but by writing to Telstra we can hopefully get some clarity around the issue.

Staff comments

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

Telstra is proposing to construct a new mobile phone base station in Newrybar.

This proposal does not require Development Approval and consultation is being undertaken in accordance with the requirements of Section 6 of the Mobile Phone Base Station Deployment Code 2020, however under the deployment code, Councils must be notified about
30 certain new telecommunications facility not requiring planning approval.

The proposal pertains the construction of a new mobile base station and includes the following activities:

- 35 • Construction of a new 10m x 8m compound area and associated site establishment works, including:

- o Installation of security fence around the proposed compound
 - o Installation of one (1) 3m high double access gates
 - o Extension of the existing 3m wide NBN access track to the proposed compound
- 5 • Construction of a new 40m monopole with a triangular headframe and installation of radio equipment including:
- o Six (6) panel antennas (each no more than 2.8m in length)
 - o Three (3) 'Air' antennas (each no more than 2.8m in length)
 - o Associated ancillary equipment including three (3) remote radio units
- 10 F6.3 Mobile Phone Base Station Deployment Code 2020 Letter Page 2
- Installation of subsurface fibre and power routes and associated underground housing, including:
- o Two (2) Amplitel power pits
 - o One (1) Telstra fibre pit
- 15 • Construction of a 3.000m (L) x 2.380m (W) x 2.975m (H) equipment shelter to house internal equipment.

The purpose of this base station is to provide enhanced mobile service coverage for the subject site's locality and surrounds.

- 20 The report, pictures and site-specific information is available to the public at www.rfnsa.com.au/2479006/.

Staff have formally written to Telstra and Aurecon to raise the following comments and objection to the proposed phone tower at the subject property at Newrybar.

- 25 Staff noted the advice from Telstra and Aurecon that the subject facility including the phone tower does not require development approval under SEPP (Transport and Infrastructure) 2021 as complying development. In these circumstances as per the Code, Council is unable to require a development application.

- 30 Notwithstanding, staff noted there is a similar sized tower located approximately 70 metres to the south of the subject site. To duplicate this infrastructure at this location would further impact the visual and scenic amenity of the Newrybar and Bangalow locality, which is not supported, considering this proposal can be delivered differently on this visually prominent ridgeline.

- 35 It has been requested that Telstra and Aurecon review their plans for the facility and investigate options to collocate the new infrastructure onto the existing tower. In the event that the existing compound area needs to be enlarged to facilitate this outcome, this would be supported to ensure the proposal has minimal impacts on the visual and scenic amenity of the locality.

Financial/Resource/Legal Implications:

As discussed above.

Is the proposal consistent with any Delivery Program tasks?

CSP Objective	CSP Strategy	DP Action
4: Ethical Growth	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

Notice of Motion No. 9.4 New Brighton River Bank Erosion

File No: I2024/1053

5

I move:

10 That Council receives a report on the erosion of the riverbank at New Brighton opposite the shops and provides recommendations on future management of the area including remediation and changes to traffic and parking management that may be required.

Signed: Cr Michael Lyon

Councillor's supporting information:

15 I held a 'Community Conversations' event with my team of election candidates on Saturday in New Brighton and spoke to locals about issues important to them in the local area. I was shown the riverbank situation and the erosion issues, the parking situation and other related matters and believe that as a Council we need to act to ensure it does not get worse. In some areas further upstream rocks have been placed in the past and backfilled to deal with the erosion and to remediate the area. There seems to be a strong case for removing parking from this side of River St and New Brighton Rd and I would like to have these matters investigated. This may feed into the conversation that is about to start for the place planning of the broader Ocean Shores area, which includes New Brighton and South Golden Beach.

25 Staff comments

by Steve Twohill, Flood and Drainage Engineer:

Review of the three (3) issues raised in this nomination have been reviewed and assessed. We make the following comments and recommendations.

1 – State of the Riverbank / Bank Erosion and Parking Matters

30 A site visit was undertaken on Monday 22 July 2024, to assess the current state of the riverbank. The area is subject to significant bank erosion which has undermined the existing vegetation with a tree fallen into the Marshalls Creek. In addition, the root balls of the existing eucalyptus trees along the bank are significantly undermined – refer photos below. The current situation requires urgent attention to stabilise the embankment and remediation measures to retain the existing vegetation.

35



5 Parking matters for this area has not been assessed due to Council Resolution 24-225 from the 23 May 2024 Council meeting. Specifically Item 1 of that resolution was :

1. *Does not proceed with any further parking investigations or designs in New Brighton until the Master Plan for the Ocean Shores area has been completed.*

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9.4

Staff have commenced their assessment and preparing a separate report I2024/1053 to be tabled at the upcoming 15 August 2024 Council Meeting to address Item 4 a) and b) of Council Resolution 24-225 which was :-

4. *Receives a report that considers:*
 - 5 a) *Limits to parking such as bollards on the western side of River Street New Brighton to stop erosion and sediment movement into Marshalls Creek, which is part of the Marine Parks estate.*
 - b) *The suggestions received in Public Access at Council's meeting on 23 May and listed under areas 1 to 7. (Lyon/Westheimer)*
 - 10 Item 4b) relates to a list tabled Public Access Submission 23 May 2024 - Item 13.18, New Brighton - Parking Improvements Investigation, Vivienne Pearson, E2024/60678.
- Initial considerations include the use of bollards to prevent parking on the creek side of River Street, opposite The Salty Mangrove shop. Erosion control details would be dealt once a carpark masterplan and configuration is resolved and adopted.
- 15 There is a single stormwater pipe outlet into the Marshall's Creek that collects runoff from the Salty Mangrove Shop carpark. It is functioning and operational – refer photo.



2 – Recommendations of the Future Management of the Riverbank / Bank Erosion

The land in question is Lot 1 on Deposited Plan 121484 River Street New Brighton.

The land is privately owned.

The orange line is an existing stormwater pipe – nominally 450mm diameter.



No works are proposed at this stage as it is in private ownership.

- 5 The remedial work previously undertaken further north was confined to the road reserve of River Street. The situation in this location is different, Council does not have access, or owners consent to undertake any remediation works.

Council staff have previously contacted the owners to seek whether they had any interest in selling and transferring the land to Council.

- 10 The owners are willing to sell the land however at price that has not been agreed upon or recommended by staff.

Financial/Resource/Legal Implications:

Not Applicable

15 Is the proposal consistent with any Delivery Program tasks?

Future carparking is contained in an operation plan to develop a Place Plan that includes New Brighton.

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9.4

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth	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	4.1.3.10	Develop a Place Plan for the North Byron Coastal Communities of Ocean Shores, South Golden Beach and New Brighton

Notice of Motion No. 9.5 Laneways in Brunswick Heads

File No: I2024/1054

5

I move that Council:

1. Investigates, through the Local Traffic Committee, changes to Slessor Lane in Brunswick Heads, where recent development activity on the corner of Tweed Street is causing conflicts between patrons and residents, including investigating changing it to one-way out to Tweed Street.
2. Investigates other laneways in Brunswick Heads that may benefit from changes to traffic conditions.

15 Signed: Cr Michael Lyon

Councillor's supporting information:

Three tenancies have been created in the building where the former mechanic used to operate on the corner of Tweed St and Slessor Lane in Brunswick Heads. These include a retail store, a café and a proposed gym which is under construction. These tenancies have all been operated independently and all relied on provisions relating to existing use under a SEPP. Staff have done a great job of attempting to bring this into compliance and a DA is expected to be lodged shortly to deal with the change of uses and the increase in parking that is needed to service them.

I held a meeting onsite with impacted residents of Slessors Lane and they have expressed a desire to ensure that any impacts from the development are minimised and that changes be made to the way Slessors Lane functions in order to accomplish this. I would like staff through the Local Traffic Committee to investigate changes of this nature. It has become apparent through my conversations to date with staff that other laneways in Brunswick Heads could also benefit from some changes so would like to formally request this occur as well.

Staff comments

by Ben Taylor, Traffic and Transport Engineer, [Infrastructure Services](#):

Council has recently received numerous requests from the community for investigations of traffic impacts which have been caused by changes in land use, typically approved as a new development application with council, or utilising existing development consent. The

traffic impacts on Slessor Lane associated with the development of 38 Tweed Street are displayed in Figure 1 below.



Figure 1 – Construction traffic using Slessor Lane for parking

- 5 Council has a considerable road network to maintain, with local area traffic management becoming increasingly important to the community due to increased traffic volumes caused by visitor, regional and local population growth.

It is difficult for staff to provide comments on potential changes to traffic operations within Slessor laneway without understanding what impacts the proposed development will have on future traffic and parking.

10

Based on the available information, Staff are supportive of the proposed investigations for one-way treatment of Slessor Lane. In the interim while a permanent solution is developed, staff propose “No Stopping” signage be installed adjacent to the commercial property on the northern side of Slessor Lane to the intersection with Tweed Street.

- 15 In addition to the motion, the investigation should consider appropriate regulatory parking signage to maintain residential property accesses on the laneway. This can be considered as part of the DA for the use of the development on the corner of the site.

There are many locations throughout the shire which are requiring new infrastructure to support this rapid growth, with major safety issues needing to be addressed as a priority.

- 20 Therefore, staff and Council need to carefully consider committing to local area traffic network improvements within low traffic volume roads, due to the commitments already

made by Council to deliver resolutions for road safety improvements. The resources available for local area traffic management, new signage and existing sign maintenance is insufficient for Staff to maintain Council's existing network.

- 5 Staff are aware of changes to traffic conditions and changes to land use throughout Brunswick Heads and are investigating the impacts as such to review and implement one-way trials where practical. The safety and accessibility for all road users is a primary concern and the efficiency of the road network. The various lanes within Brunswick heads are generally narrow 6-metre-wide reserves with pavements limited to 3 and 4 metres. As such, there continued operation as two-way lanes need to be reviewed. It is therefore
- 10 recommended that Council prepare a holistic strategy for the laneway network within Brunswick Heads with the objective of making them one-way and to formalise on street parking while maintaining accessibility.



Figure 2 – Current on street parking arrangement on corner of Tweed St and Slessor Lane

15

Financial/Resource/Legal Implications:

- Preparation of strategy and implementation of new infrastructure will have impacts on budget, as the works is not currently scoped or included in FY24-25 Capital Works Program. Due to ongoing commitments, a resource would need to be found to carry out
- 20 this work – it is estimated at approximately \$3,000 for investigations of Slessor Lane. However, this estimate is based on high level analysis.

Investigation would require:

- Community consultation with residents
- Traffic Assessment with review of DA
- Preparation of Traffic assessment report
- Development of signage plans

5 • Reporting to LTC

Implementation cost are yet to be determined and may include:

- Service locating (if required)
- Pavement works to increase parking area (if required)
- Install temporary signage and line marking – Approx. \$1,500

10 • Install permanent signage and line marking

If Council prepare a holistic strategy for the laneway network within Brunswick Heads the investigation would cost an estimated \$20,000 to review all laneway traffic operations and additional costs to implement the strategy throughout Brunswick Heads.

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

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth	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 development assessments in accordance with the relevant legislation
5: Connected Infrastructure	5.3: Invest in renewable energy and emerging technologies	5.3.1: Future needs - Plan for the infrastructure needs of the current and future population	5.3.1.5	Report regulatory traffic matters and items requiring comment through the Local Traffic Committee for recommendation to Council for approval

BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.5

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
5: Connected Infrastructure	5.2: Connect the Shire through integrated transport services	5.2.4: Parking - Manage parking through effective controls that support Movement and Place Plans and are coordinated with other initiatives such as park and ride	5.2.4.6	Implementation of Paid Parking Scheme in Brunswick Heads

Notice of Motion No. 9.6 Mullumbimby Railway Station

File No: I2024/1055

5

I move:

That Council lobbies Transport for NSW to ensure that the Mullumbimby Railway Station is rebuilt if at all possible and following any reconstruction be able to be managed by Council for community uses.

10

Signed: Cr Michael Lyon

Councillor's supporting information:

15

Tragically, a fire likely caused by an electrical fault partially destroyed the Heritage Listed Mullumbimby Train Station building on 21 April this year. It is unknown if the building can be rebuilt however the external walls appear to be in good shape as they were double brick so there is the possibility that it can be salvaged and rebuilt. Should this occur it has been expressed at a recent Mullumbimby Chamber of Commerce meeting that the building be brought into community hands.

20

Staff comments

by Shannon Burt, Director, Sustainable Environment and Economy:

25

Council has entered into a high-level agreement, a Memorandum of Understanding (MoU), with the NSW Government to work together on the future use and development of that part of the rail corridor adjacent to the town centre at Mullumbimby, which includes the Mullumbimby Railway Station building.

The MOU is consistent with and supports a key action for Precinct 1 - Town Centre in the Mullumbimby Masterplan, being '*...Liaise with Transport for NSW to ensure that any future use of the rail corridor lands is consistent with community need and values...*'

30

Negotiations with the State Government are ongoing about a long-term licence / lease of this rail corridor area for public parking and new community open space and amenities. These negotiations can easily include advocacy for the inclusion of the Mullumbimby Railway Station building in any future land management agreement with Council.

.

Financial/Resource/Legal Implications:

No new or additional implications.

Is the proposal consistent with any Delivery Program tasks?

CSP Objective	CSP Strategy	DP Action
4: Ethical Growth	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

STAFF REPORTS - GENERAL MANAGER

**Report No. 13.1 Improving the visibility of significant
Development Applications**

5 **Directorate:** General Manager

Report Author: Annie Lewis, Media and Communications Coordinator

File No: I2024/953

Summary:

10 At the meeting on 18 April 2024 staff were directed to prepare a report that considers how to improve the visibility of significant Development Applications (DAs) and other events happening at Council and in Byron Shire (**Resolution 24-178**).

15 Acknowledging the community interest in some DAs, staff (Planning and IT) are currently working on a cost-effective way to promote DAs of community significance to interested people. This includes assessing how Councils in other areas are sharing this sort of information. It is likely that any new Byron Shire Council initiative will involve the distribution of information directly to subscribers' email addresses.

20 **RECOMMENDATION:**

That Council investigates options for the establishment of a subscription service to alert subscribers to DAs in a particular area or Shire-wide.

25

Report

Improving the visibility of DAs of public interest

Since 2020 Council has not been required to advertise public notices in a newspaper circulating or distributed in the Byron Shire Local Government area. This includes development applications (DAs) on exhibition, after the NSW Government changed legislative requirements relating to advertising in print media.

People interested in DAs are directed to Council's website and the DA Tracker portal which provides information about:

- DAs submitted including supporting documents
- DAs determined
- Search for current and history DAs
- A map indicating DAs for properties around the shire.

When Council did advertise DAs in the Byron Shire Echo, aside from the DA number, address and description of the DA, members of the public were directed to Council's website for details/more information.

Note: Council continues to advertise projects and matters of interest in the Echo with the spend from 1 July 2023 to 10 April 2024 being more than \$35,000.

The DA Tracker page is consistently one of the most highly accessed pages on the entire website. For example:

- In the last 12 months (to May 29, 2024) the DA Tracker page was the second most popular page on the website with 45, 243 page views. Second only to the homepage with 182,894 page views. This suggests customers are not finding this page difficult to find.
- In the 90 days to 29 May, the DA Tracker was the second most popular page with 11,630 page views. In comparison to the third most popular content page of 'Where can I park?' with 5,951 page views (51% less views).
- In the last 12 months, the Google search query 'byron da tracker' is the fourth most popular search query for Council. The term da tracker features six times in the top 25 search queries. The click through rate is 94%.

Council's E News, which is distributed fortnightly to a subscriber base of approximately 17,000 people, highlights a click-through link for those interested in this information.

The analytics of the E News show it has an average open rate of approximately 50% (8,500 people every fortnight) with the DA link consistently one of the most popular pages.

The website and the E News are the most effective and cost-efficient ways to distribute information about DAs to the community.

As part of this report staff were asked to consider how to reach the greatest number of community members to advise them of a range of matters. These matters are addressed below.

DAs that are likely to be of public interest

- 5 DAs that are likely to be of public interest, for the purposes of this report, refer to DAs that are regarded as 'community significant development'.

These are defined by gross floor area, development assessed by the Northern Regional Planning Panel, larger subdivisions and residential accommodation, pubs, function centres etc. A full definition can be found on Council's website. [Property Development Guidelines](#)

- 10 [- Byron Shire Council \(nsw.gov.au\)](#)

In addition, some other development in the Byron Shire can be regarded as controversial, staff are now looking at an effective, directed way of alerting people interested in DAs on exhibition. This will likely take the form of a regular email sent directly to people who subscribe to this service.

- 15 As was the case when Council did advertise DAs in the Echo, people will be directed to the website for more information.

Planning staff are liaising with IT staff on options available and looking at how some other Councils in NSW are approaching this.

- 20 In the meantime, the Comms team can elevate the 'DAs on exhibition' tab in the E News to a higher position in the newsletter and provide a link to the DA Tracker on Facebook every two weeks, coinciding with the E News publication.

The DA Tracker link is and always has been available from the homepage of the website.

Public notices or similar from State and Federal agencies such as Planning Panels

- 25 Relevant public notices or other information from the NSW and Australian governments is promoted via Council's website and, sometimes via other mediums such as social media. Often this is at the request of staff in the SEE, IS or CCS directorates. Promotion of DAs being assessed by the Planning Panel would be captured in a future initiative to promote community significant DAs.

- 30 Whether or not NSW and Federal governments embark on wide-ranging engagement campaigns is not something Council can control. Generally important issues/matters of community interest are promoted to Council and this information is shared via social media, E News etc, then shared with the community.

Items usually put on the Your Say page of Council's website

- 35 Staff currently use a range of methods to promote consultations on Council's Your Say page including:

- Print advertising (e.g. Echo, Bangalow Herald)
- Radio advertising when appropriate (BayFM)

- E News
- Social media
- Stakeholder emails and letters
- Pop-up information sessions (Markets and Street Stalls).
- 5 • Info sessions (Council chambers/Council building).

Comms staff approach every consultation with the aim of getting as much engagement as possible. Some projects garner more public interest than others.

10 Engagement rates via Your Say are generally very good, defined by the number of views divided by the number of responses to a survey or other engagement activity. We also measure the number of informed participants (interacted with a web page, downloaded a document, received an email or letter, attended a pop-up session) and aware participants (number of page visits, number that saw an ad, impressions on social media).

15 As per IAP2 guidelines. A measure of success is not necessarily only the number of responses received. Not everyone who views a consultation may want to participate, they may only want to be informed.

Analytic information from the Your Say page shows:

- In the last 10 months to 29 May 2024, the Your Say section (across multiple project pages) has received 47,238 page views.
- 20 • From mid-2023 to May 2024 we have consulted with the community on over 40 active Your Say projects.

Most popular projects during this time include:

- Burringbar-Street-Draft-Concept-Design (3,473 page views).
- Short-term-rental-accommodation-Planning-Proposal (3,104 page views)
- 25 ○ Have-your-say-on-future-housing-options-in-Byron-Shire (2,241 page views)

Councillors, and community organisations are always encouraged to share information with their networks as well. Where relevant, letterbox drops are often done.

The community reach of the above methods is extensive. At some point though, people must be responsive to reading and hearing about Council projects.

30 Other significant issues that affect Byron Shire residents and businesses and items of public significance.

The primary focus of promotion and communication activities is on Council-related issues. It is not appropriate for Council resources to be used to promote activities that do not relate to the organisation.

35 Staff receive regular requests from a range of public and private interests to promote a wide range of issues (commercial and not-for-profit) to improve the reach of their campaigns in a cheap and cost-effective manner by using Council's existing databases.

It is important for our channels to not be diluted or devalued by third-party content and for this reason activities that are not related to, sponsored by or supported by Council are generally promoted or advertised. This approach is in line with many other NSW Councils.

Strategic Considerations

5 Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership	1.2: Engage and involve community in decision making	1.2.1: Community-led decision making - Engage with community to inform Council decision making	1.2.1.1	Provide opportunities for the community to have input, comment and feedback to Council on projects and matters of interest
1: Effective Leadership	1.2: Engage and involve community in decision making	1.2.2: Communication - Provide timely information to the community about Council projects and activities through traditional and digital media	1.2.2.1	Keep the community informed of Council projects via a combination of media releases, social media and E News
4: Ethical Growth	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	4.1.1.3	Exhibit development applications as required by the Community Participation Plan

Recent Resolutions

- Resolution 24-178

Legal/Statutory/Policy Considerations

N/A

10 Consultation and Engagement

- SEE
- IT

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 13.2 Council Investments - 1 June 2024 to 30 June 2024

5 **Directorate:** Corporate and Community Services
Report Author: James Brickley, Manager Finance
File No: I2024/1039

10

Summary:

This Report includes a list of investments and identifies Council's overall cash position for the period 1 June 2024 to 30 June 2024 for information.

15 This Report is prepared to comply with Section 212 of the *Local Government (General) Regulation 2021*.

RECOMMENDATION:

20 **That Council notes the report listing Council's investments and overall cash position as of 30 June 2024.**

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.2

Report

Council has continued to maintain a diversified portfolio of investments. As of 30 June 2024, the average 90-day bank bill rate (BBSW) for the month was 4.45%. Council's performance for June 2024 was 4.66%. A higher BBSW indicates that Council earned a better return on its short-term investments compared to the market average.

The table below identifies the investments held by Council as at 30 June 2024.

Schedule of Investments held as at 30 June 2024

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Fossil Fuel	Type	Int. Rate	Current Value (\$)
15/11/18	1,000,000.00	NSW Treasury Corp (Green Bond)	N	AAA	15/11/28	N	B	3.00%	949,090.00
28/03/19	1,000,000.00	National Housing Finance & Investment Corporation	Y	AAA	28/03/29	N	B	2.38%	919,720.00
21/11/19	1,000,000.00	NSW Treasury Corp (Sustainability Bond)	N	AAA	20/03/25	N	B	1.25%	981,070.00
27/11/19	500,000.00	National Housing Finance & Investment Corp	Y	AAA	27/05/30	N	B	1.52%	424,399.50
15/06/21	500,000.00	National Housing Finance & Investment Corp	Y	AAA	01/07/31	N	B	1.99%	500,383.64
06/09/21	1,000,000.00	Northern Territory TCorp	N	Aa3	15/12/26	N	B	1.40%	1,000,000.00
16/09/21	1,000,000.00	QLD Treasury Corp (Green Bond)	N	AA+	02/03/32	N	B	1.83%	794,580.00
30/10/23	850,000.00	Bank Australia Ltd	P	BBB+	30/10/26	N	FRN	5.84%	854,272.82
21/02/24	500,000.00	Bank Australia Ltd	N	BBB+	21/02/28	N	FRN	6.04%	504,696.51
27/11/23	1,000,000.00	Westpac Tailored	P	AA-	27/11/24	N	TD	5.40%	1,000,000.00

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.2

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Fossil Fuel	Type	Int. Rate	Current Value (\$)
04/12/23	2,000,000.00	Bank of QLD	P	A-	04/10/24	N	TD	5.10%	2,000,000.00
12/01/24	5,000,000.00	NAB	P	AA-	10/07/24	Y	TD	5.10%	5,000,000.00
12/01/24	5,000,000.00	Heritage Bank	P	BBB	11/07/24	N	TD	5.00%	5,000,000.00
07/02/24	1,000,000.00	Auswide Bank	N	BBB-	07/08/24	N	TD	5.15%	1,000,000.00
06/03/24	2,000,000.00	Beyond Bank	P	BBB	04/09/24	N	TD	5.05%	2,000,000.00
07/03/24	2,000,000.00	Judo Bank	P	BBB-	05/09/24	N	TD	5.20%	2,000,000.00
14/03/24	1,000,000.00	Bank of QLD	N	A-	16/09/24	N	TD	5.17%	1,000,000.00
04/04/24	1,000,000.00	Judo Bank	N	BBB-	04/07/24	N	TD	5.00%	1,000,000.00
08/04/24	2,000,000.00	NAB	N	AA-	08/07/24	Y	TD	5.00%	2,000,000.00
10/04/24	2,000,000.00	Judo Bank	N	BBB-	10/07/24	N	TD	5.00%	2,000,000.00
12/04/24	5,000,000.00	Judo Bank	N	BBB-	11/07/24	N	TD	5.00%	5,000,000.00
18/04/24	1,000,000.00	NAB	N	AA-	17/07/24	Y	TD	5.00%	1,000,000.00
19/04/24	1,000,000.00	Judo Bank	N	BBB-	18/07/24	N	TD	5.00%	1,000,000.00
29/04/24	1,000,000.00	NAB	N	AA-	29/07/24	Y	TD	5.00%	1,000,000.00
08/05/24	2,000,000.00	Judo Bank	N	BBB	07/08/24	N	TD	5.05%	2,000,000.00
13/05/24	5,000,000.00	MyState Bank	P	BBB	13/11/24	N	TD	5.20%	5,000,000.00
20/05/24	1,000,000.00	MyState Bank	N	BBB	19/08/24	N	TD	5.05%	1,000,000.00
20/05/24	1,000,000.00	Judo Bank	N	BBB	19/08/24	N	TD	5.10%	1,000,000.00
22/05/24	1,000,000.00	MyState Bank	N	BBB	21/08/24	N	TD	5.05%	1,000,000.00
29/05/24	1,000,000.00	MyState Bank	N	BBB	27/08/24	N	TD	5.10%	1,000,000.00
05/06/24	5,000,000.00	Bank of QLD	N	A-	05/12/24	N	TD	5.20%	5,000,000.00
05/06/24	5,000,000.00	NAB TD	N	AA-	02/12/24	Y	TD	5.10%	5,000,000.00
05/06/24	5,000,000.00	Police Bank	P	BBB	04/12/24	N	TD	5.20%	5,000,000.00
06/06/24	2,000,000.00	Beyond Bank	N	BBB	05/09/24	N	TD	5.05%	2,000,000.00
18/06/24	2,000,000.00	NAB	N	AA-	16/09/24	Y	TD	5.00%	2,000,000.00
21/06/24	2,000,000.00	NAB	N	AA-	19/09/24	Y	TD	5.00%	2,000,000.00
27/06/24	1,000,000.00	Auswide Bank Ltd	N	BBB-	27/09/24	N	TD	5.05%	1,000,000.00
N/A	30,055,881.78	CBA Business Saver	P	AA-	N/A	Y	CALL	4.35%	30,055,881.78
N/A	545,010.80	CBA Business Saver –	N	AA-	N/A	Y	CALL	4.35%	545,010.80

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.2

Purch Date	Principal (\$)	Description	CP*	Rating	Maturity Date	Fossil Fuel	Type	Int. Rate	Current Value (\$)
		Tourism Infrastructure Grant							
N/A	10,210,751.11	Macquarie Accelerator Call	N	A	N/A	Y	CALL	4.20%	10,210,751.11
Total	113,161,643.69						AVG	4.66%	112,739,856.16

Note 1. CP = Capital protection on maturity

N = No Capital Protection

Y = Fully covered by Government Guarantee

P = Partial Government Guarantee of \$250,000 (Financial Claims Scheme)

Note 2. Fossil Fuel ADI

N = No investment in Fossil Fuels

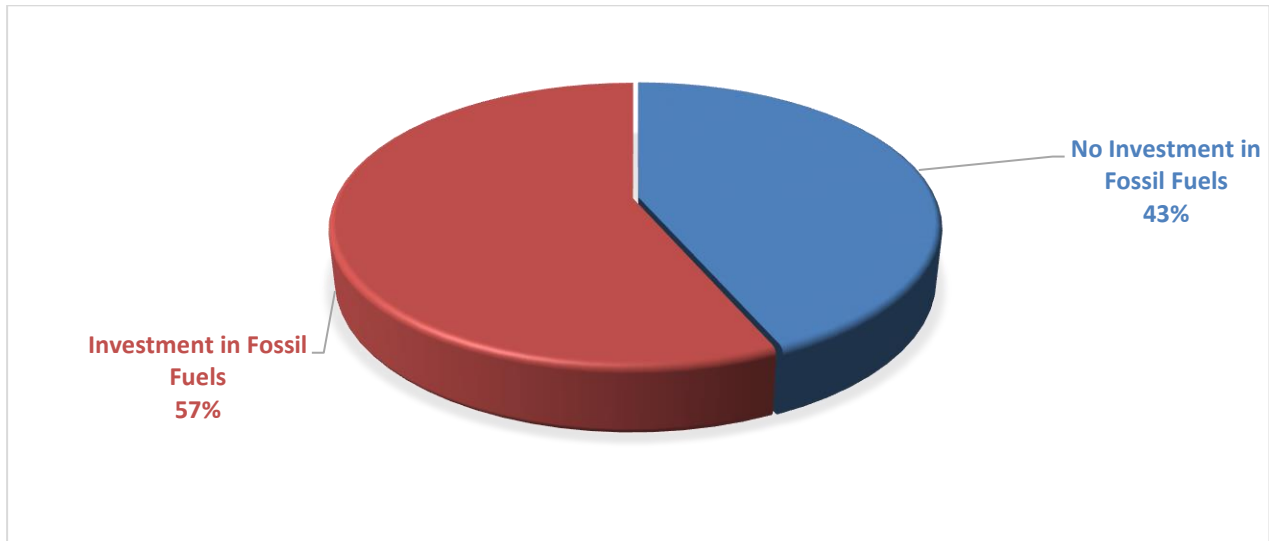
Y = Investment in Fossil Fuels

U = Unknown Status

Note 3.	Type	Description	
	B	Bonds	Principal can vary based on valuation, interest payable via a fixed interest, payable usually each quarter.
	FRN	Floating Rate Note	Principal can vary based on valuation, interest payable via a floating interest rate that varies each quarter.
	TD	Term Deposit	Principal does not vary during investment term. Interest payable is fixed at the rate invested for the investment term.
	CALL	Call Account	Principal varies due to cash flow demands from deposits/withdrawals. Interest is payable on the daily balance.

Environmental and Socially Responsible Investing (ESRI)

- 5 An additional column has been added to the schedule of Investments to identify if the financial institution holding the Council investment has been assessed as a 'Fossil Fuel' investing institution. This information has been sourced through www.marketforces.org.au and identifies financial institutions that either invest in fossil fuel related industries or do not. The graph below highlights the percentage of each classification across Council's total investment portfolio in respect of fossil fuels only.



5 The notion of Environmental and Socially Responsible Investing is much broader than whether a financial institution as rated by 'marketforces.org.au' invests in fossil fuels or not. Council's current Investment Policy defines Environmental and Socially Responsible Investing at Section 4.1 of the Policy which can be found on Council's [website](#).

Council may from time to time have an investment with a financial institution that invests in fossil fuels but is nevertheless aligned with the broader definition of Environmental and Socially Responsible investments. When this occurs, the investment will be marked as no fossil fuels given the investment purpose.

10 During the month of November 2023 as an example, Council undertook an investment with Westpac Bank as a tailored deposit. The investment proceeds are utilised for environmental purposes as this investment is Climate Bond Certified.

15 With the lifting of the NSW Treasury Corporation loan borrowing covenant on Council's investments, growth has recommenced in acquiring investments not aligned with fossil fuels. Council's portfolio reached its lowest point in August 2023 at 15% and as at 30 June 2024, the portfolio has increased to 43%.

Investment Policy Compliance

20 The below table identifies compliance with Council's Investment Policy by the proportion of the investment portfolio invested with financial institutions, along with their associated credit ratings compared to parameters in the Investment Policy. The parameters are designed to support prudent short and long-term management of credit risk and ensure diversification of the investment portfolio. Note that the financial institutions currently offering investments in the 'ethical' area are still mainly those with lower credit ratings (being either BBB or not rated at all i.e., credit unions).

25 The investment portfolio is outlined in the table below by investment type for the period 1 June 2024 to 30 June 2024:

Investment policy compliance % should not exceed the following	ACTUAL	
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BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

13.2

AAA to AA	A1+	100%	49%	Meets policy
A+ to A-	A1	60%	16%	Meets policy
BBB to NR	A2,NR	40%	35%	Meets policy

Dissection of Council Investment Portfolio as at 30 June 2024

Principal Value (\$)	Investment Linked to:	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
65,000,000.00	Term Deposits	65,000,000.00	0.00
30,055,881.78	CBA Business Saver	30,055,881.78	0.00
545,010.80	CBA Business Saver – Tourism Infrastructure Grant	545,010.80	0.00
10,210,751.11	Macquarie Accelerator	10,210,751.11	0.00
7,350,000.00	Bonds/Floating Rate Notes	6,928,212.47	(421,787.53)
113,161,643.69	Total	112,739,856.16	(421,787.53)

Council's overall 'cash position' is not only measured by funds invested but also by the funds retained in its consolidated fund or bank account for operational purposes. The table below identifies Council's overall cash position for the month of June 2024 as follows:

5 Dissection of Council's Cash Position as at 30 June 2024

Item	Principal Value (\$)	Current Market Value (\$)	Cumulative Unrealised Gain/(Loss) (\$)
Investments Portfolio			
Term Deposits	65,000,000.00	65,000,000.00	0.00
CBA Business Saver	30,055,881.78	30,055,881.78	0.00
CBA Business Saver – Tourism Infrastructure Grant	545,010.80	545,010.80	0.00
Macquarie Accelerator	10,210,751.11	10,210,751.11	0.00
Bonds	7,350,000.00	6,928,212.47	(421,787.53)
Total Investment Portfolio	113,161,643.69	112,739,856.16	(421,787.53)
Cash at Bank			
Consolidated Fund	5,333,478.02	5,333,478.02	0.00
Total Cash at Bank	5,333,478.02	5,333,478.02	0.00
Total Cash Position	118,495,121.71	118,073,334.18	(421,787.53)

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership	1.3: Ethical and efficient management of resources	1.3.1: Financial Management - Ensure the financial integrity and sustainability of Council through effective financial management	1.3.1.6	Maintain Council's cash flow

Legal/Statutory/Policy Considerations

5 In accordance with Section 212 of the *Local Government (General) Regulation 2021*, the Responsible Accounting Officer of Council must provide Council with a monthly report detailing all monies it has invested under section 625 of the *Local Government Act 1993*.

10 The Report must be presented at the next Ordinary Meeting of Council after the end of the month being reported. The current Council Meeting cycle does not always allow this to occur, especially as investment valuations required for the preparation of the report are often received after the deadline for the submission of reports. Endeavours are being made to achieve a better alignment and for some months this will require reporting for one or more months.

15 Council's investments are made in accordance with section 625(2) of the *Local Government Act 1993* and Council's Investment Policy. The *Local Government Act 1993* allows Council to invest money as per the Minister's Order – Forms of Investment, last published in the Government Gazette on 11 March 2011.

Council's Investment Policy includes the objective of maximising earnings from authorised investments and ensuring the security of Council Funds.

Financial Considerations

20 Council uses a diversified mix of investments to achieve short, medium, and long-term results.

25

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.3 PLANNING -DA 10.2021.348.2 - Modification to mixed use development including changes to design and number of parking spaces and increase from two storey to three storeys in on-site car parking structure 156-158 Jonson Street BYRON BAY

Directorate: Sustainable Environment and Economy

Report Author: Patricia Docherty, Team Leader Planning Services - Commercial Industrial & Tourism

File No: I2024/995

Proposal:

Proposed modification: Modification to mixed use development including changes to design and number of parking spaces and increase from two storey to three storeys in on-site car parking structure

Original Development: Alterations to existing building and change of use to mixed use development including shop, office premises and construction of a two-storey carpark

Type of modification sought: 4.55(2) Other modifications

Property description: LOT: 51 DP: 844054, LOT: 9 DP: 818197, LOT: 1 DP: 1289363 and part of Lot 1 DP1267388 (Mitre 10)

158 Jonson Street, 156 Jonson Street (Part of 148 Jonson Street)
BYRON BAY

Parcel No/s: 237062, 157320, 271330 and part of 270371

Applicant: Ardill Payne and Partners

Owner: 156 Jonson St Pty Ltd

Zoning: B2 Local Centre

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SP2 Infrastructure (Car Park)
C2 Environmental Conservation
C3 Environmental Management

Date received: 10 April 2024

Original DA determination date: 11 August 2022

Integrated Development: No

Public notification or exhibition:

- Level 2 advertising under the Byron Shire Council Community Participation Plan.
- Exhibition period: 24 April 2024 to 8 May 2024
- Submissions received: 16 submissions of objection

Planning Review Committee: 6 June 2024

Delegation to determination: Council

Issues: The proposed modification is not substantially the same development as originally approved. The proposal presents poor design outcomes compared to the approved design of the 'Harris Farm Markets,' commercial mixed use development and associated car park.

The proposal:

- disconnects the car park from the approved commercial building and removes level, accessible connectivity between floor levels for shoppers and tenants.
- increases the height of the multi deck car parking from two to three storeys, thereby increasing the number of car park levels adjacent to the adjoining residential land while increasing the number of car parks by 25 spaces.
- removes the approved roof cover on the car park required by current consent (condition 16B) for photovoltaics solar panels and their reintroduction would appear likely to encroach or exceed the 9 metre height limit.
- deletes provision of an entry plaza and replaces it with back of house loading areas on the south side of the commercial use between the car park that provides for potential access to the future 'rail trail' (required by current consent (condition 16A).

- substantially reduces the proposed commercial floor area on the upper level of the mixed use building.
- raises issues related to access and manoeuvrability of vehicles, trucks and loading including an increase in space needed on the road reserve for the manoeuvring of vehicles.
- encroaches further into the unmade road reserve to the south end of Jonson Street and likely increase in loss of vegetation.
- raises acoustic impacts compared to that approved due the increase in number of parking levels with immediate frontage to adjoining residential land.
- raises uncertainty about the functionality and orderly development with vague reference to the adjoining former Mitre 10 site with a proposed walkway between 'future' buildings but there is no detail to support this. No development application for the adjoining separate site has been received to provide greater clarity and important context.

The applicant was advised that the proposed modification is not supported and was given the opportunity to withdraw the application. The applicant did not withdraw the application prior to the agenda being published.

Summary:

An application has been received to modify a mixed use development including changes to the design and number of parking spaces and an increase from two storey to three storeys in the on-site car parking structure.

- 5 Council approved alterations to the existing building and change of use to mixed use development including shop (Harris Farm Market), office premises and construction of a two-storey carpark on 11 August 2022. The cost of development was estimated to be \$13,658,873.
- 10 The existing factory/warehouse building, formerly used by the Wicked Weasel Ladies Swimwear company, was approved to be fitted out for use as a Harris Farm Markets grocery store at ground level with an ancillary office, back of house cool room and bakery and separate office tenancy intended for use as a co-working space on the upper level.
- 15 This consent provided for the existing building to be connected by level access at both levels of a two-storey car park south of the existing building containing 227 car parking spaces and 16 motorcycle spaces (equivalent 231 spaces under Byron DCP 2014). The original consent required a roof and photovoltaic solar panels on the second level of the car park and a gate to be provided to the rail corridor for future access to the 'rail trail.'
- 20 The existing building is located on a battle axe lot with vehicular access from the south end of Jonson Street and frontage to Butler Street Bypass. Part of the car park site is located on a recently excised parcel of surplus rail land now registered with NSW land registry services and transfer of ownership completed. All three lots, including the mixed-use

building and car park are required to be consolidated into one lot in the original consent by the original consent.

5 The approval requires road upgrades to the southern end of Jonson Street, removal of vegetation on land zoned SP2 (Car Park) and environmental regeneration of the adjoining conservation zoned land, which will be subject to implementation of a vegetation management plan.

10 The proposed modification is not substantially the same development as originally approved. The modification to the layout, configuration, height and floor space of the mixed use development including changes to design and number of parking spaces and increase from two storey to three storeys in on-site car parking structure is substantially different to the original approved development. The proposal presents poor design outcomes compared to the approved design of the 'Harris Farm Markets,' commercial mixed use development and associated car park under the original consent and is not considered to present a clear public benefit to support such changes.

15 The proposed modification is not supported with consideration for the functionality of the site in the local centre zone, design excellence and its compatibility with adjoining land uses and zones.

20 The proposal is not satisfactory having regard to relevant matters for consideration and the section 4.55 application is recommended for refusal on the grounds listed in the Recommendation of this Report.

NOTE TO COUNCILLORS:

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

RECOMMENDATION:

30 **It is recommended pursuant to Section 4.55 of the Environmental Planning & Assessment Act 1979, that Application No. 10.2021.348.2, for modification to mixed use development including changes to design and number of parking spaces and increase from two storey to three storeys in on-site car parking structure, be refused for the following reasons:**

- 35
- 1. Pursuant to section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development does not comply with Clause 6.6 Essential Services of Byron Local Environmental Plan 2014.**
 - 2. Pursuant to section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development does not comply with Clause 6.13 Design Excellence of Byron Local Environmental Plan 2014.**





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- 5 3. Pursuant to section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development does not provide sufficient information to demonstrate that the reconfigured car park will comply with Clause 4.3 Height of buildings of Byron Local Environmental Plan 2014 with full consideration for the roof and photovoltaic panels that would need to be reinstated in accordance with the original consent.
- 10 4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development does not comply with Chapter B3 Services of Byron Development Control Plan 2014.
- 15 5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development does not comply with Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access of Byron Development Control Plan 2014.
- 20 6. Pursuant to Section 4.15 (1) (b) of the Environmental Planning and Assessment Act 1979 the proposed development is likely to result in adverse environmental impacts on both the natural and built environments, and economic and social impacts in the locality because the proposal is not substantially the same development compared to that approved in the original consent.
- 25 7. Pursuant to Section 4.15(1)(d) and of the Environmental Planning & Assessment Act 1979 the proposed development is not in the public interest with regards for relevant matters for consideration raised in properly made submissions received by Council in accordance with Section 4.55(2)(d).
- 30 8. Pursuant to Section 4.15(1)(e) of the of the Environmental Planning and Assessment Act 1979 the proposed development is not in the public interest for the reasons outlined above.
- 35 9. Pursuant to Section 4.55(2)(a) of the Environmental Planning and Assessment Act 1979 it is not satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.

Attachments:

- 1 10.2021.348.2 Redacted Submissions, E2024/59495 
- 2 10.2021.348.2 - Architectural Plans, E2024/29766 
- 3 10.2021.348.1 Original Consent - Stamped Approved DA Plan set - Marked in red, E2022/51263 
- 4 10.2021.348.1 Original Consent - Notice of Determination and Statement of Reasons - Approval, A2022/29280 

Report

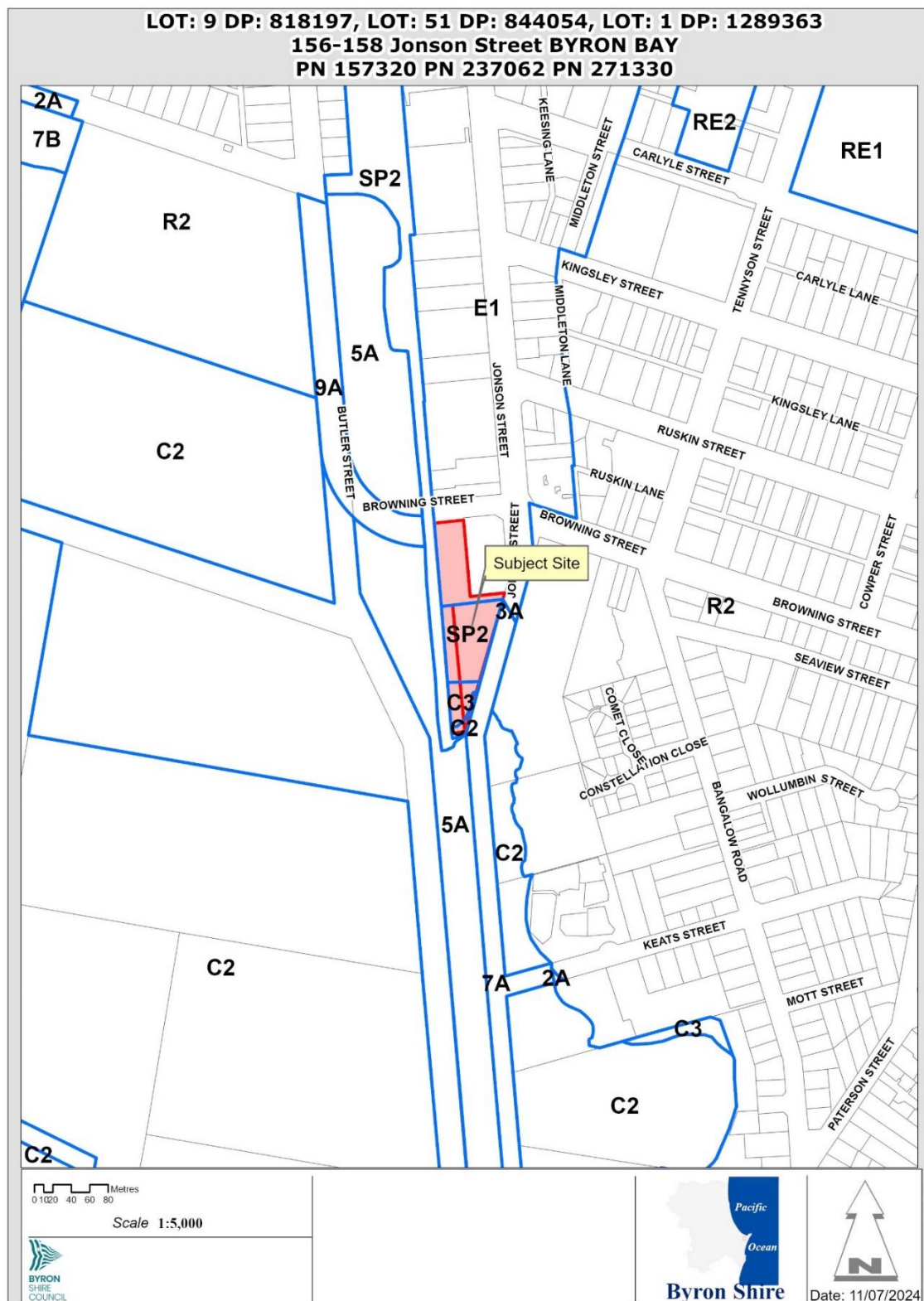


Figure 1: Locality Plan

Assessment:

1. INTRODUCTION

1.1. History/Background

- 5 The subject site comprises an existing building, vacant land and an excised part of the former rail Corridor.

DA10.2021.348.1 for Alterations to Existing Building and Change of Use to Mixed Use Development including Shop, Office Premises and Construction of a Two-Storey Carpark was approved at a meeting of Council on 11 August 2022.

1.2. Description of the proposed development

- 10 This application seeks approval for a modification to mixed use development including changes to design and number of parking spaces and increase from two storey to three storeys in on-site car parking structure. The proposed modification is not substantially the same development as originally approved. The proposal presents poor design outcomes compared to the approved design of the 'Harris Farm Markets,' commercial mixed use development and associated car park. In particular, the proposal:

- disconnects the car park from the approved commercial building and removes level, accessible connectivity between floor levels for shoppers and tenants.
- increases the height of the multi deck car parking from two to three storeys, thereby increasing the number of car park levels adjacent to the adjoining residential land while increasing the number of car parks by 25 spaces.
- removes the approved roof cover on the car park required by current conditions of consent for photovoltaics and their reintroduction would appear likely to result in an exceedance over the 9 metre height limit.
- deletes provision of an entry plaza on the south side of the commercial uses between the car park building that provides for potential access to the future 'rail trail' and replaces it with back of house loading areas.
- reduces the proposed commercial floor area on the upper level of the mixed use building.
- raises issues related to access and manoeuvrability of trucks and loading including an increase in space needed on the road reserve for the manoeuvring of trucks that will further encroach into the vegetated road reserve to the south end of Jonson Street.
- raises acoustic impacts compared to that approved due the increase in parking levels with immediate frontage to adjoining residential land.
- vaguely references the adjoining former Mitre 10 site with a proposed walkway between 'future' buildings but there is no detail to support this. There is no certainty about the functionality and orderly development of these aspects of the proposal. No development application for the adjoining separate site has been received to provide greater clarity and important context.

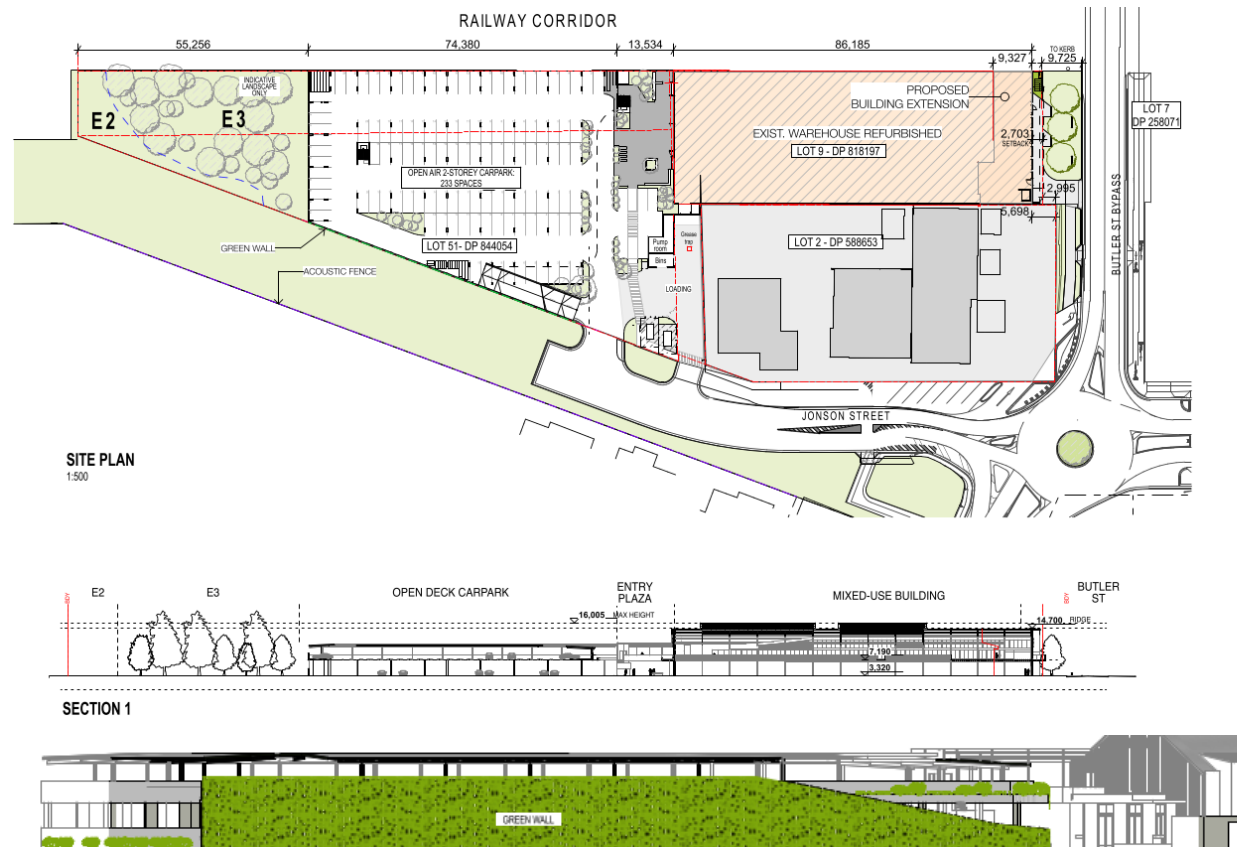


Figure 2: Approved Site Plan and Section/Elevation to Jonson St

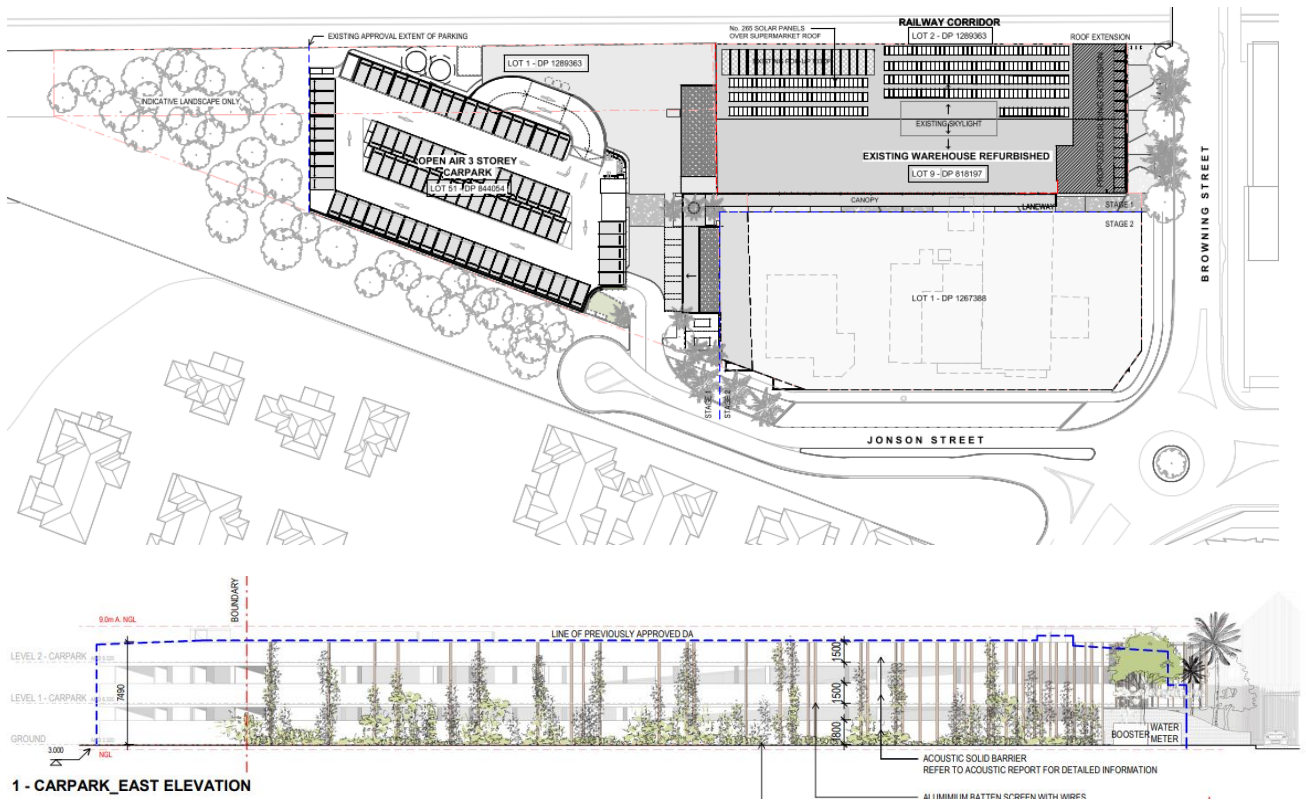


Figure 3: Proposed Site Plan and Car Park Elevations to Jonson Street



Figure 4: Approved 3D Perspective



Figure 5: Proposed Modification 3D Perspective

- 5 The applicant was advised on 5 July 2024 that the modification application is not supported and provided the opportunity to withdraw the application before being reported to Council with a recommendation for refusal. The feedback presented to the applicant was detailed as follows:

This modification has been carefully reviewed by council staff in relation to the design review process, engineering, acoustic matters etc.

Following discussion with senior staff (Director and Manager), you are advised that the 4.55 application is not supported.

- 5 *The design quality of the modification compared to the originally approved development raises issues, including the following:*
- *Aspects of the site that will rely on a DA for the adjoining 'future co-working site / Mitre 10' site that has not been lodged with council:*
 - *Lack of detail, clarity, and certainty about orderly development in relation to*
10 *delivery of key elements that rely on the adjoining site.*
 - *Concerns the Laneway between 'future' co working site and Harris Farm*
 could be even less than the 4 metres shown on the plans.
 - *Actual site boundary and relationship and interface is uncertain and*
 cannot be addressed in the modification.
 - 15 ▪ *No certainty to establish if there needs to be a right of way etc. up front to*
 address functionality and access between the lots.
 - *Poor design and planning outcomes:*
 - *Orientation of the car park and dominance of the proposed loading dock turns its*
20 *back on the rail corridor.*
 - *Disconnection and removal of approved gate access future rail trail for*
 bikes, pedestrians.
 - *Loss of public [SIC should read: plaza/communal] spaces adjacent to the*
 rail corridor and within the site.
 - *Loss of permeable, accessible connectivity between the floor levels Harris Farm*
25 *building / commercial activities and car park.*
 - *Loss of commercial floor space on the mezzanine.*
 - *Acoustic impacts from additional level of parking adjacent to residential.*
 - *Unacceptable impacts to support a nominal net increase of 14 car spaces.*
 - *Comments provided in the panel advice 22.2023.5.1 have not been addressed.*
 - *Bike parking is poorly and disparately sited – advice for it to be on northern part*
30 *of the site with good access to town etc has not provided. EV charging there are*
 too few.
 - *Photovoltaics on the roof of the car park not provided – to comply this will result*
 in further height variation that is not addressed in the application.
 - 35 • *All things considered, there is a lack of public benefit to support a variation to height.*
 - *Public submissions of objection raise relevant matters for consideration that cannot be*
 overcome by conditions of consent.

At the time of writing this report, the applicant had not withdrawn the application.

1.3. Description of the site

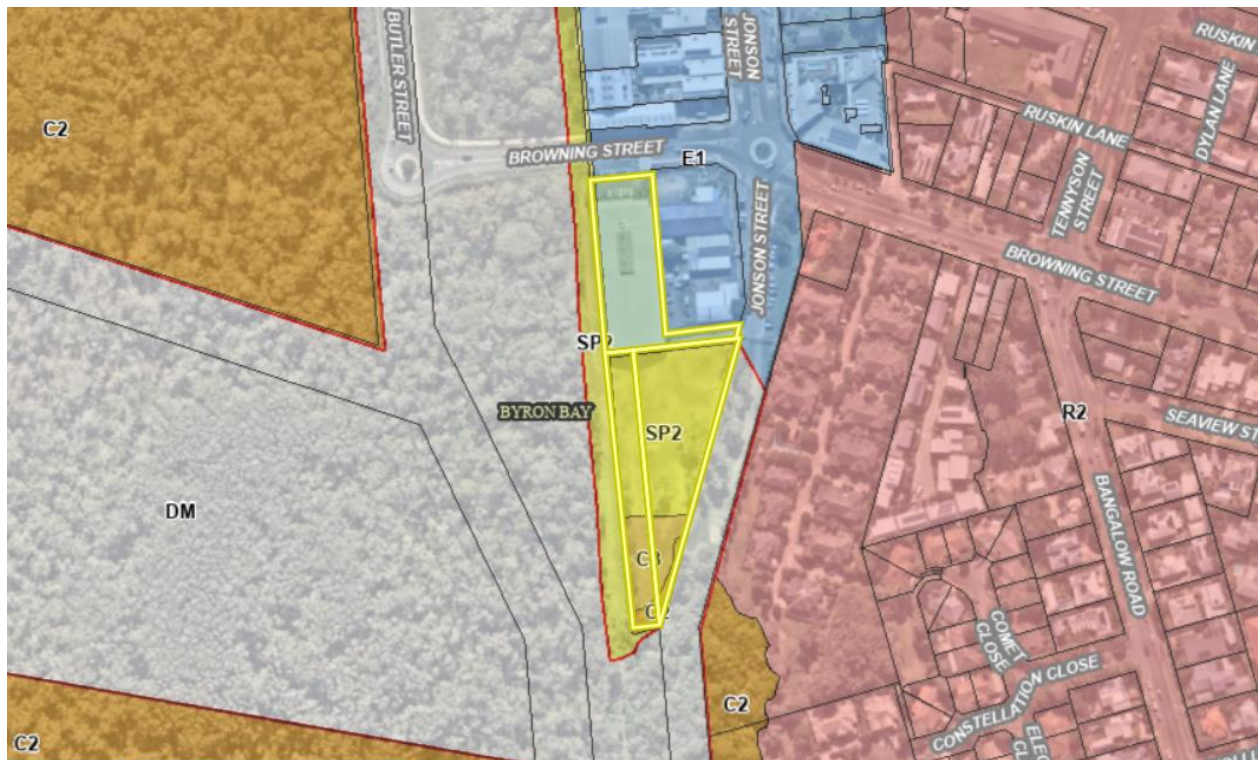


Figure 6: Zoning

Land is legally described	LOT: 51 DP: 844054, LOT: 9 DP: 818197, LOT: 1 DP: 1289363 and part of Lot 1 DP1267388 (Mitre 10)	
Property address	158 Jonson Street, 156 Jonson Street (Part of 148 Jonson Street) BYRON BAY	
Land is zoned:	B2 Local Centre; SP2 Infrastructure (Car Park); C2 Environmental Conservation; C3 Environmental Management	
Property is constrained by:	Flood Liable Land; Bushfire prone land; Acid Sulfate Soils Class 2; and High Environmental Value.	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

The existing building is located on a battle axe lot with vehicular access from the south end of Jonson Street and frontage to Butler Street Bypass. The proposed car park is to be located on land to the south of the existing building also with access from Jonson Street. The site adjoins coastal wetlands and is adjacent to residential land.



5



Figure 7: Site photos view from Jonson Street Road Reserve looking north and south

10

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

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

2.1. State Environmental Planning Instruments

- 5 The original assessment considered the provisions of the relevant SEPP's applicable to the land and the proposed development, as follows:

Considerations	Satisfactory	Unsatisfactory
<p><i>Biodiversity and Conservation SEPP 2021</i></p> <p>Consideration:</p> <p><i>Chapter 2 Vegetation in non-rural areas.</i></p> <p>Chapter 2 of the B&C SEPP doesn't apply because it only relates to vegetation clearing not ancillary to development.</p> <p>All vegetation clearing and compensation was assessed in Council's ecology assessment and conditions of consent to provide for vegetation management and restoration. No clearing is proposed on land Zoned C2 or C3.</p> <p><i>Chapter 4 Koala habitat protection</i></p> <p>The subject land is within the koala planning area as defined under the Byron Coast Comprehensive Koala Plan of Management (CKPoM) as approved under Section 4.17 of the B&C SEPP. As the subject land is less than 1 ha in area, the CKPoM does not apply to the proposal.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>Resilience and Hazards SEPP 2021</i></p> <p>Consideration:</p> <p><i>Chapter 2 Coastal management</i></p> <p>The proposal involves works on land within the proximity area to coastal wetlands as mapped under Chapter 2 of the R&H SEPP. The proposal is not expected to impact the biophysical, hydrological, and ecological integrity of the adjacent coastal wetland. It is therefore considered that the proposal complies with Section 2.8 of the R&H SEPP.</p> <p>Note. A small strip in the southern extent of the parcel is identified on the biodiversity values map. This area corresponds to a coastal wetland mapped under the</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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Considerations	Satisfactory	Unsatisfactory
<p>R&H SEPP. No development is proposed on this part of the site. The mapped coastal wetland extends beyond the parcel to the south. There are also large areas of land identified on the biodiversity values map to the west and north. The remainder of the site is mapped as a proximity area for coastal wetland.</p> <p><i>Chapter 4 Remediation of land</i></p> <p>The applicant has undertaken preliminary assessment in accordance with the R&H SEPP. The findings have been assessed by Council's Environmental Health Officer in their referral assessment referred to in Section 2.1 of this report. The proposed development can be supported subject to conditions required to be net included in the recommendations of this report.</p>		
<p><i>Transport and Infrastructure SEPP 2021</i></p> <p>Consideration:</p> <p><i>Chapter 2 Infrastructure</i></p> <p>The DA was referred to Essential Energy in accordance with <i>Division 5 Electricity transmission or distribution, Subdivision 2 Development likely to affect an electricity transmission or distribution network S2.48 Determination of development applications—other development.</i></p> <p>The DA was referred to Transport for NSW in accordance with <i>Division 15 Railways Subdivision 2 Development in or adjacent to rail corridors and interim rail corridors—notification and other requirements, S 2.97 Development adjacent to rail corridors.</i></p> <p>The DA was referred to Roads and Maritime Services in accordance with <i>Division 17 Roads and traffic, Subdivision 2 Development in or adjacent to road corridors and road reservations, S2.118 Development with frontage to classified road and S 2.121 Traffic-generating development.</i></p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

2.2. Byron Local Environmental Plan 2014 (LEP 2014)

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

- (a) The proposed development is defined in the LEP 2014 Dictionary as Mixed use development comprising shop and office and Car park;
- (b) The land subject to the proposed development is within the E1 Local Centre and SP2 Infrastructure (Car Park) zone; according to the Land Zoning Map;
- (c) The proposed development is permissible with consent; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective E1	Consideration
<ul style="list-style-type: none"> To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area. 	<p>The proposed modifications would result in poor design and planning outcomes compared to that approved for the detailed reasons outlined in this report. The proposed modification is not substantially the same development. I would result in loss of commercial space. Removal of the on-site plaza and other spaces that provided for vibrant and active spaces within the site reduces connectivity between commercial uses, parking and public land. The approved mixed use development in its original form comprising shop and office uses provides retail and employment spaces and will serve the needs of the community in proximity to available public transport routes. It will provide for upgrades for pedestrians and cycle facilities to encourage walking and cycling to and from the site.</p> <p>The proposed modification to the approved development is inconsistent with the objectives of the E1 Zone and is not supported.</p>
<ul style="list-style-type: none"> To encourage investment in local commercial development that generates employment opportunities and economic growth. 	
<ul style="list-style-type: none"> To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area. 	
<ul style="list-style-type: none"> To encourage business, retail, community and other non-residential land uses on the ground floor of buildings. 	
<ul style="list-style-type: none"> To maximise public transport patronage and encourage walking and cycling. 	

Zone Objective SP2 Infrastructure (Car Park)	Consideration
<ul style="list-style-type: none"> To provide for infrastructure and related uses. 	<p>The original approved development provides for car parking that is compatible</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>with and not inconsistent with the objectives of the SP2 Infrastructure (Car Park) zone. The approved car park provides for accessible level car parking to and from the approved commercial (Harris Farm and mixed use) building. The proposed modification raises issues that detract from the approved provision of car parking and would diminish the connectivity for shoppers and tenants of the adjoining site approved under the same consent.</p>
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Note.

No development works are proposed on land zoned C2 Environmental Conservation or C3 Environmental Management. There will be a vegetation management plan applicable to these parts of the site for the purposes of biodiversity restoration in perpetuity. This is consistent with the objectives of the C2 and C3 Zone.

C2 Objectives of zone

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

C3 Objectives of zone

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To encourage passive recreation and environmental education where there is no detrimental effect to land.

Environmental protection works are permissible without consent in the C2 and C3 zone.

Clause 4.3 and 4.4 development standards including height and floor space ratio (FSR)

Existing building approval

The existing building is subject to a maximum height of building development standard of 11.5 metres max. and floor space ratio (FSR) development standards (1.3:1).

The overall maximum height of the existing building noting that the ridge of the existing skylight loft is 12.685 metres high. Otherwise, general height to the main roof ridge is 11.3 metres. The approved extension of the building on the northern façade retains the existing

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height and does not exceed the maximum permissible 11.5 metres. The approved additional skylights on the south section of the roof exceed the maximum permissible 11.5 m and are permitted under the provisions of Clause 5.6 Architectural Roof Features. (See below). Other originally approved new roof works are approximately 8.1 metres and do not exceed the maximum permissible 11.5 m on this part of the site.

The approved FSR of the building is 0.46:1, which is below the permissible 1.3:1 under Clause 4.4 of Byron LEP 2014, calculated based on gross floor area (GFA) and site area, as follows:

Ground Floor = 2,693m²; First Floor = 1,580m²; Total GFA = 4,273m², Land Size= 9,121m². FSR= 0.46:1

Proposed modification to existing building

The overall total maximum height of the existing building does not change. The modification proposes to reduce the gross floor area to 3,035 m², which is a **loss of 1,238 m² commercial floor area**.

Approved car park

The car park site is subject to a maximum height of building of 9 metres max. but not subject to FSR development standards.

The maximum height of the car park is 8.1 metres according to elevation drawings and below the maximum permissible 9 metres.

Proposed modification to car park

The proposed modification results in a building just under the 9 metre height limit and adds an additional level of parking (2 to 3 storeys). The proposed modification removes the roof and photovoltaic solar panels approved under the original consent.

The reinstatement of these features would appear to result in a building that is closer to or may exceed the height of building limit of 9 metres.



Figure 8: Approved car park elevations

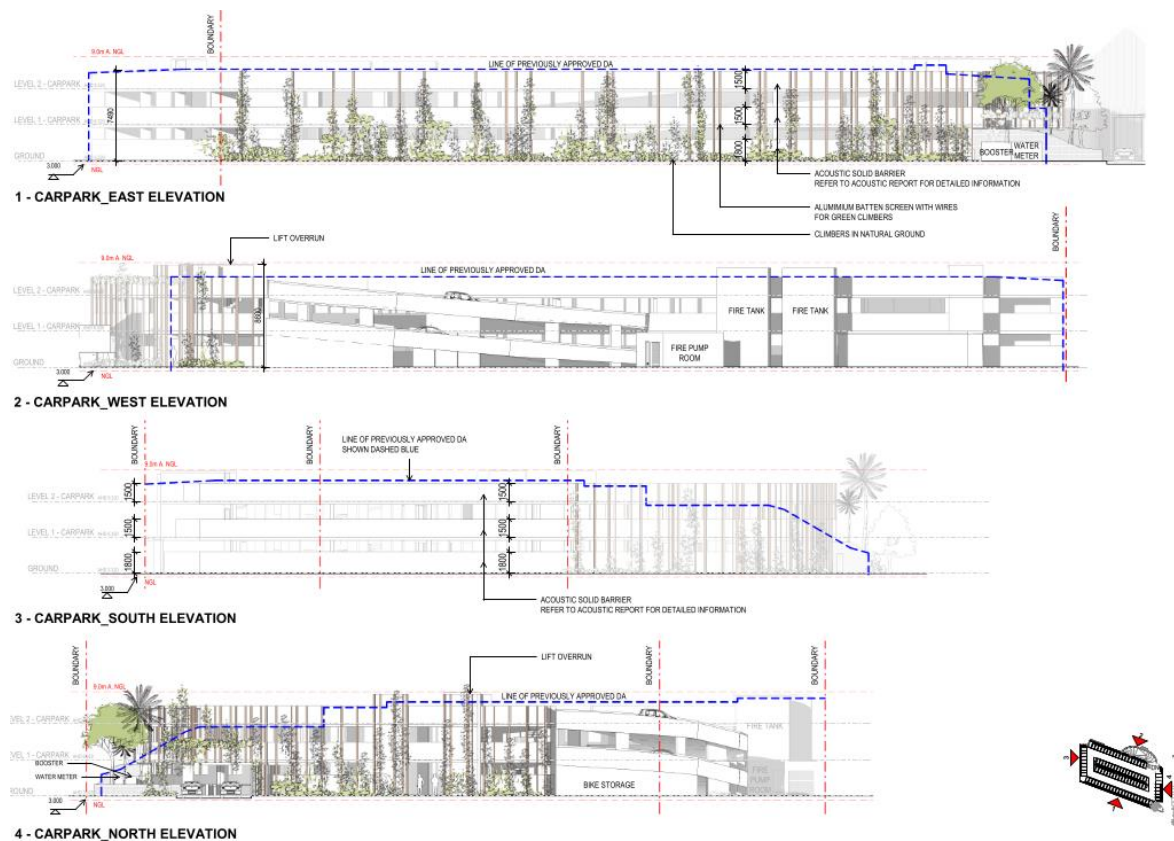


Figure 9: Proposed modification to car park elevations

5

Clause 5.21 Flood Planning

Much of the site is mapped as flood prone land (see below). Conditions of consent in relation for flood compatible materials and services requirements were included in the original consent conditions.



5 **Figure 10:** Extract of flood mapping

Clause 6.1 Acid Sulfate Soils

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

- 10 Minimal excavation is approved other than for footings and services and no basement car park is proposed. A preliminary ASSMP provides that Acid Sulfate Soils can be adequately managed. Relevant conditions were included in the original consent to ensure management of acid sulfate soils prior to and during works on the site.

Clause 6.13 Design excellence—Byron Bay town centre

- 15 The original approved development and proposed modification was referred to the Design Excellence Panel in accordance with Clause 6.13 Design Excellence.

This clause applies to development involving the erection of a new building or alterations to an existing building on land identified as “Design excellence” on the Design Excellence Map. The lot containing the existing building is located on land identified on the Design Excellence map.

20

The objective of this clause is to ensure that development exhibits design excellence that contributes to the natural, cultural, visual and built character values of Byron Bay town centre.

Development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence. Council being the consent authority must consider whether—

- (a) *the building incorporates sustainable design principles, including in relation to the following—*
 - (i) *sunlight,*
 - (ii) *natural ventilation,*
 - (iii) *wind,*
 - (iv) *reflectivity,*
 - (v) *visual and acoustic privacy,*
 - (vi) *safety and security,*
 - (vii) *resource, energy and water efficiency, durability and adaptability, and*
- (b) *a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved, and*
- (c) *the proposed development responds well to the environmental and built characteristics of the site and achieves an acceptable relationship with other buildings on the same site and on neighbouring sites, and*
- (d) *the form and external appearance of the development will improve the quality and amenity of the public domain, including by encouraging social activity and casual surveillance in public places, streets and laneways, and*
- (e) *the configuration and design of public access and communal recreational areas within the residential areas—*
 - (i) *incorporate exemplary and innovative treatments, and*
 - (ii) *promote a sociable village atmosphere, and*
- (f) *the development minimises street clutter and provides ease of movement and circulation of pedestrian, cycle, vehicular and service access, and*
- (g) *the development coordinates shared utility infrastructure and waste management to minimise disruption at street level in public spaces, and*
- (h) *the development appropriately addresses the following matters—*
 - (i) *heritage issues and streetscape constraints,*
 - (ii) *minimisation of bulk and massing, and modulation of, buildings,*
 - (iii) *pedestrian, cycle, vehicular and service access and circulation requirements.*

In addition, development consent must not be granted to the following development unless the Byron Design Excellence Panel has endorsed the development as exhibiting design excellence—

- (b) *alterations or additions to an existing building that—*

(ii) *change the use of 500 square metres or more of gross floor area of the building, In this clause—*

Byron Design Excellence Panel means a panel, consisting of 2 or more persons, established by the consent authority for the purposes of this clause.

- 5 Council resolved on 7 November 2021 to promulgate a design excellence panel under clause 6.13 of the BLEP to ensure optimum compliance is achieved by new development with the Byron Bay Town Centre Planning controls.

- 10 Resolved 21-485 that Council appoints the Director Sustainable Environment and Economy and Mr Rod Simpson (Wilson & Simpson) as the members of the Byron Design Excellence Panel for the purposes of development application assessment under Byron Local Environmental Plan 2014 - Clause 6.13 Design Excellence – Byron Bay Town Centre.

This clause only applies to the existing building and does not include the car park land.

- 15 A Design Excellence Panel referral was made on the original development. The majority of the recommendations made by the panel were included in the approved conditions except for the consideration of the future treatment of the western façade with art, which is not visible from the public domain at any point until such time as the rail trail is activated.

The proposed modification raises design issues with regards to the development for the reasons outline in this report, including:

- 20 • disconnection - removes level, accessible connectivity between floor levels for shoppers and tenants.
- height of the multi deck car parking from two to three storeys, increasing the acoustic impacts of the development on nearby dwellings.
- 25 • removes the approved roof cover and photovoltaics on the car park - reintroduction likely to result in an exceedance over the 9 metre height limit.
- deletes provision of an entry plaza on the south side of the commercial uses between the car park building that provides for potential access to the future 'rail trail' and replaces it with back of house loading areas.
- 30 • reduces the proposed commercial floor area on the upper level of the mixed use building.
- raises issues related to access and manoeuvrability of trucks and loading including an increase in space needed on the road reserve for the manoeuvring of trucks that will further encroach into the vegetated road reserve to the south end of Jonson Street.
- 35 • lack of certainty about the functionality and orderly development of the shared laneway on the mitre 10 site and no development application has been received to provide greater clarity and important context.

Clause 6.6 Essential Services

This clause requires that:

- 40 *Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are*

available or that adequate arrangements have been made to make them available when required—

(a) the supply of water,

(b) the supply of electricity,

5 (c) the disposal and management of sewage,

(d) stormwater drainage or on-site conservation,

(e) **suitable vehicular access.**

10 Development consent must not be granted unless Council, being the consent authority can be satisfied that the proposed provides suitable vehicular access. The approved development was satisfactory with regards all essential services, in some cases with requirements for conditions of consent and mark us on approved plans. The proposed modification presents significant issues with regards access, loading and traffic. Full details are outlined in Section 2.4 with regards non-compliance.

15 **2.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

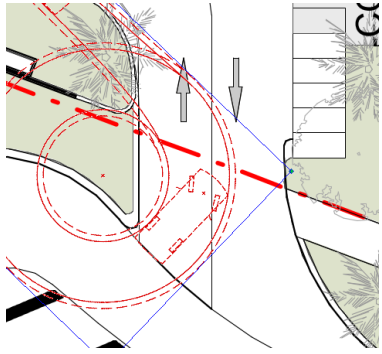
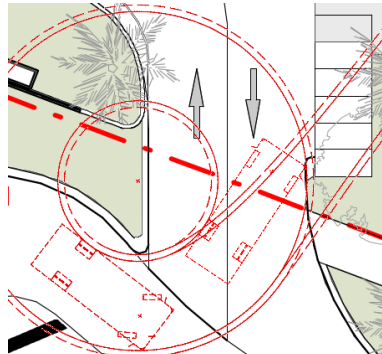
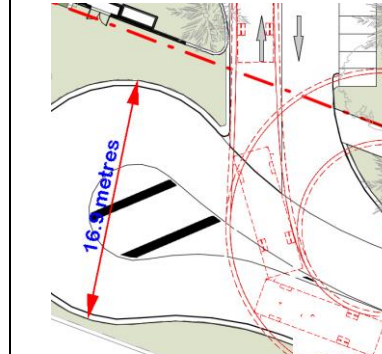
The proposal is not affected by any draft Environmental Planning Instruments.

2.4 Byron Shire Development Control Plan 2014 (DCP 2014)

20 The following comments prepared by Council's Development Engineer presents a significant non-compliance with Chapter B3 Services and Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access DCP 2014. In particular, the proposed modification raises issues with regards access for trucks and cars:

1. *Roadworks – noncompliance to the prescriptive measures section B3.2.1 (7) & (9) of Chapter B3 of BDCP2014*
 - 25 • *The proposed road configuration failed to meet the industrial road standard in Northern Rivers Local Government Design and Construction Guidelines (NRLG).*
 - *The proposed road design removed the pedestrian and cyclist connectivity on the south side of Jonson St.*
 - 30 • *The proposed roadworks failed to meet condition 32 of DA10.2021.348.1.*
 - *The proposed design of the cul-de-sac and the development access adversely impact the entry of cars into the development due to acute angle at the forcing cars to manoeuvre into the exit lane and SRV vehicle manoeuvring will encroach into the motorbike parking spaces.*
 - 35 • *The cul-de-sac head does not meet the minimum size cul-de-sac head in accordance with Table D1.12 of Chapter D1 – Geometric Road Design in NRLG.*

- Due to the inadequate size of the cul-de-sac head, the head can cater up to an SRV vehicle with vehicles larger than an SRV entering the site will manoeuvre over the bottom section in the chevron of the central island.

		
• B85 Vehicle	• SRV Vehicle	• MRV Vehicle

-
- 5 2. Access – noncompliance to the section B4.2.3 of Chapter B4 of BDCP2014
- Cars entering the site utilises both the entry and exit lanes of the access. This poses safety issues.
 - Commercial vehicles drive over the central chevron island of the cul-de-sac and the entry and exit lanes of the access.
- 10 •
3. Loading Bay – noncompliance to the section B4.2.9 and Table B4.2 of Chapter B4 of BDCP2014
- Unclear where the where in the plan the 4 x designated loading bays.
 - The service area does not show the following: -
- 15 a) The service area must be a physically defined location, screened from public view, and not used for purposes other than servicing, loading, and unloading.
- b) Service area layout must facilitate its efficient use and must effectively discourage on-street loading and unloading.
- 20 c) Requirements for storage and collection of waste must be taken into account in service area design.
- d) All service vehicles must be able to enter and leave the site in a forward direction, i.e. adequate manoeuvring space is required on site.
- 25 e) Internal roadways must be of a size adequate for the largest vehicle anticipated to use the site.
- f) Service vehicle movements should be separated from car movements.

4. Traffic

In comparison, the original DA proposed a supermarket whereby it consist of different shops operated by different shop operators and sharing common areas, the current DA proposed a grocery store operated by a single operator. The different uses utilise different traffic generation rates...

- *Traffic generation must also include the additional trips generated by the size of the parking building due to the oversupply of parking. This has not been considered.*
- *The Transport Technical Note indicated that a 2023 traffic survey has been undertaken however this survey was not included in the technical note.*

There is insufficient information in the technical note to verify the accuracy of the impact of the proposal in the surrounding road network.

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

Impact on:	Likely significant impact/s?
Natural environment	The proposal as modified, is likely to have a significantly adverse impact on the natural environment of the locality including potential loss of additional trees on the unmade road reserve to provide more space for manoeuvring of trucks to enter the site, based on assessment by Council Development Engineer.
Built environment	The proposal as modified, is likely to have a significantly adverse impact on the built environment of the locality including loss of approved commercial space, loss of common plaza and potential future access for shoppers to the rail trail. The reliance on elements of the modification on a future application on an adjoining site represents lack of certainty of orderly development.
Social Environment	The proposal as modified, is likely to have a significant social impact on the locality including the increase on car park levels and resultant increased acoustic impacts on adjoining residents.
Economic impact	The proposal as modified, is likely to have a significant economic impact on the locality due to a substantial loss of approved commercial floor space compared to that approved and uncertainty about the orderly delivery of parts of the site that would rely on a future development application that has not been received or assessed.

The approved development complies with Council's development-related policies.

2.5 The suitability of the site for the development

5 The site is a serviced, property and the approved development suitably addresses the constraints of the site and is suitable for the proposed development. The proposed modification raises issues with regards to essential access for vehicles.

2.6 Submissions made in accordance with this Act or the regulations

The application was publicly exhibited. There were 16 submissions made on objection to the application, including relevant matters for consideration, as follows:

- Acoustic impact along western boundary of Seadrift lot.
- 10 • Greater landscaping buffering of noise and light needed
- Impact on wildlife
- Safe pedestrian access from Browning/Jonson/Butler streets
- Paper Road gate should be replaced
- Increase in traffic

15

2.7 Public interest

The proposed modification compared to the originally approved development is not substantially the same as that approved and is likely to compromise the public interest and create an undesirable precedent for the reasons outlined in this report.

20

3 CONCLUSION

25 An application has been received to modify a mixed use development including changes to the design and number of parking spaces and an increase from two storey to three storeys in the on-site car parking structure. The proposal presents poor design outcomes compared to the approved design of the 'Harris Farm Markets,' commercial mixed use development and associated car park.

The proposed modification is not substantially the same development as originally approved.

30 The proposed modification is not supported with consideration for the functionality of the site, design excellence and its compatibility with and impacts on adjoining land uses and zones.

The proposal is not satisfactory having regard to relevant matters for consideration and the section 4.55 application is recommended for refusal on the grounds listed in the Recommendation of this Report.

Report No. 13.4 Status report on Development Applications (DAs) with bodies like the Northern Regional Planning Panel (NRPP)

Directorate: Sustainable Environment and Economy

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

File No: I2024/967

Summary:

10 At the Council (Planning) Meeting of 12 October 2023 it was resolved as part of **23-461** that Council: *“Receives status reports monthly to each Ordinary (Planning) Meeting on all DA’s that are being processed by Council for determination by other bodies such as the Northern Regional Planning Panel or the Independent Planning Commission.”*

15 **Resolution 22-559** further requires: *“That Councillors receive, as a standard procedure, a copy of the Assessment Report prepared by Council staff for any DA that is to be determined by the Northern Regional Planning Panel on the next working day after it is lodged on the Planning Portal.”*


20 **RECOMMENDATION:**

That Council notes the status report on Development Applications (DAs) with bodies like the Northern Regional Planning Panel (NRPP).

Report

The following applications are a matter for determination by the Northern Regional Planning Panel in accordance with the Sydney District & Regional Planning Panels Operational Procedures. There are no matters currently with the Independent Planning Commission.

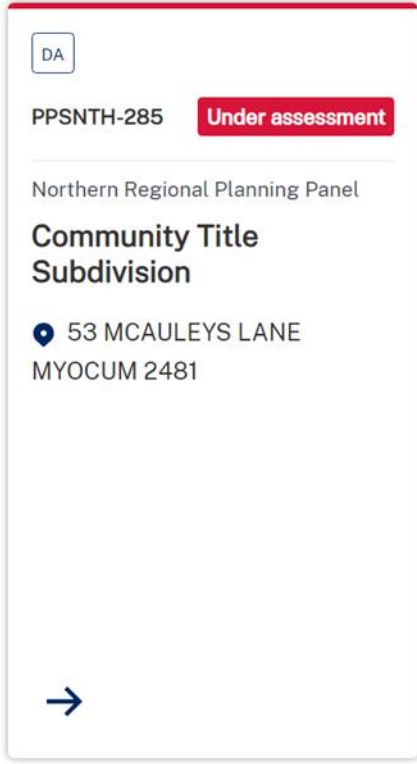
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Planning Authority	Application Description and link	Status
Northern Regional Planning Panel	 <p>Coastal Protection Works Planning Portal - Department of Planning and Environment (nsw.gov.au)</p> <p>Link to DA tracker for DA 2023.287.1 information and documents here:</p> <p>Byron Shire Council - Application Tracker</p>	Under assessment

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Planning Authority	Application Description and link	Status
Northern Regional Planning Panel	 <p>Community Title Subdivision Planning Portal - Department of Planning and Environment (nsw.gov.au)</p> <p>Link to DA tracker for DA 2023.454.1 information and documents here:</p> <p>Byron Shire Council - Application Tracker (nsw.gov.au)</p>	Under assessment

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action
1: Effective Leadership	1.1: Enhance trust and accountability through open and transparent leadership	1.1.2: Governance - Ensure legislative compliance and support Councillors to carry out their civic duties

Recent Resolutions

- 23-461

5 Legal/Statutory/Policy Considerations

The Planning Panels determine regionally significant development applications (DAs), certain other DAs and s4.55(2) and s4.56 modification applications including:

- Regionally significant development, as outlined in Schedule 6 of the *State Environmental Planning Policy Planning Systems 2021*
- 10 • Regionally significant development relating to Aboriginal land, as outlined in Chapter 3 of the *State Environmental Planning Policy Planning Systems 2021*
- Development with a capital investment value (CIV)* over \$30 million.
- Development with a CIV* over \$5 million which is:
 - 15 ○ Council related
 - lodged by or on behalf of the Crown (State of NSW)
 - private infrastructure and community facilities
 - eco-tourist facilities
 - extractive industries, waste facilities and marinas that are designated development
 - 20 ○ certain coastal subdivisions and
 - certain coastal protection works.

*Capital investment value (CIV) is calculated at the time of lodgement of the DA for the purpose of determining whether an application should go to a Planning Panel - refer to Planning Circular PS 10-008.

- 25 Section 10 of the Sydney District & Regional Planning Panels Operational Procedures talks to *Roles of councils and other panels*.

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10.1 states the elected Council and Council staff have different roles in the assessment of DAs. Under the Local Government Act 1993, the independence of Council staff is protected in the preparation of advice and recommendations. Staff members are not subject to direction by the Council or by a Councillor as to the content of any advice or recommendation made by the staff member. Equally, a Council or Councillor is not bound by the advice or recommendation made by a member of staff.

10.3 states historically, one of the roles of an elected Council has been to determine or make decisions on DAs in their capacity as a consent authority. There are occasions, however, where the determination role is performed by other people or bodies, either because the Council has delegated that function, or because it has been conferred upon another person or body. For example, where local planning panels have been introduced, elected Councils no longer determine DAs (see section 2.17 of the EP&A Act). The Panel for the area in which the development is to be carried out is the consent authority for regionally significant development (see section 4.5 of the EP&A Act).

10.4 states Council staff are responsible for post-determination functions including:

- notifying Panel determinations on DAs (see sections 4.7(2)(e), 4.18 and 4.59 of the EP&A Act),
- registering Panel development consents on the NSW Planning Portal (see sections 4.7(2)(e) and 4.20 of the EP&A Act), and
- monitoring and enforcing compliance with conditions of the development consent.

The notice of determination should be issued once Council receives a copy of the endorsed and final determination from the Panel. The notice of determination must include all conditions imposed by the Panel, including any additional or amended conditions.

The Council has no power to amend conditions or include additional conditions following the Panel's determination.

Council will advise any person who made a submission on the DA of the determination.

The Council continues to be responsible for the monitoring of, and enforcing compliance with, any conditions of the development consent.

Where an application has been approved subject to a 'deferred commencement' condition Council is responsible for determining whether the requirements of the condition have been met (see section 4.16(3) of the EP&A Act). Council advises the chair of the Panel in writing when the matter specified in the condition has been satisfied (see section 277(2) of the EP&A Regulation)

[Microsoft Word - Att C - Amended RPP Operational Procedures.docx \(amazonaws.com\)](#)

11.13 talks to *Council representation to the Planning Panel.*

An elected Council may make a submission on a DA within their LGA that is to be determined by a Panel up to seven days before the Panel meeting. After the assessment report is sent to the Secretariat, it may be given to the elected Council to assist in its decision as to whether it will be making a submission to the Panel. The elected Council's

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submission should not be prepared by persons involved in the assessment of the application but could be prepared by another Council officer, or a consultant.

5 A Council submission should not be specifically referenced in the assessment report or recommendations prepared by the Council staff. If Council makes a submission, a staff representative or individual Councillors may register to address the Panel at the meeting to express the views of Council. Councillors who are also Panel members have an independent role because they have been nominated by their Council as its nominee to the Panel.

A Code of Conduct also applies to members of the Planning Panels.

- 10 [Microsoft Word - Sydney and Regional Planning Panels Code of Conduct formatted-accessible August 2020.docx \(shared-drupal-s3fs.s3-ap-southeast-2.amazonaws.com\)](#)

Appeals from Planning Panel determinations

Section 8.15(4) of the EPA Act was introduced on 1 March 2018. It provides relevantly:

- 15 ***If the determination or decision appealed against under this Division was made by a Sydney district or regional planning panel or a local planning panel, the Council for the area concerned is to be the respondent to the appeal but is subject to the control and direction of the panel in connection with the conduct of the appeal. The Council is to give notice of the appeal to the panel.***

- 20 In respect of the conduct and potential resolution of appeals, Councils are subject to the direction and control of planning panels in respect of decisions they make after 1 March 2018.

The Land and Environment Court has said that in circumstances where the panel and Council have conflicting views on a development, the appropriate approach would be for the panel to apply to be joined as a party to the appeal proceedings.

25 **Financial Considerations**

None relevant to this report.

Consultation and Engagement

Applications are exhibited as per the Council's Community Participation Plan.

- 30 Otherwise, consultation, engagement and reporting must be in accordance with the Planning Panels Operations Procedure and Code of Conduct.

**Report No. 13.5 PLANNING - 26.2021.7.1 - Submissions
Report - Planning Proposal - 55 Settlement
Road, Main Arm**

Directorate: Sustainable Environment and Economy

5 **Report Author:** Dylan Johnstone, Development Investigations Lead

File No: I2024/972

Summary:

10 On 9 November 2023 Council considered a Planning Proposal to amend Byron Shire LEP 2014 by granting a dwelling entitlement for the land, so that development consent can be sought for the use of an existing unauthorised dual occupancy (detached) on the land.

The Department of Planning, Housing & Infrastructure issued a Gateway determination on 18 January 2024 and the Planning Proposal was placed on public exhibition for a minimum period of 28 days from 6 June to 4 July 2024. Agency consultation was undertaken in accordance with the Gateway determination.

15 No public submissions were received, and two (2) agency submissions were received. The agency submissions are included in Attachment 3.

20 A formal Planning Agreement (Attachment 2), for a monetary contribution equal to developer contributions captured by the Byron Shire Developer Contributions Plan 2012 and Section 7.11 of the Environmental Planning and Assessment Act 1979, was drafted by the Applicant's legal representative and exhibited concurrently with the Planning Proposal.

25 This Report recommends that the Planning Proposal be forwarded to the Department of Planning, Housing & Infrastructure for finalisation and that delegation be granted to the General Manager to execute the Planning Agreement associated with the Planning Proposal.

NOTE TO COUNCILLORS:






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

RECOMMENDATION:

That Council:

- 5 1. **Adopts the Planning Proposal in Attachment 1 (E2024/79738), as amended to address the NSW SES submission issues outlined in Table 1 of this report.**
2. **Forwards the Planning Proposal to the NSW Department of Planning, Housing and Infrastructure requesting finalisation.**
- 10 3. **Grants delegation to the General Manager to execute the Planning Agreement associated with the Planning Proposal in Attachment 2 (E2024/63743).**

Attachments:

- 1 26.2021.7.1 Planning Proposal Post Exhibition Version, E2024/79738 
- 2 26.2021.7.1 Planning Agreement, E2024/63743 
- 15 3 26.2021.7.1 Agency submissions combined, E2024/81564 
- 4 26.2021.7.1 Gateway Determination, E2024/8270 
- 5 Special Disclosure of Pecuniary Interest form, E2012/2815 

Report

Background

5 On 9 November 2023 Council considered a Planning Proposal to amend Byron Shire LEP 2014 by granting a dwelling entitlement for the land so that development consent can be sought for the use of an existing unauthorised dual occupancy (detached) on the land.

10 Action No. 22 of the Byron Shire Rural Land Use Strategy 2017 (BSRLS) recommends investigation into a strategic framework for resolving dwelling entitlement issues. This action provides the strategic basis for the subject Planning Proposal. This BSRLS was endorsed by the NSW Department of Planning and Environment (DPE) in July 2018.

Following consideration of the 9 November 2023 Council report, **23-515** Resolved that Council:

- 15 1. *Proceeds with the planning proposal as attached to this report (Attachment 1 – E2023/105727) to amend LEP 2014 to permit a dual occupancy (detached) with consent on the subject land;*
2. *Forwards the planning proposal to the NSW Department of Planning and Environment for a Gateway determination;*
- 20 3. *Pending a positive Gateway determination and completion of further studies (if required) and a draft Planning Agreement by the applicant, undertakes public exhibition of the planning proposal in accordance with the determination requirements;*
4. *Considers a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.*

Planning Proposal

25 The Planning Proposal seeks to amend Byron Shire LEP 2014 by granting a dwelling entitlement for the land (Lot 5 DP 585928) so that development consent can be sought for the use of an existing unauthorised dual occupancy (detached) on the land. Specifically, the Planning Proposal seeks to add the land to Division 1 of Part 6 – Additional local provisions of LEP 2014 to permit a dual occupancy (detached) with consent (similar to existing LEP [clause 6.15](#)).

30 A “Plain English” version of the proposed Byron LEP 2014 Part 6 – Additional local provisions clause is as follows:

What Land Does it Apply to?

Lot 5 DP 585928, 55 Settlement Road, Main Arm.

35 What Additional Development will be Permitted?

A dual occupancy (detached) will be permitted with development consent.

Gateway Determination

A Gateway determination (Attachment 4) was issued by the DPE on 18 January 2024. The Gateway determination required:

- 5 • Amendment to the planning proposal to:
 - include discussion on Aboriginal cultural heritage,
 - reflect upgrades to driveway access, internal driveway and Settlement Road outlined in the submitted Traffic Safety and Bushfire Assessments,
 - 10 ○ include additional information regarding flooding, such as a map that illustrates inundation of the site and further details regarding access (including the type of flood event that will affect the access as well as the duration that the road is inaccessible); and
- Updating of the following reports to include both dwellings on the land:
 - Preliminary Site Contamination
 - 15 ○ On-Site Wastewater Management System Review
 - Traffic Safety Assessment
 - Land Use Conflict Risk Assessment
 - Ecological Assessment
 - Bush Fire Assessment Report
- 20 • The Ecological Assessment must be amended to address the required upgrades to the driveway access, internal driveway and Settlement Road outlined in the submitted Traffic Safety Assessment and Bushfire Assessment
- Public exhibition for a minimum of 20 working days
- Consultation with agencies
- 25 • A 9 month time frame for completing the LEP from the date of the Gateway determination.

Planning Agreement for Infrastructure Contributions

The Planning Proposal seeks to amend LEP 2014 so that a dual occupancy (detached) is permitted with consent on the subject site.

- 30 If a dual occupancy (detached) is permitted on the site, this will create additional demands on rural roads, community facilities, open spaces etc. Such demands are captured by the Byron Shire Developer Contributions Plan 2012 which requires a monetary contribution in accordance with the Plan and Section 7.11 of the *Environmental Planning and Assessment Act 1979*.

Ordinarily contributions would be paid at the time of subdivision for creating a lot with a dwelling entitlement equivalent to one Standard Dwelling Unit (SDU). However, for the purposes of this Planning Proposal, there is no clear mechanism within the Contributions Plan for applying developer contributions.

- 5 To address this the submitted Planning Proposal included a letter of offer to enter into a Planning Agreement with Council. The offer proposes payment of a monetary contribution equivalent to two SDUs for the existing dual occupancy (detached).

- 10 Council staff have no justification to require additional contributions over and above the demand normally generated for a rural dual occupancy under the terms of the Contributions Plan 2012.

A formal agreement was drafted by the Applicant's legal representative and exhibited concurrently with the Planning Proposal.

The Planning Agreement (Attachment 2) has been reviewed and it is recommended that the Planning Agreement be executed by the General Manager.

15 **Public Exhibition**

In accordance with the Gateway determination, the Planning Proposal was placed on public exhibition for a minimum period of 28 days from 6 June to 4 July 2024. The Planning Agreement was exhibited concurrently with the Planning Proposal.

No public submissions were received.

- 20 The Planning Proposal was also referred to the following agencies for comment:

- NSW Rural Fire Service
- NSW State Emergency Service
- Tweed Byron Local Aboriginal Land Council
- Arakwal Corporation

- 25 No comments were received from Tweed Byron Local Aboriginal Land Council or Arakwal.

A copy of the agency submissions from SES and RFS are included in Attachment 3.

Agency submissions

The key issues raised by SES and RFS and staff response to these are summarised below.

30

Table 1 – Summary of Agency Submission Issues and Staff Response

NSW SES Submission (Attachment 3)		
Item #	Issues Raised	Council Staff Response
1.	<p>Recommend a site-specific flood impact and risk assessment is undertaken to adequately understand the flood risk at this site. The assessment should include:</p> <ul style="list-style-type: none"> the riverine, flash and overland flood risk up to and including the PMF on site and surrounding access/egress routes; climate change considerations; and time to onset, duration of inundation, depth, velocity and hydraulic hazard of any flooding on the site and access roads to understand the impact and risk of flooding and isolation. 	<p>Maps indicating inundation of the site for the 100 year and PMF floods, together with maps indicating inundation of Settlement Road for the 100 year and PMF floods, were included in the exhibition version of the Planning Proposal. It is proposed to <u>amend the Planning Proposal to include details of the flood depth, velocity and hydraulic hazard for internal access on the site, and at locations in Settlement Road and Main Arm Road, together with commentary on climate change considerations.</u></p> <p>The <u>amended Planning Proposal (Attachment 1)</u> includes the above <u>amendments in item 4.1 of the Section 9.1 Directions</u> from page 25.</p> <p>The planning proposal also notes that Council does not have any available flood information regarding the time to onset, and duration, of the inundation at the locations referenced above.</p> <p>Although vehicular access within the site becomes unsafe during the 100 year and PMF events, and access along Main Arm Road becomes unsafe from at least the 20 year event, the existing dwellings are not inundated by the PMF and therefore residents of the dwellings are able to shelter during a flood event without the need to evacuate.</p> <p>Given that this is not a new urban release area and the two (unauthorised) dwellings already exist on the site, neither of which are inundated by the PM, it is considered that the Planning Proposal does not present “an intolerable</p>

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NSW SES Submission (Attachment 3)		
Item #	Issues Raised	Council Staff Response
		increase in risk to life, health or property.”
2.	<p>If the development proceeds, we also recommend that the flood risks at the site, including isolation, are communicated to all future occupants and site users.</p> <p>Council may also find the following Guidelines, originally developed for the Hawkesbury Nepean Valley and available on the NSW SES website useful:</p> <ul style="list-style-type: none"> • Reducing Vulnerability of Buildings to Flood Damage • Managing Flood Risk Through Planning Opportunities. 	Any future development consent granted for the use of the existing dual occupancy (detached) can include a condition / advisory note warning of the flood risks, including isolation, associated with the site.
<p><u>Recommendation</u></p> <p>Adopt the Planning Proposal in Attachment 1 (E2024/79738), as amended to address the NSW SES submission issues outlined in Table 1 of this report (as <u>specified</u> above).</p>		

NSW Rural Fire Service (RFS) Submission (Attachment 3)		
Item #	Issues Raised	Council Staff Response
1.	<p>Future dwelling(s) development application(s) to comply with the recommendations of the submitted bushfire report prepared by Bushfire Certifiers dated 23rd May 2024 (Rev A).</p>	<p>Noted. A future development application that seeks consent for the use of the existing dual occupancy (detached) will be assessed in accordance with <i>Planning for Bush Fire Protection 2019</i>.</p>

	NSW Rural Fire Service (RFS) Submission (Attachment 3)	
Item #	Issues Raised	Council Staff Response
	Based on the above, no changes are required to the Planning Proposal with regard to bushfire.	

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	4.1.4: LEP & DCP - Review and update the Local Environmental Plan and Development Control Plans	4.1.4.1	Assess requests to amend Local Environmental Plans and/or Development Control Plans including maps in accordance with legislative requirements.

Recent Resolutions

- [23-515](#) dated 9 November 2023

5 Legal/Statutory/Policy Considerations

The relevant legal/statutory/policy considerations have been noted above.

Financial Considerations

- 10 If Council chooses to proceed with the Planning Proposal, it will be at the proponent's expense as a landowner-initiated Planning Proposal. Council will require full cost recovery of the remaining stages. If the applicant chooses not to pay then the Planning Proposal will not proceed.

If Council chooses not to proceed, then the matter does not incur any additional costs.

Consultation and Engagement

- 15 Details pertaining to community consultation and engagement are provided above. Consultation has been undertaken in accordance with the Gateway determination.

Report No. 13.6 PLANNING - DA 10.2024.20.1 - Use of land and existing shed for Landscaping Material Supplies - 1178 Myocum Road Myocum

Directorate: Sustainable Environment and Economy

5 **Report Author:** Dylan Johnstone, Development Investigations Lead

File No: I2024/973

Proposal:

DA No: 10.2024.20.1

Planning Portal ref PAN-409472

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

Property description: LOT: 342 DP: 755692
1178 Myocum Road MYOCUM

Parcel No/s: 238148

Applicant: Town Planning Studio Pty Ltd

Owner: Mr M K Archibald

Zoning: RU1 Primary Production

Date received: 15 February 2024

Public notification or exhibition:

- Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications
- Exhibition period: 27/02/24 to 11/03/24
- No Submissions received

Planning Review Committee 4 April 2024 – application to be determined by Council

Estimated Cost \$65,000

Delegation to Council

determine

Issues:

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

Summary:

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

The existing landscaping material supplies business and existing shed have been carried out without the necessary development consent. The application has been submitted in response to compliance action taken by staff for unauthorised development. A previous deferred commencement consent was issued by Council under DA10.2020.568.1 – Use of Land and Existing Shed for Landscaping Material Supplies on 09 September 2022, however the applicant has not complied with any conditions of consent and the consent has now lapsed.

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

Subject to recommended conditions of consent, including deferred conditions, the proposal is considered acceptable and is recommended for approval. In the event that the consent conditions are not complied with further compliance action will result.



NOTE TO COUNCILLORS:

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

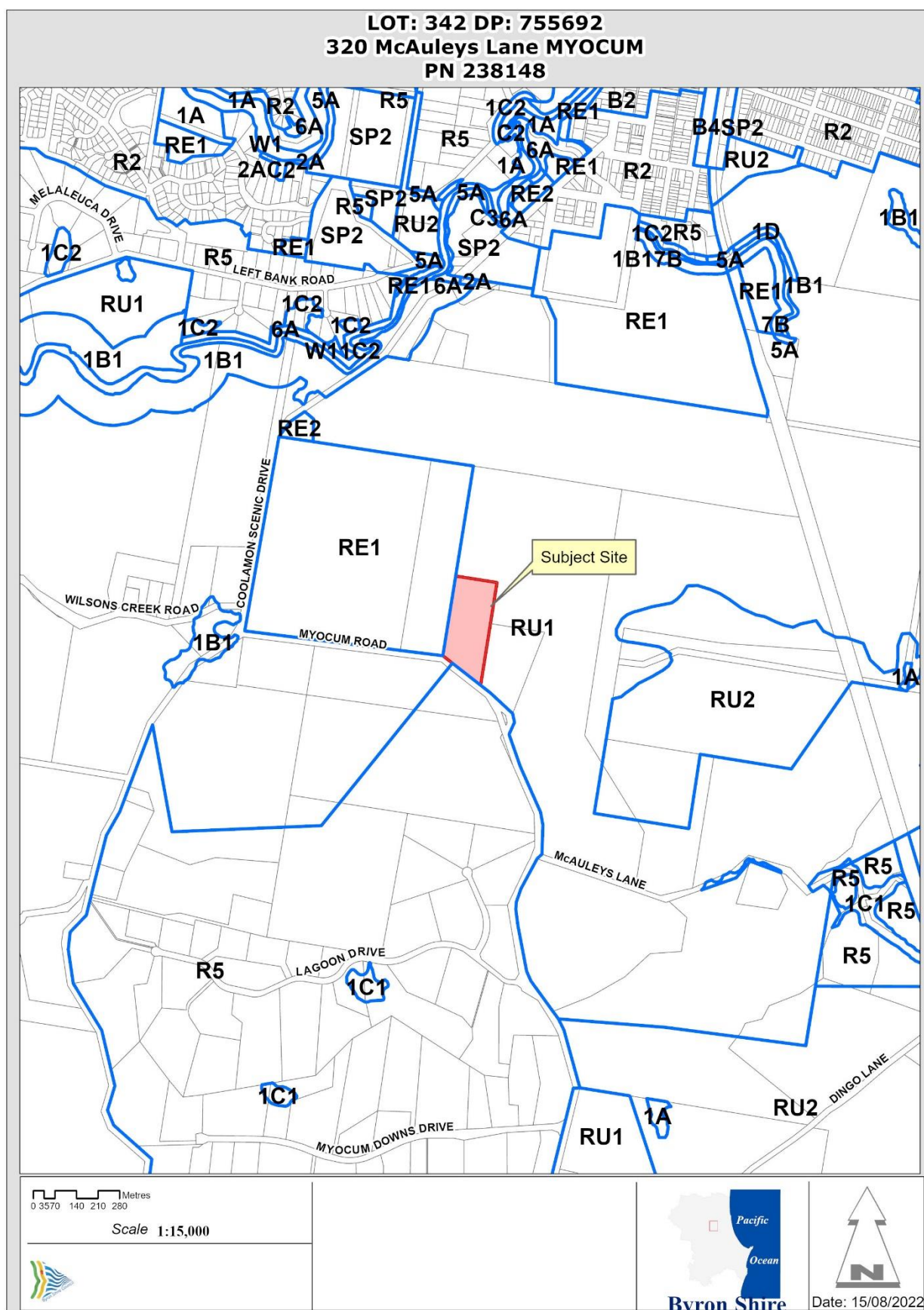
RECOMMENDATION:

- 5 **That, pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2024.20.1 for use of land and existing shed for landscaping material supplies, be granted consent subject to the recommended conditions of approval in Attachment 2 #E2024/75212.**

Attachments:

- 10 1 10.2024.20.1 - Plans, E2024/75961 
 2 10.2024.20.1 - Conditions of consent, E2024/75212 

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Assessment:

1. INTRODUCTION

History/Background

5 History of development applications

10.2004.567.1 – Removal of one tree from the site - Approved 07/02/05

10.2017.694.1 - Subdivision (Boundary adjustment between two (2) Lots) - Approved 20/02/18

10 10.2018.259.1 – Use of site as a landscaping material supplies business – Council officers identified various issues with this application. The application was subsequently withdrawn on 09/07/19.

10.2020.568.1 – Use of Land and Existing Shed for Landscaping Material Supplies – Approved (Deferred Commencement) 09/09/22.

Background

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

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

25 Enforcement Officers have been in contact with the owners regarding the unauthorised activities. In response the applicant lodged DA 10.2018.259.1 which was subsequently withdrawn to enable the applicant to address outstanding issues identified by Council officers as part of a new development application.

30 A Notice of Proposed Stop Use Order was issued to the landowner on 21 January 2020 to stop the use of the site for the purpose of landscaping material supplies, remove unapproved signage and to remove all stockpiles of landscaping supplies. Development application 10.2020.568.1 was lodged in response to the Notice.

A shed had also been constructed on the site without the required approvals between the issuing of the above Notice and lodgement of development application 10.2020.568.1.

Consent 10.2020.568.1 was granted on 9 September 2022 and included deferred commencement conditions requiring a Building Information Certificate for the existing shed, removal of illegal fill, removal of unauthorised signs, removal of concrete batching plant, and establishing approved landscaping.

- 5 All of these deferred conditions were required to be complied with within 12 months of the date of the consent.

None of the deferred commencement conditions were completed within this timeframe and, in accordance with the Deferred Commencement Consent, the consent subsequently lapsed.

- 10 The subject application has been submitted in response to Council's Community Enforcement staff issuing a Notice of Proposed Order dated 2 November 2023 to stop use of the landscaping material supplies business.

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

15



Figure 1 – Aerial Photograph



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



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



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

Description of the proposed development

- 5 This application seeks approval for Use of Land and Existing Shed for a Landscaping Material Supplies business and construction of an amenities building. The proposal includes:
- The storage and sale of sand, gravel, soil and mulch of various sizes and mixes. The application indicates that between 1,000 and 2,000 cubic metres of landscape materials will be moved in and out of the site per annum. Landscaping products will include:
 - 10mm, 20mm & 30mm aggregate
 - White Sand
 - Metal dust
 - Road Base
 - Sand/gravel mixes
 - Garden Soils
 - Garden Mulches
- 10 The proposed site layout plan is shown on Figure 5.
- The construction of 46 storage bays. These will be divided by 200mm thick concrete tilt slabs with a height of 1.3 metres. The material to be stockpiled within each bay will have a height of up to 3.0 metres.
- 15
- 20

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STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.6

- Use of an existing shed that has been constructed on the site. The shed measures 14 m x 7m (floor area 98m²) and is 4.27 metres high (refer to photographs above). The shed will be used to store landscape materials that require protection from the weather. The applicant indicates that: *The landowner has recently constructed a steel framed shed within the site in consideration of the 'exempt development' provisions from State Environmental Planning Policy (Exempt & Complying Development Codes) 2008.*

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

- Provision of landscaping along the site frontage, adjacent to the shed and along part of the eastern boundary (refer to Figure 6).
- Construction of a unisex amenities building with one (1) WC and a handbasin. It is elevated off the ground and has an overall total height of 4.01 m (2.4 x 3.2 m overall size) plus a deck and stairs, with provision for a future disabled access ramp if required.
- An on-site wastewater management system (OSMS) which includes:
 - Water Conserving Devices to be installed on the hand basin and tank water supply of 4L/person/day equating to 20 L/day total.
 - Composting toilet a dry composting toilet (Clivus Multrum) for collection and treatment of all wastewater flow.
 - An Evapotranspiration/ Absorption Bed (ETA) Disposal Area (15m²).
- Both retail sales from the site and a bulk delivery service. Stored material is to be delivered by a heavy rigid vehicle to customers off site. The application estimates that the development will generate approximately 50 trips per day comprising 4 staff trips, 20 retail customer trips, 20 wholesale and delivery trips and 6 trips for landscape materials supply to the site.
- Driveway design to allow a 19 m articulated (semi) vehicles and regular service with 12.5 heavy rigid vehicles.
- Hours of operation 7am-5pm Monday to Friday and 7am-2pm Saturday

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

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

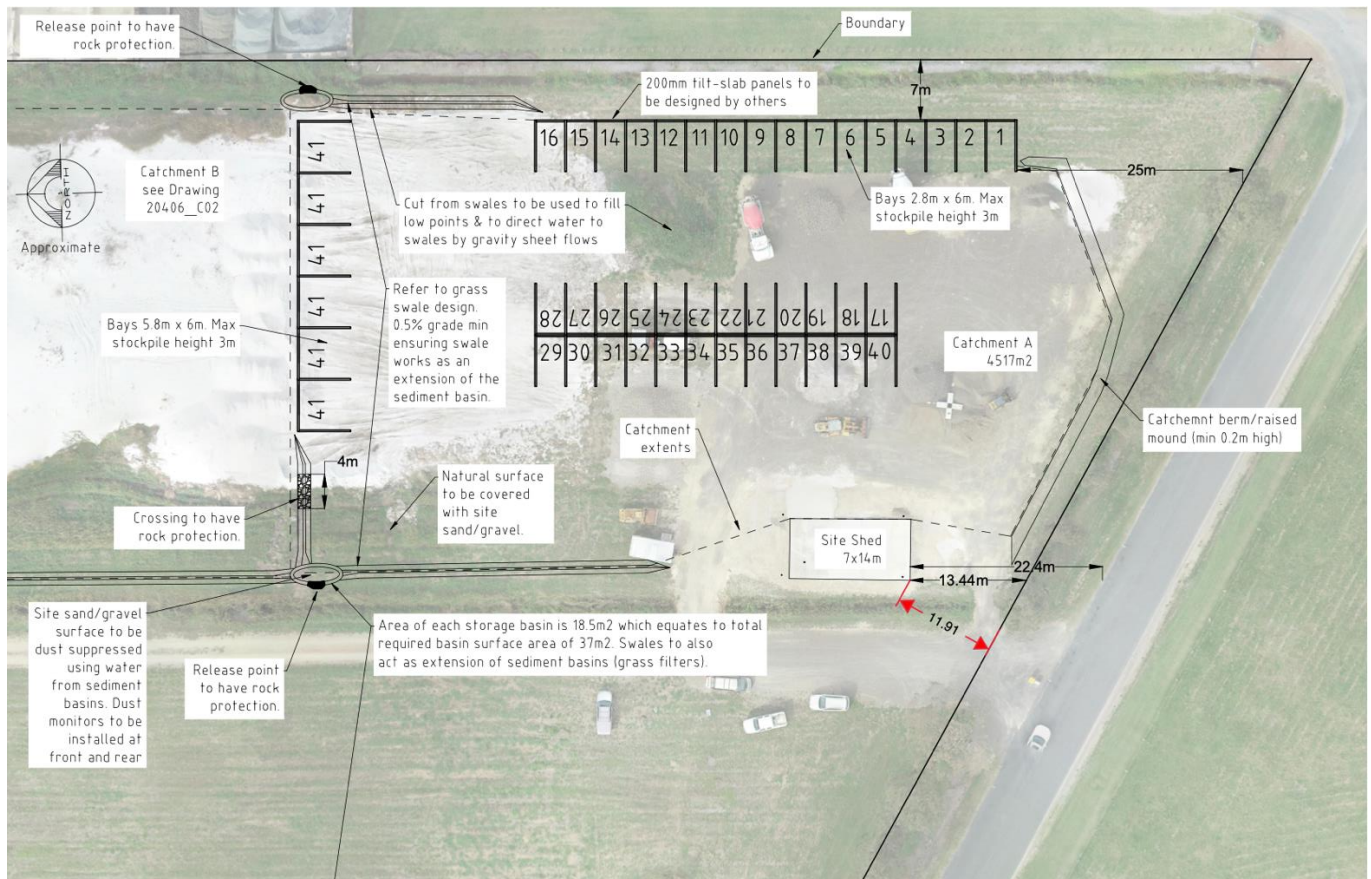


Figure 5 – Site Layout Plan (Source: Greg Alderson & Associates) -This plan covers part of the site – refer to Figure 1 for the aerial photograph which shows the extent of the site

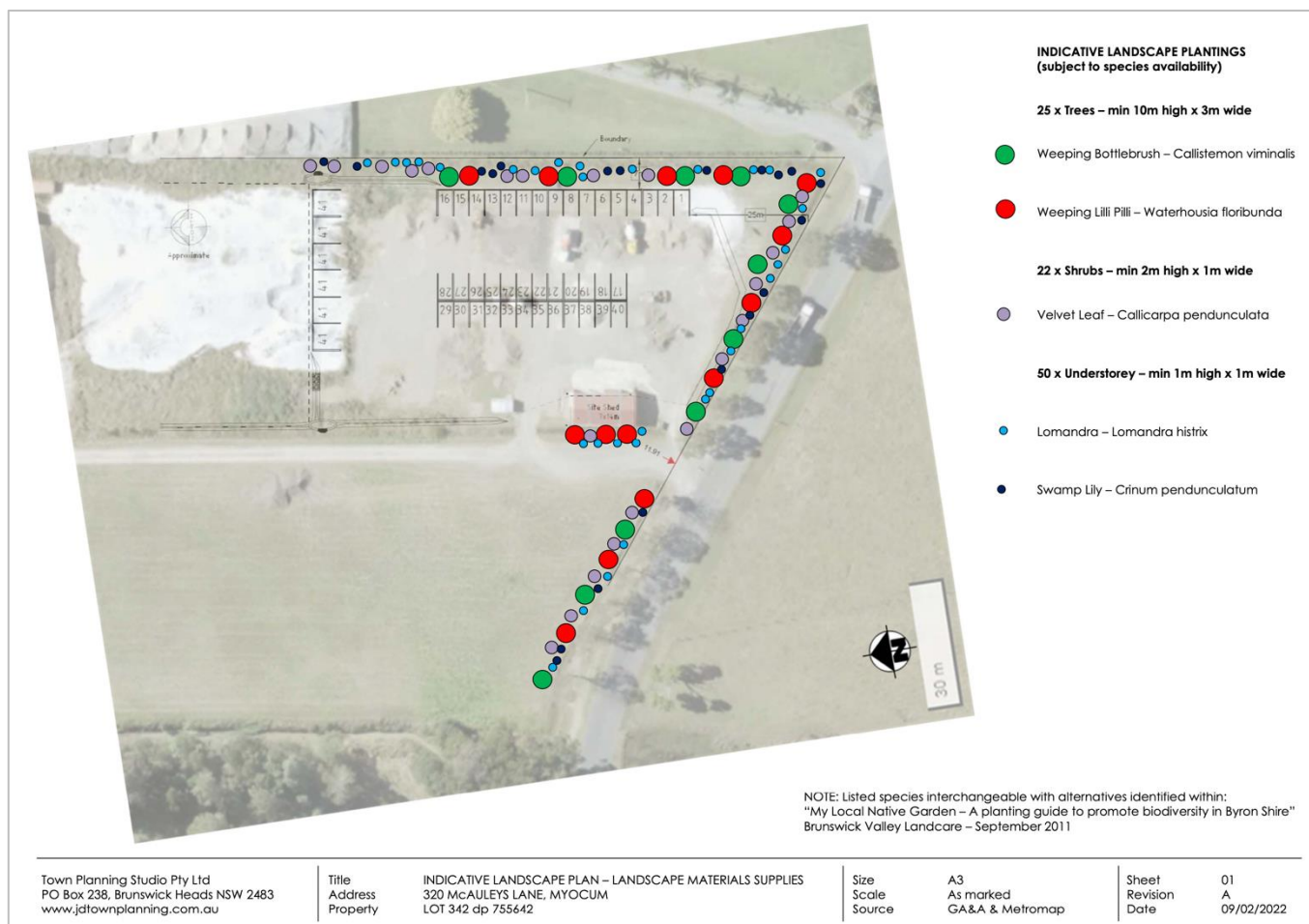


Figure 6 – Indicative Landscape Plan

Description of the site

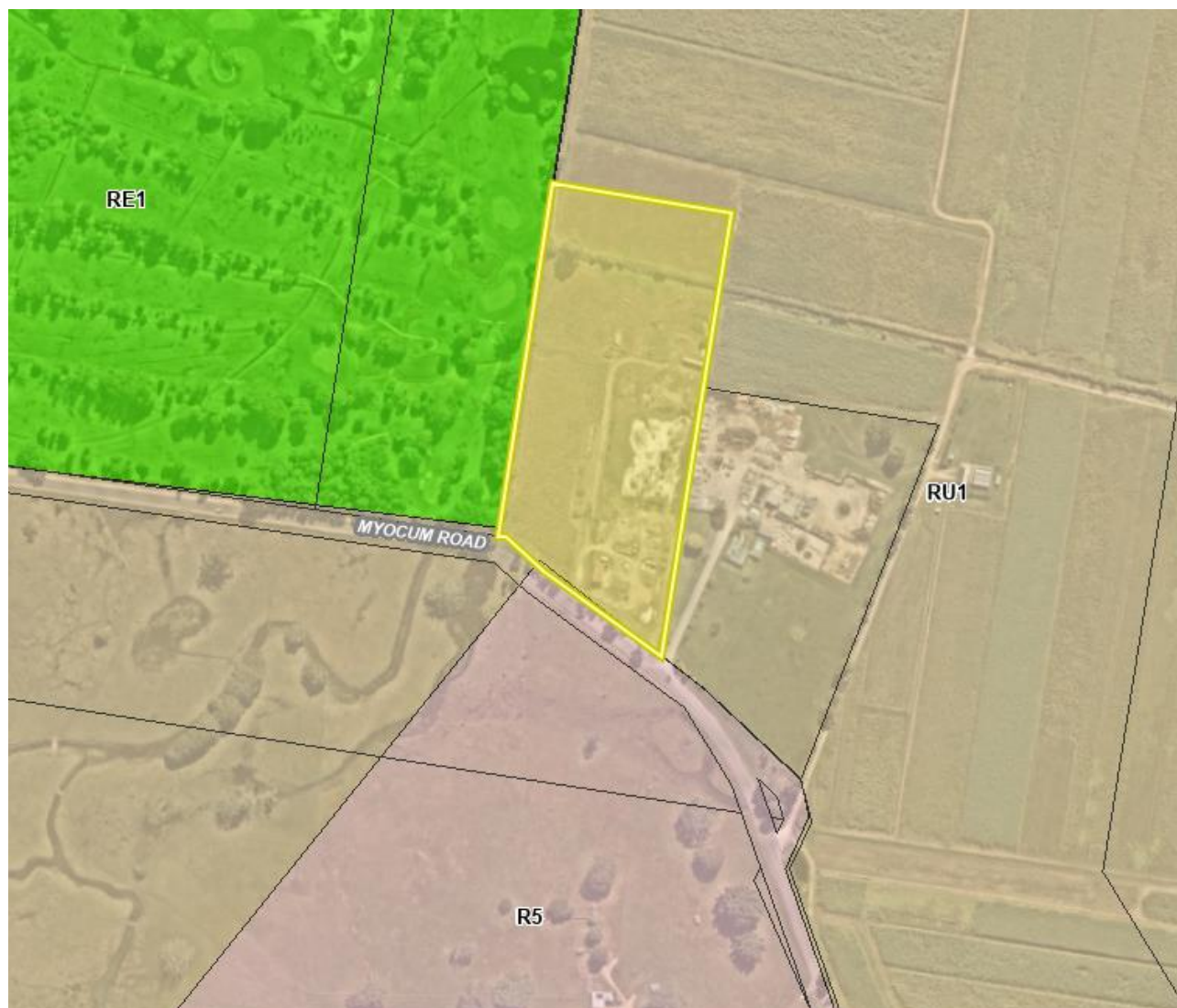


Figure 7: LEP 2014 zone map of the site

A site inspection was carried out on 26 February 2024

Land is legally described	LOT: 342 DP: 755692	
Property address	1178 Myocum Road MYOCUM	
Land is zoned:	RU1 Primary Production	
Land area is:	4.047 ha	
Property is constrained by:	Flood Liable Land Acid Sulfate Soils Class 4	
	Is a BDAR required due to the location of the	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

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proposed development?	
Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No



Figure 8: Existing shed and landscaping materials viewed from Myocum Road looking North



Figure 9: Existing landscaping materials and machinery looking East



Figure 10: Existing shed and advertising signage looking Northeast



Figure 11: Existing shed (foreground) and existing sand stockpile and concrete batching plant (background) looking North

2. SUMMARY OF REFERRALS

5

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	Flooding – See discussion below.
Building Certifier	No objections subject to conditions.

Issues

Development Engineer:

Flooding: A flood report was submitted with the application which provided the following comments in conclusion:

5 *The hydraulic model created as part of the NBFS has been updated to include the existing concrete blocks on the property (Wards Landscaping) to the east of the site. The 5-, 20- and 100-year ARI flood events have been simulated with the revised model.*

10 *The proposed development has been incorporated into the hydraulic model and has been assessed for the 5-, 20- and 100-year ARI flood events and maps representing flood impacts have been created. The flood impact assessment shows that there are some minor offsite changes to peak flood level in the range 10 to 20mm predicted on lot number DP 3/1067849. The extent of this impacts is largest in the 20-year ARI flood event and they extend approximately 40 metres onto this property.*

Staff have noted that no assessment has been made of the site in the current condition as advised by the applicant:

15 *It is important to note that no assessment of the site in the current (i.e. present day) condition has been prepared, as on advice from Michael Archibald (owner), the site will be modified to remove materials and equipment that exists outside of the proposed development extent.*

It is likely that the flood extent and flood level will increase should an assessment be made to the current condition.

20 Therefore, the retention of the large areas of stockpiled fill are not supported as they are non-compliant with clause 5.21(2) of LEP 2014 and Chapter C2 of DCP 2014. However, compliance can be achieved by removal of fill material from the site which is recommended as a deferred commencement condition.

25 **Access:** The existing driveway access is to be upgraded. The proposed access is to be constructed to meet the requirements of AS2890.2 Figure 3.1, with a minimum width at the boundary line of 12.5m to cater for all vehicle sizes up to and including 19m Articulated Vehicles and 12.5m Heavy Rigid Vehicles.

30 The submitted Traffic Impact Assessment prepared by Greg Alderson & Associates dated 25 August 2021 recommends the provision of a Basic Right (BAR) and Basic Left (BAL) intersection in accordance with Figure 7.1 (BAR) and Figure 8.2 (BAL) of Austroads Guide to Road Design Part 4A, Council's Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings.

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

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

Traffic: Sight distances are in excess of the requirements of AS2890.

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

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

Stormwater Management: The flows coming from the site are proposed to be controlled using the principles in NSW Blue Book.

Engineering conditions of consent to apply

5 Environmental Health Officer:

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

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



Figure 11 – Proposed location of toilet and OSSM

15 **On-site sewage management:** The On-site Wastewater Management Report No. 19043_ww prepared by Greg Alderson & Associates dated 24 August 2018 demonstrates that wastewater generated from the development can be adequately managed via an On-site Sewage Management Facility. Councils Environmental Health Officer noted the location of the proposed facilities (approximately 130m from the existing/unapproved shed as shown on Figure 11).

20 The applicant has previously advised that it is preferred to leave the toilet building in the proposed location. Although it is remote from the shed, workers will be working over the

entire landscape yard. This is considered satisfactory as it is essentially a decision of the owner as to where to locate the toilet to best suit their operational requirements, as long as it does not create adverse external impacts.

Waste management: A detailed Environmental Management Plan (EMP) will be required and this can be imposed as a consent condition.

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

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

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

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

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

Building Surveyor:

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

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

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

3. SECTION 4.14 – BUSH FIRE PRONE LAND

Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document

‘Planning for Bush Fire Protection 2019’. The site is bush fire prone land. The location of the existing shed is not bushfire prone land however the proposed amenities building and vehicular access to the site are located on bush fire prone land.

- 5 In accordance with Section 8.3 of ‘Planning for Bush Fire Protection 2019’ the following access requirements are relevant to the proposal:

To provide safe access to/from the public road system for firefighters providing property protection during a bush fire and for occupant egress for evacuation.

- 10 The existing driveway access is to be upgraded. The proposed access is to be constructed to meet the requirements of AS2890.2 Figure 3.1, with a minimum width at the boundary line of 12.5m to cater for all vehicle sizes up to and including 19m Articulated Vehicles and 12.5m Heavy Rigid Vehicles.

The above requirements are recommended as conditions to ensure that access is in accordance with ‘Planning for Bush Fire Protection 2019’.

- 15 The proposed amenities building is a class 10a structure and, in accordance with Section 8.3.2 of ‘Planning for Bush Fire Protection 2019’, there are no bush fire protection requirements.

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

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

State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><i>Resilience and Hazards SEPP 2021</i></p> <p>Consideration:</p> <p><u>Chapter 2 Coastal management</u> - This chapter applies to land within the coastal zone. Coastal management areas comprise:</p> <ul style="list-style-type: none"> • <i>the coastal wetlands and littoral rainforests area</i> – The subject land is not mapped as coastal wetlands or littoral rainforest. The land is not within a ‘proximity’ area to coastal wetlands or littoral rainforest. • <i>the coastal vulnerability area</i> – no areas mapped at this time • <i>the coastal environment area</i> – the subject site is within the coastal environment area 	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Considerations	Satisfactory	Unsatisfactory
<ul style="list-style-type: none"> • <i>the coastal use area</i> – the subject site is within the coastal use area. <p>Part 2 Division 3 – Coastal Environment Area – Section 2.10 requires that:</p> <p>(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—</p> <ul style="list-style-type: none"> (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment, (b) coastal environmental values and natural coastal processes, (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1, (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms, (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, (f) Aboriginal cultural heritage, practices and places, (g) the use of the surf zone. <p>(2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—</p> <ul style="list-style-type: none"> (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or (c) if that impact cannot be minimised—the development will be managed to mitigate that impact. <p>The proposal is considered satisfactory in relation to the</p>		

Considerations	Satisfactory	Unsatisfactory
<p>relevant considerations as:</p> <ul style="list-style-type: none"> • Conditions will be placed on any consent requiring the management of soil and water in accordance with relevant engineering standards. • No native vegetation will require removal. • The site is not adjacent to the foreshore and there is no public open space that the proposal will affect. • An Aboriginal Heritage Information Management System search indicates that there are no Aboriginal sites or places recorded or declared within 50m of the site. <p>Part 2 Division 4 – Coastal use area – Section 2.11 requires that:</p> <p>(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—</p> <p>(a) has considered whether the proposed development is likely to cause an adverse impact on the following—</p> <ul style="list-style-type: none"> (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability, (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores, (iii) the visual amenity and scenic qualities of the coast, including coastal headlands, (iv) Aboriginal cultural heritage, practices and places, (v) cultural and built environment heritage, and <p>(b) is satisfied that—</p> <ul style="list-style-type: none"> (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and 		

Considerations	Satisfactory	Unsatisfactory
<p>(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.</p> <p>The proposal is considered to be consistent with Section 2.11 provisions of the SEPP.</p> <p>Part 2.2 Division 5 relates to development in coastal zone generally and requires that the consent authority must be satisfied that development will not increase risk of coastal hazards and any certified coastal management programs that apply to the land.</p> <p>The location of the site is sufficiently distant from the active coastal zone and there are no coastal management programs applying to the land.</p> <p><u>Chapter 4 – Remediation of land</u></p> <p>The development will not result in an increased sensitivity of land use. Councils Environmental Health Officer has recommended that an Unexpected Findings Protocol (UFP) be prepared to ensure management of any unexpected findings are managed appropriately.</p> <p>Conditions are recommended requiring the importation of landscape materials into the site to be certified clean and free of contamination.</p>		

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

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

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

Zone Objective	Consideration
----------------	---------------

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

Clause 4.3 Height of buildings

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

5 Clause 5.21 Flood planning

A flood report was submitted with the application which provided the following comments in conclusion:

10 *The hydraulic model created as part of the NBFS has been updated to include the existing concrete blocks on the property (Wards Landscaping) to the east of the site. The 5-, 20- and 100-year ARI flood events have been simulated with the revised model.*

The proposed development has been incorporated into the hydraulic model and has been assessed for the 5-, 20- and 100-year ARI flood events and maps representing flood impacts have been created. The flood impact assessment shows that there are some minor offsite changes to peak flood level in the range 10 to 20mm predicted on lot number

DP 3/1067849. The extent of this impacts is largest in the 20-year ARI flood event and they extend approximately 40 metres onto this property.

Staff have noted that no assessment has been made of the site in the current condition as advised by the applicant:

- 5 *It is important to note that no assessment of the site in the current (i.e. present day) condition has been prepared, as on advice from Michael Archibald (owner), the site will be modified to remove materials and equipment that exists outside of the proposed development extent.*

- 10 It is likely that the flood extent and flood level will increase should an assessment be made to the current condition.

Therefore, the proposal has not demonstrated compliance with clause 5.21(2) of LEP 2014. and Chapter C2 of DCP 2014. However, compliance can be achieved by removal of fill material from the site which is recommended as a deferred commencement condition.

Clause 6.1 Acid Sulfate Soils

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

Clause 6.2 - Earthworks

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

Clause 6.4 Floodplain risk management

The objectives of this clause are as follows—

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

- Subclause 3 nominates a variety of land uses for which development consent must not be granted unless the consent authority is satisfied that the development will not, in flood events exceeding the flood planning level, affect the safe occupation of, and evacuation
35 from the land.

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

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

Clause 6.6 Essential services

This clause requires that:

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

(a) *the supply of water,*

10 (b) *the supply of electricity,*

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

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

(e) *suitable vehicular access.*

In relation to these matters it is commented that:

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

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).

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

No such instrument applicable.

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

B6 - Buffers and Minimising Land Use Conflict

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

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

C2 – Areas Affected by Flood

- 10 A flood report was submitted with the application which provided the following comments in conclusion:

The hydraulic model created as part of the NBFS has been updated to include the existing concrete blocks on the property (Wards Landscaping) to the east of the site. The 5-, 20- and 100-year ARI flood events have been simulated with the revised model.

- 15 *The proposed development has been incorporated into the hydraulic model and has been assessed for the 5-, 20- and 100-year ARI flood events and maps representing flood impacts have been created. The flood impact assessment shows that there are some minor offsite changes to peak flood level in the range 10 to 20mm predicted on lot number DP 3/1067849. The extent of this impacts is largest in the 20 year ARI flood event and they extend approximately 40 metres onto this property.*
- 20

Staff have noted that no assessment has been made of the site in the current condition as advised by the applicant:

- 25 *It is important to note that no assessment of the site in the current (i.e. present day) condition has been prepared, as on advice from Michael Archibald (owner), the site will be modified to remove materials and equipment that exists outside of the proposed development extent.*

It is likely that the flood extent and flood level will increase should an assessment be made to the current condition.

- 30 Therefore, the proposal has not demonstrated compliance with Chapter C2 of DCP 2014. However, compliance can be achieved by removal of fill material from the site which is recommended as a deferred commencement condition.

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

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

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

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

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

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

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

15 D2 – Residential Accommodation and Ancillary Development in Rural Zones

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

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

D4 – Commercial and Retail Development

Design Detail and Appearance

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

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

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

Vehicle Access and Parking

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

Setbacks

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

- 5 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).

Environmental Planning and Assessment Regulation 2021 considerations

10

Environmental Planning and Assessment Regulations 2021	Applicable to the proposal:	Considered the control as it relates to the proposal:	If this control is applicable, does the proposal comply?
Section 61 - 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
Section 62 - Consideration of fire safety	<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 64 - Consent authority may require upgrade of buildings	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA
Section 63 - Considerations for 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

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

15

4.6.1

Impact on:	Likely significant impact/s?
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Natural environment	No. Subject to the implementation of recommended conditions, the proposal will not have a significantly adverse impact on the natural environment of the locality.
Built environment	<p>No. Subject to the implementation of recommended conditions, the proposal will not have a significantly adverse impact on the built environment of the locality.</p> <p>The primary issue of concern is the visual impact of the unauthorised shed. As discussed, this can be suitably screened by landscaping.</p>
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.

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

Council Policy	Consideration
Building Certificates Policy	A condition is recommended requiring a Building Information Certificate to be obtained.
Enforcement Policy	<p>The Enforcement section of Council have been involved in the history associated with the transportation of materials to the site without approval.</p> <p>The applicant/ land owner is at risk of further compliance action should this matter not be taken seriously, noting that this has been ongoing for some four years.</p>

4.7 The suitability of the site for the development

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

4.8 Submissions made in accordance with this Act or the regulations

The development application was publicly exhibited.

There were nil 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

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

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

7. CONCLUSION

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

**Report No. 13.7 PLANNING - DA 10.2024.111.1 Subdivision
of road reserve, lot consolidation – 89
Massinger Street, Byron Bay**

Directorate: Sustainable Environment and Economy

5 **Report Author:** Jordan Vickers, Planner

File No: I2024/978

Proposal:

DA No:	10.2024.111.1
Planning Portal ref	PAN-427327
Proposal description:	Subdivision – part road closure & lot consolidation
Property description:	LOT: 1 DP: 44807, LOT: 7 DP: 548466, RD: RESERVE
	89 Massinger Street BYRON BAY
Parcel No/s:	120620, 120610, 271693
Applicant:	Mr P J Wallace
Owner:	Mr I A & Mrs L Heanes/ Byron Shire Council
Zoning:	R2 Low Density Residential
Date received:	22 May 2024
Concurrence required	No
Public notification or exhibition:	<ul style="list-style-type: none"> – Level 0 advertising under Council’s Community Participation Plan. – No submissions received
Variation request to Development Standards under an EPI (eg clause 4.6)	<p>Clause 4.6</p> <p>Name of clause – Minimum subdivision lot size</p> <p>Clause number – 4.1</p> <p>Percentage value of variation sought – 90% (65m²/600m²)</p>

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	Brief justification for the variation – The lot to be created out of road reserve and will be required to be consolidated with the existing residential land parcel which exceeds the 600 m2 minimum.
Delegation to determine	Council

Summary:

This proposal is to close a small section of road reserve with an area of 65 m² to enable it to be acquired and consolidated with the adjacent residential lot at 89 Massinger Street, Byron Bay creating a lot with an area of 1,110.1 m². The portion of road reserve is at the top of a cul-de-sac which fronts the subject parcel, and the existing garage appears to encroach over the boundary.

A 4.6 variation request was submitted to vary the minimum lot size of 600m² to create the 65m² land parcel. Compliance with the development standard is unnecessary and unreasonable in this instance as the undersized property will be immediately consolidated with the remainder of 89 Massinger Street.

The proposal raises no issues and the application is recommended for approval subject to conditions of consent.



NOTE TO COUNCILLORS:

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

RECOMMENDATION:

That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2024.111.1 for Subdivision – part road closure and lot consolidation, be granted consent subject to the conditions contained in attachment 2 (#E2024/72360).

Attachments:

- 1 DA10.2024.111.1 Plans for approval, E2024/72306 
- 2 DA10.2024.111.1 Conditions of consent, E2024/72360 

Assessment:

1. INTRODUCTION

History/Background

A search of Council records indicates the following relevant site history:

DA No.	Description	Outcome	Date
6.1996.2096.1	Alteration/dwelling	Approved	22/03/1996

5 Description of the proposed development

This application seeks approval for Subdivision – part road closure & lot consolidation. The road closure/subdivision relates to a parcel of land which is to be created out of road reserve of 65m², which will then be consolidated with the two properties that currently comprise 89 Massinger Street to create a property with an area of 1,110.1m².

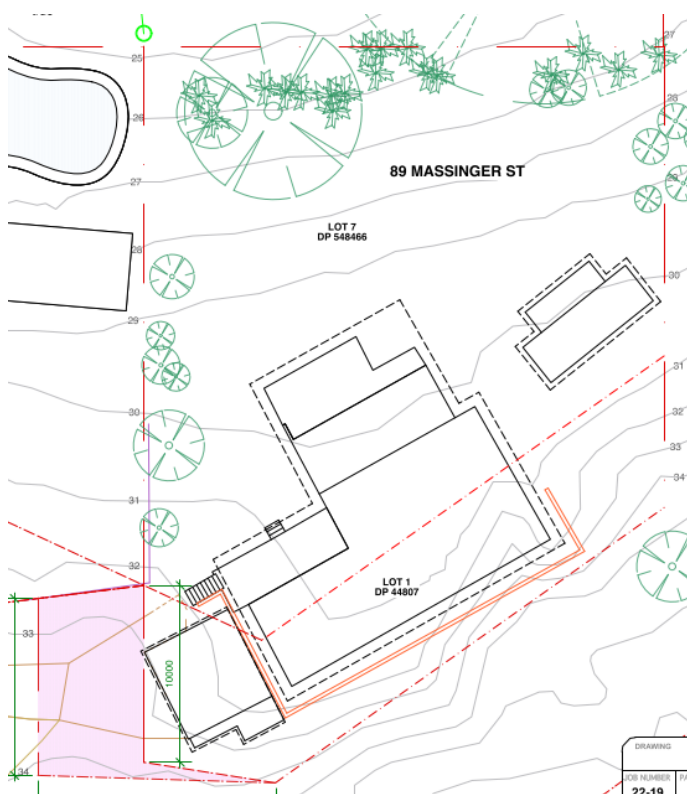


Figure 1: Land to be subdivided and acquired (pink) – 65m²

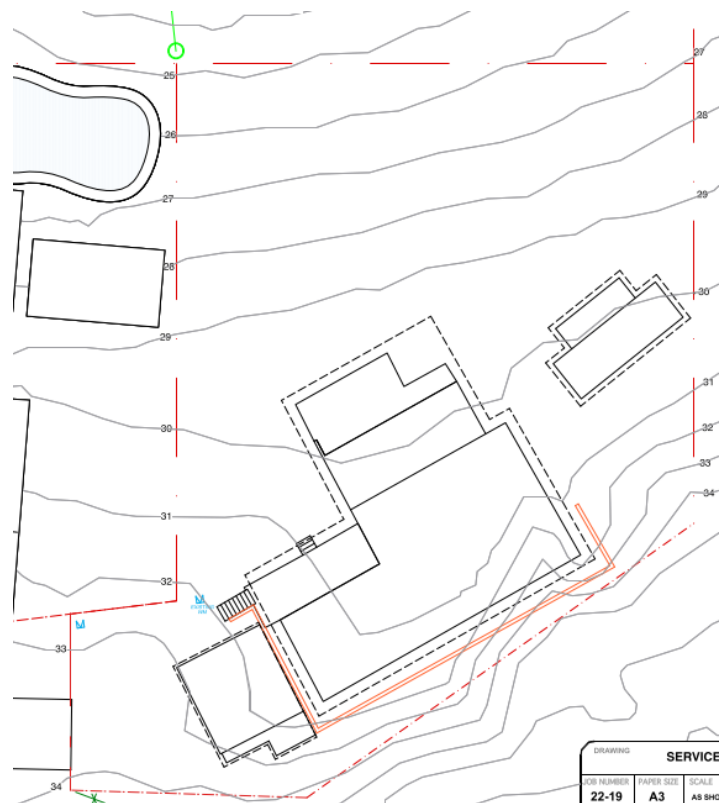


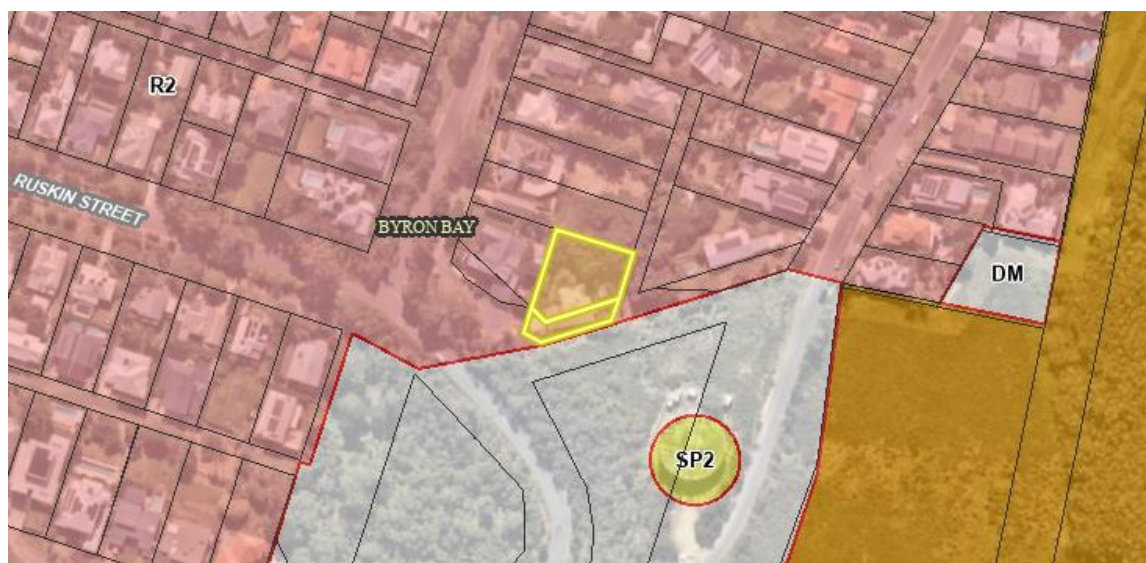
Figure 2: Consolidation of all allotments - total area 1110.1m²

Description of the site

- 5 The development site known as 89 Massinger Street, Byron Bay and comprised of Lot 1 on DP44807 and Lot 7 on DP548466 is located in the Low density residential (R2) zone of the Byron LEP 2014. The property is currently comprised of two separate allotments (referred above) which is improved by a single dwelling house. The land is bushfire prone and contains high environmental value vegetation.

A site inspection was carried out on 24 June 2024

Land is legally described	LOT: 1 DP: 44807, LOT: 7 DP: 548466, RD: RESERVE	
Property address	89 Massinger Street BYRON BAY	
Land is zoned:	R2 Low Density Residential	
Land area is:	253.7 m ²	
Property is constrained by:	Bushfire prone land & High Environmental Value	
	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
Development Engineer	No objections subject to conditions.

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

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

State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><i>Resilience and Hazards SEPP 2021</i></p> <p>Consideration:</p> <p>The property has a long standing residential history and is not included on Council's contaminated lands register. There is no record of previous land uses on the site, or on surrounding sites, that are likely to have resulted in land contamination. Based on the available information, the site is considered to be suitable for the proposed residential use in its current state and no further investigation is warranted.</p>	☒	☐

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

- (a) The proposed development is defined in the LEP 2014 Dictionary as subdivision;
- 5 (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
- (c) The proposed development is permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
<ul style="list-style-type: none"> 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. 	<p>The proposal closure and consolidation of the road area with the residential lot is not inconsistent with the objectives of the zone</p>

Clause 4.1 – Minimum subdivision lot size

- 10 This clause prescribes a minimum lot size of 600m² for this allotment in accordance with the Minimum Lot size Map.

As the proposed allotment is less than 65m², the application is supported by a 4.6 variation request. Variation to the Clause 4.1 development standard is justified in this instance as discussed below.

15

Clause 4.6 Exceptions to Development Standards

Applicant has sought a variation to the minimum lot size of 600m² by proposing an allotment of 65m².

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

- It is reasonable and necessary to create the undersized lot as it will inevitably be consolidated into the adjoining premises and the resulting lot will be greater than 600m²

10 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:

- Creation of the undersized allotment is only an interim step in the process of the allotment being acquired by the adjacent landowner and consolidated with their property;
- To acquire this portion of road reserve, the undersized allotment must be created to be amalgamated;
- The outcome of the development overall will rationalise the existing property by amalgamating the numerous allotments into a single lot on the title;
- The development aligns with the objectives of the Low Density Residential zone.

Further, the proposal is in the public interest having regards to the objectives of the development standard because consolidating the properties will ensure that the resulting lot facilitates the efficient use of the land for residential purposes.

The concurrence of the Planning Secretary is not required.

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

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

There are no proposed Environmental Planning Instruments relevant to the proposal.

30 4.4A Byron Shire Development Control Plan 2014 (DCP 2014)

The proposed subdivision does not raise any matters under the DCP, subject to conditions of consent applying.

4.5 Environmental Planning and Assessment Regs 2021

Proposal raises no issues under the regulations.

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 The proposal is unlikely to generate any impacts on the built or natural environment.

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

No submissions were received.

4.9 Public interest

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

15

4. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

No Section 64 levies will be required.

5.2 Developer Contributions

No Developer Contributions will be required.

20

5. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

6. CONCLUSION

25

The proposed Subdivision – part road closure & lot consolidation, 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 is recommended for approval subject to conditions of consent.

Report No. 13.8 PLANNING - 26.2024.8.1 Planning Proposal for Public Road Subdivision

Directorate: Sustainable Environment and Economy

Report Author: Alex Caras, Land Use Planning Coordinator

5 **File No:** I2024/1002

Summary:

This report presents a planning proposal that seeks to amend Byron Local Environmental Plan (LEP) 2014 to include subdivision of Council-owned roads as an item within *Schedule 2 – Exempt Development*.

10 The current process for the closure of Council-owned roads depends on the ability to obtain consent for a subdivision certificate granted through a Development Application.

15 Since the responsibility of road closures was transferred to Council, issues have arisen in the closure of roads located in areas zoned RU1 or RU2 or any land with a 40 hectare Minimum Lot Size. Subdivision of a road cannot occur due to the land area not being able to meet the required Minimum Lot Size specified in the Byron LEP 2014. Road closure does not meet any of the exceptions to minimum lot size in the LEP. The road closure therefore cannot be finalised as the appropriate consents are unable to be obtained. Council is unable to fulfil its obligation under s38A of the Roads Act 1993.

20 By making public road subdivision ‘exempt’ Council will be able to issue the subdivision certificate. This in turn will allow roads to be closed and if appropriate sold to neighbouring land owners.

The Planning proposal is a minor change to Byron LEP 2024, but it will increase Council efficiency in processing road closures and reduce the resources required.

25 It is recommended that Council submit the planning proposal to the NSW Department of Planning, Housing and Infrastructure requesting a “Gateway Determination”.

NOTE TO COUNCILLORS:



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

RECOMMENDATION:

That Council:

- 5 1. **Proceeds with a planning proposal as attached to this report (Attachment 1 – E2024/75673) that would amend Byron LEP 2014 to include subdivision of Council-owned roads as an item within Schedule 2 Exempt Development.**
2. **Forwards the planning proposal to the NSW Department of Planning, Housing and Infrastructure for a Gateway determination.**
- 10 3. **Pending a positive Gateway determination, undertake a public exhibition of the planning proposal in accordance with the determination requirements.**
4. **Considers a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.**

Attachments:

- 15 1 26.2024.1.1 Draft Planning Proposal for Public Road Subdivision as Exempt Development, E2024/75673 
- 2 2 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

20

Report

The current process for the closure of Council-owned roads depends on the ability to obtain consent for a subdivision certificate granted through a Development Application.

- 5 Since the responsibility of road closures was transferred to Council, issues have arisen in the closure of roads located in areas zoned RU1 or RU2. It will also be a problem in any other zone with a 40 ha Minimum Lot Size. Subdivision of a road cannot occur due to the land area not being able to meet the required Minimum Lot Size specified in the Byron LEP 2014. Road closure does not meet any of the exceptions to minimum lot size in the LEP. The road closure therefore cannot be finalised as the appropriate consents are
- 10 unable to be obtained. Council is unable to fulfil its obligation under s38A of the Roads Act 1993.

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 permits road widening as exempt development but does not permit road subdivision (and closure) as exempt development.

- 15 Other North Coast Councils that have commenced a similar LEP amendment include Bellingen and Nambucca. Camden Council successfully amended its LEP in November 2022 to make public road subdivision exempt development.

Key issues

- 20 There are a number of sites in rural locations where Council can't proceed to close a section of surplus public road because it can't obtain a subdivision certificate since a development application cannot be approved.

By making public road subdivision 'exempt' Council will be able to issue the subdivision certificate. This in turn will allow roads to be closed and if appropriate sold to neighbouring land owners.

Options

- 25 One alternative would be to lobby the State Government to amend the SEPP (Exempt and Complying Development Codes) 2008. However, there is no evidence that this is likely to commence in the foreseeable future.

- 30 Another option is to bundle this LEP amendment into the next "housekeeping LEP amendment" but this is not due till 2025. This matter needs to be resolved as soon as possible.

Proceeding as a stand-alone LEP amendment is the fastest way to resolve this matter.

Next steps

- 35 If Council agrees to proceed it forwards the planning proposal to the NSW Department of Planning, Housing and Infrastructure for a Gateway determination.

If the Gateway determination is issued it's then placed on public exhibition.

Post exhibition the planning proposal can be finalised under delegation.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
5: Connected Infrastructure	5.1: Provide a safe, reliable, and accessible transport network	5.1.5: Restore road network - Restore the affected parts of the road network that were impacted by the 2022 flood events	5.1.5.10	Implement Road network betterment initiatives in accordance with approved programs

Recent Resolutions

- 5 No recent resolutions on this matter.

Legal/Statutory/Policy Considerations

The Environmental Planning and Assessment Act 1979 outlines Council powers in making and amending LEPs in Division 3.4 Environmental planning instruments—LEPs.

This report is consistent with these provisions.

- 10 It is also consistent with the Department of Planning and Environment Local Environmental Plan Making Guideline (August 2023).

Financial Considerations

Infrastructure Services has funded this planning proposal to ensure this matter is resolved in a timely manner.

15 Consultation and Engagement

This is a minor amendment to Byron LEP 2014 that is unlikely to be controversial or have significant public interest. Although planning proposals are normally on public exhibition for 28 days it is recommended that this one be exhibited for 14 days.

**Report No. 13.9 PLANNING - Byron Shire Affordable
Housing Contribution Scheme 02**

Directorate: Sustainable Environment and Economy

5 **Report Author:** Alex Caras, Land Use Planning Coordinator

File No: I2024/1022

Summary:

10 This report seeks Council's authorisation to prepare and submit a planning proposal to introduce a second Byron Shire Affordable Housing Contribution Scheme (AHCS 02) to capture the additional investigation areas identified in the recently adopted Byron Shire Residential Strategy 2041. The following documents have been prepared to support preparation of a planning proposal for AHCS 02, which are discussed in more detail in the report:

- Housing Needs Assessment
- 15 • Viability Assessment Report
- Draft Affordable Housing Contribution Scheme 02

20 Pending positive Gateway determination, the planning proposal will be exhibited in accordance with the determination requirements, followed by a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.

NOTE TO COUNCILLORS:

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

30 **RECOMMENDATION:**

That Council:

- 35 1. **Authorises staff to prepare and submit a planning proposal to introduce a second Byron Shire Affordable Housing Contribution Scheme (AHCS 02), in accordance with Action 10 of the recently adopted Byron Residential Strategy 2041 (and Attachments 1-4).**





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2. **Pending a positive Gateway determination, exhibits the planning proposal in accordance with the determination requirements.**
3. **Receives a Submissions Report post-exhibition that includes any recommended changes to the planning proposal for final adoption.**

5 **Attachments:**

- 1 Final Draft Byron Shire Housing Needs Study - 22 May 2024, E2024/78446 
- 2 Final Draft Byron Shire Viability Assessment Report, E2024/84059 
- 3 Final Draft Byron Shire AHCS 02 - 22 July 2024, E2024/83876 
- 10 4 Table of Draft Scheme Comments from DPHI and Suggested Response, E2024/83861 

Background and Report

The Byron Shire Affordable Housing Contribution Scheme (AHCS) 01 came into effect in January 2023 through the introduction of Clause 6.18 within the Byron LEP 2014. The Scheme provides detail about how, where, and at what rate development contributions can be collected from landowners for affordable housing and currently applies to the areas of Mullumbimby, Bangalow, and Byron Bay.

The Scheme is activated when land is upzoned. Upzoning is a change in planning controls, such as zones or building heights that creates new or increased development potential and therefore increases the value of the land.

A form of contribution will be determined by Council at the time of development and may include:

- Fit for purpose land within the development,
- Monetary contribution, and/or
- Dwellings within the development

It should be noted that an Affordable Housing Contribution Scheme (under SEPP Housing 2021) is primarily targeted at delivering rental housing, rather than owner-occupied housing. Additionally, there is a general expectation that that such housing should be institutional (in the sense that it must be managed by registered housing organisations, rather than traditional ‘mum and dad’ and property investors). Further, land and dwellings provided for affordable housing are to be managed to maintain their continued use for affordable housing in perpetuity.

Residential Strategy 2041

In March 2024, Council approved Byron Shire Residential Strategy 2041 with amendments for submission to the Department of Planning, Housing, and Infrastructure (DPHI) for endorsement. The Strategy provides the long-term approach to guide the delivery of housing in the Shire.

Action 10 of the ‘Implementation Plan’ accompanying the Strategy commits to investigating “expanding or applying new affordable housing contribution mechanisms over all new rezoned areas, and other planning control uplift opportunities, to maximise the capture of affordable housing opportunities over time”. To this end, Scheme 02 will implement this, Action.

The purpose of this report is to seek Council’s support to prepare and submit a planning proposal to introduce a second Byron Shire Affordable Housing Contribution Scheme (AHCS 02) to capture the additional investigation areas identified in the recently adopted Byron Residential Strategy 2041. The following documents have been prepared to support preparation of planning proposal for AHCS 02, which are discussed in more detail below:

- Housing Needs Assessment
- Viability Assessment Report

- Draft Affordable Housing Contribution Scheme 02

Housing Needs Assessment

The purpose of this report is to support the development of an additional affordable housing program for the AHCS 02, by researching affordable housing needs and documenting these in an evidence base which will satisfy the requirements of section 7.32 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and the State Environmental Planning Policy (SEPP) Housing 2021.

The report analyses are focussed on demonstrating the need by outlining the constraints in the housing market in Byron Shire, current need for affordable housing and gaps in meeting housing need. As well as providing background to the context and policy settings the analysis is structured around understanding the following fundamental questions:

1. What are the housing market constraints in Byron Shire?
2. Is there a current need for affordable housing?
3. What are the gaps in meeting housing?

Overall, the assessment report highlights the extreme housing situation in Byron Shire. All indicators and measures of housing affordability and need show the housing market is highly constrained and inaccessible for the majority of low- and moderate-income households.

A copy of the Housing Needs Assessment is contained in Attachment 1.

Viability Assessment Report

In accordance with the [Guideline for Developing an Affordable Housing Contribution Scheme \(2019\)](#) this report carries out a viability assessment to examine the capacity of development to tolerate affordable housing contributions within the proposed contribution areas in Bangalow, Brunswick Heads and Mullumbimby in Byron Shire. The localities under investigation for the AHCS 02 are shown in Table 1 below and represent new investigation areas identified in the recently adopted Byron Residential Strategy 2041.

Table 1 – Localities Under Investigation for AHCS 02

Locality/Designation	Description
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Locality/Designation	Description
Bangalow NSW 2479 B2	Site B2 NRRC Draft Resilient Lands Strategy identified site Now included in Residential Strategy 2041 14 Ballina Rd
Brunswick Heads The Saddle Road Brunswick Heads NSW 2483 B1	Site B1 NRRC Draft Resilient Lands Strategy identified site Now included in Residential Strategy 2041
Brunswick Heads NSW 2483	New investigation areas 172 and 166 Tweed St and 66 The Saddle Road (part) 125 Tweed Street, The Saddle Rd wider village 'investigation area'
Mullumbimby NSW 2482	Left Bank Road. Potential urban conversion area.
Mullumbimby NSW 2482	New investigation areas. 1982 Coolamon Scenic Dr 1862 Coolamon Scenic Dr 1897 Coolamon Scenic Dr Azalea St
Suffolk Park (Byron Bay)	64 Corkwood Cr

The report confirms the earlier findings of AHCS 01, namely that the significant uplift between rural to residential land uses provides an opportunity for a significant affordable housing contribution, whilst providing both a traditional profit to the developer as well as a viability buffer that is available to cover any significant risks in the development process.

Although construction costs for land development continue to escalate, the increase in dwelling prices associated with the new migration patterns post-Covid and the limited supply of new housing coming online (due to labour and material shortages) has generated significant increases in land prices that can support affordable housing contributions. From a viability standpoint, the need for the development to make decent returns and cover off any unknown market risks has been factored into the assessment methodology.

In some cases, however, as the detailed engineering studies are undertaken when designing these developments (e.g., Saddle Road 'B1' site and wider investigation area), development costs may exceed the estimates in this report. In these cases, it is important to provide some flexibility in applying the affordable housing charge so as not to discourage or make unviable future land development.

A copy of the Viability Assessment Report is contained in Attachment 2.

Site B1 – Saddle Road/Gulgan Village Investigation Area

Staff have had ongoing discussions with the landowners of the B1 Site as a pre-cursor to lodging a planning proposal. As the more detailed infrastructure studies (e.g., road upgrades) and master planning are still some months away from completion, it is not possible for the viability assessment to apportion future infrastructure contributions to this site. As a result, the Applicant's draft letter of offer to enter into a Planning Agreement (to accompany a planning proposal) should be worded accordingly to provide flexibility for both parties while still achieving the intent and outcomes of AHCS 02:

"... dedication of land, or combination of land and housing, will be in accordance with Council's Affordable Housing Contribution Scheme No. 2 (in preparation) OR based on an alternative contribution rate determined by an independent viability assessment in accordance with Part 4 of Council's Affordable Housing Contribution Policy ...".

Draft Affordable Housing Contribution Scheme 02

The objectives of AHCS 02 are to:

- a) Facilitate the provision of affordable housing options within the Byron Shire Council area to meet the needs of very low, low and moderate income households so as to promote diversity, equity, liveability and sustainability;
- b) Recognise affordable housing as critical infrastructure to support sustainable and diverse communities and economic growth in the Byron Shire;
- c) Contribute to meeting the housing needs of very low to moderate income households who live and work in the LGA;
- d) Set out how, where and at what rate development contributions will be collected by Byron Shire Council to provide fairness, certainty and transparency for the local community, developers and other stakeholders.

This Scheme augments AHCS 01 to provide the background, requirements, and operational detail for development in the contribution areas identified. AHCS 01 continues to apply to land within the contribution areas identified in that Scheme, as indicated in the Scheme's accompanying maps.

A copy of the draft AHCS 02 is provided in Attachment 3.

What types of development will AHCS 02 apply to?

The Scheme will apply to all residential development within the AHCS 02 Contribution Areas, including:

- 5 -- Development of residential accommodation as defined in [Byron LEP 2014](#);
- Subdivision of land for residential purposes;
- Creation of Torrens Title lots, community title and strata schemes, cooperative and company title of residential property and the like.

10 The Scheme will not apply where an Affordable Housing Contribution has previously been applied unless the proposal involves an intensification of the development.

Registered Community Housing Providers and Delivery Program

Section 3.4 of the draft AHCS 02 states that:

“Council may prepare a **Distribution Plan** to provide transparency and clarity about the process for allocation or transfer of contributions, including:

- 15 - criteria for selection of one or more community housing providers to receive funding or property;
- framework for dispersal of funds;
- requirements relating to the transfer of assets;
- 20 - performance expectations for community housing providers receiving and using the contributions (including the use of surplus or other funds to support leveraging of finance to deliver more affordable housing);
- any eligibility criteria to apply to the allocation of affordable housing;
- any rent setting requirements for provision of affordable housing;
- monitoring and reporting on affordable housing outcomes to Council;
- 25 - regular review of arrangements and process for Council changes to the Distribution Plan.”

30 Staff will be updating Council’s register of community housing providers (as endorsed at the [8 December 2022 Planning Meeting](#)) over the coming months via a further expression of interest process. This will strengthen Council’s ability to facilitate the future delivery and management of affordable rental housing in line with the Scheme.

Staff will also be preparing a Distribution Plan to guide the allocation or transfer of contributions to various target groups that fall within the household definition. Once prepared, the Distribution Plan will be workshopped with councillors prior to being reported for endorsement later this year.

35 *Preliminary feedback from Department of Planning, Housing, and Infrastructure*

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Council sought feedback from the Department's Housing & Policy Team on the draft AHCS 02 and supporting documents. The Department's comments along with the staff/consultant responses to these are contained in Attachment 4. Staff will discuss any outstanding matters with the Department during the gateway assessment of this planning proposal.

5 Recommendation and Next steps

This report seeks Council's authorisation for staff to prepare and submit a planning proposal to introduce a second Byron Shire Affordable Housing Contribution Scheme (AHCS 02), in accordance with Action 10 of the recently adopted Byron Residential Strategy 2041.

- 10 Pending positive Gateway determination, the planning proposal will be exhibited in accordance with the determination requirements, followed by a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.

Strategic Considerations

15 Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth We manage growth and change responsibly	4.2: Enable housing diversity and support people experiencing housing insecurity	4.2.2: Partnerships and pilots to address housing needs - Investigate partnerships and pilots that deliver an innovative and affordable housing model for the Shire	4.2.2.1	Consider residential rezoning proposals, as identified within existing North Coast Regional Plan growth boundary and the Affordable Housing Contribution Scheme

Recent Resolutions

- [23-654](#): Housing Options Paper
- [24-080](#): Residential Strategy 2041

Legal/Statutory/Policy Considerations

- 20 A Planning Proposal for AHCS 02 will amend clause 6.18 the Byron Shire Local Environmental Plan 2014 to reflect the introduction of a second Scheme.

This amendment is a legislative requirement of [Section 7.32](#) Environmental Planning and Assessment Act 1979 (EP&A Act) to impose an affordable housing condition on developments specified in both Schemes.

Financial Considerations

AHCS 02 is granted funded by NSW Reconstruction Authority as part of a partnership with Byron Shire Council, given its contribution and alignment with the shared housing objectives of both organisations.

5

Consultation and Engagement

Council sought early feedback from the Department's Housing & Policy Team on the draft AHCS 02 and supporting documents. Further consultation will be undertaken in accordance with a Gateway determination for the AHCS 02 Planning Proposal.

Report No. 13.10 Amendment to Chapter D5 Industrial Development and B4 Traffic Planning, Vehicle Parking, Circulation and Access to include new provisions for Artisan Food and Drink Industry

Directorate: Sustainable Environment and Economy

Report Author: Shannon Burt, Director Sustainable Environment and Economy
Chris Larkin, Manager Sustainable Development

File No: I2024/1030

Summary:

The Byron Development Control Plan (DCP) 2014 is periodically reviewed to ensure that planning controls are current and correct.

A need to provide specific development controls for artisan food and drink industry in the DCP has been identified.

The DCP controls proposed for artisan food and drink industry will clarify use, operations, and car parking requirements needed for change of use and new development applications.

RECOMMENDATION:

That:

- 1. Council proceeds with the public exhibition of the Byron Development Control Plan 2014 amendments to Chapter D5 Industrial Development and B4 Traffic Planning, Vehicle Parking, Circulation and Access to include new provisions for Artisan Food and Drink Industry as detailed in the report.**
- 2. Council receives a further report for consideration on the amendments that receive submissions following the public exhibition period.**
- 3. Should there be no submissions received to certain amendments, that those amendments to the DCP be adopted as of the close of the statutory public exhibition period date and notified accordingly.**

Report

The DCP is periodically reviewed to ensure that planning controls are current and correct.

A need to provide specific development controls for artisan food and drink industry in the DCP has been identified.

- 5 The definition of artisan food and drink industry in the Standard Instrument Local Environment Plans (SILEP) was introduced in 2018 to provide clarity for the growing craft and boutique industry. This amended Byron Local Environmental Plan (LEP) 2014. Prior land use definitions were not adequately encompassing the growing artisan manufacturing industry. This was creating an environment where the inconsistent application of multiple land uses was occurring across councils.

An artisan food and drink industry is a place where **the main purpose (principal use) of the business is to manufacture boutique, artisan or craft food and/or drink items**. These businesses may also include a retail space, a café and an area to host tastings, workshops, or tours and legally defined in the LEP as:

- 15 *artisan food and drink industry means a building or place the principal purpose of which is the making or manufacture of boutique, artisan or craft food or drink products only. It must also include at least one of the following—*
- (a) *a retail area for the sale of the products,*
- 20 (b) *the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided,*
- (c) *facilities for holding tastings, tours or workshops.*

A limit on the amount of 'floor area' for the retail use is provided for in clause 5.4 of the LEP for certain zones:

- 25 *...(10) **Artisan food and drink industry exclusion** If development for the purposes of an artisan food and drink industry is permitted under this Plan in Zone E3 Productivity Support, Zone E4 General Industrial, Zone E5 Heavy Industrial, Zone W4 Working Waterfront or a rural zone, the floor area used for retail sales (not including any cafe or restaurant area) must not exceed—*
- 30 (a) *40% of the gross floor area of the industry, or*
- (b) *250 square metres,*
- whichever is the lesser...*

Otherwise, the components under the definition are meant to be ancillary to the principal use in bold above.

- 35 The State Environmental Planning Policy (SEPP) Exempt and Complying 2008 provides for change of use in certain instances in Business and Industrial zones including for an artisan food and drink industry. If certain preconditions are met it allows a private certifier

to assess compliance with these including reference to Council DCP provisions and issue a complying development certificate (CDC).

Recent experiences with certain CDCs issued by private certifiers for change of use under the SEPP have highlighted problems with interpretations of the CDC preconditions, and a need to ensure provisions in the DCP, to avoid unintended consequences from land use intensification, the result of the SEPP CDC processes.

The DCP controls proposed for artisan food and drink industry are needed, and will clarify use, operations, and car parking requirements for change of use and new development applications.

The proposed amendments to the DCP are provided below.

Amendment to Chapter D5 Industrial Development to include new provisions for Artisan Food and Drink Industry

D5.2.12 Artisan Food and Drink Industry

Artisan food and drink industry offers craft food and drink experiences, usually in a space attached to a larger industrial space used for production. Craft and locally produced goods support industries such as tourism and hospitality and provide local employment and are increasingly popular places for residents and visitors. Artisan food and drink activities range from microbreweries and distilleries to cheese makers, bakeries and charcuterie workshops, which include an expansion of services to include an 'industrial door' experience for the public to view and understand how products are made by hosting tastings, tours, and workshops.

Objectives

1. To support the establishment of artisan food and drink industry in appropriate locations.
2. To ensure the design of publicly accessible areas of artisan food and drink industry provides a pleasant and safe environment.

Performance Criteria

1. To ensure the artisan food and drink industry's dominant use is industrial in nature.
2. To provide for ancillary activities within the industry limited to tours, tastings, workshops, ancillary retail, café and food and drink.

Prescriptive Measures

1. Details of the industrial activity proposed within the artisan food and drink industry demonstrating the dominant use is industrial in nature.
2. The floor area of any ancillary food and drink area (including bars) to be no more than 30% of the gross floor area of the artisan food and drink industry development.

3. A Plan of Management is to be provided for operation of the artisan food and drink industry for the industrial component and the ancillary components including:

- a. hours of operation;
- b. opening hours to the public;
- c. details on tours, tastings, workshops;
- d. staff numbers; and
- e. total maximum patrons.

4. Construction, use and operation to comply with relevant Food standards and regulations as applicable at that time. Detailed fit out plans are to be submitted with all applications for development of artisan food and drink industry.

5. Car parking to comply with Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access.

Note: Where the principal use appears to be the ancillary food and drink premises/ bar or retail uses, such applications may be refused. Careful consideration should be given to the hours of operation and / or patron numbers for ancillary uses (e.g. limited hours when open to the general public compared to the industrial use).

Amendment to Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access to insert artisan food and drink premises into table B4.1 – Parking Rates and amend food and drink car parking rates to capture outdoor dining areas for restaurants and cafes and the like.

B4.2.12 Parking Schedules

Table B4.1 – Parking Rates

Land Use	Car Parking	Bicycle Spaces
Artisan Food and Drink Industry	0.4 space per patron or 1 space per 40 m ² GFA, whichever is the greater	1 per 25m ² of GFA
Food and Drink Premises	1 per 20m ² of GFA (plus any additional dining floor area on private property) in Employment zones 1 per 7.5m ² of GFA (plus any additional dining floor area on private property) in all other zones	1 per 25m ² of GFA

Next steps

The draft DCP amendments will be exhibited for a minimum of 28 days. Any submissions received will be presented to Council along with any recommended changes to the exhibited chapters.

The amended Byron DCP chapters will come into effect once adopted and published on Council's website.

Strategic Considerations

Community Strategic Plan and Operational Plan

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

5 Legal/Statutory/Policy Considerations

As discussed in the report.

Financial Considerations

None relevant to this report.

Consultation and Engagement

- 10 The proposed amendments to DCP 2014 will be exhibited for a minimum of 28 days in accordance with Byron Community Participation Plan.

Report No. 13.11 PLANNING - DA 10.2024.63.1- Demolition of existing Dwelling House, construction of new Dual Occupancy (Attached) including basement carparking, swimming pool and removal of twelve (12) trees - 19 Marine Parade Byron Bay

Directorate: Sustainable Environment and Economy

Report Author: Alissa Magnifico, Planner

File No: I2024/1037

Proposal:

DA No:	10.2024.63.1		
Planning Portal ref	PAN-417743		
Proposal description:	Demolition of existing Dwelling House, construction of new Dual Occupancy (Attached) including basement carparking, swimming pool and removal of twelve (12) trees.		
Property description:	LOT: 2 DP: 244699		
	19 Marine Parade BYRON BAY		
Parcel No/s:	49780		
Applicant:	Mambrooke Pty Ltd		
Owner:	Mambrooke Pty Ltd		
Zoning:	R2 Low Density Residential		
Date received:	19 March 2024		
Integrated / Designated Development:	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable
Concurrence required	No		
Public notification or	– Level 2 Council advertising under Council's Community		

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exhibition:	Participation Plan. <ul style="list-style-type: none">– Exhibition period: 2 April 2024 to 15 April 2024, extended till 26 April 2024 due to application submitting an updated Visual Impact Statement– 14 Submissions received
Variation request to Development Standards under an EPI (eg clause 4.6)	Clause 4.6 Name of clause – Minimum Lot Size for certain residential accommodation Clause number – 4.1E Percentage value of variation sought – 1.2%
Estimated cost	\$12,000,000.00
Delegation to determine	Council

Summary:

The DA proposes demolition of existing dwelling house and the construction of a Dual Occupancy (Attached) with basement carparking, a swimming pool and the removal of twelve (12) trees.

- 5 The application was advertised and notified between 2 April 2024 to 26 April 2024. Fourteen submissions were received objecting to the development for a range of reasons including building height plane breaches, visual impacts, excessive earthworks, stormwater management, overshadowing, car parking, manoeuvrability, bulk, scale, height, floor space ratio and the like.
- 10 In particular the applicant was advised of the need to resolve an existing stormwater pipe which takes stormwater from Pandanus Lane through the property to Marine Parade. The applicants' various consultants including the surveyor had not located this important piece of Council infrastructure at the design stage and the development needed to be appropriately designed around the pipe requiring an increased setback to the western
- 15 boundary of at least three metres.

- The applicant's various attempts at redesign were to remove the stormwater pipe and create an open drain cascading down the side boundary whereby stormwater was to be collected and returned back into the pipe network in Marine Parade with only a 1.5 metre setback to the boundary. This has not been supported by Council's Development
- 20 Engineer and in particular the existing pipe should remain in-situ and the development then designed in accordance with Council's Building in the vicinity of underground infrastructure Policy 2020.

- The subject site with an area of only 790m² is less than the required 800 m² for a dual occupancy under Byron LEP 2014. A written justification for the proposed variation to the
- 25 4.1E lot size development standard was submitted in accordance with clause 4.6 of LEP

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2014. Having regard to the size of the development, non-compliances and the number of additional variations being sought, it is considered there is no valid planning grounds to vary the lot size requirements in this instance.

- 5 Further, the proposed development has a floor space ratio of 0.5:1.0 whereby the requirements for floor space are 0.4:1.0. In essence the development has some 79 m² of floor area in excess of what is permitted. As to earthworks, the development seeks to extensively excavate into the property with depths in excess of 7 metres and an area of approximately 170m². This far exceeds the excavation limitations of 50 m² for Wategos under Chapter E5.10 of Byron DCP 2014.
- 10 In terms of the building bulk and scale from Marine Parade the development will appear like a 4-storey structure as it rises towards the rear lane, whilst from Pandanus Lane the building dominates as two storey structure impacting on neighbours views, whilst failing to satisfy the lane way setback provisions of 3 metres under Chapter D1 of Byron DCP 2014.
- 15 The proposal also incorporates 2 car parking spaces on the laneway; however these have not been designed in accordance with Chapter B4 in terms of manoeuvring safely within the laneway and the site triangles for pedestrian safety as per AS2890 have been imposed onto the road reserve not within the subject property.
- 20 Having regards to the fundamental flaws of the building design, the development needs to be carefully re-designed, considering and observing Council's planning controls under both Byron LEP 2014 and Byron DCP 2014. The applicant was invited to withdraw the application and resubmit at a later time as a complete package in the form of a new development application noting that it should be submitted as single dwelling house not a dual occupancy. The applicant has not taken that advice and as such having regards to the legislation and the NSW Department of Planning Housing and Infrastructure Statement of Expectation Order, the assessment has been completed for Council's consideration.
- 25 [Environmental Planning and Assessment \(Statement of Expectations\) Order 2024 \(nsw.gov.au\)](https://www.nsw.gov.au/environmental-planning-and-assessment/statement-of-expectations-order-2024)
- 30 As the proposed development is contrary to numerous planning provisions without adequate justification as discussed above, the proposal is considered an overdevelopment of the site, and the application is recommended for refusal accordingly.

NOTE TO COUNCILLORS:

- 35 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:



It is recommended that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2024.63.1 for Demolition of existing Dwelling House, construction of new Dual Occupancy (Attached) including basement carparking, swimming pool and removal of twelve (12) trees, be refused for the following reasons:

1. Pursuant to Section 4.15(1)(a)(i) of the EP&A Act 1979 the proposed development is contrary to clause 2.10 and 2.11 of the *State Environmental Planning Policy (Resilience and Hazards) 2021* and has an adverse impact visual amenity and scenic qualities of the coast, and the surrounding coastal and built environment.
2. Pursuant to Section 4.15(1)(a)(i) of the EP&A Act 1979 the proposed development does not satisfy the minimum lot size provisions for dual occupancy of 800 m² under clause 4.1E of Byron LEP 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the EP&A Act 1979 the proposed development exceeds the allowable floor space ratio provisions under Clause 4.4 of Byron LEP 2014.
4. Pursuant to Section 4.15(1)(a)(i) of the EP&A Act 1979 the proposed development does not satisfy Clause 4.6 Byron LEP 2014 and has failed to demonstrate that strict compliance with the development standards is unreasonable or unnecessary in this instance.
5. Pursuant to Section 4.15(1)(a)(i) of the EP&A Act 1979 the proposed development is unsatisfactory with its excessive earthworks having regards to Clause 6.2 of Byron LEP 2014 and won't disrupt, or have a detrimental effect on, drainage patterns and soil stability in the locality of the development, or the amenity of adjoining properties.
6. Pursuant to Section 4.15(1)(a)(i) of the EP&A Act 1979 the proposed development is not satisfactory having regard to Clause 6.6 of Byron LEP 2014 in terms of stormwater drainage on the site and suitable vehicular access.
7. Pursuant to Section 4.15(1)(a)(iii) of the EP&A Act 1979 the proposed development does not demonstrate adequate stormwater management and road access contrary to the requirements of Chapter B3 Services of the BDCP 2014.
8. Pursuant to Section 4.15(1)(a)(iii) of the EP&A Act 1979 the proposed development does not demonstrate provision of suitable vehicle manoeuvring, access, and site lines contrary to the requirements of Chapter B4 Traffic Planning of the BDCP 2014.

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9. Pursuant to Section 4.15(1)(a)(iii) of the EP&A Act 1979 the proposed development does not provide adequate landscaping for the second dwelling, contrary to the requirements of Chapter B9 Landscaping of the BDCP 2014.
- 5 10. Pursuant to Section 4.15(1)(a)(iii) of the EP&A Act 1979 the proposed development contravenes the requirements of Chapter B14 Excavation and Fill of BDCP 2014 in terms of the extent and scale of earthworks and does not adequately address the geotechnical constraints of the site.
- 10 11. Pursuant to Section 4.15(1)(a)(iii) of the EP&A Act 1979 the proposed development contravenes the design and character requirements contrary to the requirements of Chapter D1 Residential Accommodation in Urban, Village and Special Purpose Zones of the Byron DCP 2014, including building height plane, setbacks, solar access, privacy and private open space.
- 15 12. Pursuant to Section 4.15(1)(a)(iii) of the EP&A Act 1979 the proposed development does not comply with the provisions relating to basement footprint, site coverage, adequate geotechnical assessment, use of lightweight building materials, visual impact, suitable provision for stormwater and is contrary to the provisions of Chapter E5.10 Waterways of the BDCP 2014.
- 20 13. Pursuant to Section 4.15(1)(b) of the EP&A Act 1979 and will have an adverse impact on the built environment in terms of visual impacts and the bulk, scale and height of the development and is an overdevelopment of the site.
14. Pursuant to Section 4.15(1)(c) of the EP&A Act 1979 the site is not suitable for the development having regard to the scale and design of the development proposed and is an overdevelopment of the site.
- 25 15. Pursuant to Section 4.15(1)(d) of the EP&A Act 1979 the proposed development is unacceptable having regards to the objections received and the matters raised in those submissions.
- 30 16. Pursuant to Section 4.15(1)(e) of the EP&A Act 1979 the development application is not in the public interest as outlined in the other reasons for refusal and is an overdevelopment of the site.
- Attachments:**
- 1 10.2024.63.1 - Development Plans, E2024/71765 
- 2 10.2024.63.1 - Submissions, E2024/83436 

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Report

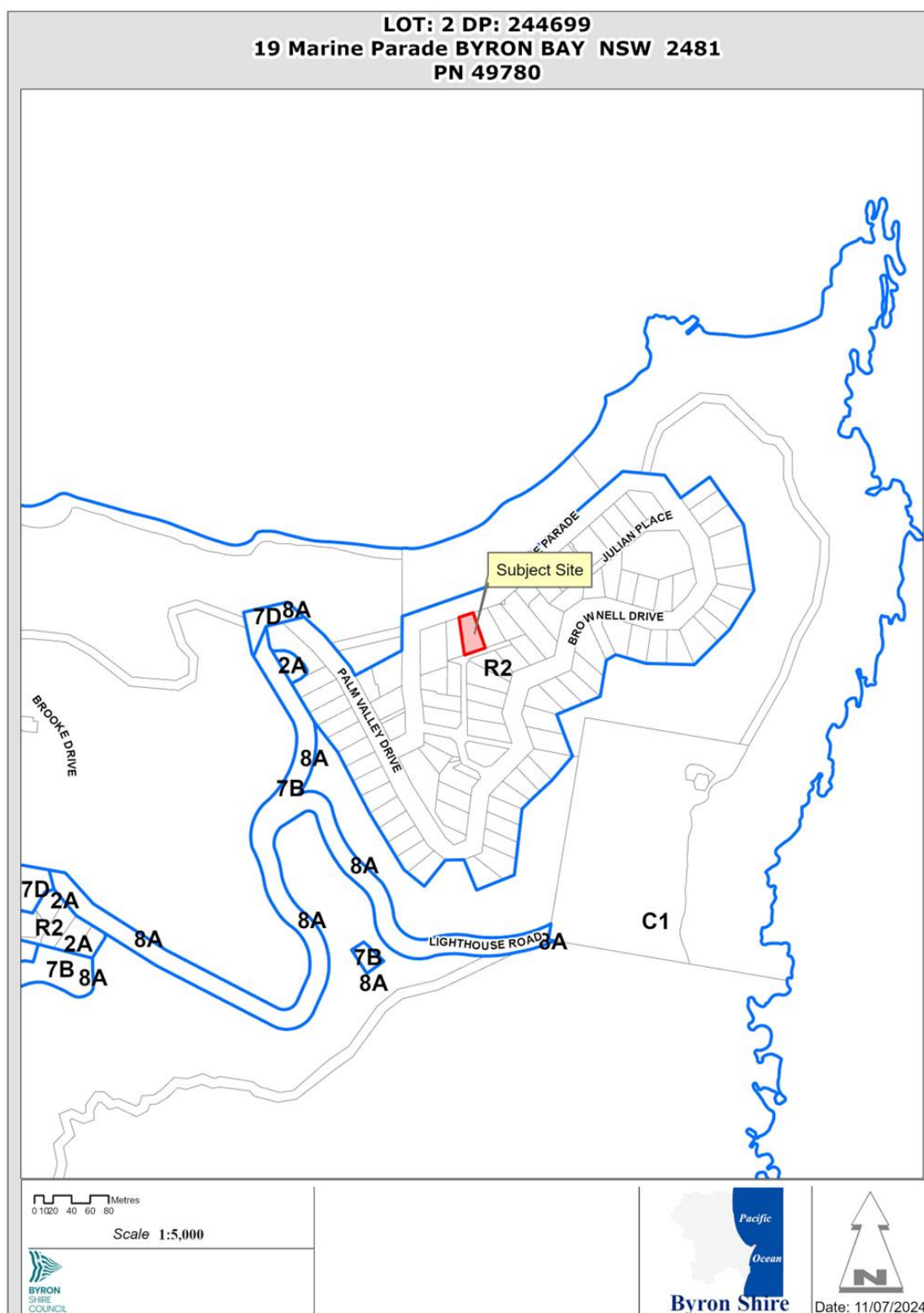


Figure 1: Locality Plan

Assessment:

History/Background

Previously approved development applications:

<u>Module</u>	<u>Memo Type</u>	<u>Date</u>	<u>Nbr</u>	<u>Comments</u>
Property	BA pre Munics		1	BA Number 77/2032 BA Type DWELLING Application Date 14/02/1977 Determination Date 28/02/1977 Value 15000 ? 0
<u>Module</u>	<u>Memo Type</u>	<u>Date</u>	<u>Nbr</u>	<u>Comments</u>
Property	BA pre Munics		2	BA Number 77/2190 BA Type ADITIONS Application Date 05/08/1977 Determination Date 19/08/1977 Value 25000 ? 0

Requests for additional information

Several requests for additional information have been made throughout the assessment of this application as follows:

- On 03/04/24 additional information was requested through the Planning Portal seeking a Visual Impact Statement in accordance with Byron DCP 2014 Chapter C3. The applicant submitted an updated Visual Impact Statement on 17/4/24 and the updated document was added to Council's DA tracker. The advertising period was extended to 26/4/24 to allow for this additional information to be viewed.
- On 18/4/24 additional information was requested for a survey accurate location of Council's sewer and stormwater infrastructure. This was provided on 15/05/24 confirming stormwater infrastructure is located on the site and not on the neighbouring lot. The applicant proposed two possible stormwater concepts to be reviewed by Council's Development Engineer.
- Insufficient information was provided on the proposed Stormwater options and on 24/5/24 additional information was requested by Council's Engineer to facilitate the assessment of the proposed variations to the stormwater drainage system.
- The applicant submitted further amended stormwater concept plans on 6/6/2023 which again failed to satisfactorily resolve all issues.
- The Applicant submitted further amended architectural plans on 21/6/2023 to reflect the proposed stormwater concept plan. The amended plans fail to satisfactorily resolve stormwater issues and the application is recommended for refusal accordingly.
- On 8/7/24 letter sent to applicant recommending the application be withdrawn due to significant issues of:
 - Stormwater management
 - Vehicle manoeuvring

- Gross Floor Area
- Floor Space Ratio
- Building Height Plane encroachment and potentially building height
- Excessive excavation
- Site coverage
- Visual Impacts
- Geotechnical, stability, noise, vibration, and lighting impacts
- Suitability of the site
- Public Interest

10 It is considered the development needs to be carefully redesigned and a smaller development with a reduced footprint to accommodate existing stormwater infrastructure and that respects Council's planning controls is needed. The applicant was invited to withdraw the application but as it is still active it is now reported to Council for determination as it is outside staff delegation to determine as fatally flawed.

15 **Description of the proposed development**

Development consent is sought to demolish the existing dwelling that occupies the property and construct a new dual occupancy (attached) development comprising of a main (larger) dwelling and a smaller studio style dwelling. The proposed development is made up of five levels, with basement car parking a swimming pool and lift access to all 5 levels.

Basement Level

25 A basement level is proposed with a finished floor level of RL6.3m. It is to be excavated into the property to allow vehicle access from Marine Parade to the north. Sufficient area is proposed to park 2 x vehicles in a garage space, as well as provide a workshop and storage areas.

30 A narrow access open air hallway is proposed adjacent to the western property boundary to provide access from the garage to a basement lobby within the south-western corner of the property. The basement lobby adjoins a space for containing services and provides access to a common stair and lift that rise vertically to each level above. A new driveway crossover is proposed within the Marine Parade road reserve.

Mezzanine Level

The development plans nominate a mezzanine level (which is also a subterranean basement room) with a finished floor level of RL 10.2m containing a laundry space. The mezzanine level is accessible from the stair and lift that is positioned within the south-

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western corner of the property. It sits below the existing ground level and effectively comprises an upper level of the basement lobby.

Ground Floor

- 5 The proposed ground floor level is made up of 3 x bedrooms and 2 x bathrooms, a bar with adjacent lounge area, an outdoor dining area, a swimming pool and extensive lawn/terrace areas. The ground floor has a finished floor level of RL 12.8m.

First Floor

- 10 The proposed first floor has a finished floor level of RL 16.1m. The smaller studio style dwelling is located within the east of the allotment. It contains a single bedroom with a bathroom, a study and terrace areas. A parking area suitable for 2 x vehicles associated with this dwelling is provided adjacent to the Pandanus Place frontage.

The main dwelling is located within the west of the property and contains a kitchen/living/dining area plus various terrace and garden spaces.

Second Floor

- 15 A master bedroom with an ensuite and robe is proposed within the second floor of the building. This is to be used as part of the main dwelling. It has a finished floor level of RL 19.7m.
- 20 This application seeks approval for Demolition of existing Dwelling House, construction of new Dual Occupancy (Attached) including basement carparking, swimming pool and removal of twelve (12) trees.

Description of the Site



Figure 2: Zoning

The proposed development relates to a single allotment of land that is formally described as Lot 2 in Deposited Plan 244699. The property is located at No. 19 Marine Parade, Byron Bay. The allotment has a rectangular configuration with dual street frontages. Deposited Plan 244699 indicates that land has an area of 31.25 perches, which equates to 790.4 square metres.

The subject lot has a frontage of 15.24 metres to Marine Parade to the north. A frontage of 23.3 metres is provided to a rear lane (Pandanus Place). The eastern and western property boundaries are 49.63 metres and 41.15 metres respectively (based on the Deposited Plan). The land falls from south to north towards Marine Parade.

The lot currently contains a two-storey dwelling house, an on-site parking area, decks covered in shade structures, staircases and landscaping. Vehicular and pedestrian access is currently available to the site via Pandanus Place, with only pedestrian access currently available from Marine Parade to the north.

A site inspection was carried out on 31 March 2024

Land is legally described	LOT: 2 DP: 244699
Property address	19 Marine Parade BYRON BAY

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Land is zoned:	R2 Low Density	
Land area is:	790.4 m ²	
Property is constrained by:	Bushfire prone land View Corridor High Environmental Value Vegetation Stormwater infrastructure	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No



Figure 3: View from Wategos Beach



Figure 4: Source - View of existing dwelling from Pandanus Lane



5 Figure 5:Source- Existing view from Wategos Beach



Figure 6: Applicant's Visual Impact render of proposed development

5 SUMMARY OF REFERRALS

Referral	Comment
Environmental Health Officer	Not supported. Insufficient and deficient documentation provided to resolve issues raised.
Development Engineer	Not supported. Stormwater issues raised by Council's Development Engineer have not been satisfactorily resolved by the DA. Insufficient and deficient documentation provided to resolve other issues raised including geotechnical matters considering the extensive earthworks proposed for the development.
S64 / Systems Planning Officer	No objections subject to conditions.
S7.11 / Contributions	Development contributions are payable should the

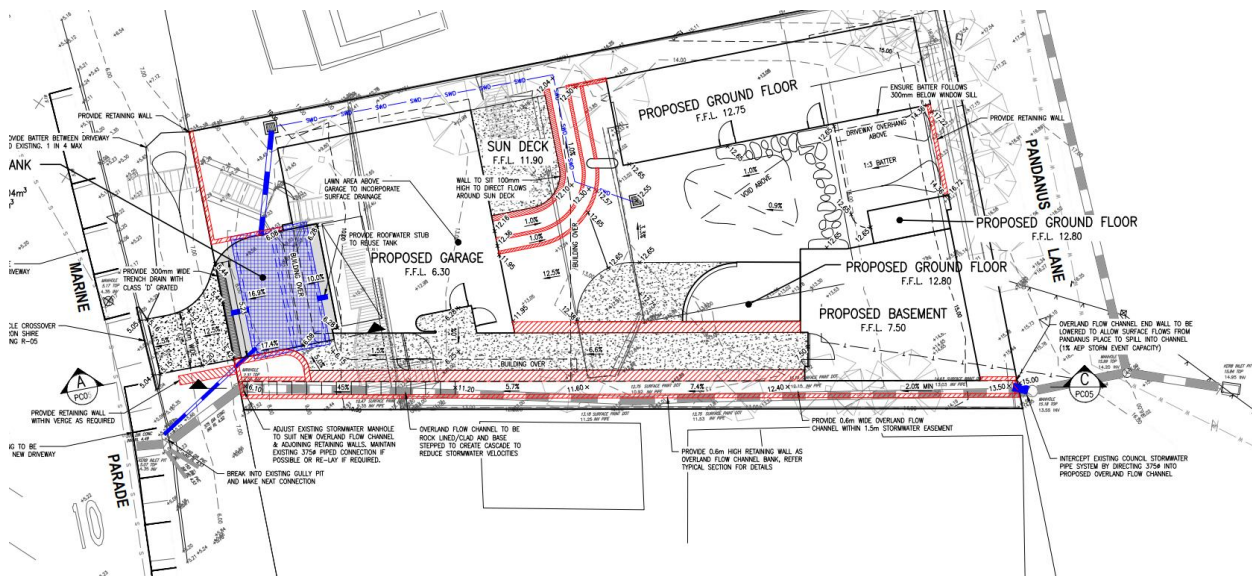
Referral	Comment
Planner	application be approved.
Natural Resource Planner	No objections subject to conditions.
Essential Energy	CNR -66993 No objections subject to conditions.
NSW National Parks and Wildlife Service	NPWS were notified as a neighbour and provided comments on the proposal.

ISSUES:

Development Engineer

The stormwater issues raised by Council's Development Engineer have not been satisfactorily addressed, and the application is recommended for refusal because insufficient information has been provided to demonstrate compliance to Clause 6.6(e) and 4.2D of BLEP 2014 and Section B3.2.1 of DCP 2014, Clause 6.6(d) of BLEP 2014 and Section B3.2.3 & B3.2.4 of DCP 2014 for the following reasons:

1. The updated Stormwater Management Plan is not supported and fails to demonstrate compliance with easement, design and maintenance requirements of Comprehensive Guidelines for Stormwater Management and Chapter D10 – Handbook of Stormwater Drainage Design.



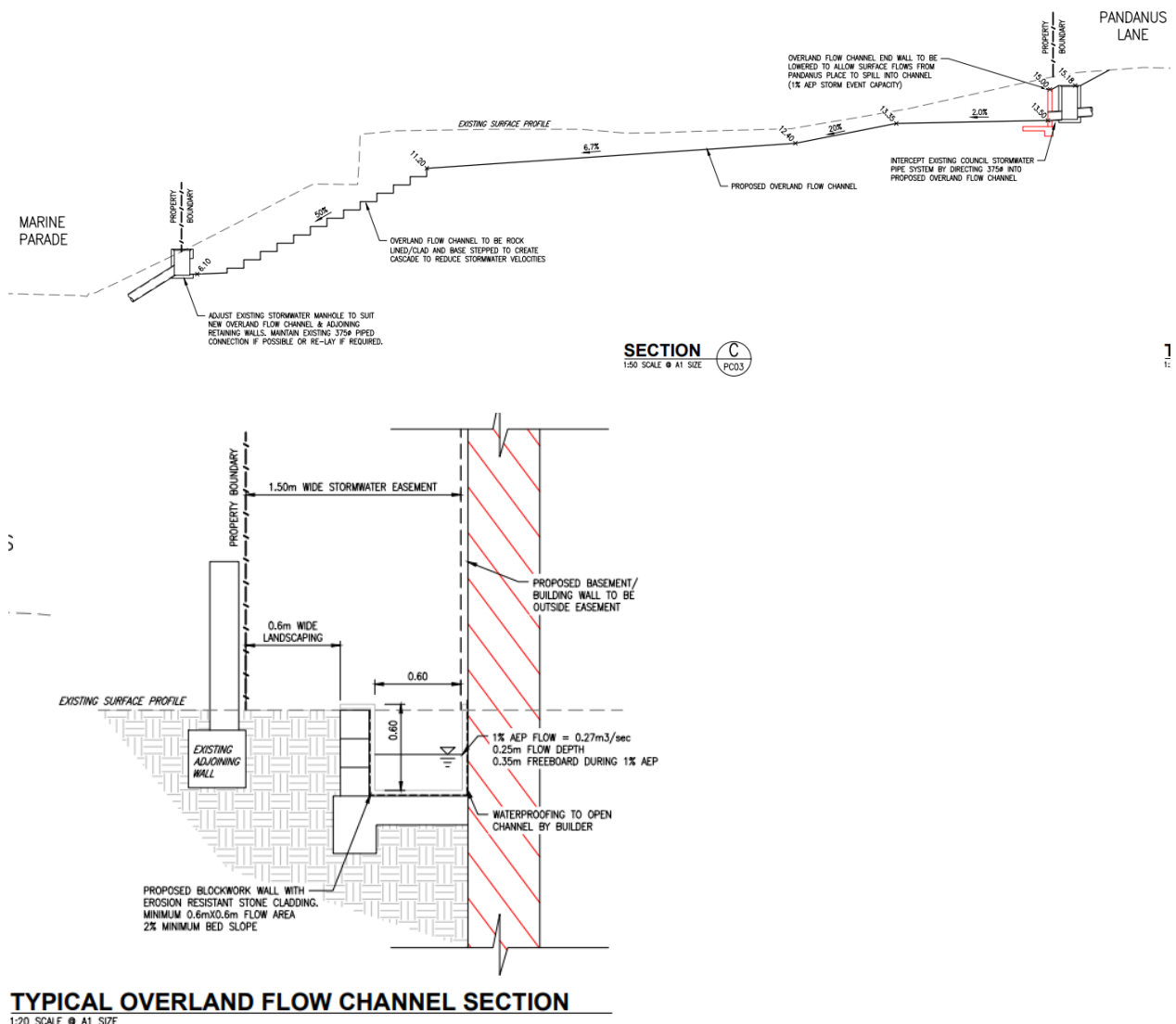


Figure 7, 8 and 9 Extracts of Stormwater Concept

- 5 2. The proposed plans do not demonstrate that adequate manoeuvring area is provided to allow vehicles to enter and exit the site in a forward direction. Turning paths must include 0.3m swept path clearance in accordance with Appendix B of AS 2890.1.

Vehicle manoeuvring fails to demonstrate compliance, or insufficient information is provided for Access servicing the Main Dwelling in Marine Pde

- 10 (i) retaining walls within the road reserve are not permitted other than the proposed retaining wall between 17 and 19 Marine Pde as shown on Westera Partners drawing N24-018-PC02 rev B. The maximum longitudinal length of the proposed retaining wall to be 1.76m measured from the front property boundary.
- 15 (ii) widening of the driveway width along the road reserve does not comply with Chapter D1.37 & D1.38 of the Northern Rivers Local Government Guidelines. The driveway must be set square to the road carriageway.

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(iii) sight distances do not meet all parts of clause 3.2.4 of AS2890.1:2004.

(iv) manoeuvring areas do not allow vehicles to enter and leave the site in a forward direction in accordance with part B4.2.2 and B4.2.3 of Chapter B4 of BDCP 2014.

Access servicing the Second Dwelling in Pandanus Lane

- 5 (v) manoeuvring in Pandanus Lane does not clear the retaining wall opposite the proposed driveway and encroaches into the neighbouring driveway opposite the site.
- (vi) the representation of minimum sightlines for pedestrian safety in Kennon Architecture drawing DA103 and Westera Partners drawing N24-018-PC03 rev B. are incorrect. The sight distances do not meet all parts of clause 3.2.4 of AS2890.1:2004.
- 10 (vii) The driveway cross section in and Westera Partners drawing N24-018-PC05 rev B does not meet clause 2.6.2 of AS2890.1.



3. A Stability Assessment Report in terms of landslip has not been submitted and is required, demonstrating a risk level of low or better to the site and its surrounds in relation to the proposed development.
- 15

Environmental Health Officer

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The application is not supported because insufficient information has been provided in order to assess the impact of noise and vibration created by the proposed demolition, excavation, and construction of the dwelling and the impact of lighting on neighbouring properties.

- 5 (i) The submitted geotechnical report is deficient and does not include soil bore logs to at least one metre (1.0m) below the proposed finished floor level or lowest point whichever is greater. The proposed dwelling requires excavations of at least 7m, however the borehole taken is only to 6 meters.
- 10 (ii) A dilapidation report was not submitted and is required to certify that the method of construction and dewatering will not adversely impact/effect the structural integrity and support of the neighbouring buildings and associated private and public infrastructure within the zone of influence of the construction site. The report is to also required to address the current structural state of those buildings and infrastructure, and how the proposed construction work is likely to affect their structural integrity.
- 15 A noise assessment report was not submitted and is required.
- An assessment by an appropriately qualified and experienced acoustic consultant is required to include (but not necessarily be limited to):
- a. determination of the background sound characteristics of the property location, and relative sensitivities of surrounding neighbourhood residences.
- 20 b. details of the noise relating to specific equipment to be used in the demolition phase.
- c. details of the noise relating to, excavation, rock breaking/blasting, piling, construction and associated activities for the construction of the proposed structures.
- d. assessment of expected noise and vibration from the construction activities.
- 25 e. construction activities that are likely to affect their amenity or cause structural damage through vibration.
- f. detailed examination of feasible and reasonable work practices that will be implemented to minimise noise impacts.
- g. noise and vibration monitoring, reporting and response procedures.
- h. strategies to promptly deal with and address noise complaints.
- 30 i. description of specific mitigation treatments, management methods and procedures that will be implemented to control noise and vibration during construction.
- j. details of performance evaluating procedures (for example, noise monitoring or checking work practices and equipment).
- 35 k. procedures for notifying nearby residents of forthcoming works that are likely to produce noise impacts.

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- l. contingency plans to be implemented in the event of non-compliance and/or complaints.
- m. details of locations and appropriate acoustic treatments for any external equipment that will be located on the property such as swimming pool pump / filtration, “heat-pump” hot water systems, air conditioning units, lift motors, etc.
- n. details of congregation points such as the swimming pool which might generate noise that would be audible outside the boundaries of the property.

Advisory note:

Refer to DECC’s ‘Interim Construction Noise Guideline’ (2009) for more information (see <http://www.environment.nsw.gov.au/noise/constructnoise.htm>)

(iii) The proposed development has not considered lighting impacts on the environment and neighbouring properties. A Lighting Impact Assessment is required to demonstrate that safe minimum standards of lighting (min. 0.2 Lux) can be provided without generation of undue glare and nuisance from the lighting installations.

(iv) Groundwater may be encountered and a Construction Dewatering Management Plan was not provided and is required.

The plan must include the following:

- a) copy of a licence from the NSW Department of NSW Office of Water for the dewatering of excavations and any associated groundwater monitoring bores;
- b) water quality criteria for waters to be discharged to the stormwater system, to be derived from ANZECC / ARMCANZ (2000) Fresh and Marine Water Quality Guidelines 95% species protection trigger levels for freshwaters, or similar. Parameters to include, but not be limited to, pH, electrical conductivity, dissolved Nitrogen (TN), Filterable Reactive Phosphorus, Total Phosphorus, Total Petroleum Hydrocarbons, Benzene, toluene, ethyl benzene, xylene (BTEX), Polycyclic Aromatic Hydrocarbons (PAHs) and Aluminium;
- c) details of proposed water treatment prior to discharge to ensure compliance with the above water quality criteria, including those that are manual and automated;
- d) site plan that demonstrates the location of all dewatering equipment and tanks;
- e) details of water sampling methodologies and frequencies for each parameter;
- f) details of disposal methods if water does not comply with above criteria; and
- g) details of a 24-hour contact person and telephone number for complaints.

Infrastructure Services

No objections raised to loss of a motorcycle parking space on Marine Parade subject to DA assessment considering site constraints.

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No retaining walls to be constructed in road reserve.

Local Traffic Committee must approve the changes to line marking and signage prior to the issue of any Roads Act consent.

Natural Resource Planner

- 5 The site contains a mix of lawn, weeds and landscaping plantings, including two planted Durobby Syzygium moorei (vulnerable - BC Act, EPBC Act). Up to 15 trees will be removed for the demolition and rebuild. With the exception of the two planted Durobby, all other trees are exotic/ornamental species.
- 10 The Aboricultural Impact Assessment (Northern Tree Care, Feb 2024) prepared for the proposal notes 12 individual trees and a small group of 3 trees will require removal.
- Considerations under Section 7.3 of the Biodiversity Conservation Act 2016 (test of significance) are addressed and impacts of the proposal upon the two planted Durobby are not significant. This assessment is agreed with.
- 15 The Aboricultural Impact Assessment made the following recommendation (below) which is supported:
- 8.2. It is recommended that the trees be replaced in the new development. It is recommended that the trees be replaced by the planting of 2 new trees, 4 shrubs and 4 ground covers. The species planted should be local native species. The planting should be carried out from 1 litre pots and the stock sourced from a local accredited nursery.

NSW National Parks and Wildlife Service

NPWS has identified the following concern in relation to DA 10.2024.63.1.

Erosion and sediment control (ESC) and stormwater management during construction:

- 20 Section 4.3 of the Storm Water Management Plan (SWP) identifies that the proposed development has an erosion hazard score of 23, indicating that it is a high-risk site and that an Erosion Sediment Control Plan (ESCP) must be submitted to Council for approval during the planning phase. The SWP also notes the need for erosion and sediment control measures to be well maintained, satisfy Council, regularly inspected and replaced
- 25 and repaired where required, and that any breaches are documented. NPWS supports the development of a high quality ESCP and the adoption of a high standard of ESC and stormwater management during construction.

- 30 However, unfortunately NPWS has observed that previous developments in the Wategos Beach catchment have had significant ESC and stormwater management failings during construction.

As a result, NPWS requests a copy of the ESCP before works commence. NPWS will advise Council of any concerns regarding ESC and stormwater management during demolition and construction of the new dwelling.

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 2019'. The site is bush fire prone land. The development application is accompanied by a Report by GeoLINK dated 14/03/24 which provides conditions for inclusion on the consent if issued.

10 SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

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

State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<i>Biodiversity and Conservation SEPP 2021</i> Consideration: Council's Ecologist did not identify issues under the SEPP, and the proposal is regarded as satisfactory in relation to the SEPP.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Housing SEPP 2021</i> Consideration: The proposal is not unsatisfactory having regard to the provisions of the Housing SEPP.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>Resilience and Hazards SEPP 2021</i> Consideration: <i>Chapter 2.10 Development on land within the Coastal Environment Area</i> The dwelling has no significant impacts upon public access to foreshore. There is some loss of motorcycle on-street parking along the property frontage which was assessed by Council's Infrastructure Services as satisfactory. Deficient geotechnical and stormwater details have been provided, unable to demonstrate that the development is	<input type="checkbox"/>	<input checked="" type="checkbox"/>

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Considerations	Satisfactory	Unsatisfactory
<p>not likely to cause an adverse impact on the following (and is recommended for refusal accordingly):</p> <p>(a) the integrity and resilience of the biophysical and ecological environment;</p> <p><i>Chapter 2.11 Development on land within the coastal use area</i></p> <p>The application fails to demonstrate that the development is not likely to cause an adverse impact on the following (and is recommended for refusal accordingly):</p> <p>(a) the visual amenity and scenic qualities of the coast, including coastal headlands,</p> <p>b) the surrounding coastal and built environment.</p> <p>The bulk, scale and size of the proposed development is considered to be over development of the land.</p> <p><i>Chapter 2.8 Development on land in proximity to Coastal Wetlands or littoral rainforest</i></p> <p>The site is in the proximity area to nearby mapped littoral rainforest. The SEE addresses this matter adequately. Complies.</p> <p><i>Chapter 4 Remediation</i></p> <p>In relation to potential contamination, the subject site contains existing residential use, and conditions can be applied to ensure correct demolition regarding potential asbestos contamination. Complies.</p>		
<p><i>Transport and Infrastructure SEPP 2021</i></p> <p>Consideration:</p> <p>Essential Energy reviewed the proposal and provided comments. The application is satisfactory having regard to clause 2.48.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>Sustainable Buildings SEPP 2022</i></p> <p>Consideration:</p> <p>The proposal is BASIX development. A valid BASIX</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Considerations	Satisfactory	Unsatisfactory
certificate has been provided.		

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

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

- 5
- (a) The proposed development is defined in the LEP 2014 Dictionary as Dual Occupancy;
 - (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
 - (c) The proposed development is permitted with consent; and
 - (d) Regards for the proposed residential development to the Zone Objectives as follows:

Zone Objective – R2	Consideration
<ul style="list-style-type: none"> 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. 	The proposed development with its excessive footprint, bulk and scale and floor space ratio is not consistent with the low-density zone objectives.

10

Part 4 – Principal Development Standards

Provision	Compliance	Comment
4.1E Minimum lot sizes for certain residential accommodation	No	<p>A minimum lot size of 800m² applies to dual occupancies (detached) in the R2 Residential Zone.</p> <p>The property has an undersized lot area of ~790.4m², resulting in a 1.2% variation.</p> <p>The applicant submitted a clause 4.6 variation request for this development standard, which is not supported, as detailed below.</p>
4.3 Height of Buildings	yes	A 9m maximum building height applies to the site. It is likely the development is within the 9-metre height limit.

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Provision	Compliance	Comment
		Should the application be approved conditions would apply to ensure compliance.
4.4 Floor Space Ratio	No	<p>At the time of application lodgement, the maximum applicable floor space ratio for this site was 0.5:1 for dual occupancies as per LEP clause 4.4 (2A), however there was a draft LEP that was pending gazettal.</p> <p>The LEP amendment became effective on 23/5/24 changing the applicable floor space ratio of the site to 0.4:1. There are no savings provision.</p> <p>The proposed floor space ratio of 0.5:1 exceeds the maximum floor space ratio of 0.4:1 for dual occupancies by 79 m² and is a recommended reason for refusal.</p>
4.6 Exceptions to development standards	No	<p>Applicant has sought a variation to 4.1 E Minimum lot sizes for dual occupancies by proposing a Dual Occupancy (attached) on an undersized lot with an area of 790.4m², less than the minimum 800m² required.</p> <p>The applicant has submitted a written request that strict compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental grounds to vary the controls.</p> <p>It is considered that the objectives of the development standard are <u>not</u> achieved and there are <u>not</u> sufficient environmental grounds to vary the development standard for the following reasons:</p> <ul style="list-style-type: none"> • A change to LEP clause 4.4(2A) from FSR 0.5:1 to FSR 0.4:1 for dual occupancies which occurred on 24/05/24, with no savings provisions and is a recommended reason for refusal. • The numerous development control and LEP breaches result in substantive impacts to the locality. <p>The proposal is not in the public interest having regards to the objectives of the development standard for the reasons outlined above and it is <u>not</u> recommended that the development standard be varied in this instance.</p>

Part 6 – Additional local provisions

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Provision	Compliance	Comment
6.2 Earthworks	No	<p>Major earthworks up to 7.7m deep are proposed for the 5-storey dwelling, basement and swimming pool. The provided Geotechnical report is deficient and Council cannot be satisfied that the earthworks will not significantly:</p> <ul style="list-style-type: none"> • affect the drainage patterns or soil stability in the surrounding area • affect the development on the existing and likely amenity of adjoining properties, • have adverse impacts on the surrounding environmentally sensitive area. This is a recommended reason for refusal.
6.6 Essential services	No	<p><u>Services</u></p> <p>The site has satisfactory existing electricity and telecommunications connections, mains water and sewage connection.</p> <p><u>Stormwater drainage</u></p> <p>The stormwater issues raised by Council's Development Engineer are yet to be resolved. The updated Stormwater Management Plan fails to demonstrate compliance with easement, design and maintenance requirements of Comprehensive Guidelines for Stormwater Management and Chapter D10 – Handbook of Stormwater Drainage Design. The applicants plan to remove the drain and create a narrow overland channel between the boundary and the subject dwelling is not supported, having regards to the fall from Pandanus Lane to Marine Parade of some 9 metres. The existing drain should be left insitu and the development adequately setback from this infrastructure in accordance with Councils Building in the Vicinity of Underground Infrastructure Policy 2020. This would necessitate the dwelling being setback 3 metres from the western boundary. The proposal is unsatisfactory.</p> <p><u>Vehicular Access</u></p> <p>Vehicular access and manoeuvring from both driveways are non-compliant and inadequate arrangements have</p>

Provision	Compliance	Comment
		<p>been made for vehicular access.</p> <p>The application does not satisfy Clause 6.6 of the LEP.</p>

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

- 5 Changes to Byron Local Environmental Plan 2024 were publicly exhibited through to 29 January 2024. One of these including the removal of subclause (2A) from Section 4.4 of Byron Local Environmental Plan 2014, which reads as follows:

“(2A) Despite subclause (2), the maximum floor space ratio for dual occupancies on land in Zone R2 Low Density Residential is 0.5:1”.

- 10 This in effect reduced the Floor space ratio to 0.4:1.0. The applicant was aware of the potential LEP amendment and submitted the application anyway. The change to LEP Clause 4.4(2A) from FSR 0.5:1 to FSR 0.4:1 for dual occupancies occurred on 24/05/24 as advised to the applicant during pre-lodgement. No savings provisions are included in the LEP amendment, and the application is fatally flawed in terms of floor space ratio.

15 4.4A Byron Shire Development Control Plan 2014 (DCP 2014)

B1 Biodiversity

- 20 The site is mapped as containing High Environmental Value vegetation. The Aboricultural Impact Assessment (Northern Tree Care, Feb 2024) prepared for the proposal notes 12 individual trees and a small group of 3 trees will require removal. Considerations under Section 7.3 of the Biodiversity Conservation Act 2016 (test of significance) are addressed in the Statement of Environmental Effects, and impacts of the proposal upon the two planted Durobbys are not significant. This assessment is agreed with. Should the application be approved conditions to apply.

25

Chapter B3 Services

B3.2.3 Stormwater Management

- 30 The updated stormwater management plan does not demonstrate compliance with easement, design and maintenance in accordance with Byron Council Comprehensive Guidelines for Stormwater management.

The proposal cannot be considered to comply with the provisions of Chapter B3, and the development requires a significant redesign as discussed elsewhere in this report to accommodate the existing stormwater main.

B3.2.4 Sedimentation and Erosion Control Measures

- 5 National Parks and Wildlife Services raised concerns re erosion control measures. Conditions can be recommended if the application is approved.

Chapter B4 Traffic Planning

10 B4.2.3 Vehicle Access and Manoeuvring Areas

Access servicing the Main Dwelling in Marine Pde

The following items are non-compliant:

- 15 (i) The proposed retaining wall within the road reserve is not permitted other than the proposed retaining wall between 17 and 19 Marine Pde as shown on Westera Partners drawing N24-018-PC02 rev B. The maximum longitudinal length of the proposed retaining wall to be 1.76m measured from the front property boundary.
- (ii) widening of the driveway width along the road reserve does not comply with Chapter D1.37 & D1.38 of the Northern Rivers Local Government Guidelines. The driveway must be set square to the road carriageway.
- 20 (iii) sight distances do not meet all parts of clause 3.2.4 of AS2890.1:2004.
- (iv) manoeuvring areas do not demonstrate vehicles to enter and leave the site in a forward direction in accordance with part B4.2.2 and B4.2.3 of Chapter B4 of BDCP 2014.

25 Access servicing the Second Dwelling in Pandanus Lane

The following items are non-compliant:

- (v) manoeuvring in Pandanus Lane failed to clear the retaining wall opposite the proposed driveway and encroaches into the neighbouring driveway opposite the site.
- 30 (vi) the representation of minimum sightlines for pedestrian safety in Kennon Architecture drawing DA103 and Westera Partners drawing N24-018-PC03 rev B. are incorrect. The sight distance does not meet all parts of clause 3.2.4 of AS2890.1:2004.
- (vii) The driveway cross section in and Westera Partners drawing N24-018-PC05 rev B failed clause 2.6.2 of AS2890.1.

The proposal cannot be considered to comply with the provisions of Chapter B4.

35

Chapter B9 Landscaping

B9.5 Dual Occupancy

A landscaping plan was submitted with the application. The proposed plans do not demonstrate each dwelling has a minimum landscaped area of 90m², excluding any area

used for vehicle circulation or parking. The submitted Deep Soil Landscape plan details 29.4% (232.1m²) of the site is deep soil. However, areas of the site are included which are covered by the roof of the dwelling. Insufficient information is provided to demonstrate at least 25% of the site consists of deep soil areas.

- 5 The proposal cannot be considered to comply with the provisions of Chapter B9.

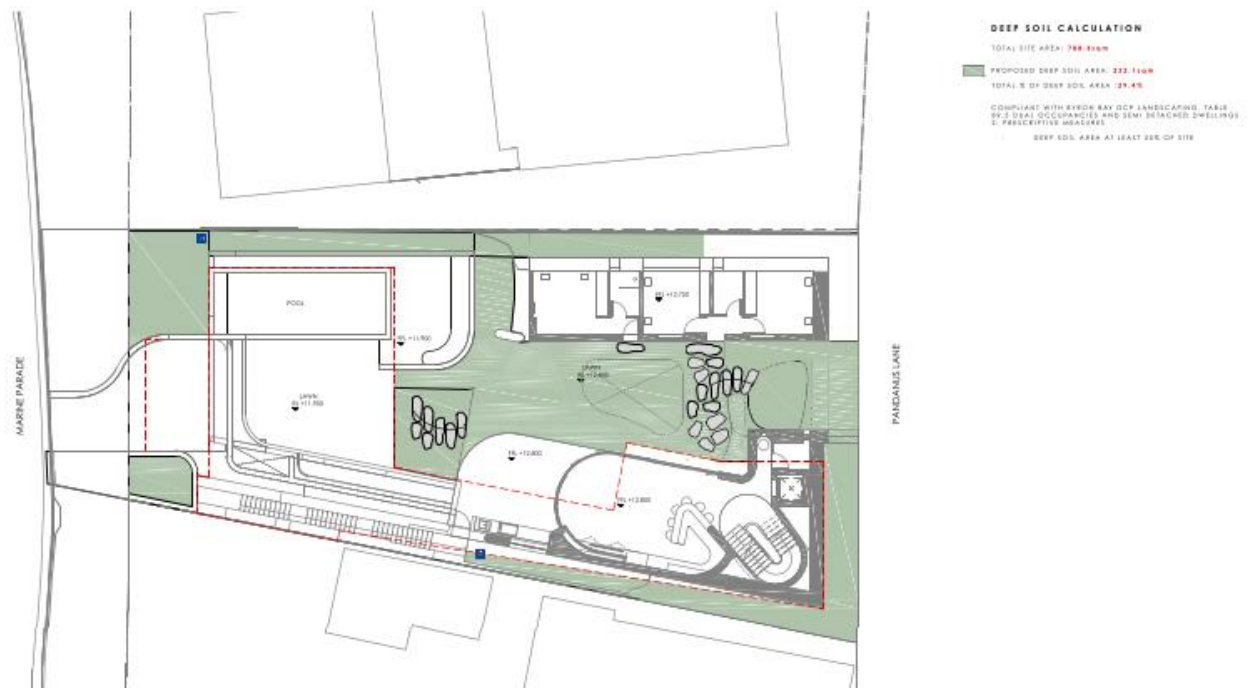


Figure 10: Proposed Deep Soil Plan

10 B14 Excavation and Fill

The proposed excavation works are up to 7.7m deep and are considered excessive. The proposal has not demonstrated compliance Chapter B14 for the following reasons:

- 15 a) The proposal does not demonstrate controlling the extent, character, bulk and scale of earthworks so that both individual and cumulative earthworks over time do not detract from the existing and desired future character of their immediate locality, and the surrounding area.
- b) The proposal does not satisfy prescriptive measure 2, the maximum excavation to satisfy minimum car parking requirements up to a maximum height of 2 metres.
- 20 c) The proposal does not demonstrate geotechnical constraints have been adequately addressed.

- d) The proposal does not satisfy prescriptive measure 9 demonstrating Engineering detail by a suitably qualified structural or geotechnical engineer to be submitted for earthworks on land with a gradient exceeding 15% or where cut and fill of more than 1 metre is proposed.
- 5 The proposal cannot be considered to comply with the provisions of Chapter B4.

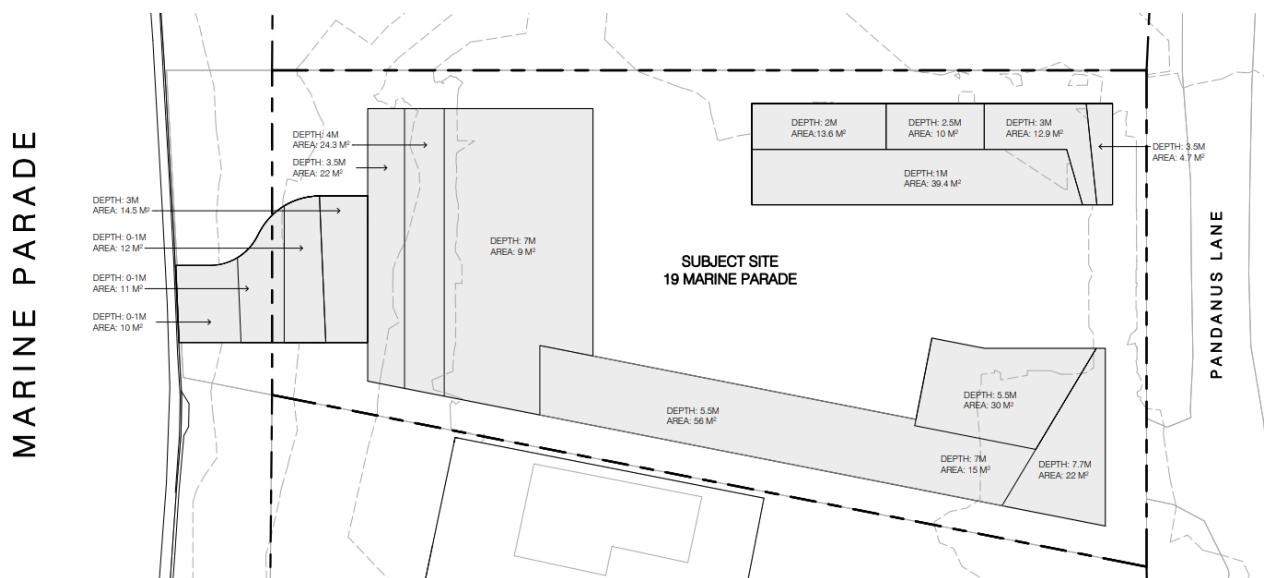


Figure 11: Proposed excavation

C3 Visually Prominent Site

An incomplete Visual Impact Assessment was provided with the initial application. Once the application was lodged an updated Visual Impact Assessment was obtained and the advertising period for the proposal extended to enable full public review.

The updated Visual Impact Statement omitted any visual views from the neighbouring dwellings impacted behind on Pandanus Lane and failed to include the northern neighbour in any visual renders. The building presents as a large solid masonry two storey structure to the laneway as evidenced in the render below.

The development proposes many development control breaches, including reduced setbacks, building height plane encroachments, floor space ratio exceedance, possible building height encroachment and undersized lot for proposed dual occupancy.

The impact on views that arise as a result of the non-compliance with numerous planning controls, is likely to be considered unreasonable. Council is not satisfied that the development is not likely to create adverse visual impacts.

The proposal cannot be considered to comply with the provisions of Chapter C3.



Figure 11: Visual Impact Assessment Render of Southern boundary by Kennon Architects

5 Chapter D1 Residential Accommodation in Urban, Village and Special Purposes

D1.2.1 Building Height Plane

The Building Height Plane encroachment, particularly along the Southern boundary is exacerbated by the reduced setback and the bulk and scale of the approximately 6.7m high straight wall, as seen from the site boundary along Pandanus Lane and is not supported.

The application is not satisfactory because the extent of the encroachment into the building height plane does not comply with the objectives and performance criteria of D1.2.1 of Byron Shire Development Control Plan 2014 given that the development is not set back progressively from the site boundaries as height increases and the application fails to demonstrate that the development will not:

- (a) adversely affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy or obstructing views;
- (b) establish spatial separation between residential dwellings (including domestic outbuildings) from the street and other public reserves, and between allotments, to provide a varied and interesting streetscape, optimise microclimate, and mitigate excessive bulk in built form; or

- (c) integrate with surrounding developments, public reserves and the predominant streetscape character to offer a high level of amenity and establish a sense of openness.

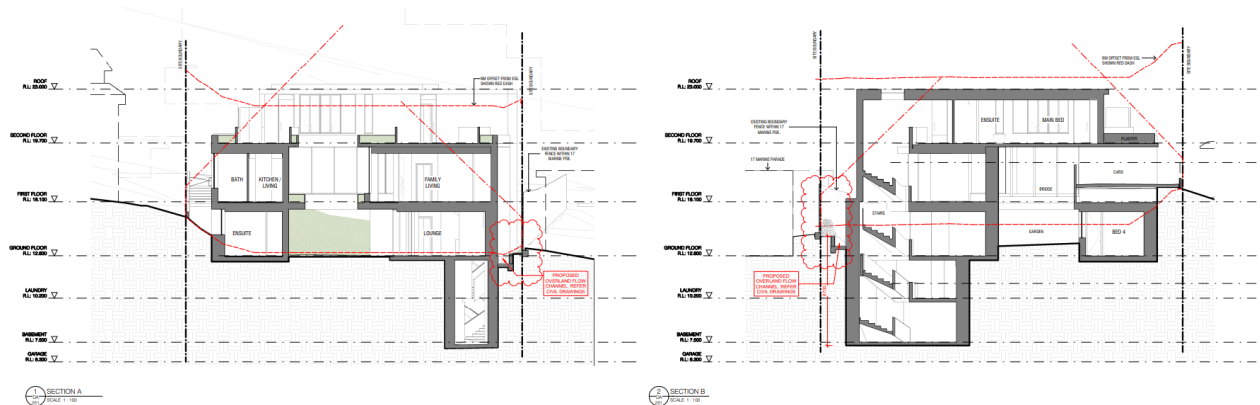


Figure 12: Proposed Building Height Plane encroachment to the two side boundaries

D1.2.2 Setbacks from Boundaries

The development encroaches into the rear lane setback of 3 metres to the building proper with the upper level approximately 2.6 metres from the lane. Other elements of the development at laneway level although not clearly marked on the plan appear to protrude up to the laneway boundary. This includes a solid balustrade fence structure which appears to have created a semi enclosed courtyard to the lane at the garage level, whilst the level below is excavated and retained up to 1.7 metres into this laneway setback. Extracts from the plans are provided below with the encroachments highlighted.

On review of the application, there are no valid reason for these encroachments and the variations are not supported in this instance.



- 5 Figure 13: Encroachments into the rear lane setback and site triangles within the road reserve

D1.2.4 Solar Access

Shadow diagrams were provided by the applicant; however they fail to note the date of the shadowing assessment or show the correct north point. It is likely the proposal will have an adverse impact on the neighbouring dwelling to the west during the morning hours which is a smaller/modest two storey dwelling.

D1.5.3 Privacy

Development must be compatible with the bulk, scale, height and character of adjoining and adjacent development. The reduced rear setback and building height plane encroachment adds to the bulk and scale of the proposed development, likely to be incompatible with the character of the adjoining properties, especially when viewed from Pandanus Lane. With the upper level deck and raised garden lounge area of the main bedroom the privacy of neighbours either side of the development are likely to be impacted upon. The proposal is not supported.

D1.5.4 Private Open Space

The proposed private open space of the second dwelling does not demonstrate a minimum area of 30m² and a minimum length and width each of 4m, is available for the smaller second dwelling. The proposal does not comply.

Chapter E5 Certain Locations in Byron Bay

E5.8.4 Character Narrative

The site is located within pocket C Wategos Beach. It is considered important that future housing remains consistent with the R2 zone objectives, with appropriate bulk and scale and use of natural landscaping. The bulk and scale of the proposed development is considered inappropriate to the character narrative of the locality and over development of the site.

E5.10 Wategos Beach

The applicant requested a variation to this prescriptive control to allow the proposed development to provide a double vehicle garage, a lift and staircase, basement storage areas, plant rooms, a laundry and accessways. The applicant submitted that this control is unnecessarily restrictive as, once completed, basements are not visible from public or private properties.

The proposal does not demonstrate the siting and design of dwelling does not detract from the streetscape and the residential character of the area, have minimal impact on adjoining properties, environment and public domain for the following reasons:

- a) The proposed excavation of the site is excessive with the basement and basement landing area having a combined footprint of approximately 170m². This is in excess of the maximum footprint of 50 square metres. This is in agreement with Council's

recent resolution on 23/5/24 to limit excavation, bulk and scale of development at Wategos via compliance with development controls.

- b) The dwellings and hardstand areas including the swimming pool exceed the maximum site coverage of 50%.
- 5 c) The provided Geotechnical report is deficient and does not address slope stability issues.
- d) The development does not utilise lightweight building and cladding materials and is proposed to be constructed of concrete and stone cladding, likely to detract from the streetscape and residential character of the area.
- 10 e) The updated Visual Impact Assessment is deficient, and Council cannot fully assess the impacts on views and view sharing on neighbouring properties.
- f) The updated stormwater concept plan submitted does not demonstrate compliance with Chapter B3: Services.

The proposal cannot be considered to comply with the provisions of Chapter E5.

15

4.5 Environmental Planning and Assessment Regulation 2021 considerations

Environmental Planning and Assessment Regulations 2021	Applicable to the proposal:	Considered the control as it relates to the proposal:	If this control is applicable, does the proposal comply?
Section 61 - Additional matters that consent authority must consider	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA
Section 62 - Consideration of fire safety	<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 64 - Consent authority may require upgrade of buildings	<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	<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

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	Yes. Proposal considered acceptable if to be approved.
Built environment	<u>The proposal will have a significant adverse impact on the built environment of the locality.</u> As outlined above, the proposed development is not consistent with the design, scale and/or character of the locality.
Social Environment	No. The proposal will not likely have a significantly adverse impact on the social environment.
Economic impact	Yes - The proposal will short term impacts in the construction industry and associate multiplier effects.
Construction Impacts	The development will generate minor impacts during its construction. Conditions of consent would be recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

4.6.2 Marine Estate Management Act 2014

The development is unlikely to have an effect on the plants or animals within the Cape Byron Marine Park or their habitat.

10 4.6.3 Council Policies applicable to the proposed development?

Council Policy	Consideration
Building in the Vicinity of Underground Infrastructure Policy 2020	The proximity to stormwater infrastructure has been assessed by Council's Development Engineer and is inconsistent with the policy.
Water and Sewer Equivalent Tenements Policy	No objections have been raised by Council's ET Engineer in this regard.

4.7 The suitability of the site for the development

The site has not been demonstrated to be suitable for the proposed development for the reasons outlined in this report.

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

The development application was publicly exhibited from 2 April 2024 to 15 April 2024, extended till 26 April 2024 due to the applicant submitting an updated Visual Impact Statement. Fourteen submissions were received.

10 The reasons for objection are summarised and commented on as follows:

View Impacts, non-comprehensive Visual Impact Statement

15 Comment: The application is recommended for refusal because insufficient information has been provided to demonstrate compliance to the development controls of Chapter C3 Visual Impacts and E5.10 Wategos Beach, particularly with regards to view impacts on neighbouring properties.

Car parking manoeuvrability, traffic impacts, driveway impacts on neighbouring property

Comment: The application is recommended for refusal because the proposal does not demonstrate compliance with LEP6.6e and 4.2D and DCP B3.2.1

20 ***Stormwater impacts, incorrect location of pipe***

Comment: The applicant provided an updated survey as requested, which shows the correct location of the stormwater infrastructure located within the applicant's site. An updated stormwater management plan was requested and provided by the applicant.

25 The application is recommended for refusal because the proposed stormwater concept plan does not demonstrate compliance to Clause 6.6(d) of LEP 2014 and Chapter B3.2.3 & Chapter D6 of BDCP 2014

Excessive use of concrete

Comment: The proposed building material of mainly concrete does not comply with the character narrative of Wategos E5.10 and is a recommended reason for refusal.

30 ***Environmental and Ecological concerns***

Comment: Council's Ecologist has reviewed the proposal and advised it satisfactorily addresses Chapter B1 Biodiversity and the Biodiversity Act.

Building height plane encroachments, setbacks non-conformity

Comment: The application is recommended for refusal because the extent of the encroachment into the building height plane does not comply with the objectives and performance criteria of D1.2.1 of Byron Shire Development Control Plan 2014 given that the development is not set back progressively from the site boundaries as height increases and the application does not demonstrate that it will not:

1. adversely affect existing or future development on adjoining properties by way of overshadowing, impinging on privacy or obstructing views;
2. establish spatial separation between residential dwellings (including domestic outbuildings) from the street and other public reserves, and between allotments, to provide a varied and interesting streetscape, optimise microclimate, and mitigate excessive bulk in built form; or
3. integrate with surrounding developments, public reserves, and the predominant streetscape character to offer a high level of amenity and establish a sense of openness.

Site coverage, floor space ratio, insufficient lot size

Comment: The lot is undersized for the proposed dual occupancy and the applicant submitted a 4.6 variation request. The floor space ratio applicable to the proposal was amended during the assessment period from 0.5 to 0.4:1. Thus the proposed 0.5:1 FSR does not comply with clause 4.4 BEP 2014. The proposed site coverage does not comply with the maximum 50% as per DCP E5.10 Wategos. The numerous development control non compliance issues demonstrate the proposed development is not suitable for the site and is a recommended reason for refusal.

Building height breach, incorrect survey points, lack of measurements on plans

Comment: Insufficient information was provided on the proposed building height to determine if there is a breach. However, it is expected the existing ground level would dip in the area of the existing dwelling footprint to be demolished, however this is not demonstrated. Should the application be approved it is likely conditions of consent would be drafted to lower the building to ensure compliance.

Excessive Excavation and geotechnical concerns

Comment: The proposed excavation of the site of up to 7.7m deep is considered excessive and does not comply with BDCP 2014 Chapter B14 and E5.10. The provided Geotechnical report is insufficient to adequately address the geotechnical constraints of the site and is a recommended reason for refusal.

Short term rental accommodation

Comment: Noted

Disregard for Legal and Community Standards due to overall noncompliance of the proposal

Comment: Noted

Amenity of Second dwelling (dual occupancy), landscaping noncompliance

- 5 Comment: Noted and as discussed above in the report.

Privacy and overlooking exacerbated by rooftop amenity

Comment: The over development of the lot exacerbates the privacy and overlooking concerns by neighbouring dwellings and does not comply with D1 Privacy.

Overshadowing

- 10 Comment: Noted and as discussed in the report.

Light pollution

Comment: Should the application a Lighting Assessment report would be required to assess any impacts.

4.9 Public interest

- 15 The proposed development having regards to the issues raised in this report is considered to be an overdevelopment of the site and is not in the public interest.

5 Developer Contributions

5.1 Water & Sewer Levies

Section 64 levies will be payable if the development was approved.

- 20 **5.2 Developer Contributions**

Developer Contributions would be required if the development was approved.

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"/>

CONCLUSION

- 5 The proposed dual occupancy is contrary to numerous planning provisions under Byron LEP 2014 and Byron DCP 2014 and is considered to be an overdevelopment of the site. Based on the issues identified in the assessment report, the site is not considered to be suitable for the proposed development, is contrary to the public interest and is recommended for refusal.

REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY

**Report No. 14.1 Report of the Housing and Affordability
Advisory Committee Meeting held on 30 May
2024**

5

Directorate: Sustainable Environment and Economy

File No: I2024/968

Summary:

- 10 This report provides the minutes of the Housing and Affordability Advisory committee Meeting held on 30 May 2024

RECOMMENDATION:

- 15 1. That Council notes the minutes of the Housing and Affordability Advisory Committee Meeting held on 30 May 2024.
2. That Council adopts the following Committee Recommendation(s):
- Report No. 3.1 Adopted Minutes Housing and Affordability Committee Meeting held 16 November 2023**
File No: I2024/91
- Committee Recommendation 3.1.1**
- That the minutes of the Housing and Affordability Advisory Committee Meeting held on 16 November 2023 be confirmed.
3. That Council adopts the following Committee Recommendation(s)
- Report No. 4.1 Future Items Report**
File No: I2024/358
- Committee Recommendation 4.1.1**
- That the Housing and Affordability Advisory Committee:
1. Requests staff to follow up with Dr Michael Klein the potential for either a

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REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY 14.1

prerecorded presentation or an evening session at a future committee meeting.

2. Supports staff looking at opportunities to participate in discussions on module housing that may occur through government review or conferences.

4. That Council adopts the following Committee Recommendation:

Report No. 4.2 Housing Initiatives and Project Updates Report

File No: I2024/357

Committee Recommendation 4.2.1

That the Housing and Affordability Advisory Committee notes the update on current initiatives and projects being progressed by Council staff and thanks staff for their ongoing efforts.

5. That Council adopts the following Committee Recommendation(s):

Report No. 4.3 Inquiries Legislative Assembly Committee on Environment and Planning - Historical development consents in NSW

File No: I2024/811

Committee Recommendation 4.3.1

That the Housing and Affordability Advisory Committee:

1. Considers the Terms of Reference for the NSW Legislative Assembly Inquiry into the impact of historical consents, and whether committee members want to contribute to a staff submission.
2. Subject to item 1, provides staff with their comments relevant to the Terms of Reference for inclusion in the staff submission to the Inquiry.

Attachments:

5

- 1 Minutes Housing and Affordability Advisory committee held 30 May 2024, I2024/879 

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REPORTS OF COMMITTEES - SUSTAINABLE ENVIRONMENT AND ECONOMY 14.1

Report

The attachment to this report provides the minutes of the Housing and Affordability Advisory Committee Meeting of 30 May 2024 for determination by Council. The agenda for this meeting can be located on Council's website at:

- 5 [Agenda of Housing and Affordability Advisory Committee Meeting - Thursday, 30 May 2024](#)

The following items were considered by the Committee:

Report No. 4.1 Future Items Report

Report No. 4.2 Housing Initiatives and Project Updates Report

- 10 **Report No. 4.3 Inquiries Legislative Assembly Committee on Environment and Planning - Historical development consents in NSW**

Financial Implications

As per the Reports listed within the Housing and Affordability Advisory Committee Meeting of 30 May 2024.

- 15 **Statutory and Policy Compliance Implications**

As per the Reports listed within the Housing and Affordability Advisory Committee Meeting of 30 May 2024.

QUESTIONS WITH NOTICE

Question with Notice No. 15.1 Council Policies and 57 Station Street

5 File No: I2024/1058

Cr Duncan Dey asks the following questions:

- 10 Council resolved in its previous term 2016-2021 to investigate housing over car parks. In the current term 2022-2024 a project started as *housing over carpark* became housing instead of carpark and now includes selling the carpark (at 57 Station Street, Mullumbimby). During this term of Council, the State-run land developer Landcom has presented at several confidential Councillor Workshops on the housing benefits of this development, for which Landcom and Council appear to be the developers.
- 15

Over the 2022-24 life of the project, Housing Providers also became involved. They discovered that the project could not proceed as it did not stack up economically. To make the project viable, Council resolved (Res 24-252 of 23 May) to *donate* the land at 57 Station Street to the project.

- 20 The land sale includes a covenant to be registered on the title that requires the land be transferred back to Council if the land ceases to be used for the purpose of affordable housing.

Council has two Policies that apply here. The following questions relate to each Policy.

- 25 In relation to our Policy "Land Acquisition and Disposal" (adopted in 2024; pages 4 to 6 attached below):

1. how was the main and only policy Objective met in the case of disposing of 57 Station Street? That objective is "to ensure that Byron Shire Council has an open and accountable framework for the acquisition and disposal of land".
 2. which circumstance in the list in Section 4.2 of the Policy enabled sale by direct negotiation?
 3. was a Probity Plan developed as required by the Policy and is that Plan available to the public?
 4. how does the Probity Plan deal with the Conflict(s) of Interest inherent in this project?
 5. what process will be followed in relation to Part e) of Section 4.2 of the Policy?
- 30

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QUESTIONS WITH NOTICE

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In relation to our Policy “Managing conflicts of interest for Council related development” (adopted in 2023; pages 4 to 6 attached below):

6. has a conflict or conflicts of interest been identified in relation to this project?
7. has Council identified this or these conflicts of interest early enough to demonstrate “good governance” and to “allow council to strengthen our relationship with communities and build and enhance trust”? These quotes are from Part 2 Statement in the Policy.

In relation to a conflict of interest that appears not covered by these two Policies:

8. is Council exposed to liabilities arising from conflict inherent in the condition of sale of 57 Station Street namely that, if the property ceases to be used for affordable housing, it reverts to Council’s ownership? The conflict is that Council would gain an asset worth about \$1m, plus the value of buildings to be built on it.
9. who will assess over the years as to whether that sale condition is being fulfilled?
10. how likely is it that the future landowner would win a future case against repossession?

Response Matt Meir, Legal Counsel:

Responses to the questions, as numbered, are provided below:

Land Acquisition and Disposal Policy:

1. **how was the main and only policy Objective met in the case of disposing of 57 Station Street? That objective is “to ensure that Byron Shire Council has an open and accountable framework for the acquisition and disposal of land”.**

The relevant, public resolutions of the elected body in dealing with the land are the chief way the policy’s objective is met.

2. **which circumstance in the list in Section 4.2 of the Policy enabled sale by direct negotiation?**

The proposed land transfer in this project isn’t by direct negotiation under the policy. That’s because the preferred community housing provider (CHP) was selected after a public tender run by Landcom and Council.

3. **was a Probity Plan developed as required by the Policy and is that Plan available to the public?**

A Council probity plan under the policy is required where a proposed land sale is by direct negotiation. As noted above, the project’s preferred CHP was selected via a public tender.

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QUESTIONS WITH NOTICE

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4. **how does the Probity Plan deal with the Conflict(s) of Interest inherent in this project?**

See above.

5. **what process will be followed in relation to Part e) of Section 4.2 of the Policy?**

5 *Again, this part of the policy deals with sale by direct negotiation. The 57 Station Street project isn't a proposed sale by direct negotiation.*

Managing conflicts of interest for Council related development

6. **has a conflict or conflicts of interest been identified in relation to this project?**

10 *The Managing Conflicts of Interest for Council Related Development Policy applies to council-related development. This is defined in the policy as development for which the council is the applicant developer (whether lodged by or on behalf of council), landowner, or has a commercial interest in the land the subject of the application.*

15 *No such application has been lodged and therefore the Policy does not apply at this stage.*

7. **has Council identified this or these conflicts of interest early enough to demonstrate “good governance” and to “allow council to strengthen our relationship with communities and build and enhance trust”? These quotes are from Part 2 Statement in the Policy.**

Part 3.2 of the Policy is undertaken when an application is lodged. This part requires that:

(1) The General Manager (or delegate) is to:

- 25 a. *assess whether the application is one in which a potential conflict of interest exists,*
b. *identify the phase(s) of the development process at which the identified conflict of interest arises,*
30 c. *assess the level of risk involved at each phase of the development process,*
d. *determine what (if any) management controls should be implemented to address the identified conflict of interest (in each phase of the development process if necessary) having regard to any controls and strategies outlined in Section 3.1 of this Policy and the outcome of this assessment of the level of risk involved as set out clause 3.2(1)c. of this Policy, The General*
35 *Manager (or delegate) could determine that no management controls are necessary in the circumstances.*
e. *document the proposed management approach for the proposal in a statement that is published with the application during exhibition.*

In relation to a conflict of interest that appears not covered by these two Policies:

- 40 8. **is Council exposed to liabilities arising from conflict inherent in the condition of sale of 57 Station Street namely that, if the property ceases to be used for**

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affordable housing, it reverts to Council's ownership? The conflict is that Council would gain an asset worth about \$1m, plus the value of buildings to be built on it.



5 *Council staff don't think that trying to protect the public's interest in the land amounts to a conflict in Council's interests.*

9. who will assess over the years as to whether that sale condition is being fulfilled?

It's up to Council as a party to the relevant agreements to ensure they are adhered to, just like any other agreement Council enters.

10 **10. how likely is it that the future landowner would win a future case against repossession?**

Attachments:

- 15 1 Aqu & Disp policy Pp 4-6, E2024/82287 
2 C of I policy Pp 4-6, E2024/82289 

CONFIDENTIAL REPORTS - INFRASTRUCTURE SERVICES

Report No. 16.1 CONFIDENTIAL - Exemption from Tender and Extension of Contract 2014-0011 - Waste and Resource Recovery Collection Service

Directorate: Infrastructure Services

Report Author: Mila Jones, Governance and Internal Audit Coordinator

File No: I2024/987

Summary:

This report seeks approval to extend the current Waste and Resource Recovery Collection Service Contract 2014-0011 beyond the contract's expiration date of 4 August 2025 (including all available extension options).

Recent changes in industrial legislation (*Local Government (General) Regulation 2021*) have created an extra layer in complexity to the tender process for waste contracts which was not anticipated when developing the procurement strategy for a new Contract.

As such, this report seeks an exemption from going to tender as:

1. it may result in financial inefficiencies if Council approaches the market to procure another contract at this stage.
2. the timeline to establish a new contract (including the provision of new waste collection trucks) is too short to meet the 4 August 2025 transition to the next service provider under the recently introduced legislation.

RECOMMENDATION:

1. That pursuant to Section 10A(2)(c) of the Local Government Act, 1993, Council resolves to move into Confidential Session to discuss the report Exemption from Tender and Extension of Contract 2014-0011 - Waste and Resource Recovery Collection Service.
2. That the reasons for closing the meeting to the public to consider this item be that the report contains:
 - a) information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business
3. That on balance it is considered that receipt and discussion of the matter in open Council would be contrary to the public interest, as:

it would compromise Council's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.