

# Agenda Ordinary (Planning) Meeting

Thursday, 14 November 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**



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## CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

### Disclosure and participation in meetings

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



Committee:

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

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

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

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

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

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## RECORDING OF VOTING ON PLANNING MATTERS

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

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



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## OATH AND AFFIRMATION FOR COUNCILLORS

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



# BYRON SHIRE COUNCIL

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### 14. QUESTIONS WITH NOTICE

Nil

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

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



NOTICES OF MOTION

**Notice of Motion No. 9.1 Heritage buildings in Mullumbimby**

**File No:** I2024/1482


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**I move that Council:**

- 10      1.    **Does everything in its power to retain, control and restore the (old stationmaster's) house and the train station building in the rail corridor in Mullumbimby; and**
- 15      2.    **Receives a report on the progress of the licence negotiations with TfNSW and TAHE, that will see a significant section of rail corridor coming into Council hands, including next steps on how to determine the mix of open space and parking as per the Mullumbimby Masterplan.**

**Attachments:**

- 20      1      Petition - Save Mullums Oldest House from Destruction and Keep it in Community Hands  
E2024/130835 

**Signed: Cr Michael Lyon**

**Councillor's supporting information:**

25      Following requests from the Brunswick Valley Historical Society and Mullumbimby Chamber of Commerce I am putting this NOM forward to ensure we work towards keeping, restoring and utilising these two buildings in the rail corridor. Both buildings sit within the rail corridor footprint that is to be transferred to Council by way of licence, if it hasn't been already, and it would be good to get an update on how this is progressing and the exact scope/footprint of the licence. It has been said that the old stationmaster's house is the oldest existing structure in Mullumbimby. Whilst there is some lead contamination, it

30      hopefully will not prevent us from using the house for commercial purposes associated with the rail trail and ensure Council derives some income to help cover the ongoing maintenance costs.

35      The fire that destroyed the roof of the station building does not seem to have had a massive impact on the walls, which by all accounts seem to still be in good condition and capable of supporting restoration. This type of heritage is in my view very worthy of protecting and I am very happy to support the requests to put this NOM forward.

[Petition - Save Mullum's Oldest House from Destruction and Keep it in Community Hands - Mullumbimby, Australia - Change.org](#)



# BYRON SHIRE COUNCIL

## NOTICES OF MOTION

9.1





## Staff comments

by Shannon Burt, Director, Sustainable Environment and Economy:

Council received Notice of Motion No. 9.6 Mullumbimby Railway Station on the [Agenda of Ordinary \(Planning\) Meeting - Thursday, 1 August 2024](#) and resolved :

- 5 **24-365 Resolved that Council lobbies Transport for NSW:**
1. *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.*
  2. *To prevent the demolition of the Railway Cottage and find alternative ways to deal with any contamination surrounding this valuable historical Cottage. (Lyon/Ndiaye)*
- 10 Discussions with Transport for NSW are ongoing in relation to the future of the Mullumbimby Rail Station and the former Station Masters Cottage. It is understood that investigations into the building integrity, and other site issues for both are being undertaken with a view to retain the buildings either as is, or as an adapted use and form if legal, safe, and feasible. Transport for NSW are yet to decide.
- 15 In relation to the licence negotiations for the Rail Corridor, these are being progressed in stages.
- Council has recently been issued its first licence for a part of the rail corridor land which will be developed as car parking. This carparking will replace the car parking on 57 Station Street once this site is developed for Affordable Housing.
- 20 A second licence under consideration is for the remainder of the rail corridor land, (not including the Temporary Housing Village). This larger licence area will accommodate additional car parking for the town centre, new community open space and amenities facilities. Once this second licence is issued, next steps on how to determine the mix of open space and parking as per the Mullumbimby Masterplan can occur.

## 25 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



## Notice of Motion No. 9.2 Finding a space for Queer Family

File No: I2024/1490

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I move that Council:

1. Requests a report investigating Council-owned or managed properties that could provide a suitable permanent home for Queer Family, with the report to consider:
  - 10 a) Space requirements to support both community gatherings and confidential service delivery
  - b) Accessibility and safety considerations for service users
  - c) Both immediate temporary and long-term permanent solutions
  - 15 d) Potential locations across the Shire
  - e) Estimated costs and potential funding sources
  - f) Timeline for implementation
2. Receives a briefing from Queer Family representatives about their service delivery needs and current challenges.
3. Considers, if no Council-owned or managed properties are identified, options  
20 to support Queer Family to find an alternative home to ensure this vital service can continue to operate in our Shire.

Signed: Cr Elia Hauge

### 25 Councillor's supporting information:

Since 2019, Queer Family has provided essential support services and community connection for LGBTQIA+ people in the Byron Shire, engaging with over 2,000 community members. As the only dedicated LGBTQIA+ service provider between Lismore and the Queensland border, they play a crucial role in reducing social isolation and improving  
30 mental health outcomes for queer community members.

The lack of stable accommodation has impacted Queer Family's ability to deliver consistent services, having relocated multiple times in recent years. After having a private lease terminated earlier this year, they have been operating out of a single room at the  
35 community college. The lease is up at the end of 2024, and space is not fit for purpose given its size and lack of privacy.

A dedicated space would enable Queer Family to:

- Provide confidential support services in a safe environment



- Host community events and social connection activities
- Secure their long-term future in the Byron Shire
- Expand their service delivery to meet growing community need

5 Research conducted in Mullumbimby in 2019 identified that vulnerable LGBTQIA+ community members were experiencing isolation and difficulty accessing support services, highlighting the importance of maintaining this vital service. Studies show LGBTQIA+ individuals experience significantly higher rates of psychological distress, with research indicating that interpersonal connection and engagement with LGBTQIA+ community services can serve as crucial protective factors against poor mental health outcomes. Those living in regional areas face particular challenges, with LGBTQIA+ people outside metropolitan centres reporting higher rates of discrimination, reduced access to support services, and poorer mental health outcomes compared to their urban counterparts. These impacts are often compounded for those facing multiple forms of marginalization, such as disability or cultural background, making dedicated local LGBTQIA+ services like Queer Family essential for providing culturally-safe, identity-affirming support.

20 The Rainbow Realities report provides a thorough snapshot of queer health and wellbeing in Australia, for further background on the need for support services (Available at: [lgbtiqhealth.org.au/rainbow\\_realities](https://lgbtiqhealth.org.au/rainbow_realities) . Amos, N., et al, on behalf of the Private Lives 3, Writing Themselves In 4, SWASH, Trans Pathways, Walkern Katatdjin, and Pride and Pandemic teams (2023). *Rainbow Realities: In-depth analyses of large-scale LGBTQIA+ health and wellbeing data in Australia*. Melbourne, Australia: Australian Research Centre in Sex, Health and Society, La Trobe University.)

25 This motion aligns with multiple objectives in Council's Community Strategic Plan 2032, particularly:

- Strategy 2.2: "Enhance safety and contribute to the physical, mental, and spiritual health and wellbeing of the community"
- Strategy 2.5: "Create social impact and initiatives that address disadvantage"

30 The 2024-25 Operational Plan also identifies "access to services" and "community wellbeing" as key priorities under the Inclusive Community objective

## Staff comments

**by Esmeralda Davis, Director Corporate & Community Services**

35 Staff are supportive of the important work delivered by Queer Family for LGBTQIA+ community members and in 2021, Council funded \$5,000 through the Community Initiatives program to support Queer Family and the new Queer Peers project by funding two major events for the LGBTQIA+ community and allies.

40 Staff acknowledge the passion and commitment of Queer Family and the challenges facing the service as a result of a lack of suitable space to operate from. Staff have engaged in meetings with Queer Family on at least two separate occasions recently, to receive information about their needs and to provide advice on available options. Council currently has no community buildings that are available for use by Queer Family or any other interested group/organisation.



Offers of support to Queer Family have included guidance on Development Application processes, offer to provide a letter of support for grant funding opportunities, advice on utilisation of community halls and associated fees including the process for fee waiver/reduction, and encouragement to pursue partnerships or hire arrangements with other organisations.

Council regularly receives requests for community buildings. These have recently included domestic and family violence crisis accommodation, preschool operations, community libraries, rehearsal and performance space, for example. Council has been unable to accommodate these requests due to lack of available buildings. This demand also highlights the need for a more transparent and equitable process for the alignment and allocation of community buildings with community priorities. Staff will be considering how this may be achieved, when resourcing permits the prioritisation of this work.

A report could be prepared by staff as requested in point 1 of this motion, however it is unlikely to yield a different outcome unless there's an unexpected change of occupancy in one of Council's community buildings. If a building were to become available, Council would be required to ensure consistency of the proposed use with planning controls and other approvals and would generally undertake a competitive expression of interest process to ensure equity, fairness, and transparency.

It is a matter for Councillors to determine if they wish to receive a briefing from Queer Family representatives about their service delivery needs and current challenges. This could be accommodated at a future Councillor Workshop.

### Financial/Resource/Legal Implications:

The preparation of a report to Council can be accommodated within existing resources, noting staff comments about likely outcome of this investigation based on prior consideration of this issue.

In accordance with Council's Leasing and Licencing Policy 2021:

*Leases and licenses will only be granted over Council owned and managed facilities and land where the proposed occupation is:*

- 1. for a lawful purpose, and*
- 2. permitted by relevant planning instruments, and*
- 3. in accordance with relevant legislation, if for use of community land or community facilities, and*
- 4. following community consultation.*

*A lease or license may only be granted to:*

- 1. not-for-profit or charity organisation that can demonstrate:*
  - a. a not-for-profit or charity status,*
  - b. use of the facility or land will meet a community or Council need,*
  - c. governance capacity and financial viability to hold a lease or license, and*
  - d. relevant insurance covers.*



## BYRON SHIRE COUNCIL

### NOTICES OF MOTION

9.2

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

<b>CSP Objective</b>	<b>CSP Strategy</b>	<b>DP Action</b>
2: Inclusive Community	2.5: Create social impact and initiatives that address disadvantage	2.5.2: Advocacy - Advocate for services and funding to enhance social outcomes across the Shire



STAFF REPORTS - GENERAL MANAGER

**Report No. 13.1      Submission to review of Councillor conduct rules**

5    **Directorate:**                      General Manager

**Report Author:**                Matt Meir, Legal Counsel  
   Heather Sills, Manager Corporate Services

**File No:**                         I2024/1460

**Summary:**



10    This report contains Council's submission to the current Office of Local Government review into the Councillor conduct framework.

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15    **RECOMMENDATION:**

**That Council notes the draft submission to the OLG's Councillor Conduct Framework review.**

**Attachments:**

- 20    1      OLG Councillor Conduct and Meeting Practices Discussion Paper - September 2024, E2024/128100 
- 2      Letter - Council to OLG NSW - response to OLG discussion paper - Councillor conduct framework review - November 2024, E2024/128089 

25



## Report

### Context

On 5 September 2024, the NSW Government proposed reforms to the Code of Conduct system for Councillors (Review).

- 5 To support the Review, the NSW Government has released a discussion paper (see attachment to this report).

The discussion paper raises various policy questions about how NSW Local Councils should operate.

In response, Council has drafted a submission to the Review.

- 10 Council's response is based on the questions posed in the discussion paper.

The discussion paper's relevant context and questions, and Council's responses, are below.

Because the submission deadline is the day after this Council meeting, substantive changes to the submission cannot be made within time.

- 15 This is why the report recommends Councillors note the submission.

Individual Councillors can make further submissions to the OLG review by close of business on Friday 15 November, via the [OLG website](#).

### Discussion paper

- 20 Underpinning the Review's position is an argument is that the current Councillor "conduct framework" – largely comprising the Councillor Code of Conduct (Code) and associated *Local Government Act 1993* provisions – isn't working.

The discussion paper states at page four:

- 25 *Unfortunately, the existing councillor conduct framework is not delivering on the need for transparency or the necessary degree of respect in the community for the role that councillors have.*

Broadly, the paper (see page 5) sees several weaknesses in the Code system, including that it:

- 30
- Encourages trivial complaints.
  - Chills democratic debate.
  - Is weaponised for political reasons.
  - Creates lengthy and expensive investigations into alleged breaches.
  - Causes difficulties for the Office of Local Government (OLG) as the sector regulator.



In response, the NSW Government wants to (see page 6):

- Make OLG directly responsible for dealing with pecuniary interest and significant non-pecuniary conflicts of interest, with sanctions being determined by an appropriate tribunal or body.
- 5 • Refer behavioural based concerns about Councillor conduct to a State-wide panel of experienced Councillors.
- Change the Code to be similar to NSW Parliamentary codes, to clarify expected Councillor behaviour.
- 10 • Ban “closed to the public briefing sessions”, and “restore the dignity and prestige” of the Council chamber.

### Questions and answers

In the above context, the discussion paper asks a series of questions about its proposed changes.

- 15 Council’s submission responds to these questions, as per the answers below (in Council teal).

Relevant context from the discussion is also included below.

### Change principles

The first discussion paper question relates to the principles underpinning the proposed Code changes (see page 7). They are:

- 20 • Council leadership and decision making is paramount.
- Freedom of speech.
- Transparency and accountability.
- A strong and proportionate local government regulator.
- Subsidiarity.
- 25 • Justice is timely and proportionate.

#### Question:

*Are we missing anything in the principles of change?*

#### Response:

Broadly, no. Council’s view is that the principles are sound.

- 30 It notes that some principles intersect – for instance, freedom of speech for both elected representatives and their electors is fundamental to democratic Council leadership and decision making.



## BYRON SHIRE COUNCIL

### STAFF REPORTS - GENERAL MANAGER

13.1

And it also notes that it wouldn't weight each principle equally. In this context, freedom of speech should be emphasised in an effort to reduce the number of trivial Code of Conduct complaints.

- 5 By contrast, subsidiarity is less important. In some cases, the proposed changes will result in a move away local decision making – e.g., having a statewide standards committee for Councillors. But in this context, that is a good thing.

#### **Code and oath of office**

The proposed reforms would substantially shorten the current Councillor Code.

At page eight, the discussion paper states:

- 10 *The key proposed reform for the councillor behavioural framework is to move to a streamlined, aspirational Code of Conduct. This is equivalent to the Code of Conduct framework for NSW Members of Parliament.*

*It is proposed to make the new Code of Conduct an aspirational code of expected behaviours instead of enforceable for local councillors.*

- 15 This is in contrast to the substance of Council's current Code – based on the model code applicable in NSW – which is more than 20 pages long, and a breach of which can constitute Councillor 'misconduct' under the *Local Government Act 1993* (LG Act).

#### Questions:

*What are the key elements of an aspirational Code of Conduct that should be enshrined?*

- 20 Response:

Council sees merit in an aspirational code of conduct being brief. It regards the NSW Parliamentary codes as reasonable starting points for a revised Councillor code.

- 25 In Council's experience, trivial complaints under the Code are generally linked to the 'general conduct' obligations under part three. It notes there isn't an equivalent set of obligations under the NSW parliamentary codes.

The trade-off for a shortened Councillor code may be that some of the current provisions that reflect NSW local government structures need to be moved to the *Local Government Act 1993* or Regulation. For instance, the provisions of part 7 of the Code – regarding the relationship between elected Councillors and Council staff.

- 30 Question:

*What are your views about aligning the Oath of Office to the revamped Code of Conduct?*

#### Response:

Council generally supports the oath of office referring to a reformed Code.



**Changes re: Councillor misconduct**

This is the discussion paper's largest section. It covers:

- Conflicts of interest.
- Councillors as real estate developers.
- 5 • Councillor misbehaviour.
- Lobbying.

The discussion paper argues that the current meaning of Councillor misconduct is complex. At page nine, the paper states:

10 *The current Local Government Act defines councillor misconduct as a breach of the Local Government Act or other regulatory provisions, which includes the Code of Conduct.*

*This means that it is difficult for the average person to understand the definition of misconduct as they need to reference several other regulatory instruments and policy documents to determine what constitutes.*

15 Broadly, the paper suggests that the [current definition of 'misconduct'](#) under the LG Act be set at a higher threshold by only covering:

- Pecuniary conflicts of interest.
- Significant non-pecuniary conflicts of interest.
- Some poor behaviour in public office.

20 On pecuniary interests, the paper proposes to align the pecuniary interest meaning with that used for NSW members of parliament (see page 10).

Questions:

*Is the proposed pecuniary interest framework appropriate? Is anything missing?*

Response:

25 [The framework is appropriate.](#)

On non-pecuniary interests, the paper recognises these feature more shades of grey than pecuniary interests. At page 10, the paper notes:

30 *The nature and breadth of non-pecuniary interests naturally means that the framework for management of such interests is more nuanced, with the management approach often dependent upon the individual circumstances of the case.*

Question:

*Do you agree with the principles of what constitutes a significant or major non-pecuniary interest?*



## BYRON SHIRE COUNCIL

### STAFF REPORTS - GENERAL MANAGER

13.1

#### Response:

Yes.

- 5 On Councillors with real estate interests, the paper notes (pages 11-12) that legislation is being considered to prevent Councillors serving two masters. The core of the proposed laws appears to be an obligation on Councillors to divest any real estate or property development interests.

#### Question:

*Are there any other specific features that should be included to address concerns about councillors undertaking real estate and development business activities?*

- 10 Response:

Council has no further suggestions.

On Councillor poor behaviour, this part of the proposed revision to the meaning of Councillor misconduct contains three limbs. This is the paper at page 12:

- 15 *There would be three limbs to this proposed misbehaviour definition being conduct that:*
- *Is unbecoming of a councillor;*
  - *Brings council into disrepute; and/or*
  - *Is assessed as being outside the norms and expectations of a sitting councillor.*

- 20 The paper argues judgments about Councillor behaviour should be made by experienced Councillors via a new 'Local Government Privileges Committee' (see page 13).

#### Questions:

*Is this the appropriate threshold to face a Privileges Committee? How else can complaints be minimised?*

- 25 Response:

Generally, yes.

On complaint minimisation – beyond a streamlined Code no longer being enforceable, but only aspirational – further consideration should be given to who can refer a Councillor to the proposed Privileges Committee.

- 30 On lobbying, the OLG is developing guidelines and a model policy on lobbying (see page 13 of the paper).

#### Question:

*What key features should be included in lobbying guidelines and a model policy?*

#### Response:



Professional lobbying isn't a significant feature at Byron Shire Council. However, Council generally thinks the proposed guidelines and policy should be guided by a principle of maximum transparency regarding the work of lobbyists.

- 5 This principle should support measures such as lobbyist registration and near to real-time disclosure about when lobbyists meet with elected representatives.

Council thinks the bigger challenge is to provide increased transparency around amateur lobbying of Councillors where the purpose of that lobbying is to further a person's financial interests.

### Disputes and penalties

- 10 The discussion paper proposes substantial reforms regarding dispute resolution and penalties.

The paper (see page 14) explains:

- 15 *The approach being proposed is to create clear separation between the process for consideration of conflicts of interest and the processes for consideration of misbehaviour.*

*This has the benefit of removing general managers from being central to the complaint process.*

- 20 Serious conflicts of interest would be handled solely by the OLG. This would remove the current need for an investigation by a third-party prior to the matter potentially being referred to the OLG.

Meanwhile, misbehaviour complaints would be made to the proposed Privileges Committee discussed above.

The paper asks no questions about these proposed changes.

Instead, the paper assumes these changes and asks about:

- 25
- The OLG being empowered to issue penalty infringement notices as a remedy for minor conflict of interest breaches.
  - Proposed penalties from the Privileges Committee.
  - The appropriate body for some sanctions against Councillors.

### Question:

- 30 *What level of PIN is appropriate?*

### Response:

This is a matter for the NSW Parliament.

- 35 However, Council notes that the current highest penalty notice under the LG Regulation is \$330 – mostly for carrying out an activity without approval or failing to comply with an order.



## BYRON SHIRE COUNCIL

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Interest declaration requirements are fundamental to Councillors performing their role in the public interest. A Councillor's competing interests must be on the public record.

Given this, Council's view is that a breach of these provisions will generally be more objectively serious than the above breaches of the LG Act.

- 5 As a result, Council thinks a penalty notice in the high hundreds and working up from there is a reasonable starting point. Infringements could also potentially be scaled according to how long it took a Councillor to publicly declare any interests.

Question:

- 10 *Are the penalties proposed appropriate, and are there any further penalties that should be considered?*

Response:

A time-limited ban on attending further Council or committee meetings should also be considered as a proposed penalty.

Question:

- 15 *Are the existing sanctions available under the Local Government Act sufficient?*

Response:

Generally, yes.

- 20 If the NSW Civil and Administrative Tribunal (NCAT) is given the responsibility for sanctioning Councillors under the LG Act, it should possess a wide power to make orders as it sees fit to remedy the matter before it.

Question:

*Should decisions on sanctions for councillors be made by the Departmental Chief Executive or a formal tribunal with independent arbitrators and a hearing structure?*

Response:

- 25 Council appreciates the separation of powers argument that underpins this question.

- 30 Council regards it as a balancing act. OLG's potential ability to issue PINs for some misconduct is one exception to the general principle that the executive branch can't 'punish' a wrongdoer. It's a common exception, given the ability of various Government executive agencies and bodies – including Local Councils – to issue fines for legislative breaches.

Generally, Council supports non-monetary sanctions being within the jurisdiction of a body like NCAT. Though it also acknowledges that this can slow proceedings and increase complexity.



Giving the OLG non-monetary sanction powers but with rights of appeal to NCAT may be an alternative.

- 5 Meanwhile, under the proposed changes where OLG handles conflict of interest issues and the Privileges Committee handles egregious Councillor behaviour, it isn't clear to Council how sanctions for misbehaviour would be regulated. The paper (page 16) mentions a Committee referral to a body like NCAT. However, it isn't clear who the applicant in a cause of action against a Councillor would be.

### Council meetings

- 10 The discussion paper's final section is concerned with a degradation in Council meeting standard. Page 17 states:

*Unfortunately, many council meetings are conducted without the appropriate level of dignity or reverence for tradition that suggests the importance of the debate and the need for civility. Councillors are not expected to agree with each other, in fact debate is encouraged, but the debate should be fair and respectful.*

- 15 This section's first half foreshadows changes to the model code of meeting practice to give a Council meeting chair more scope to regulate disorderly conduct.

#### Question:

*Are there any other powers that need to be granted to the mayor or chair of the relevant meeting to deal with disorderly behaviour?*

- 20 Response:

The proposed reforms to the Model Code of Meeting Practice would further empower the person holding the position of Mayor or chair. Conferring this power on an individual, who may have been elected either by their peers or by the public, could prove problematic.

- 25 The suggested check against misuse of this power is a right of review. Assuming reviews would occur sometime after the relevant event, this lag may not adequately remedy unjust Council meeting management by a chair.

Meanwhile, consideration should be given to whether the right granted by the LG Act to members of the public to attend Council meetings should be further qualified to provide for potential time-limited prohibitions for persistently disorderly members of the public.

- 30 Currently, the Act only provides for expulsion from the Council meeting in which a person has been disorderly.

- 35 Lastly, while Council supports the notion of restoring dignity to Council meetings, requiring Councillors to stand when the Mayor enters the room likely won't achieve this. Further, mandating that Councillors stand when they speak will impose costs on Council to retrofit its audio system. This addition to the Code is not supported.

The final section's second half proposes banning what are described as "briefing sessions".



The details are scant, but the paper describes the issue and proposed change this way (see page 18):

*A practice has recently developed in local government where councillors receive briefings from staff that are closed to the public.*

5 *As an example, development applications should be considered in the public domain. However, councillors receive private briefings from the council planners before they are dealt with in the public forum of a council or committee meeting. Consequently, members of the public impacted by the council's decision have no idea what the councillors have been told or what has been discussed.*

10 ...

*Any material provided to councillors, other than the mayor, that will affect or impact or be [considered] by councillors in their deliberations or decisions made on behalf of the community must be provided to them in either a committee meeting or council meeting.*

15 At first glance, the proposed restriction is very broad. It is difficult to see how it could be adequately defined, let alone enforced.

If the proposal is trying to ban meetings like the monthly Councillor workshops, this could have material consequences for how Council manages its operations.

20 For this reason, though the question linked to this section asks about other transparency measures to improve Council decision making, Council's feedback focuses on the proposed briefing ban.

Question:

*Are there any other measures needed to improve transparency in councillor deliberations and decision making?*

25 Response:

The proposal to prohibit Councillor "briefings" is not supported.

Council acknowledges the details of this proposal are minimal. Its opposition to the proposal as provided is based on the following principles.

30 First, the proposed ban is inconsistent with discussion paper's overall thrust to bring the third tier of government more into line with the other two. This proposal works against that principle.

It does this by applying a different rule to Council than to other government tiers. Neither the NSW nor Australian Governments receive every briefing from their respective public services in full public view.

35 Government operations at a State and Federal level would be seriously hampered if they were subject to the discussion paper's proposal.



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Council appreciates that the Westminster cabinet system doesn't apply at the local government level. Councillors aren't responsible for government departments the way State and Federal Ministers are.

5 Despite these differences, the paper acknowledges the broad similarity between the three tiers of government regarding their respective dealings between elected representatives and staff, by exempting the Mayor from the proposed meeting ban.

Preventing non-Mayor Councillors from accessing information between formal meetings doesn't reasonably account for the similarity between government tiers.

10 Second, it isn't clear why Councillor-staff exchanges between formal meetings are perceived as riskier to good decision making than Councillor-member of the public dealings between formal meetings.

15 A development application opponent doesn't know if a development proponent has met with a Councillor or Councillors to lobby for a decision between Council meetings. Nor vice versa. There is – rightly – no suggestion these general public “briefings” should be banned.

20 In this context, impartial and timely Council staff advice on a matter can provide a crucial check for Councillors against only hearing from vested interests. This is especially so in a context where NSW Councillors are not full-time office bearers and are generally at more risk than elected representatives in other government tiers of not being across all the formal reports attached to a Council meeting.

Third, the proposed prohibition is not a reasonable response to the risk that Councillors will pre-judge a matter due to be determined at a formal meeting because of a prior meeting with Council staff.

25 The information provided to Councillors between formal meetings by Council staff does not result in final decision-making. Rather, the purpose of Councillor-staff information sharing between meetings is to assist good ultimate decision making. It does this by refining the real issues relevant to the matter to be determined.

30 In Byron Shire Council's experience, its “Councillor workshops” enhance decision-making, collaboration, and learning. Workshops provide an opportunity for Councillors to gain deeper understanding of upcoming strategic matters in a safe and collaborative space. This is particularly useful for providing input into strategic documents during the drafting phase.

35 Further, Councillor workshops provide opportunities for Councillors to ask questions without risk of unreasonable criticism. On occasion, public meetings threaten Councillor safety. Councillor safety is of the utmost importance.

Fourth, the status quo already provides high degrees of transparency regarding Council decision making.

40 Regarding the development application example in the discussion paper, the Council reports to formal meetings are on the public record. Council resolutions are made on the public record. Development applicants have merit appeal rights against planning



determinations. Development opponents have judicial review rights where they think Council has unlawfully determined a matter. None of these existing checks would be enhanced by the proposed ban.

Fifth, the ban risks causing unintended consequences.

- 5 For example, if Councillors could only receive information from staff on a matter before them at a formal meeting, Council meetings are likely to increase in time and complexity.

This may reduce the desire in members of the public from attending, listening to or engaging with Council meetings. This risks reducing transparency.

- 10 A further example is that excluding non-Mayoral Councillors from receiving information between Council meetings risks concentrating power in a Mayor's hands at the expense of other duly elected Councillors by creating an information imbalance across the elected body. This risks increasing division between Councillors.

- 15 Another potential unintended consequence is reduced information accessibility. The opportunity for Councillors to receive verbal briefings on matters can support their understanding and decision making by providing information to them in an accessible way and meaningful way.

### Next steps

- 20 The consolidated version of Council's Review response – in the form of a letter from the General Manager to the OLG – is attached to this report. It will be sent to the OLG by Friday 15 November.

Beyond the submission deadline, there's no information yet about when Review submissions will be published, nor when OLG will respond to submissions.

## Strategic Considerations

### Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership	1.1: Enhance trust and accountability through open and transparent leadership	1.1.1: Leadership - Enhance leadership effectiveness, capacity, and ethical behaviour	1.1.1.6	Manage Code of Conduct matters

### 25 Legal/Statutory/Policy Considerations

Under [s440\(7\) of the Local Government Act](#), councils must review their adopted codes of conduct within 12 months of the elections and make such adjustments as they consider appropriate. Councils must adopt a code of conduct that incorporates the provisions of the Model Code of Conduct prescribed by the Regulation.



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Under [s360 of the Local Government Act](#), council must adopt a code of meeting practice that incorporates the mandatory provisions of the Model Code of Meeting Practice prescribed by the Regulation within 12 months of the elections.

- 5 Given the timing of this review, Council will await the outcome and any subsequent amendments to both model codes prior to considering its review of same.

### **Financial Considerations**

Not applicable.

### **Consultation and Engagement**

- 10 Council's Executive Team approved Council's submission at its 23 October strategic meeting.



STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

**Report No. 13.2      Proposed change to 2024 Council Meeting Schedule**

5    **Directorate:**                      Corporate and Community Services

**Report Author:**                Heather Sills, Manager Corporate Services

**File No:**                          I2024/1458

**Summary:**

10    This report proposes the reinstatement of the Planning Meeting scheduled for 5 December, which was previously converted to a Councillor Workshop.

     Upon further review, it has come to our attention that several time-sensitive reports require resolution at this meeting to ensure continuity in planning processes and adherence to deadlines.

15

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**RECOMMENDATION:**

**That Council schedules a Planning Meeting on 5 December 2024.**

20



## Report

On 24 October 2024, Council resolved to convert the Planning Meeting on 5 December into a Councillor Workshop and combine the Planning Meeting with the Ordinary Meeting scheduled for 12 December.

- 5 The intention was to avoid three consecutive weekly Council Meetings on 28 November, 5 December, and 12 December. However, further information has arisen regarding matters that are due to be reported to Council on 5 December, it has become clear that certain reports critical to ongoing projects must be addressed on the original date.

Council is therefore asked to reinstate the Planning Meeting on 5 December.

- 10 A brief Councillor Workshop will be held on Monday, 2 December, from 3-5pm to provide the opportunity for Councillors to be briefed on these reports.

Site visits related to the 5 December planning matters will be conducted on Tuesday, 3 December, from 3-5pm.

## Strategic Considerations

### 15 Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
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	1.1.2.4	Deliver Council meeting secretariat – including agenda preparation, minutes and council resolutions monitoring

## Legal/Statutory/Policy Considerations

Clause 3.2 of Council's *Code of Meeting Practice* states that "*The council shall, by resolution, set the frequency, time, date and place of its Ordinary meetings.*"

- 20 The setting of the 2025 meeting schedule complies with Council's obligations under the various sections of the *Local Government Act 1993* that apply to meeting dates, namely:

- [Section 9](#) notes that a council must give notice to the public of the times and places of its meetings.
- [Section 365](#) notes that Council is required to meet at least 10 times each year, each in a different month.
- 25 • [Section 367](#) outlines the required notice period of business papers for Councillors.



**Financial Considerations**

There are no financial implications with this meeting schedule.

**Consultation and Engagement**

- 5 Public notice will be given on Council's website in compliance with [Section 9](#) of the Local Government Act.



**STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY**

**Report No. 13.3      PLANNING - 10.2024.130.1 Dual Occupancy (Detached) including Existing Dwelling and New Dwelling with Swimming Pool at 46 Federal Drive Eureka**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Ben Barnet, Planner

**File No:** I2024/985

**10 Proposal:**

<b>DA No:</b>	10.2024.130.1		
<b>Planning Portal ref</b>	PAN-431285		
<b>Proposal description:</b>	Dual Occupancy (Detached) including Existing Dwelling and New Dwelling with Swimming Pool		
<b>Property description:</b>	LOT: 11 DP: 627139		
	46 Federal Drive EUREKA		
<b>Parcel No/s:</b>	114480		
<b>Applicant:</b>	Balanced Systems Planning Consultants		
<b>Owner:</b>	Mr R D & Mrs J E Lovett		
<b>Zoning:</b>	RU1 Primary Production		
<b>Date received:</b>	6 June 2024		
<b>Integrated / Designated Development:</b>	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable
<b>Concurrence required</b>	No		
<b>Public notification or exhibition:</b>	– Level 2 advertising under Council’s Community Participation Plan.		



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	<ul style="list-style-type: none"> <li>– Exhibition period:19/06/2024 to 02/07/2024</li> <li>– Submissions received: 1</li> <li>– Submissions acknowledged: <input checked="" type="checkbox"/> Yes   <input type="checkbox"/> No   <input type="checkbox"/> N/A</li> </ul>
<b>Planning Review Committee</b>	Not called up to a planning review committee.
<b>Variation request to Development Standards under an EPI (e.g. clause 4.6)</b>	<p><b>Clause 4.6</b></p> <p>Name of clause – Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2</p> <p>Clause number – 4.2D(2)(b)</p> <p>Percentage value of variation sought – 100%</p> <p>Brief justification for the variation: The site currently has primary access to the existing dwelling house via driveway from Federal Drive, and secondary access from Goremans Road that will service the new dwelling proposed.</p> <p>The variation is reasonable and orderly with consideration for positioning of the existing dwelling and the utilisation of existing access from Goremans Rd for the proposed dwelling to form a Dual Occupancy.</p> <p>The site is suitable for the development and the variation raises no environmental impacts.</p>
<b>Estimated cost</b>	\$608,650.00
<b>Delegation to determine</b>	<p>Council</p> <p>Reason: application requires Council determination for a variation to a development standard over 10%.</p>
<b>Issues</b>	Clause 4.6 variation to development standard Clause 4.2D(2)(b) to permit second driveway access. Conditions of consent are recommended to formalise the provision of not more than two driveway crossovers within the road reserve.

### Summary:

The Development Application (DA) proposes a dual occupancy (detached) comprising an existing dwelling and a proposed new dwelling, swimming pool and driveway.

- 5 A variation is sought to the numerical development standard of ‘one access point to rural dual occupancies’ under Clause 4.2D of Byron LEP 2014. The application requires Council determination for a variation to a development standard over 10%, being a 100% variation to provide for separate driveways to each of the dwellings and respective car parking areas. Any variation to a development standard greater than 10% must be determined by



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the elected Council in accordance with the NSW Department of Planning, Housing and Infrastructure *Guide to Varying Development Standards* dated November 2023.

Proposed works include the construction of a new dwelling, 54kl fibreglass swimming pool, driveway access and parking, water tanks and an onsite wastewater management system.

- 5 The subject site is located at 46 Federal Road, Eureka and covers an area of 2 hectares. More than one driveway access already exists whereby primary access to the site is from Federal Drive on the northern boundary and secondary access via Goremans Road on the southern boundary. The property is mapped as Zone RUI – Primary Production within the Byron Local Environmental Plan (BLEP) 2014.
- 10 The site contains an existing single dwelling and shed in the north-western portion of the site and a second larger farm shed in the south-eastern portion of the site. The site is within Eureka Village Landscape Conservation Area.
- 15 The applicant has submitted a written request to vary the development standard that demonstrates strict compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental grounds to vary the controls. The development will not impair the use of the land for agriculture. The land is physically suitable for the development and is capable of accommodating on-site disposal and management of sewage for the development. The development will not have an adverse impact on the scenic amenity or character of the rural environment.
- 20 The variation is supported on the basis that secondary access already exists and is not expected to impact rural zoning provisions or objectives. The variation to the development standard is supported in this instance under Clause 4.6.
- 25 A recommendation is included in the report for staff to review the need for this development standard in Clause 4.2D(2)(b) '*one access point to rural dual occupancies*'. This is due to its apparent redundancy as evidenced by the number of variation requests being received since Council removed the 100m distance restriction to rural dual occupancy development in the Byron LEP 2014.

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

### 30 NOTE TO COUNCILLORS:

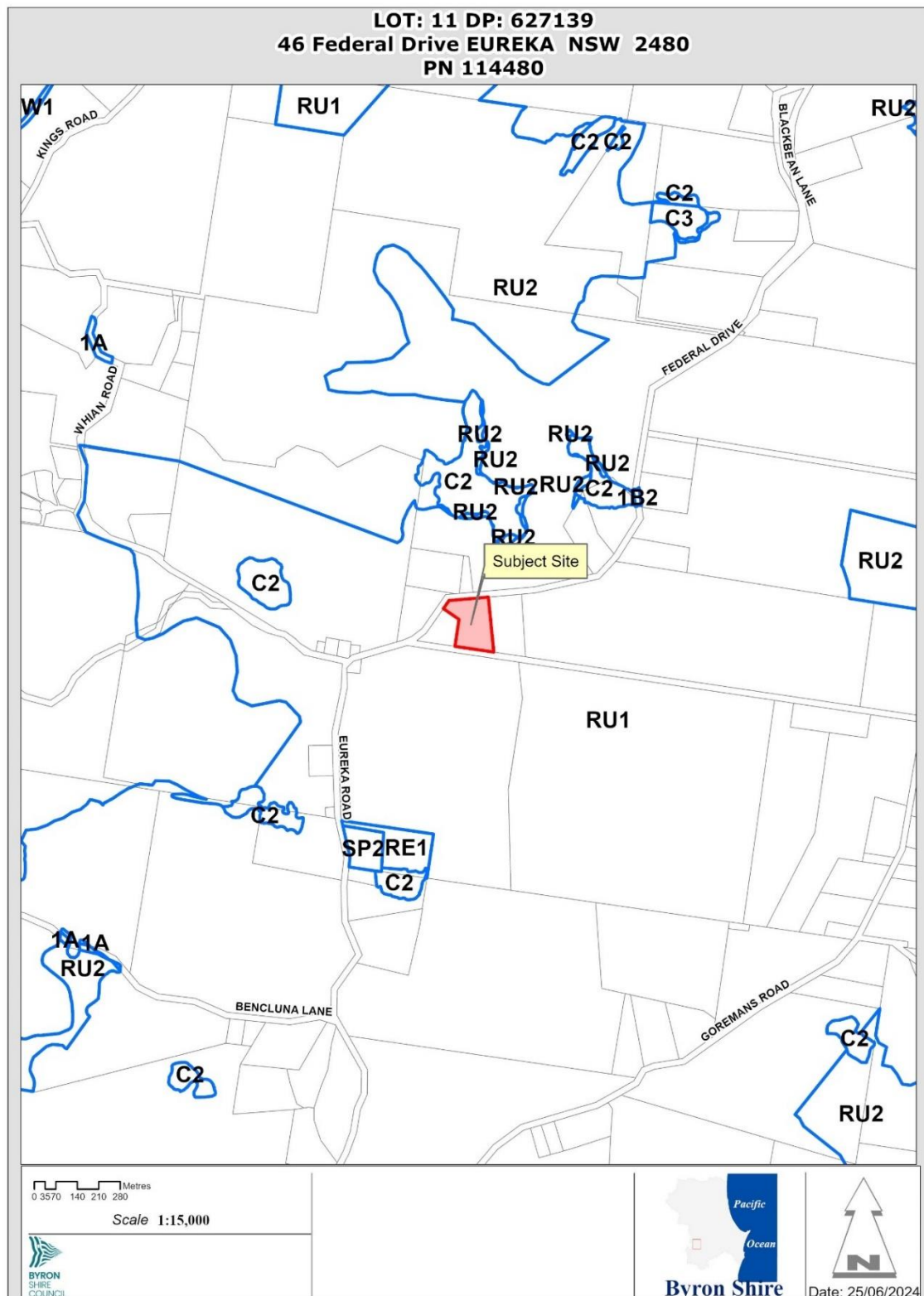
- 35 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes 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.



### 13.3

## page 34





**Figure 1: Locality Plan**



**Assessment:**

# 1. Introduction

## History/Background

5 The site forms part of Deposited Plan 627139 48/82 registered 14/10/1982. The subject allotment has a dwelling entitlement.

### Applications and Registers

BA Number 83/2280 BA - Type *DWELLING* Application Date 03/06/1983 Determination Date 18/07/1983

10 BA Number 84/229 BA - Type *GARAGE* Application Date 24/05/1984 Determination Date 01/06/1984

Development Applications - Subdivision- Special Purpose - *SUBDIVISION 2 LOT - 5.1995.317.1- REFD - Date: 14/12/1995*

15 Development Applications - Change of Use - *CHANGE OF US OF SHED TO BUS DEPOT & SPECIAL PURP SUBDI - 5.1997.67.1 - APPD 27/10/1997*

Building Applications - *Swimming Pool - 6.1990.2380.1 - FINI - 20/08/1990*

Building Applications - *6.1996.2595.1- Rural Shed – APPD 17/10/1996*

## Description of the proposed development

20 This application seeks approval for a New Dwelling and Swimming Pool (Detached) including Existing Dwelling House to form a Dual Occupancy.

The proposed works include the construction of a new dwelling, 54kl fibreglass swimming pool, driveway access and parking, water tanks and an onsite wastewater management system.

25 The proposed new 4-bedroom dwelling (to form part of the dual occupancy) is a two-storey (234.2m<sup>2</sup> GFA), located within the eastern-central area of the property. The proposed new dwelling will utilise prefabricated shed components and includes an open plan kitchen, dining and living, bathroom, laundry, mezzanine and rumpus room.

Vegetation removal is not proposed to accommodate the dwelling.

30 The proposed new dwelling will use the existing driveway from Goremans Rd which was approved as part of DA for change of use from Shed to Bus Depot DA 5.1997.67.1.

Conditions are imposed requiring the driveway and crossovers to be in accordance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".



Providing access from Goremans Rd is not expected to cause land use impacts and is compatible with the primary production potential, rural character and environmental capabilities of the land. The variation is compatible with the objectives of 4.2D (2)(b).

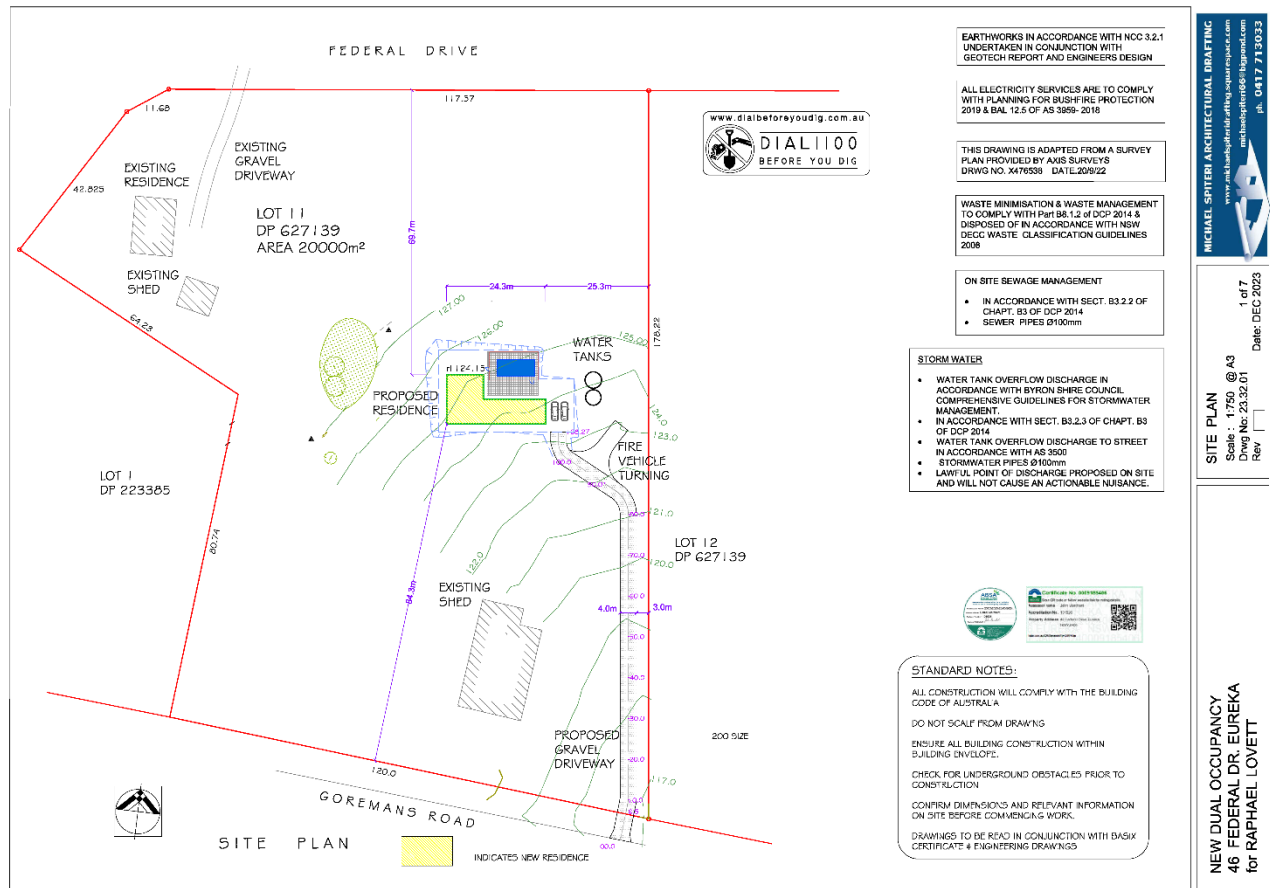


Figure 2: Site Plan

## Description of the site

Site inspection date 09/07/2024

Land is legally described	LOT: 11 DP: 627139
Property address	46 Federal Drive EUREKA
Land is zoned:	RU1 Primary Production
Land area is:	2 Hectares
Property is constrained by:	Bush Fire Prone Land



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	Cattle Dip Buffer Eureka Village Landscape Conservation Area Drinking water catchment	
	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: Land Zoning – RU1





Existing Dwelling House



Driveway access point from Goremans Road.



5

Driveway access point Federal Drive

**Figure 4: Site photos**

### High Environmental Vegetation (HEV)



The proposed dwelling is located within a cleared portion of the site. No HEV is proposed to be removed. No Clearing is proposed as part of the development application. HEV is not expected to be impacted by the proposed development.



5 **Figure 5: High Environmental Vegetation Mapping**

### Surrounding Vegetation Communities

Vegetation Communities within the site comprised of scattered remnants of Macadamia Plantation, Mixed Landscaping Plantings and Camphor.



10

**Figure 6: Surrounding Vegetation Communities mapping**



## 2. Summary of Referrals

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to a condition which is included in the Recommendation of this Report.
S7.11 / Contributions Planner	No objections subject to a condition and a Note, both of which are included in the Recommendation of this Report.
Heritage Consultant	No objections subject to conditions.

### 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
- 5 *'Planning for Bush Fire Protection 2019'*. The site is bush fire prone land. The development application is accompanied by a Bushfire Assessment Report by Landuse dated 06/03/2024 which concludes. Condition 7 is included in the Recommendation of this Report requiring that the development must comply at all times with the requirements of Bushfire Assessment Report by Landuse dated 06/03/2024.
- 10 **Effect of 10/50 rule on significant vegetation.** Conditions are included in the Recommendations of this report for the retention of native vegetation within 10/50 Vegetation Clearing Entitlement Area due to proximity of HEV.

## 3. Section 4.15c – Matters For Consideration – Discussion Of Issues

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



## 4.1 State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><i>Biodiversity and Conservation SEPP 2021</i></p> <p>Consideration: Chapter 4 Koala habitat protection 2021</p> <p>The site <u>is not</u> mapped in Council's adopted Koala Plan of Management or mapped as being Koala Habitat. No trees are proposed to be removed under this application. The building envelope for the proposed dwelling is void of vegetation. The remainder of the site is comprised of scattered remnants of Macadamia Plantation, Mixed Landscaping Plantings and Camphor species.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>Resilience and Hazards SEPP 2021</i></p> <p>Consideration: Council's Environmental Health Officer advised that the proposal is satisfactory in relation to potential for contamination, noting that the submitted Preliminary Site Investigation found the land parcel suitable for residential use. No further investigation is considered warranted.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>Sustainable Buildings SEPP 2022</i></p> <p>Consideration: The application is accompanied by a BASIX Certificate, incorporating a NatHERS Certificate and NatHERS stamped plans. Conditions of consent require compliance with these certificates.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

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

5

Part 1	<input checked="" type="checkbox"/> 1.1   <input checked="" type="checkbox"/> 1.1AA   <input checked="" type="checkbox"/> 1.2   <input checked="" type="checkbox"/> 1.3   <input checked="" type="checkbox"/> 1.4   <input checked="" type="checkbox"/> Dictionary   <input checked="" type="checkbox"/> 1.5   <input checked="" type="checkbox"/> 1.6   <input checked="" type="checkbox"/> 1.7   <input checked="" type="checkbox"/> 1.8   <input checked="" type="checkbox"/> 1.9
Part 2	<input checked="" type="checkbox"/> 2.1   <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table
Part 4	<input checked="" type="checkbox"/> 4.1E <input checked="" type="checkbox"/> 4.2A   <input checked="" type="checkbox"/> 4.2D   <input checked="" type="checkbox"/> 4.3   <input checked="" type="checkbox"/> 4.6
Part 5	<input checked="" type="checkbox"/> 5.10   <input checked="" type="checkbox"/> 5.11
Part 6	<input checked="" type="checkbox"/> 6.2   <input checked="" type="checkbox"/> 6.5   <input checked="" type="checkbox"/> 6.6

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



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- (a) The proposed development is defined in the LEP 2014 Dictionary as Dual Occupancy (Detached);
- (b) The land is within the RU1 Primary Production according to the Land Zoning Map;
- (c) The proposed development is permitted with consent; and
- 5 (d) The proposed development is satisfactory having regard to the Zone Objectives.

Zone Objective	Consideration
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base	The proposal does not compromise the natural resource base
To encourage diversity in primary industry enterprises and systems appropriate for the area	The proposal does not compromise the primary industry enterprise and systems potential of the site
To minimise the fragmentation and alienation of resource lands	The proposal does not fragment or alienate resource lands
To minimise conflict between land uses within this zone and land uses within adjoining zones	The proposal does not include any land use that conflicts with the existing zoning nor does it compromise adjoining zones
To encourage consolidation of lots for the purposes of primary industry production	The proposal does not include any lot consolidation
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 proposal does not include any tourism uses
To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality	The proposal will not compromise the scenic landscape or scenic quality of the locality. It is noted that the building is a relocated dwelling that is in keeping with similar development in the area.



Consideration: Clause 4.1E Minimum lot sizes for certain residential accommodation

Minimum lot size requirements for dual occupancy (detached) in RU1 Primary Production zoned land is 4,000 square metres. The lot size is 20,000 m<sup>2</sup>. The proposal complies with minimum lot size requirements.

5 Consideration: Clause 4.2D

**4.2D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2**

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

(a) *to provide alternative accommodation for rural families and workers,*

10 (b) *to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land,*

15 (c) *to set out consent considerations for development of dual occupancies (detached) and secondary dwellings to address matters such as access, siting, land suitability and potential impacts.*

(2) *Development consent must not be granted to development for the purpose of a dual occupancy (detached) or secondary dwelling on land in Zone RU1 Primary Production or Zone RU2 Rural Landscape unless the consent authority is satisfied that—*

20 (a) *the development will not impair the use of the land, or neighbouring land, for agriculture or rural industries, and*

(b) ***each dwelling will use the same vehicular access to and from a public road, and***

(c) *(Repealed)*

(d) *the land is physically suitable for the development, and*

25 (e) *the land is capable of accommodating the on-site disposal and management of sewage for the development, and*

(f) *the development will not have an adverse impact on the scenic amenity or character of the rural environment.*

30 The application seeks approval to utilise a second existing access which does not comply with Clause 4.2D(2)(b). The site currently has primary access to the existing dwelling house from Federal Drive, and secondary access from Goremans Road that will service the proposed dwelling. The variation is reasonable and orderly with consideration for positioning of the existing dwelling and the utilisation of existing access. This exception is further assessed as a variation to a development standard below.



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It is noted that prior amendments to Byron LEP 2014 which repealed Clause 4.2D(2)(c) *for dual occupancies (detached)—dwellings will be situated within 100 metres of each other* provides more flexibility for siting and distance separating dwellings in rural zones.

- 5 There are in most cases ecological and environmental reasons to allow buildings to be sited some distance from one another, such as to avoid unnecessary building or earthworks near watercourses, disturbance to habitat.

For similar reasons, there is often environmental benefit in permitting the use of a separate driveway in rural areas and there is redundancy for controls requiring dwellings to utilise the same access to and from a public road.

- 10 Any application that proposes more than one driveway currently needs to be approved by the Elected Council and this is only because of the development standard under Clause 4.2D(2)(b).

- 15 A recommendation of this report for staff to investigate the effectiveness or redundancy of this development standard would allow for a further report to be brought to Council to explore what housekeeping amendments could be made.

Council may, at a future meeting, subsequently decide if housekeeping amendments to repeal this development standard and any associated development controls that would enable the merits of otherwise simple dual occupancy applications to be assessed and determined under staff delegation.

- 20 Consideration: Clause 4.3 Height of buildings

The site is mapped as having a maximum building height of 9 metres. The proposed dwelling has a maximum building height of 8.06m. The proposal complies with height of building requirements.

Consideration: Clause 5.10 Heritage conservation.

- 25 The site is located in the Eureka Village Landscape Conservation Area. The proposal was referred to Council's Heritage Consultant. It is considered that the location of the building is not likely to have an adverse visual impact upon the setting of the rural landscape or views from Federal Drive or Goremans Road. The proposal has no adverse impact upon the visual setting of heritage items in the vicinity of the site on Whian Road /Eureka Road.
- 30 Conditions have been provided.

Following commentary from Council's Heritage Consultant:

- 35 The site is within Eureka Village Landscape Conservation Area. The proposed dual occupancy building is set well within the rural site with low visibility from public views and vistas from the public road. Consideration is given to the rural landscape character of the site and views from public viewpoints on Goremans or Federal Drive.

- 40 The proposed development is located on a vegetated site landscaped on boundaries and road reserves. Whilst the proposed building is a utilitarian structure, it is considered that the location of the building is not likely to have an adverse visual impact upon the setting of the rural landscape or views from Federal Drive or Goremans Road. The proposal would also have no adverse impact upon the visual setting of heritage items in the vicinity of the site on Whian Road / Eureka Road.



Consideration: Clause 6.2 Earthworks

Proposed earthworks include works for driveway and fire truck turning area, on-ground concrete slab and swimming pool.

- 5 The proposal does not raise any concerns with regards to this clause. The proposal satisfies objectives of Clause 6.2.

Consideration: Clause 6.5 Drinking Water Catchments

- 10 The site is located within a drinking water catchment. Councils environmental health officer has assessed the proposal for potential impacts. The land parcel is suitable for residential use which includes a dual occupancy. The existing approved on-site sewage management is sufficient for both the existing and proposed dwelling. Council is satisfied that proposal complies with the objectives of Clause 6.5

Consideration: Clause 6.6 Essential services

- 15 The proposal does not raise any concerns with regards to this clause. The site has adequate access to all essential services.
- 15 The clauses have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development complies with all applicable clauses (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to the development standard contained in clause 4.2D(2)(b) which is addressed as follows:

20 **Clause 4.6 Exceptions to Development Standards**

Applicant has sought a variation to Clause 4.2D(2)(b) by proposing a second vehicular access to be used for the new Dual Occupancy dwelling.

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

- There are two existing driveways used to access the site; and
- The site has dual road frontage access whereby servicing the proposed dwelling from Goremans Road is more suitable.

The full Clause 4.6 written request for variation is included in Attachment no.4 this report.

- 30 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:

- 35
- The underlying objective or purpose of the clause is not relevant to this case considering that the proposal does not intent to duplicate an existing driveway access to Federal Drive, and seeks to formalise use for the dual occupancy via the existing Goremans Road entrance.



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- The underlying objective of utilising the same driveway entrance in this case does not appear to be reasonable when there are already two existing driveway access points for two different roads.
- If approved council will impose conditions requiring the upgrade of both accesses to ensure they are meet current standards for construction and safety.

Further the proposal is in the public interest having regards to the objectives of the development standard Add in objectives for Discuss reason.

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

The application has demonstrated that:

- 10 a) The development is satisfactory having regard to the requirements outlined in clause 4.6;
- b) The DA demonstrates that compliance is with the development standard is unreasonable and unnecessary;
- 15 c) The DA demonstrates that there are sufficient environmental planning grounds to justify contravening the standard;
- d) The DA demonstrates that the development is consistent with the objectives of the standard and the zone;
- e) The DA demonstrates how the development produces a better planning outcome than one that strictly complied with the development standard; and
- 20 f) The DA demonstrates what it is about the grounds of the request that are particular to the proposed development on this site, and that there has to be something particular to the development on this site to justify the variation.

25 Providing access from Goremans Rd is not expected to cause land use impacts. The proposal is compatible with the primary production potential, rural character and environmental capabilities of the land. The variation is compatible with the objectives of 4.2D (2)(b).

The proposed driveway access to Goremans Road has sight distances exceeding the minimum requirements of AS 2890 and is not likely to cause traffic conflicts on the adjoining roadway.

30 Makes use of existing road frontage access and crossover to the proposed dwelling.

Access from Goremans Road has previously been considered and given approval as part of Shed to Depot development application.

Two driveways provide the ability for dual access for emergency vehicles and evacuation routes within bushfire-prone land.

35



### **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 instruments of significant applicability to the proposed development.

5

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

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because it applies to the land to which LEP 2014 applies.

10

Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input checked="" type="checkbox"/> B2   <input checked="" type="checkbox"/> B3   <input checked="" type="checkbox"/> B4   <input checked="" type="checkbox"/> B6 <input checked="" type="checkbox"/> B8   <input checked="" type="checkbox"/> B14
Part C Chapters:	<input checked="" type="checkbox"/> C1   <input checked="" type="checkbox"/> C3   <input checked="" type="checkbox"/> C4
Part D Chapters	<input checked="" type="checkbox"/> D2

#### Consideration: Chapter B2 Tree and Vegetation Management

The site is not mapped in Council's adopted Koala Plan of Management however there is mapping of High Environmental Value Vegetation elsewhere on the lot. No trees or vegetation are proposed to be removed under this application and the area has already been converted to cleared and managed agricultural land.

15

#### Consideration: Chapter B3 Services

The site has adequate supply of services available.

#### Consideration: Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access

The site is a large rural allotment with available space for traffic, parking and access. The proposed dwelling makes provision of two car parking spaces as per car parking schedule rate of two car spaces required for the proposed 4 bedroom dwelling. Sufficient turning area is provided to ensure vehicles can enter and exit the site in a forward direction. Enough space is provided for parking areas to be compliant with the minimum requirements of AS 2890.

20

25

#### Consideration: Chapter B8 Waste Minimisation and Management

The site is capable of managing the waste generated during the construction phase and future use of the dwelling. Relevant conditions of consent have been recommended to achieve compliance with this chapter.

#### Consideration: Chapter B14 Excavation and Fill

Earthworks are proposed for slab on ground construction. The extent of earthworks does not raise concerns with Council. No fill is proposed as part of the development.

30



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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### Consideration: Chapter C3 Visually Prominent Sites, Visually Prominent Development and View Sharing

- 5 The site is considered visually prominent under Part A of Byron DCP due to its height being over 60m AHD. Whilst no visual impact statement accompanied the DA, the structure is considered to be visually consistent with other, similar development in the area. The structure will not be visually prominent from the public road due to vegetation screening and the central location of the dwelling. The proposal was referred to Councils' Heritage Officer for comment. A condition of consent will be imposed requiring the dwelling utilise 'muted bushland tones' so as not to compromise visual amenity.

### 10 Consideration: Chapter C4 Development in a Drinking Water Catchment

The development is unlikely to have an adverse impact on the quality and quantity of water entering the drinking water catchment. Conditions of consent have been recommended that require provision of an Onsite Sewage Management System (OSMS) to service the proposed dwelling, which must be separately approved by Council.

- 15 The submitted LUCRA report is satisfactory and contains practical measures which can be put in place to minimise exposure to potential spray drift, noise and dust from the macadamia farms surrounding the property.

### Consideration: Chapter D2 Residential Accommodation and Ancillary Development in Rural Zones

- 20 The development generally complies with the provisions of this chapter with regards to location, siting, setbacks, and character and visual impact. The proposal satisfies the specific objectives and criteria with regards to Chapter D2.5 (Dual Occupancies and Secondary Dwellings).
- 25 All relevant Parts/Chapters of Byron DCP 2014 have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development complies with all sections of these Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to certain prescriptive measures which are considered further (having regard to the DCP 2014 Section A1 Dual Path Assessment) as follows:
- 30

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section?	Does the proposed development comply with the Performance Criteria of this Section? Address.
<b>B4.2.5 Car Parking Requirements - B4.2.12 Parking Schedules</b> <b>Carparking Requirements for a Dual Occupancy.</b>	The proposed development complies with the Objectives of the Section because: <ul style="list-style-type: none"><li>• Meets the aims of chapter B4.</li><li>• The proposed development will not cause traffic impacts.</li><li>• Sufficient carparking is provided onsite.</li></ul>	The proposed development complies with the Performance Criteria of this Section because:  The proposal does not provide for 1 undercover car parking space as per the DCP requirements (parking



<p>Medium density housing</p> <p>1 space per 1 or 2 bed unit, 2 spaces per 3 or more bed unit, 1 visitor space per 4 dwellings or part thereof.</p> <p><b><i>Each dwelling to have at least one covered car space.</i></b></p>	<ul style="list-style-type: none"> <li>• Safe and efficient circulation of vehicles are maintained.</li> <li>• The proposal demonstrates that the additional driveway will not adversely affect rural character or amenity within the locality and satisfies the objectives of Chapter B4.</li> <li>• The proposed formalisation of an existing second vehicular access provides adequate and compatible on-site accommodation of vehicles for the residents and visitors of the proposed dual occupancy dwelling as well as maintaining access for the existing dwelling.</li> </ul>	<p>schedule) for the proposed dwelling.</p> <p>Although there are no specific performance criteria for the provision of undercover car parking, sufficient car parking is provided onsite for proposal. The site is capable of accommodating undercover car parking if required.</p> <p>No visual impact on the landscape is anticipated from the lack of undercover car parking.</p>
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The proposed development is demonstrated to meet the relevant Objectives of DCP 2014.

#### **4.5 Environmental Planning and Assessment Regulation 2021 considerations**

<b>Environmental Planning and Assessment Regulations 2021</b>	<b>Applicable to the proposal:</b>	<b>Considered the control as it relates to the proposal:</b>	<b>If this control is applicable, does the proposal comply?</b>
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 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**

### **4.6.1**

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

5

### **4.6.2 Council Policies applicable to the proposed development?**

<b>Council Policy</b>	<b>Consideration</b>
<a href="#"><u>Building in the Vicinity of Underground Infrastructure Policy 2020</u></a>	No objections have been raised by Council's ET Engineer in relation to the proximity of the proposed development to the Rous County Council water main which is in the road reserve and not mapped as being close to the proposed building works.
<a href="#"><u>Management of Contaminated Land Policy</u></a>	Council's Environmental Health Officer advised that the proposal is satisfactory in relation to potential for contamination, noting that the submitted Preliminary Site Investigation found the land parcel suitable for residential use.
<a href="#"><u>Water and Sewer Equivalent Tenements Policy</u></a>	Levies will be payable.



#### 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

- 5 The development application was publicly exhibited.

There was 1 submission made on the development application. The redacted submission is included in **Attachment 3** of this report. Comments are provided in response to the issues raised as follows:

<i><b>Issue</b></i>	<i><b>Comments / consideration</b></i>
<i>Visual impact and views</i>	<p>The proposal complies with building height and setback requirements. The neighbouring dwelling has an elevation that is a considerable height above the site of the proposed dwelling. Outlook from Lot 1 is not anticipated to be significantly affected by the proposed dwelling.</p> <p>The proposed dwelling is centrally located within the site. Vegetation screening currently exists on site boundaries. The dwelling is not anticipated to be significantly visually obtrusive from either road frontages.</p> <p>Reasonable protection of existing views from neighbouring dwellings are maintained.</p>
<i>Privacy</i>	<p>Privacy is not anticipated to be significantly affected as the proposed dwelling is approximately 130 metres from the neighbouring western dwelling and is separated by vegetation screening.</p>
<i>Noise</i>	<p>Dual Occupancies are permitted with consent and are acceptable forms of development within RU1 Zoning. Pools are an ancillary use and associated with a dwelling. Noise generated by residential dwellings (within permissible noise levels) is considered acceptable.</p>
<i>Compliance with conditions</i>	<p>The proposal is accompanied by a Bushfire</p>



<b><i>Issue</i></b>	<b><i>Comments / consideration</i></b>
	Assessment report which outlines compliance measures for bushfire protection, including APZs requirements under Planning for Bushfire Protection.

## **4.9 Public interest**

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

## **Developer Contributions**

### **5 5.1 Water & Sewer Levies**

Levies will be payable.

### **5.2 Developer Contributions**

Section 7.11 Contributions will be payable.

## **Disclosure Of Political Donations And Gifts**

<b>Disclosure details</b>	<b>Response</b>
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"/>

### **10 Conclusion**

The DA proposes Dual Occupancy (Detached) including an Existing Dwelling and a New Dwelling with Swimming Pool.

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

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

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**Report No. 13.4 PLANNING - DA 10.2024.117.1 - Dual Occupancy (Detached) Comprising the Existing Dwelling and a New Dwelling, Tree Removal: Six (6) Trees and Ancillary Works – 497 Coolamon Scenic Drive Coorabell**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Dylan Johnstone, Development Investigations Lead  
**File No:** I2024/1420

**Proposal:**

**DA No:** 10.2024.117.1  
**Planning Portal ref** PAN-424961  
**Proposal description:** Dual Occupancy (detached) Comprising the Existing Dwelling and a New Dwelling, Tree Removal: Six (6) Trees and Ancillary Works  
**Property description:** LOT: 8 DP: 259637  
 497 Coolamon Scenic Drive COORABELL  
**Parcel No/s:** 13610  
**Applicant:** Mrs S Ramsay  
**Owner:** Messrs K G Byrne & C A Perez Ledesma  
**Zoning:** RU2 Rural Landscape  
**Date received:** 20 May 2024  
**Integrated / Designated Development:** Not designated Development or Integrated Development  
**Concurrence required** No  
**Public notification or exhibition:** – Level 2 advertising under Council's Community Participation Plan.  
 – Exhibition period: 29/05/24 – 11/06/24



## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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- Submissions received: Nil
- Submissions acknowledged: ☐ Yes ☐ No ☒ N/A

**Concurrent approvals included with DA**

On-Site Sewage Management System (Section 68)

**Planning Review Committee**

Application was not called up to Planning Review Committee

**Variation request to Development Standards under an EPI (e.g. clause 4.6)**

**Clause 4.6**

Name of clause - Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2

Clause number – 4.2D(2)(b)

Percentage value of variation sought – 100%

Percentage value of the variation recommended to be approved – 100%

Brief justification for the variation – The variation is reasonable and orderly with consideration for the proposed driveway. It is unnecessary to comply with the standard as it is proposed to significantly minimise disturbance to the natural environment caused by earthworks, civil works and tree removal that would otherwise be required to comply with the standard. The site is suitable for the development and the variation raises no environmental impacts.

**Estimated cost**

\$1,114,305.00

**Delegation to determine**

Council

Reason: application requires Council determination for a variation to a development standard over 10%.

**Issues**

- Clause 4.6 variation to Clause 4.2D of LEP 2014 to allow second vehicular access
- DCP 2014 variation for building setback to Friday Hut Road (Chapter D2.2.2)
- Variation to Chapter B14 of DCP 2014 to permit excavation and fill greater than 1.0m
- Unauthorised conversion of approved garage to studio
- Unauthorised construction of car parking in Council road reserve



## Summary:

This Development Application (DA) seeks consent for dual occupancy (detached) comprising the existing dwelling and a new dwelling, tree removal: six (6) trees and ancillary works.

- 5 The application proposes a variation to a development standard in accordance with clause 4.6 of Byron LEP 2014. The development standard to be varied is the requirement for each dwelling to use the same vehicular access to and from a public road prescribed by clause 4.2D (2) (b). The application proposes a new access to Friday Hut Road.in addition to an existing approved access from Coolamon Scenic Drive, which represents a 100% variation and any variation greater than 10% must be determined by the elected Council in accordance with the NSW Department of Planning, Housing and Infrastructure *Guide to Varying Development Standards* dated November 2023.

- 15 The applicant has submitted a written request to vary the development standard that demonstrates strict compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental grounds to vary the controls. The development will not impair the use of the land for agriculture. The land is physically suitable for the development and is capable of accommodating on-site disposal and management of sewage for the development. The development will not have an adverse impact on the scenic amenity or character of the rural environment.

- 20 The variation to the development standard is supported by staff.

- A recommendation is included in the report for staff to review the need for this development standard in Clause 4.2D(2)(b) '*one access point to rural dual occupancies*' to remain. This is due to its apparent redundancy as evidenced by the number of variation requests being received since Council removed the 100m distance restriction to dual occupancy development in the Byron LEP 2014

The application was advertised and notified between 29 May to 11 June 2024 in accordance with the Byron Shire Community Participation Plan with no submissions received.

- 30 The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions listed in Attachment 2.

### 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:**

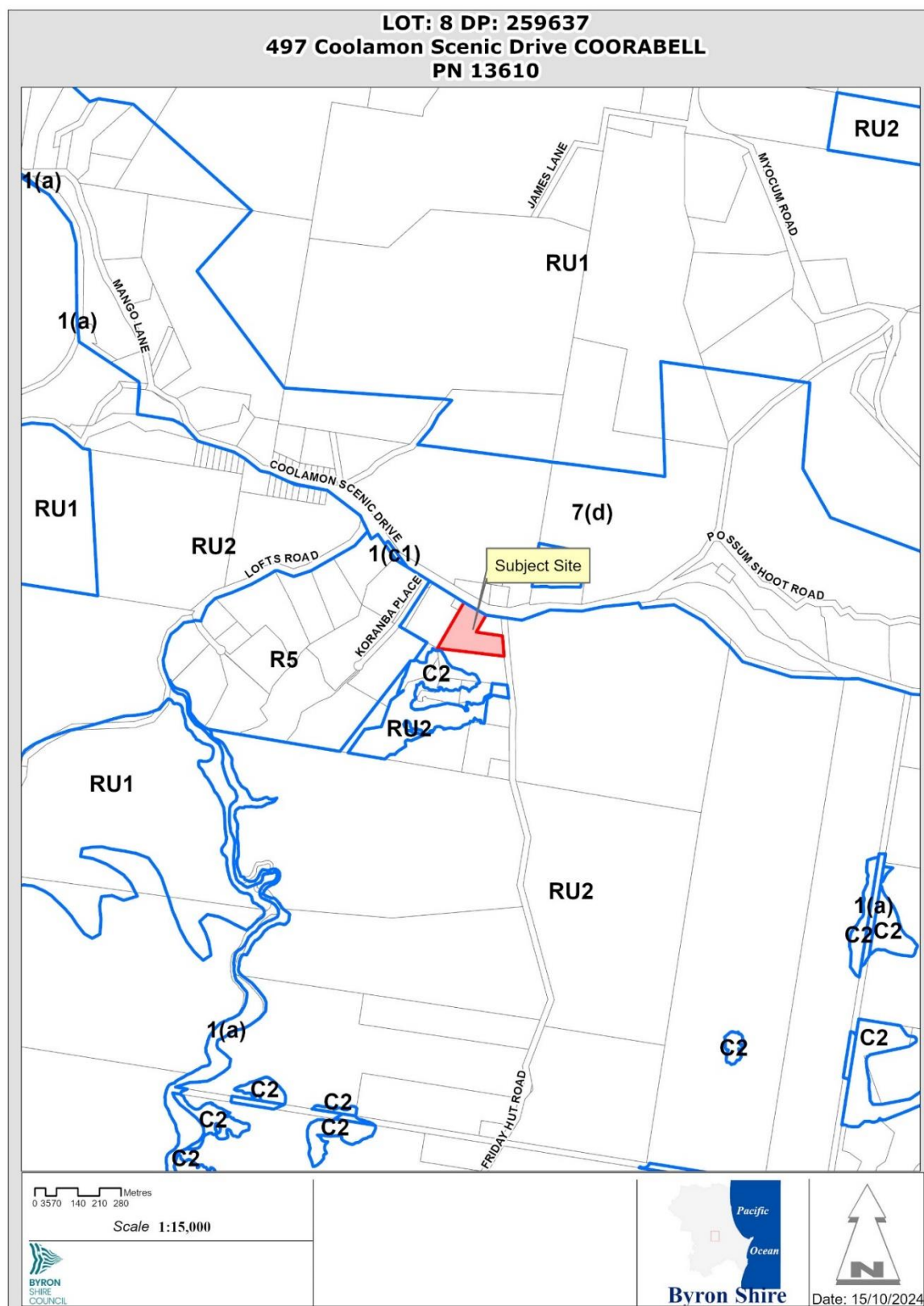
**That:**

1. Pursuant to dual occupancy (detached) comprising the existing dwelling and a new dwelling, tree removal: six (6) trees and ancillary works, be granted consent subject to the conditions in Attachment 2 #E2024/126182.
2. The redundancy of Byron Local Environmental Plan 2014 controls that require each dwelling of a dual occupancy on a rural lot to use the same vehicular access to and from a public road be reviewed by staff. With New DCP provisions to be considered instead to otherwise allow a second driveway to be approved where there are reasonable and sufficient environmental planning grounds. Both LEP and DCP amendments to be reported back to Council as future LEP and DCP House Keeping matters.

**Attachments:**

- 1 10.2024.117.1 Plans, E2024/127508 
- 2 10.2024.117.1 Recommended conditions, E2024/126182 
- 3 10.2024.117.1 Clause 4.6 Variation Request, E2024/114087 





**Figure 1: Locality Plan**



## Assessment:

### 1. Introduction

#### History/Background

5.1985.92.1 – Dwelling and Garage – approved 02/04/85

5 BA 127/85 – Dwelling and Garage – approved 03/04/85

10.1999.82.1 – Studio – approved 13/04/99

During a site inspection for the subject application, it was apparent that the garage approved by consent 5.1985.92.1 has been converted to a habitable area and is currently unable to be utilised as car parking for the existing dwelling.

#### 10 Description of the proposed development

Development consent is sought for a dual occupancy (detached) with ancillary works.

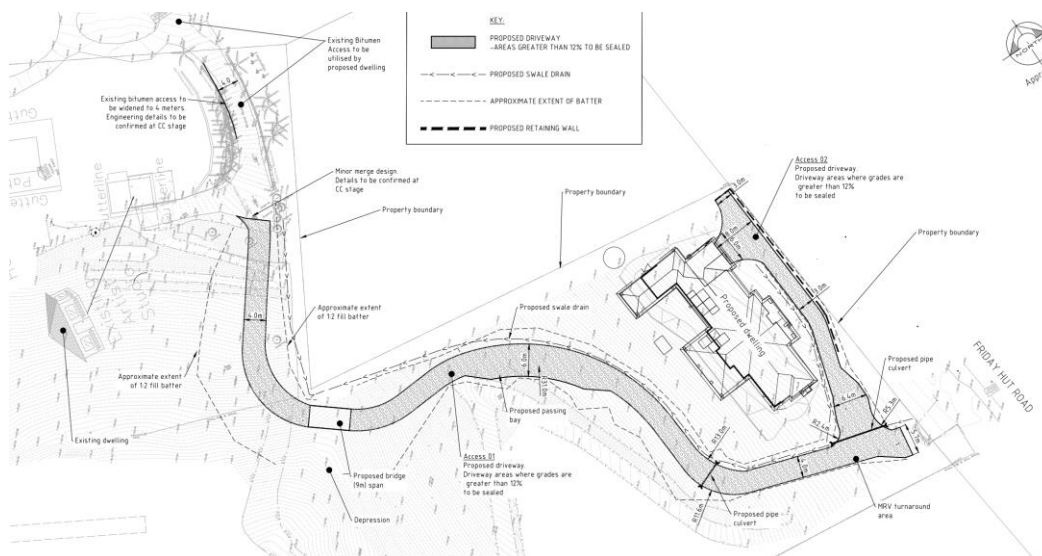
The proposed new dwelling house consists of five bedrooms and includes a double garage. The proposed dwelling is single storey and is to be of weatherboard / rendered brick construction on a concrete slab with a tiled roof. Cut and fill works are required to create the site of the dwelling. The maximum depth of excavation works is 1.5 metres, with fill up to a maximum height of 1.3 metres. The dwelling will have a maximum building height of 6.5 metres. The application proposes to formalise an existing farm track for access to the proposed dwelling from Friday Hut Road. The existing dwelling will continue to utilise the existing approved access from Coolamon Scenic Drive. The siting of the proposed dwelling requires removal of six Slash Pines which are identified by DCP 2014 as being a non-native / invasive tree species.

The application was originally submitted with a single driveway and during assessment this was changed to a separate driveway to minimise avoidable impacts on the environment.

The driveway access plan was amended to provide a shorter more direct access to Friday Hut Road.



Note original driveway proposal was amended to provide a separate shorter driveway off Friday Hut Road. The original design would have resulted in avoidable impacts:



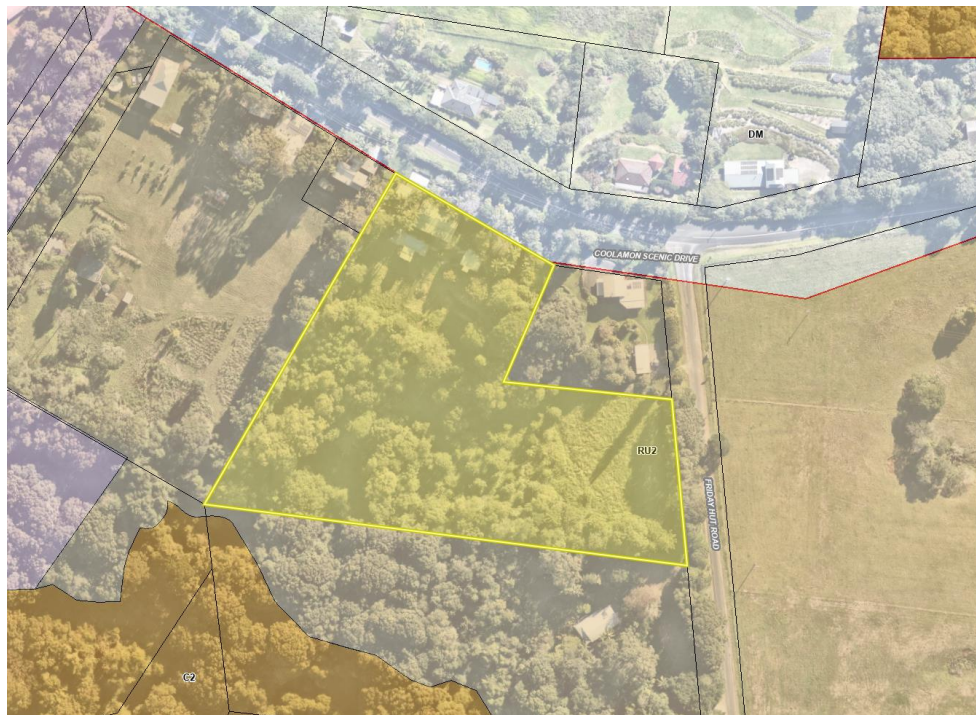
**Figure 3:** Original shared extensive driveway plan prior to amendment for two separate driveways



## Description of the site

A site inspection was carried out on 14 October 2024

Land is legally described	LOT: 8 DP: 259637	
Property address	497 Coolamon Scenic Drive COORABELL	
Land is zoned:	RU2 Rural Landscape	
Land area is:	1.999 hectares	
Property is constrained by:	Bushfire prone land High Conservation 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



**Figure 4:** Zoning map





Existing studio unlawfully converted from approved garage



Existing unapproved driveway to Coolamon Scenic Drive to be removed – looking E



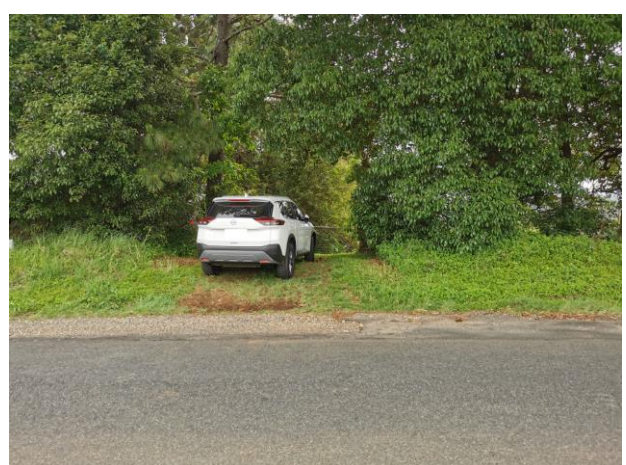
5 Location of proposed dwelling – looking N



Existing carparking unlawfully constructed



Proposed access to Friday Hut Road – looking south and west



**Figure 5:** Site photos



## 2. Summary Of Referrals

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
S7.11 / Contributions Planner	Contributions calculated by planner.
Rural Fire Service (4.14)	No objections subject to conditions.

## 3. Section 4.14 – Bush Fire Prone Land

- 5 Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document 'Planning for Bush Fire Protection 2019'. The site is bush fire prone land. The development application was referred to the NSW Rural Fire Service, which provided conditions included in the Recommendation of this Report.

Effect of 10/50 rule on significant vegetation

- 10 The land is located in a designated 10/50 vegetation entitlement clearing area however the proposed development will not result in the removal of any significant vegetation.

## 4. Section 4.15c – Matters For Consideration – Discussion Of Issues

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

### 4.1 State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<i>Resilience and Hazards SEPP 2021</i> Consideration: Chapter 4 Remediation of Land The application has demonstrated that the proposed Dual Occupancy is formerly cleared grazing land, has not been used for cropping, and was formerly part of a large dairy farm dating back to 1906. The land is considered suitable for the proposed use.	<input checked="" type="checkbox"/>	<input type="checkbox"/>



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.4

Considerations	Satisfactory	Unsatisfactory
<p><i>Sustainable Buildings SEPP 2022</i></p> <p>Consideration:</p> <p>BASIX Certificate required for:</p> <ul style="list-style-type: none"> <li>• <b>New dwellings</b></li> <li>• Alterations &gt; \$50,000.00</li> <li>• Pools &gt; 40,000 kl</li> </ul> <p>A BASIX certificate has been provided and a condition of consent requires the development to comply with the requirements of that certificate.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. The LEP 2014 clauses that are

5

Part 1	<input checked="" type="checkbox"/> 1.1   <input checked="" type="checkbox"/> 1.1AA   <input checked="" type="checkbox"/> 1.2   <input checked="" type="checkbox"/> 1.3   <input checked="" type="checkbox"/> 1.4   <input checked="" type="checkbox"/> Dictionary   <input checked="" type="checkbox"/> 1.5   <input checked="" type="checkbox"/> 1.6   <input checked="" type="checkbox"/> 1.7   <input checked="" type="checkbox"/> 1.8   <input checked="" type="checkbox"/> 1.9
Part 2	<input checked="" type="checkbox"/> 2.1   <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table
Part 4	<input checked="" type="checkbox"/> 4.1E   <input checked="" type="checkbox"/> 4.2A   <input checked="" type="checkbox"/> 4.2D   <input checked="" type="checkbox"/> 4.3   <input checked="" type="checkbox"/> 4.6
Part 6	<input checked="" type="checkbox"/> 6.2   <input checked="" type="checkbox"/> 6.5   <input checked="" type="checkbox"/> 6.6

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

- The proposed development is defined in the LEP 2014 Dictionary as Dual Occupancy (detached);
- The land is within the RU2 Rural Landscape according to the Land Zoning Map;
- The proposed development is permitted with consent; and
- Regard is had for the Zone Objectives as follows:

10

Zone Objective	Consideration
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base	The application proposes minimal disturbance to the natural resource base.
To encourage diversity in primary industry enterprises and systems appropriate for the	The proposal does not have a significant impact on the agricultural viability of the



area	land.
To minimise the fragmentation and alienation of resource lands	The proposal does not fragment or alienate resource lands.
To minimise conflict between land uses within this zone and land uses within adjoining zones	The proposal does not present any significant land use conflict.
To encourage consolidation of lots for the purposes of primary industry production	The proposal does not include any lot consolidation.
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 application proposes residential use only.
To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality	The proposal will not have a significant impact on the scenic quality of the locality.

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) except as outlined below.

**4.2D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2**

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

*(a) to provide alternative accommodation for rural families and workers,*

*(b) to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land,*

*(c) to set out consent considerations for development of dual occupancies (detached) and secondary dwellings to address matters such as access, siting, land suitability and potential impacts.*

*(2) Development consent must not be granted to development for the purpose of a dual occupancy (detached) or secondary dwelling on land in Zone RU1 Primary Production or Zone RU2 Rural Landscape unless the consent authority is satisfied that—*

*(a) the development will not impair the use of the land, or neighbouring land, for agriculture or rural industries, and*

***(b) each dwelling will use the same vehicular access to and from a public road, and***

*(c) (Repealed)*



(d) *the land is physically suitable for the development, and*

(e) *the land is capable of accommodating the on-site disposal and management of sewage for the development, and*

5 (f) *the development will not have an adverse impact on the scenic amenity or character of the rural environment.*

The application proposes a new access to Friday Hut Road.in addition to an existing approved access from Coolamon Scenic Drive. Therefore the application seeks approval to utilise a second existing access which does not comply with Clause 4.2D(2)(b). This exception is further assessed as a variation to a development standard below.

10 It is noted that prior amendments to Byron LEP 2014 which repealed Clause 4.2D(2)(c) *for dual occupancies (detached)—dwellings will be situated within 100 metres of each other* provides more flexibility for siting and distance separating dwellings in rural zones.

15 There are in most cases ecological and environmental reasons to allow buildings to be sited some distance from one another, such as to avoid unnecessary building or earthworks near watercourses, disturbance to habitat etc.

For similar reasons, there is often environmental benefit in permitting the use of a separate driveway in rural areas and there is redundancy for controls requiring dwellings to utilise the same access to and from a public road.

20 Any application that proposes more than one driveway currently needs to be approved by the Elected Council and this is only because of the development standard under Clause 4.2D(2)(b).

A recommendation of this report for staff to investigate the effectiveness or redundancy of this development standard would allow for a further report to be brought to Council to explore what housekeeping amendments could be made.

25 Council may, at a future meeting, subsequently decide if housekeeping amendments to repeal this development standard and any associated development controls that would enable the merits of otherwise simple dual occupancy applications to be assessed and determined under staff delegation.

#### Clause 4.3 Height of Buildings

30 The proposal does not raise any concerns with regards to this clause. The proposed dwelling will be a maximum of 6.5 metres at its highest point above ground level which does not exceed the specified maximum height of 9 metres.

#### Clause 6.5 Drinking water catchments

35 The proposal does not raise any concerns with regards to this clause. The development is unlikely to have an adverse impact on the quality and quantity of water entering the drinking water storage basin. The site is not serviced by town sewer infrastructure and the wastewater and solid waste generated by the dwelling will be managed via an appropriately designed onsite sewage management system (OSMS). Conditions of consent have been recommended that require separate Council approval for the OSMS  
40 that will service the future dwelling.

#### Clause 6.6 Essential services



The proposal does not raise any concerns with regards to this clause. The site has adequate access to all essential services.

## Clause 4.6 Exceptions to Development Standards

5 The applicant has sought a variation to Clause 4.2D(2)(b) by proposing a second vehicular access to the public road network. The existing dwelling will retain its existing approved access to Coolamon Scenic Drive while the proposed dwelling is requested to have its own separate vehicular access to Friday Hut Road.

10 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:

- 15 • Variation to the development standard will remove the need for extensive works to extend internal access from Coolamon Scenic Drive including the removal of mature vegetation, extreme earthworks and civil works, a 9m bridge crossing and extremely steep batters.
- The carrying out of such works described above would be incompatible with the rural character of the land.
- Not having to construct a 200m extension of the existing internal driveway will significantly reduce the cost of the proposed development.

20 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:

- 25 • Requiring compliance with the development standard would require the extension of the driveway to the existing dwelling for a distance of approximately 200m to provide vehicular access to the proposed dwelling. Such an extension would traverse a significantly sloping area of the site which would require tree removal and major earthworks and civil works. This area also drains to a nearby stream and would potentially present a sediment erosion risk.
- 30 • There is an existing “farm track” and gate at the location of the proposed access to Friday Hut Road which has been used historically to access the southeastern portion of the site.
- Access to Friday Hut Road can reasonably achieve compliant sight distances and provide safe access without the need to increase the number of vehicle movements to and from the existing driveway to Coolamon Scenic Drive.
- 35 • The existing second access will provide a safer and more efficient means of evacuating the site in the event of a bush fire emergency by providing a shorter route to the public road network. The existing second access will also provide a more direct path to the dwelling for a fire truck to more efficiently protect the asset in the event of a bush fire emergency.
- 40 • The existing second access can reasonably be upgraded to comply with Council’s construction standards and Planning for Bush Fire Protection 2019 requirement subject to recommended conditions.



Further the proposal is in the public interest having regards to the objectives of the development standard being to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land, and to set out consent considerations for development of dual occupancies (detached) and secondary dwellings to address matters such as access, siting, land suitability and potential impacts.

By allowing a separate driveway access to Friday Hut Road for the proposed new dwelling, the development will ensure that it is of a scale and nature that is compatible with the rural character and environmental capabilities of the land and that potential impacts are minimised.

The concurrence of the Planning Secretary is not required.

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

- a) The development is satisfactory having regard to the requirements outlined in clause 4.6;
- b) The development is satisfactory having regard to applicable Department of Planning, Infrastructure and Environment Circulars;
- c) The development is satisfactory having regard to relevant caselaw;
- d) The DA demonstrates that compliance with the development standard is unreasonable and unnecessary;
- e) The DA demonstrates that there are sufficient environmental planning grounds to justify contravening the standard;
- f) The DA demonstrates that the development is in the public interest;
- g) The DA demonstrates that the development is consistent with the objectives of the standard and the zone;
- h) The DA demonstrates how the development produces a better planning outcome than one that strictly complied with the development standard; and
- i) The DA demonstrates what it is about the grounds of the request that are particular to the proposed development on this site, and that there has to be something particular to the development on this site to justify the variation.

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

No such instrument applicable.

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

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because it applies to the land to which LEP 2014 applies.



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input checked="" type="checkbox"/> B1   <input checked="" type="checkbox"/> B3   <input checked="" type="checkbox"/> B4   <input checked="" type="checkbox"/> B6   <input checked="" type="checkbox"/> B8   <input checked="" type="checkbox"/> B9   <input checked="" type="checkbox"/> B14
Part C Chapters:	<input checked="" type="checkbox"/> C3   <input checked="" type="checkbox"/> C4
Part D Chapters	<input checked="" type="checkbox"/> D2

### B1 Biodiversity

The application proposes the removal of six (6) *Pinus elliottii* (slash pines). This species is considered to be invasive and undesirable therefore no ecological assessment is required for their removal.

### 5 B4 Traffic Planning, Vehicle Parking, Circulation and Access

During a site inspection for the subject application, it was apparent that the garage approved by consent 5.1985.92.1 has been converted to a habitable area and is currently unable to be utilised as car parking for the existing dwelling.

- 10 A condition is recommended that requires the existing habitable area be converted back to a garage in accordance with consent 5.1985.92.1 to ensure that 2 compliant car parking spaces are provided onsite.

The proposed dwelling includes a double garage.

- 15 It was also noted during the site inspection that there is an existing constructed car parking area. A survey submitted by the applicant demonstrates that this car parking area is located within Council's road reserve.

A condition is recommended that requires this car parking area to be removed and landscaped to Council's satisfaction.

It was further observed during the site inspection that there is an existing second unapproved driveway access from Coolamon Scenic Drive.

- 20 A condition is recommended that requires this driveway access to be removed and landscaped to Council's satisfaction.

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

- 25 The site meets the definition of a visually prominent site being RU2 Rural Landscape with a height of 60m AHD or greater. Recommended conditions will prohibit the use of white or near white roof colours to ensure that the existing visual character of the area is retained, and no further assessment is required.

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

The development complies with the relevant Objectives and Prescriptive Measures of this Chapter with the exception of the items outlined in the below table:

30



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.4

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
<p><b>B14 Excavation and Fill</b></p> <p>The application proposes excavation to a maximum depth of 1.5m, with fill up to a maximum height of 1.3m in order to site the proposed dwelling on a level surface. This does not comply with the maximum 1.0m depth for general excavation works.</p>	<p>The proposed development complies with the Objectives of the Section because:</p> <p>The proposal satisfies the Objectives of B14.2 as the excavation and fill works do not present any compatibility issues with the character of the area and does not detract from the existing and desired future character of the area. The proposed earthworks will not result in any significant visual impact on the landscape.</p>	<p>The proposed development complies with the Performance Criteria of this Section because:</p> <p>The proposal satisfies the Performance Criteria as the excavation and fill works will not have any adverse visual impacts, will not overshadow or impact on the privacy of any adjoining land, does not present any risk of geotechnical instability / landslip and any resulting stormwater will be appropriately disposed of.</p>
<p><b>D2.2.2 Setbacks from boundaries</b></p> <p>The application proposes a minimum setback of 7.01m from the boundary with Friday Hut Road which does not comply with the required 15m setback.</p>	<p>The proposed development complies with the Objectives of the Section because:</p> <p>Council's records demonstrate that the existing dwelling and shed on the adjoining land to the north have a setback of 6.0m to the boundary with Friday Hut Road.</p> <p>The proposed dwelling has a minimum setback of 7.01m while the majority of the dwelling is setback at least 9.0m from the boundary with Friday Hut Road.</p> <p>Therefore the proposed setback is considered to be consistent with the rural and scenic character and amenity of the area.</p> <p>Adjoining land to the north</p>	<p>The proposed development complies with the Performance Criteria of this Section because:</p> <p>The performance criteria allow for flexibility with setback requirements.</p> <p>Due to the sloping nature of the site, strict compliance with the 15m setback requirement would result in further earthworks to site the dwelling on a level building pad which is considered to be an undesirable outcome.</p> <p>The proposed dwelling will be located approximately 50m from each of the dwellings on adjoining land to the north and south.</p> <p>Therefore there is minimal potential for intrusion on</p>



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.4

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
	and south are not used for any agricultural purpose therefore the proposal will not present any significant land use conflict	privacy, amenity, solar access or climate characteristics of those buildings.  The proposed location of the dwelling will not have any impact on vehicular safety and visibility on a public road and does not present any issues with regard to vehicle manoeuvrability on the site.

The proposed development is demonstrated to meet the relevant Objectives of DCP 2014.

### 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 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 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

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



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

### **5 4.6.1**

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

### **4.6.2 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.

### **4.6.3 Council Policies applicable to the proposed development?**

<b>Council Policy</b>	<b>Consideration</b>
<a href="#"><u>Management of Contaminated Land Policy</u></a>	The application has demonstrated that the proposed Dual Occupancy is formerly cleared grazing land, has not been used for cropping, and was formerly part of a large dairy farm dating back to 1906.  The land is considered suitable for the proposed use.
<a href="#"><u>Provision of Driveways Policy</u></a>	A Section 138 approval must be obtained for the existing driveway and car parking to be removed and for proposed new driveway construction.
<a href="#"><u>Local Approvals Policy</u></a>	Concurrent Section 68 approval for installation of an onsite sewage management system to service the new dwelling to be issued with any development consent granted.



## 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

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

## 4.9 Public interest

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

# 5. Developer Contributions

## 5.1 Water & Sewer Levies

No Section 64 levies will be required.

## 5.2 Developer Contributions

Section 7.11 Contributions will be payable.

# 6. Disclosure Of Political Donations And Gifts

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

# 7. Conclusion

The DA proposes Dual Occupancy (detached) Comprising the Existing Dwelling and a New Dwelling, Tree Removal: Six (6) Trees, and Ancillary Works.

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

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



**Report No. 13.5      PLANNING - Post Exhibition Submissions  
Report - Planning Proposal - 26.2023.7.1 -  
West Byron Transition to Local  
Environmental Plan 2014**

5      **Directorate:**                      Sustainable Environment and Economy

**Report Author:**                      Cameron Thiessen, Land Use Planner

**File No:**                                  I2024/1259

**Summary:**

10      On 10 November 2023, Council considered and supported progression of a Planning Proposal to transition the West Byron Urban Release Area into the Byron LEP 2014.

The Department of Planning, Housing & Infrastructure issued a Gateway determination on 26 February 2024 and the Planning Proposal was placed on public exhibition for a minimum period of 28 days from 30 May to 27 June 2024. Agency consultation was undertaken in accordance with the Gateway determination.

15      Two (2) public submissions (refer Attachment 2) were received during the exhibition period and one (1) agency submission was received (refer Attachment 3).

20      The submissions were received from planning consultants representing the owners of the Harvest Estate and the property owners managed under the Site R&D group. The comments, summarised in Table 1 of this report, reflect the consultants feedback on proposed mapping amendments and wording of various clauses for inclusion in the BLEP 2014.

Comments received from the NSW RFS, shown in Table 2, raised no concerns or issues in relation to bush fire.

25      In accordance with the Gateway Determination, Council is the delegated plan making authority in this instance and the Planning Proposal is to be finalised within 9 months of the issuance of the Gateway, i.e., 26 November 2024. An extension to the Gateway timeframe has been requested to enable finalisation of the amendment.

This report recommends that the planning proposal be amended and finalised with due consideration given to the relevant comments received from the submissions.

30      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:**

**That Council:**

- 5 1. **Revise the West Byron transition to Byron LEP 2014 planning proposal (Attachment 1 E2024/60126) to include zoning changes as described in Table 1 of this report and forward the planning proposal to NSW Parliamentary Counsel's Office (PCO) requesting that a draft LEP instrument be prepared;**
- 10 2. **Requests confirmation from the NSW Department of Planning, Housing and Infrastructure that the changes made to the planning proposal post-exhibition are of such a minor nature that re-exhibition is not required; and**
3. **Pending receipt of PCO opinion that the plan can be made, forwards the plan to the NSW Department of Planning, Housing and Infrastructure requesting notification on the NSW Government legislation website.**

**Attachments:**

- 15 1 26.2023.7.1 West Byron Transition Planning Proposal - PDF Exhibition Version, E2024/60126 
- 2 2 26.2023.7.1 Submissions Redacted, E2024/108984 
- 3 3 26.2023.7.1 Agency Submission - RFS Determination Letter, E2024/119173 
- 20 4 26.2023.7.1 PP-2023-2829 - Gateway Determination, E2024/38406 
- 5 5 Template - Form of Special Disclosure of Pecuniary Interest, E2012/2815 



## Report

### Background

At the 9 November 2023 Council (Planning) meeting Council resolved (**Resolution 23-525**) to:

- 5     1.     *Proceed with the planning proposal contained in Attachment 1, which sought to:*
  - (i)     *amend the West Byron Urban Release Area (WBURA) zones to reflect the court approved subdivisions for Harvest Estate (development consent 10.2017.201.1) and Site R&D (Development Consent 10.2017.661.1); and*
  - 10       (ii)    *transition all relevant LEP 1988 maps and site-specific provisions into Byron Local Environmental Plan 2014 for the WBURA.*
2.     *Forward the planning proposal to the NSW Department of Planning, Industry and Environment for a Gateway determination;*
3.     *Pending a positive Gateway determination, undertake public exhibition of the planning proposal in accordance with the determination requirements; and*
- 15     4.     *Consider a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.*



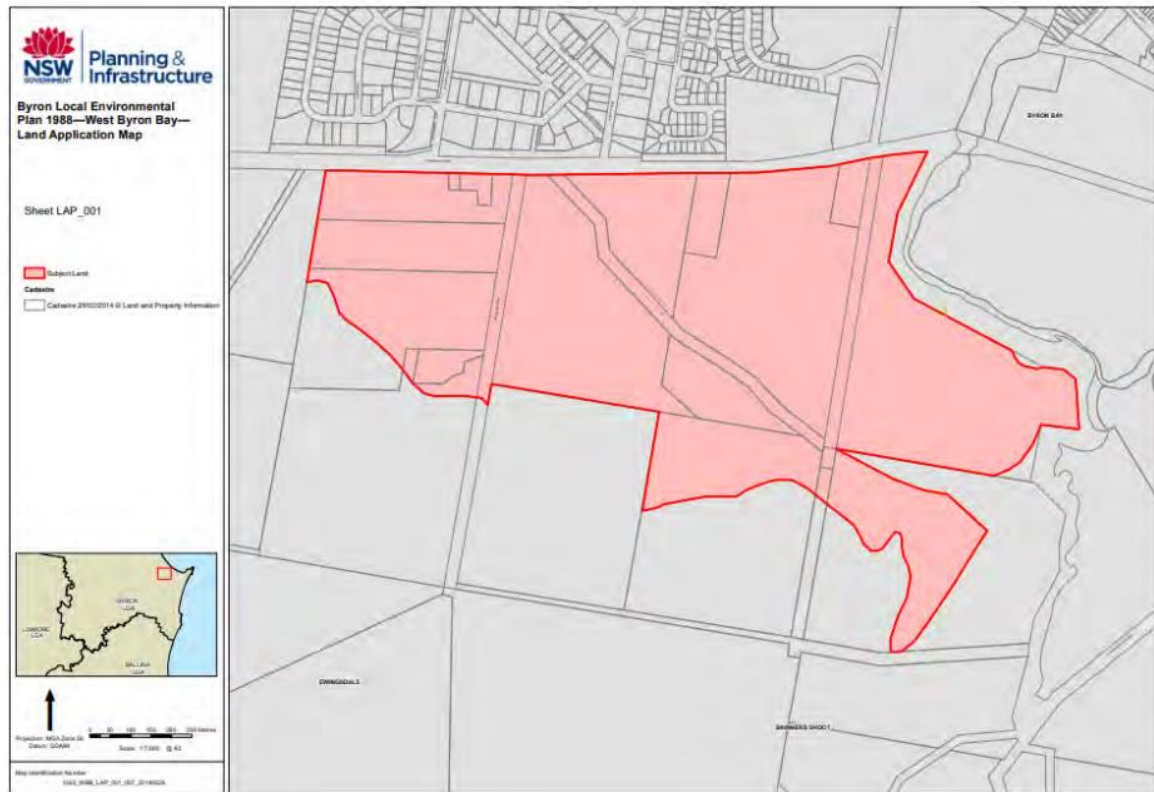


Figure 1 Current West Byron Urban Release Area - Land Application Area Map



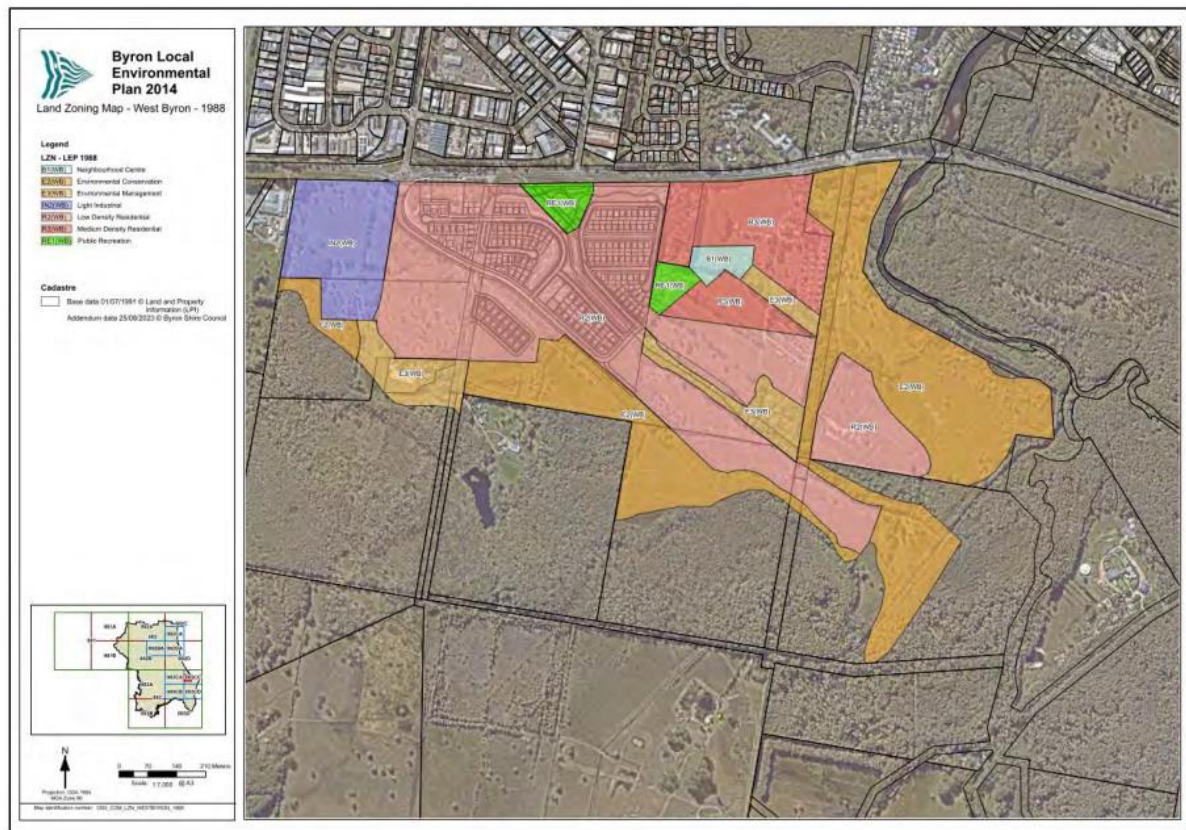


Figure 2 Current WBURA LEP 1988 Land Zoning Map

Gateway Determination was received on 26 February 2024 with conditions to include changes to the planning proposal to:

- 5 1. Remove the proposed savings provision;
2. Insert clauses 99, 100 and 101 of the Byron Local Environmental Plan 1988 into the LEP 2014 with appropriate numbering; and
3. Modify Clause 4.1C of the LEP 2014 to include for boundary adjustments between lots zoned C2 Environmental Conservation and C3 Environmental Management.
- 10 Point 3 was required by the Department of Planning as a part of the gateway determination.

In accordance with the Gateway Determination, Council has delegation to exercise its plan making functions in this instance and the proposed LEP is to be finalised by 26 November 2024. An extension to the Gateway timeframe has been requested to enable finalisation of the amendment.



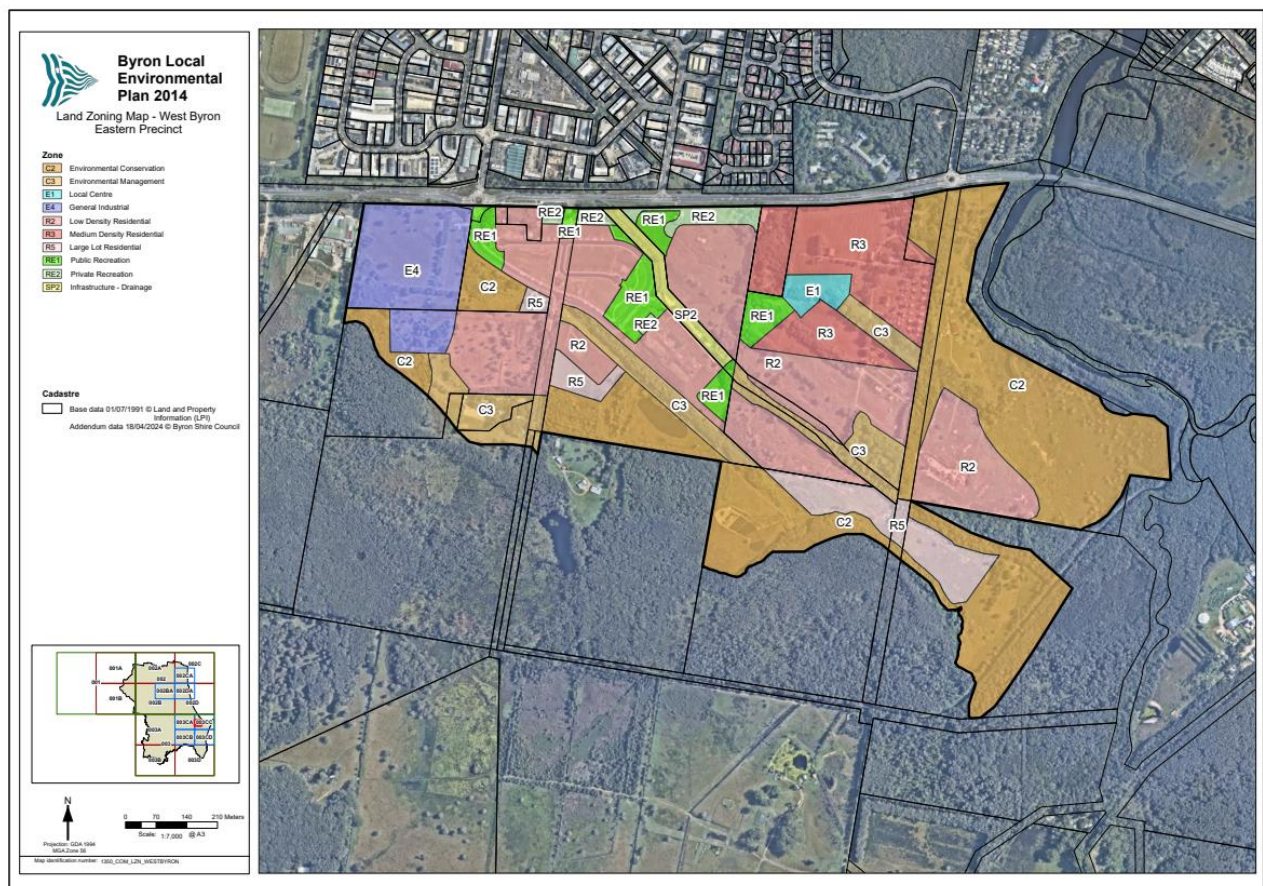


Figure 3 Exhibited WBURA Land Zoning Map

Figure 3 above shows the exhibited Land Zoning map proposed for the LEP 2014 transition of the WBURA. The Land Zoning in this map reflects the court approved Development Approval for the “Harvest” site (10.2017.201.3), whilst the mapping of land that is part of “Site R + D” development approval remains unchanged other than the like-for-like transition from the 1988 LEP to the LEP 2014 mapping. Additional maps for Acid Sulfate Soils, Land Reservation Acquisition, Lot size, Urban Release Area, and Height of Buildings are contained in the appendices of the Planning Proposal.

- 5 In addition to mapping undertaken for the LEP transition, the following amendments to LEP 2014 clauses are contained in the Planning Proposal, including:
  - Amend clause 4.1E ‘Minimum lots sizes for certain residential accommodation’ to permit greater residential densities for dual occupancy (attached and detached) in Zones R2 and R3 consistent with clause 82(2) of Byron LEP 1988.
- 15 - Incorporate an equivalent provision to clause 83 of Byron LEP 1988 ‘Exceptions to minimum subdivision lot sizes for certain residential development’ to ensure permitted densities for integrated housing are retained.
- Insert clauses 99, 100 and 101 of the Byron Local Environmental Plan 1988 into the LEP 2014 with appropriate clause numbering.



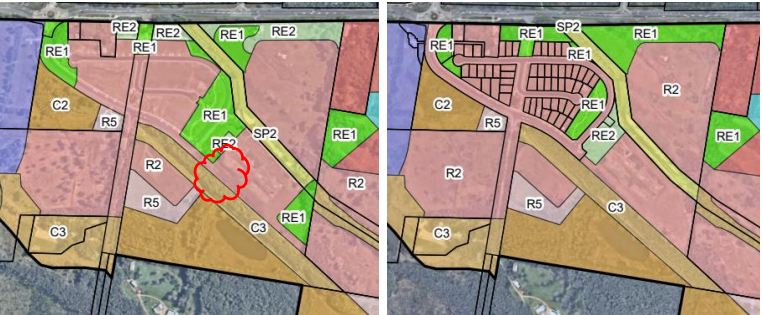
- Amend Clause 4.1C of the LEP 2014 to include for boundary adjustments between lots zoned C2 Environmental Conservation and C3 Environmental Management.

The above clause amendments will result in the deletion of “Part 4 West Byron” of the LEP 1988 as it will no longer have any effect.

**5 Public submissions**

The Planning Proposal was publicly exhibited, in accordance with the Gateway Determination, from 20 May 2024 to 27 June 2024. Table 1 provides a brief summary of the received submissions and Staff comments in relation to the items raised. The submissions are contained in Attachment 2 to this report.

**10 Table 1: Summary of submissions and staff response**

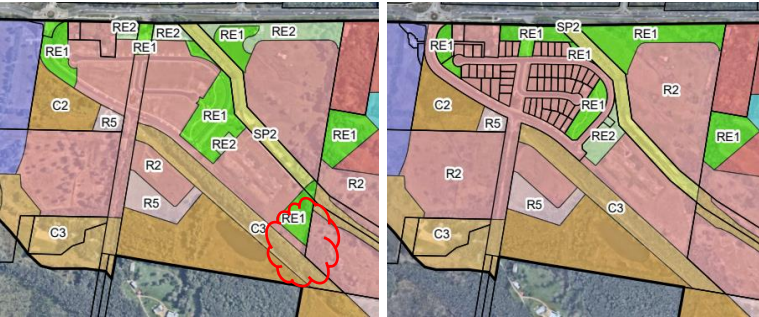
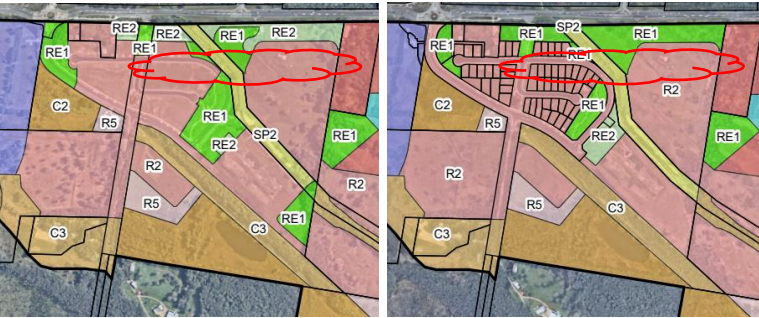
Item #	Submission Issues	Staff comment
	Submitter: Planit Consulting for NSPT Pty Ltd	
Item 1	<p><b>Private Open Space – Stage 3</b></p> <p>Landowner requests lots shown as RE1 be zoned RE2 due to previous advice from Council that they would not accept dedication of these lots.</p>	<p><b>Recommendation</b></p> <p>Amend Zoning plan to show the below highlighted subject lots as RE2, to be retained by the developer.</p> <p>Note: The recommendation will amend part of this area from zone RE1 to zone RE2. Areas where a road is approved will be zoned R2 per ‘Item 5’ below.</p>  <p><i>Figure 4 Exhibited and Recommended LZN Mapping comparison for Item 1</i></p>
Item 2	<p><b>C2 Environmental Conservation</b></p> <p>Landowner requests Lot 55 DP1299678 to be zoned R5 in its entirety in lieu of the current part zoning of C2 Environmental Conservation, due to the Acid Frog and Vegetation Management Plans included in the subdivisions consent for</p>	<p>Retain existing C2 and R5 zones for Lot 55 DP1299678 to ensure integrity of the C2 zone (no amendment to exhibited LZN Map proposed).</p>



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.5

Item #	Submission Issues	Staff comment
	the lot.	
Item 3	<p><b>Open Space – South-East Stage 3</b></p> <p>Landowner requests triangular shaped RE1 lot in the approved Stage 3 be changed to R2 due to it being a drainage lot.</p>	<p><b>Recommendation</b></p> <p>Remove RE1 Public Recreation Zone from Stage 3 triangular lot highlighted below. Change to R2 Low Density Residential. The lot is a preliminary Drainage Lot, drainage works are a permitted use in an R2 zone.</p>  <p><i>Figure 5 Exhibited and recommended Drainage lot comparison for Item 3</i></p>
Item 4	<p><b>Ewingsdale Road buffer</b></p> <p>Landowner requests currently zoned RE2 Private Recreation be rezoned to RE1 Public Recreation as they are to be dedicated to council.</p>	<p><b>Recommendation</b></p> <p>Amend below highlighted Ewingsdale Road buffer lots to be zoned from RE2 Private Recreation to RE1 Public Recreation.</p>  <p><i>Figure 6 Exhibited and Recommended Buffer lots for Item 4</i></p>
Item 5	<p><b>Internal Roads</b></p> <p>Landowner requests all internal roads be zoned R2 Low Density Residential.</p>	<p><b>Recommendation</b></p> <p>Amend zoning to show internal roads as R2 Low Density Residential to match adjacent residential lots to maintain consistency and avoid confusion (refer Figure 9 for amended zoning).</p>
<b>Submitter: SJB Planning for Site R&amp;D Pty Ltd</b>		
Item 6	Landowner supports direct transfer of zoning and other LEP maps on a like-for-like basis from BLEP 1988 to BLEP	Noted.



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Item #	Submission Issues	Staff comment
	2014.	
<b>Item 7</b>	Landowner requests confirmation that the zoning boundaries in the Site R&D land remain unchanged in the transition from BLEP 1988 to BLEP2014	Noted. The subject zone boundaries remain unchanged.
<b>Item 8</b>	Landowner requests that the Land Reservation Acquisition Map only relates to the Harvest Estate land	Noted. Current Land Reservation Acquisition Map is consistent with DA approval (10.2017.661.1).
<b>Item 9</b>	Landowner notes the importance of the transfer of LEP 1988 provisions (cl.82) to BLEP 2014.	Noted.
<b>Item 10</b>	Landowner notes the importance of the transfer of LEP 1988 provisions (cl.83) to BLEP 2014.	Noted.
<b>Item 11</b>	Landowner supports the direct transfer of LEP 1988 provision (cl.83A) to BLEP 2014.	Noted.
<b>Item 12</b>	Landowner supports the transfer of BLEP 1988 cl 99, 100 and 101 to BLEP 2014	Noted.
<b>Item 13</b>	Landowner noted the removal of a previously proposed savings clause	Noted. Clause removed due to DA Consent being consistent with current provisions, and there is a suitable provision under c1.8A of BLEP 2014.
<b>Item 14</b>	Landowner requests council includes an amendment to BLEP 2014 cl.4.1 to include the wording of objective (b) of BLEP 1988 cl.81.	Council staff consider that the Lot Size mapping, and provisions contained in the transferred BLEP cl.82 and 83 and the existence of cl.4.1 in the BLEP 2014 is sufficient to address objective (b) of BLEP 1988 cl.81.



Government agency consultation

Government agencies were consulted in accordance with the Gateway Determination and a summary of the consultation is provided in Table 2.

**Table 2 - Agency Consultation**

Agency Name	Submission Issues and Staff comment (where applicable)
New South Wales Rural Fires Service	The NSW RFS has considered the information submitted and subsequently raise no concerns or issues in relation to bush fire.

5 Recommendations

Recommended amendments are noted in Table 1 and listed below:

- Item 1
- Item 3
- Item 4
- Item 5

The recommended amendments to the zoning map for the West Byron Urban Release Area are illustrated below in Figure 7.

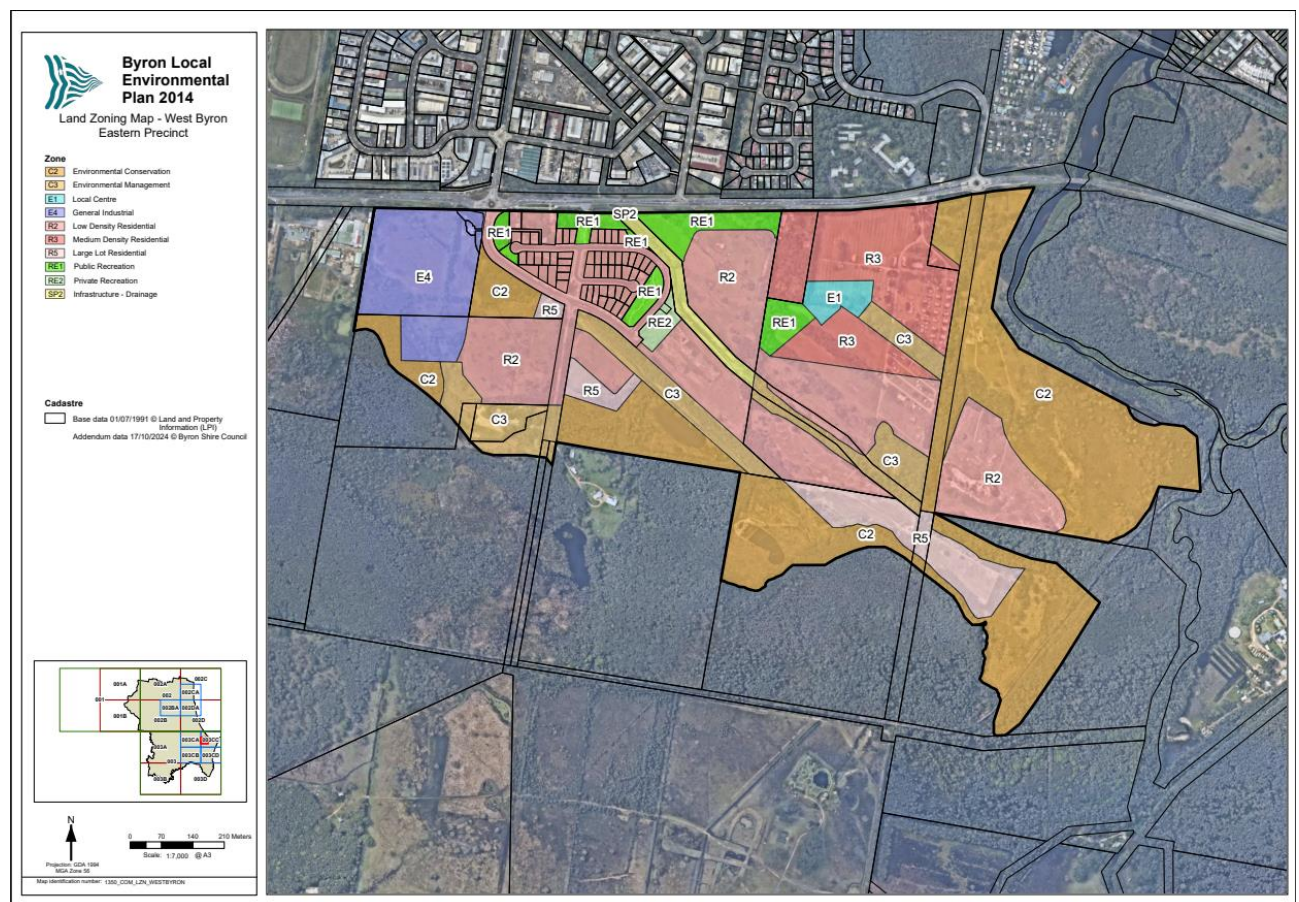


Figure 7 WBURA Land Zoning Map with recommended amendments listed in Table 2



## Next steps

- 5 It is recommended that Council adopt the planning proposal with the amendments recommended in this report. Should Council adopt the recommended amendments, the planning proposal will be sent to Parliamentary Counsel for legal drafting; Council exercises its plan making functions; and the Planning Proposal will be sent to the Department of Planning, Housing and Infrastructure for notification.

## 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

## 10 Recent Resolutions

- **19-137** (28 March 2019). Council Meeting - West Byron – Alternate Zoning Plan. I2019/384
- **23-525** (10 November 2023). Council (Planning) Meeting - Planning Proposal to transition the West Byron Urban Release Area into LEP 2014. I2023/1215

## 15 Legal/Statutory/Policy Considerations

This planning proposal will amend the Byron Local Environmental Plan 2014 and the Byron Local Environmental Plan 1988.

Relevant legal/statutory/policy considerations are provided in this report.

## Financial Considerations

- 20 This is a Council initiated planning proposal and will be funded from within existing budgets.

## Consultation and Engagement

- 25 Exhibition of the planning proposal for the West Byron Transition to Local Environmental Plan 2014 occurred in accordance with the Gateway Determination for a period of 28 days concluding on 27 June 2024.



5

**Report No. 13.6 PLANNING - DA 10.2024.208.1 - Use of, and alterations and additions to, existing dwelling to create dual occupancy (detached) and new swimming pool - 72 Lawlers Lane Bangalow**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Dylan Johnstone, Development Investigations Lead  
**File No:** I2024/1421

**Proposal:**

**DA No:** 10.2024.208.1  
**Planning Portal ref** PAN-447934  
**Proposal description:** Use of, and alterations and additions to, existing dwelling to create dual occupancy (detached) and new swimming pool  
**Property description:** LOT: 2 DP: 1007622  
 72 Lawlers Lane BANGALOW  
**Parcel No/s:** 229440  
**Applicant:** Town Planning Studio Pty Ltd  
**Owner:** Mr R Mamone  
**Zoning:** RU1 Primary Production / RU2 Rural Landscape  
**Date received:** 1 August 2024  
**Integrated / Designated Development:** Not Designated or Integrated Development  
**Public notification or exhibition:** – Level 2 advertising under Council's Community Participation Plan.  
 – Exhibition period: 12/08/24 – 25/08/24  
 – Submissions received: One  
 – Submissions acknowledged: ☒ Yes ☐ No ☐ N/A



## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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<b>Planning Review Committee</b>	Application was not called up to a planning review committee
<b>Delegation to determine</b>	<p>Council</p> <p>Reason: Any variation to a development standard greater than 10% must be determined by the elected Council in accordance with the NSW Department of Planning, Housing and Infrastructure <i>Guide to Varying Development Standards</i> dated November 2023</p>
<b>Variation request to Development Standards under an EPI (e.g. clause 4.6)</b>	<p><b>Clause 4.6 Byron Local Environmental Plan (LEP) 2014</b></p> <p>Name of clause - Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2</p> <p>Clause number – 4.2D(2)(b)</p> <p>Percentage value of variation sought – 100%</p> <p>Percentage value of the variation recommended to be approved – 100%</p> <p>Brief justification for the variation – The variation is reasonable and orderly with consideration for existing provision of driveways. No environmental impacts and it is unnecessary to comply with the standard as it is proposed to utilise an existing historical second access to Lawlers Lane. The site is suitable for the development and the variation raises no environmental impacts.</p>
<b>Estimated cost</b>	\$999,500.00
<b>Issues</b>	<p>Clause 4.6 variation to development standard Clause 4.2D(2)(b) to permit second driveway access. Conditions of consent are recommended to formalise the provision of not more than two driveway crossovers within the road reserve.</p> <p>A building information certificate is required subject to deferred commencement of the consent to bring the existing unauthorised converted building into compliance with the Building Code of Australia (BCA) prior to the consent becoming operational.</p>



## Summary:

This Development Application (DA) seeks consent for the use of, and alterations and additions to, an existing dwelling to create a dual occupancy (detached) and new swimming pool. The application is seeking consent for the use of an existing dwelling that has been created by an unauthorised conversion of a historical dairy bails on the site.

The application proposes a variation to a development standard in accordance with clause 4.6 of Byron LEP 2014. The development standard to be varied is the requirement for each dwelling to use the same vehicular access to and from a public road prescribed by clause 4.2D (2) (b). The application proposes to utilise a second unapproved access to the site from Lawlers Lane which represents a 100% variation and any variation greater than 10% must be determined by the elected Council in accordance with the NSW Department of Planning, Housing and Infrastructure *Guide to Varying Development Standards* dated November 2023.

The applicant has submitted a written request to vary the development standard that demonstrates strict compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental grounds to vary the controls. The development will not impair the use of the land for agriculture. The land is physically suitable for the development, and is capable of accommodating on-site disposal and management of sewage for the development. The development will not have an adverse impact on the scenic amenity or character of the rural environment.

The variation to the development standard is supported by staff.

A recommendation is included in the report for staff to review the need for this development standard in Clause 4.2D(2)(b) '*one access point to rural dual occupancies*'. This is due to its apparent redundancy as evidenced by the number of variation requests being received since Council removed the 100m distance restriction to rural dual occupancy development in the Byron LEP 2014.

The application was advertised and notified between 12 August to 25 August 2024 in accordance with the Byron Shire Community Participation Plan and one (1) submission was received from the public with regard to the location of the existing second access to the site. The proposal however is considered acceptable subject to recommended conditions of consent including the requirement for the proponent to obtain a Section 138 approval to upgrade the existing driveways to ensure compliance with Council's standards.

The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions listed in Attachment 3 of this report.

### NOTE TO COUNCILLORS:

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







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**RECOMMENDATION:**

**That:**

- 5     1.     Pursuant to Section 4.15 of the Environmental Planning & Assessment Act 1979, Development Application 10.2024.208.1 for Use of, and Alterations and Additions to, Existing Dwelling to create Dual Occupancy (detached) and New Swimming Pool, be granted Deferred Commencement subject to the conditions in Attachment 3 #E2024/124480.
- 10    2.     The redundancy of Byron Local Environmental Plan 2014 controls that require each dwelling of a dual occupancy on a rural lot to use the same vehicular access to and from a public road be reviewed by staff. With New DCP provisions to be considered instead to otherwise allow a second driveway to be approved where there are reasonable and sufficient environmental planning grounds. Both LEP and DCP amendments to be reported back to Council as House Keeping matters.
- 15

**Attachments:**

- 1     10.2024.208.1 Plans, E2024/124491 
- 20    2     10.2024.208.1 Redacted Submission, E2024/124486 
- 3     10.2024.208.1 Recommended conditions, E2024/124480 
- 4     10.2024.208.1 Clause 4.6 Variation Request - 72 Lawlers Lane, Bangalow, E2024/74565 



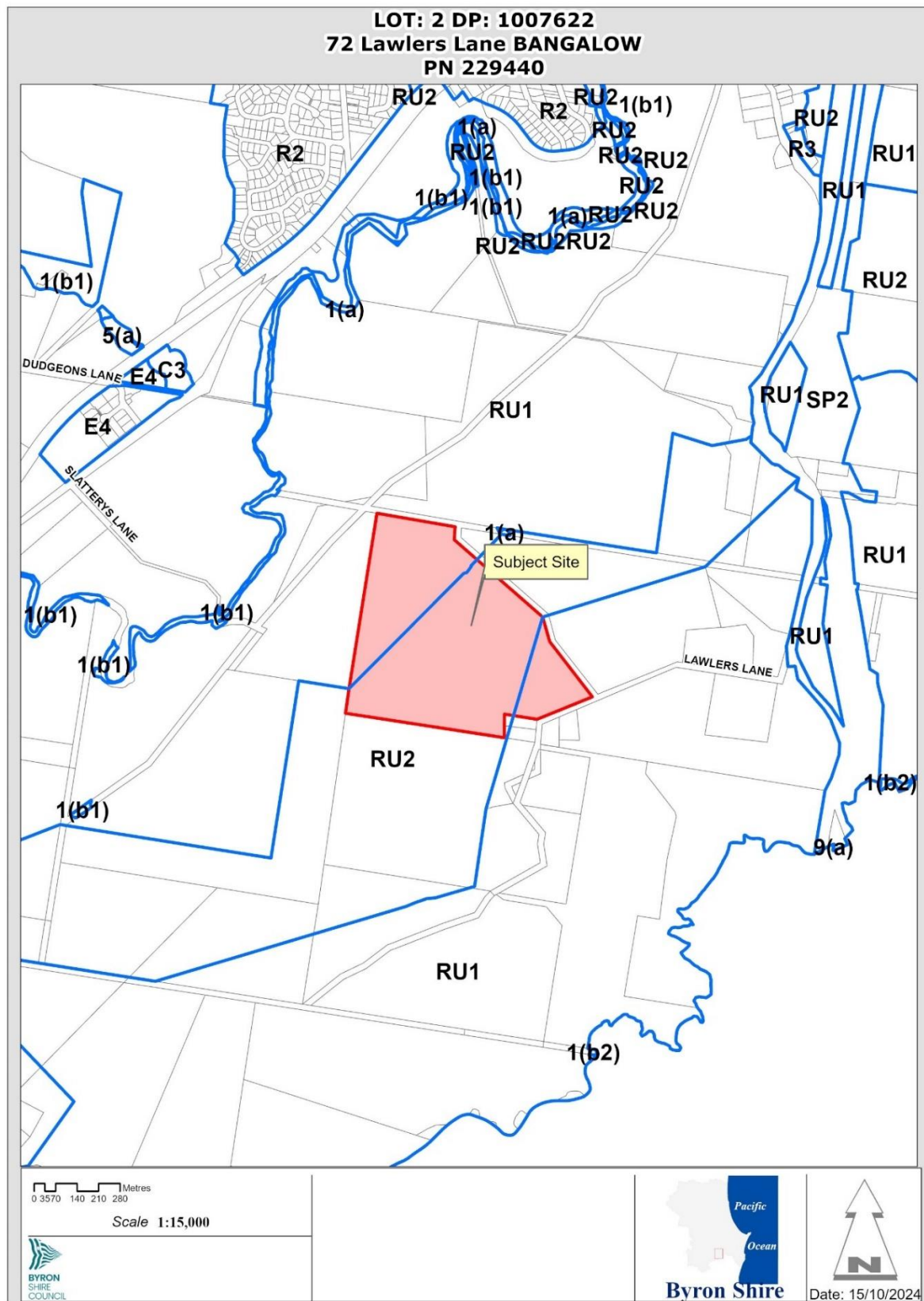


Figure 1: Locality Plan



## Assessment:

### 1. INTRODUCTION

#### History/Background

- 10.2000.61.1 – Development Consent for a dwelling and shed Issued 20 April 2000.
- 5 • 10.2003.81.1 – CDC for a swimming pool issued 10 June 2003.
- 10.2022.36.1 – Development Consent for Tourist and Visitor Accommodation comprising of Six (6) Holiday Cabins and Associated Works issued 22 June 2023.

#### Compliance action

- 10 Council received a complaint in June 2023 alleging that an old dairy bails on the property has been converted into a dwelling without consent. Council's compliance staff inspected the property and determined that the complaint was valid. A Restore Works Order was issued in September 2023 requiring the dwelling to be restored to its original configuration and use as a bails / shed.

This development application has been lodged in response to the Order.

15

#### Description of the proposed development

Development consent is sought to formalise the use of an existing building within the site as a dwelling and to construct alterations and additions to that dwelling to create dual occupancy (detached) and a new swimming pool.

- 20 The proposed development is located within the east of the property, approximately 45 metres to the south of the main dwelling approved under development consent 10.2000.61.1. The existing building comprises a single level building containing a kitchen, bathroom, bedroom, living and laundry facilities.

- 25 The new additions are proposed over a single level and contain a new kitchen to replace existing / living / dining area, 3 x bedrooms, 2 x bathrooms and a new laundry to replace existing. Deck areas are proposed on the eastern and western sides of the dwelling. A swimming pool is proposed on the western side of the dwelling.



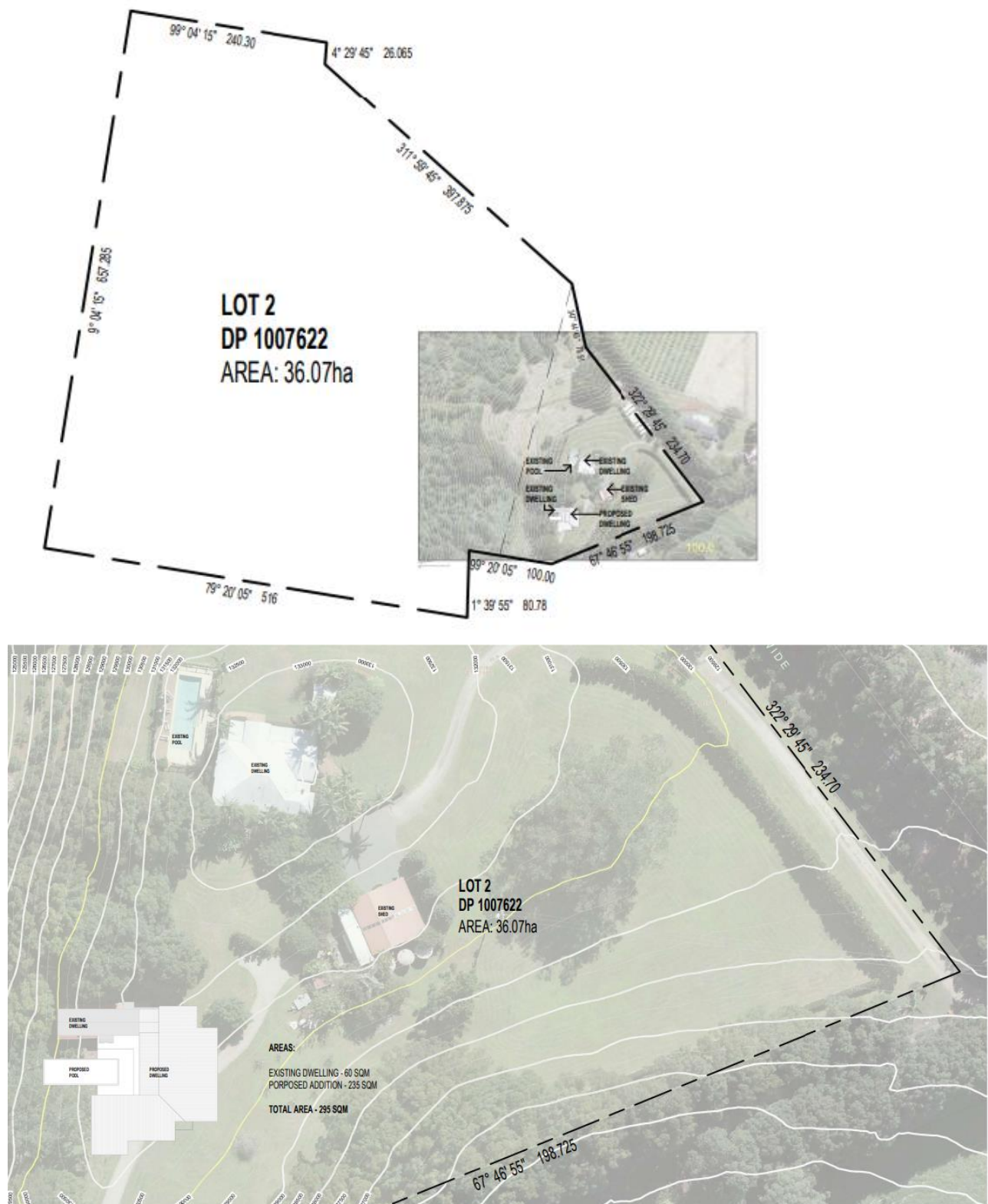


Figure 2: Proposed site plan

## Description of the site

- 5 A site inspection was carried out on 14 October 2024

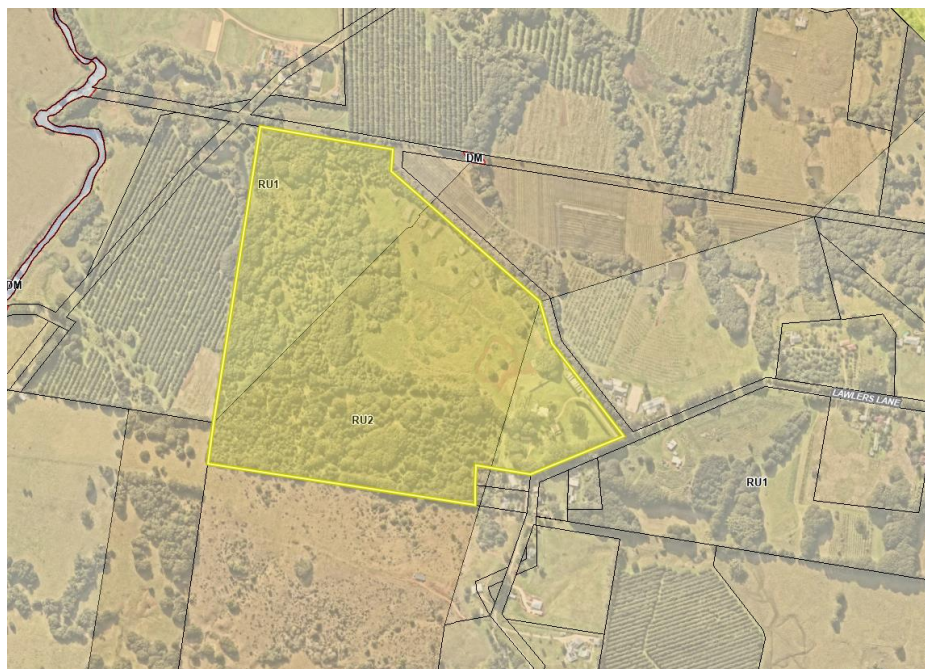


# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Land is legally described	LOT: 2 DP: 1007622	
Property address	72 Lawlers Lane BANGALOW	
Land is zoned:	RU1 Primary Production / RU2 Rural Landscape	
Land area is:	360,700 m <sup>2</sup> (36.07 hectares)	
Property is constrained by:	Bushfire prone land High environmental value vegetation Drinking water catchment	
	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:** Zoning map





**Figure 4:** Fig tree requires pruning to comply with Planning for Bush Fire Protection 2019



Existing unauthorised dwelling, Existing second access to Lawlers Lane



Existing second access to Lawlers Lane, Existing second access to Lawlers lane

**Figure 5:** Site photos



## 2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
Building Surveyor	No objections subject to conditions.
S7.11 Contributions Planner	Contributions calculated by planner.
Rural Fire Service (4.14)	No objections subject to conditions.

## 3. SECTION 4.14 – BUSH FIRE PRONE LAND

- 5 Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document 'Planning for Bush Fire Protection 2019'. The site is bush fire prone land. The development application was referred to the NSW Rural Fire Service, which provided conditions which are reflected in the Recommendation of this Report below.

Effect of 10/50 rule on significant vegetation

- 10 The land is located in a designated 10/50 vegetation entitlement clearing area. Recommended conditions include a requirement that the fig tree may only be pruned to comply with the requirements of Planning for Bush Fire Protection 2019 with no further pruning permitted.

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

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

### 4.1 State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<i>Resilience and Hazards SEPP 2021</i> Consideration: Chapter 4 Remediation of Land The applicant has demonstrated that the location of the dwelling subject to this application is not contaminated by previous land use and the land is considered suitable for the proposed use. No further investigation is	☒	☐



<b>Considerations</b>	<b>Satisfactory</b>	<b>Unsatisfactory</b>
considered warranted.		
<p><i>Sustainable Buildings SEPP 2022</i></p> <p>Consideration: BASIX Certificate required for:</p> <ul style="list-style-type: none"> <li>• <b>New dwellings</b></li> <li>• Alterations &gt; \$50,000.00</li> <li>• Pools &gt; 40,000 kl</li> </ul> <p>A BASIX certificate has been provided and a condition of consent requires the development to comply with the requirements of that certificate.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. The LEP 2014 clauses that are

5

Part 1	<input checked="" type="checkbox"/> 1.1   <input checked="" type="checkbox"/> 1.1AA   <input checked="" type="checkbox"/> 1.2   <input checked="" type="checkbox"/> 1.3   <input checked="" type="checkbox"/> 1.4   <input checked="" type="checkbox"/> Dictionary   <input checked="" type="checkbox"/> 1.5   <input checked="" type="checkbox"/> 1.6   <input checked="" type="checkbox"/> 1.7   <input checked="" type="checkbox"/> 1.8   <input checked="" type="checkbox"/> 1.9
Part 2	<input checked="" type="checkbox"/> 2.1   <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table
Part 4	<input checked="" type="checkbox"/> 4.1E   <input checked="" type="checkbox"/> 4.2A   <input checked="" type="checkbox"/> 4.2D   <input checked="" type="checkbox"/> 4.3   <input checked="" type="checkbox"/> 4.6
Part 6	<input checked="" type="checkbox"/> 6.2   <input checked="" type="checkbox"/> 6.5   <input checked="" type="checkbox"/> 6.6

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 Dual Occupancy (detached);
- (b) The land is within the RU1 Primary Production / RU2 Rural Landscape according to the Land Zoning Map (the proposed development is located entirely within the RU1 zone);
- (c) The proposed development is permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

10

<b>Zone Objective</b>	<b>Consideration</b>
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base	The proposal does not significantly impact upon the agricultural viability of the land



<b>Zone Objective</b>	<b>Consideration</b>
To encourage diversity in primary industry enterprises and systems appropriate for the area	The proposal is for residential use only
To minimise the fragmentation and alienation of resource lands	The proposal does not significantly impact upon the agricultural viability of the land
To minimise conflict between land uses within this zone and land uses within adjoining zones	The proposed dwelling is located to minimise any potential land use conflict issues
To encourage consolidation of lots for the purposes of primary industry production	The proposal comprises a single allotment and consolidation is not applicable
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 proposal is for residential use only
To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality	The proposal does not have any significant impacts on the scenic landscape/quality of the locality

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) except as outlined below.

**4.2D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2**

5

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

*(a) to provide alternative accommodation for rural families and workers,*

*(b) to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land,*

10 *(c) to set out consent considerations for development of dual occupancies (detached) and secondary dwellings to address matters such as access, siting, land suitability and potential impacts.*



(2) *Development consent must not be granted to development for the purpose of a dual occupancy (detached) or secondary dwelling on land in Zone RU1 Primary Production or Zone RU2 Rural Landscape unless the consent authority is satisfied that—*

5 (a) *the development will not impair the use of the land, or neighbouring land, for agriculture or rural industries, and*

**(b) *each dwelling will use the same vehicular access to and from a public road, and***

(c) *(Repealed)*

(d) *the land is physically suitable for the development, and*

10 (e) *the land is capable of accommodating the on-site disposal and management of sewage for the development, and*

(f) *the development will not have an adverse impact on the scenic amenity or character of the rural environment.*

15 The application proposes to utilise an existing unapproved access to Lawlers Lane which is separate from the approved access to Lawlers Lane utilised by the existing approved dwelling (as indicated in the submitted driveway plan below). Therefore the application seeks approval to utilise a second existing access which does not comply with Clause 4.2D(2)(b). This exception is further assessed as a variation to a development standard below.

20 It is noted that prior amendments to Byron LEP 2014 which repealed Clause 4.2D(2)(c) *for dual occupancies (detached)—dwellings will be situated within 100 metres of each other* provides more flexibility for siting and distance separating dwellings in rural zones.

25 There are in most cases ecological and environmental reasons to allow buildings to be sited some distance from one another, such as to avoid unnecessary building or earthworks near watercourses, disturbance to habitat.

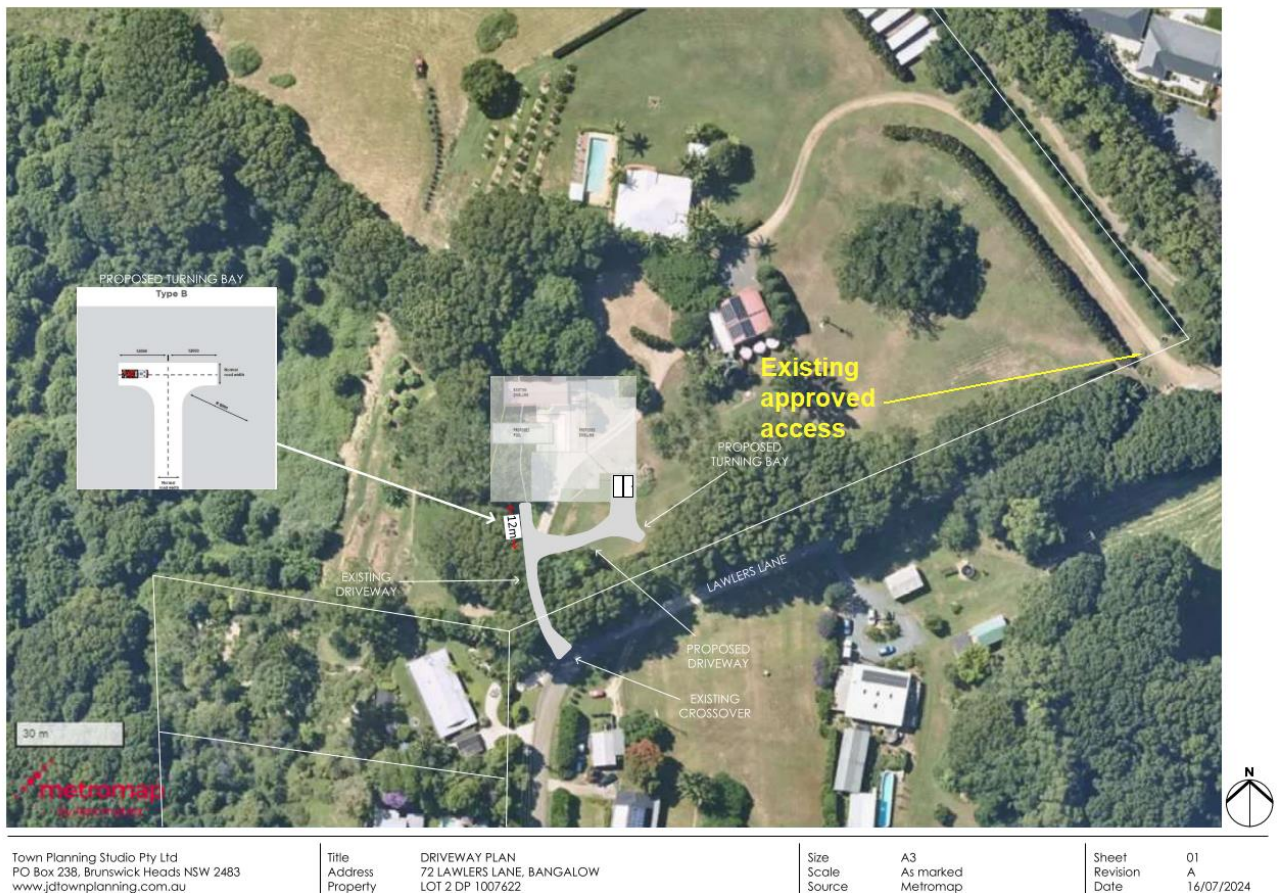
For similar reasons, there is often environmental benefit in permitting the use of a separate driveway in rural areas and there is redundancy for controls requiring dwellings to utilise the same access to and from a public road.

30 Any application that proposes more than one driveway currently needs to be approved by the Elected Council and this is only because of the development standard under Clause 4.2D(2)(b).

A recommendation of this report for staff to investigate the effectiveness or redundancy of this development standard would allow for a further report to be brought to Council to explore what housekeeping amendments could be made.

35 Council may, at a future meeting, subsequently decide if housekeeping amendments to repeal this development standard and any associated development controls that would enable the merits of otherwise simple dual occupancy applications to be assessed and determined under staff delegation.





### Clause 4.3 Height of Buildings

The proposal does not raise any concerns with regards to this clause. The proposed dwelling will be a maximum of 6.9 metres at its highest point above ground level which does not exceed the specified maximum height of 9 metres.

### Clause 6.5 Drinking water catchments

The proposal does not raise any concerns with regards to this clause. The development is unlikely to have an adverse impact on the quality and quantity of water entering the drinking water storage basin. The site is not serviced by town sewer infrastructure and the waste water and solid waste generated by the dwelling will be managed via an appropriately designed onsite sewage management system (OSMS). Conditions of consent have been recommended that require separate Council approval for the OSMS that will service the future dwelling.

### Clause 6.6 Essential services

The proposal does not raise any concerns with regards to this clause. The site has adequate access to all essential services.



## Clause 4.6 Exceptions to Development Standards

The applicant has sought a variation to Clause 4.2D(2)(b) by proposing to utilise an existing unapproved second vehicular access to the public road network. The existing dwelling will retain its existing approved eastern access to Lawlers Lane while the proposed dwelling is requested to utilise its own separate western access to Lawlers Lane.

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:

- *The proposed dual occupancy development makes use of an existing building that is positioned within a previously disturbed area of the rural holding. An inspection of the site confirms that an established driveway provides access to the subject dwelling from Lawlers Lane. The other dwelling within the property also has its own vehicle access driveway from Lawlers Lane.*
- *Upon an inspection of the property, it is apparent that the construction of a connecting driveway between the two existing dwellings is unreasonable and unnecessary for this project. The proposed dwelling can safely be accessed from the existing driveway. The established driveway from the roadway to the dwelling is a practical arrangement that allows direct access for property maintenance vehicles/machinery/equipment.*

It is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental grounds to vary the development standard for the following reasons:

- The existing second access is well established and is currently being used to access this area of the site.
- The existing second access will provide a safer and more efficient means of evacuating the site in the event of a bush fire emergency by providing a shorter route to the public road network. The existing second access will also provide a more direct path to the dwelling for a fire truck to more efficiently protect the asset in the event of a bush fire emergency.
- The existing second access achieves compliant sight distances in relation to approaching vehicles on Lawlers Lane which is a no through road and has a low traffic volume travelling at low speed on a gravel formation.
- The existing second access can reasonably be upgraded to comply with Council's construction standards and Planning for Bush Fire Protection 2019 requirements subject to recommended conditions.



Further, the proposal is in the public interest having regards to the objectives of the development standard being to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land, and to set out consent considerations for development of dual occupancies (detached) and secondary dwellings to address matters such as access, siting, land suitability and potential impacts.

By allowing a separate driveway access to Lawlers Lane for the subject dwelling, the development will remain of a scale and nature that is compatible with the rural character and environmental capabilities of the land.

10 The concurrence of the Planning Secretary is not required.

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

- a) The development is satisfactory having regard to the requirements outlined in clause 4.6;
- 15 b) The development is satisfactory having regard to applicable Department of Planning, Infrastructure and Environment Circulars;
- c) The development is satisfactory having regard to relevant caselaw;
- d) The DA demonstrates that compliance is with the development standard is unreasonable;
- 20 e) The DA demonstrates that there are sufficient environmental planning grounds to justify contravening the standard;
- f) The DA demonstrates that that the development in the public interest;
- g) The DA demonstrates that the development is consistent with the objectives of the standard and the zone;
- 25 h) The DA demonstrates how the development produces a better planning outcome than one that strictly complied with the development standard; and
- i) The DA demonstrates what it is about the grounds of the request that are particular to the proposed development on this site, and that there has to be something particular to the development on this site to justify the variation.

The full Clause 4.6 written request for variation is included as **Attachment 4** of this report

#### 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)**

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because it applies to the land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are checked below are of relevance to the proposed development:

Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input checked="" type="checkbox"/> B1   <input checked="" type="checkbox"/> B3   <input checked="" type="checkbox"/> B4   <input checked="" type="checkbox"/> B6   <input checked="" type="checkbox"/> B8   <input checked="" type="checkbox"/> B9   <input checked="" type="checkbox"/> B14
Part C Chapters:	<input checked="" type="checkbox"/> C3   <input checked="" type="checkbox"/> C4
Part D Chapters	<input checked="" type="checkbox"/> D2

### B1 Biodiversity

The application proposes pruning of a large mature fig tree to ensure that trees at maturity should not touch or overhang the building in accordance with Asset Protection Zone requirements of Planning for Bush Fire Protection 2019. A condition is recommended that no further native vegetation removal is approved.

The application also proposes the removal of five (5) camphor laurel trees within the required APZ which are an invasive species and will not have any significant ecological impact.

### B4 Traffic Planning, Vehicle Parking, Circulation and Access

Submitted plans have indicated that 2 uncovered parking spaces are proposed to service the dwelling. However the DCP requires that at least one covered car parking space be provided for the dwelling. Recommended conditions include the requirement that plans submitted with the application for a Construction Certificate must demonstrate at least one covered car parking space.

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

The site meets the definition of a visually prominent site being zoned RU1 Primary Production with a height of 60m AHD or greater. Recommended conditions will prohibit the use of white or near white roof colours to ensure that the existing visual character of the area is retained and no further assessment is required.

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

The application has demonstrated compliance with the relevant Objectives and Prescriptive Measures of this Chapter.

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



## 4.5 Environmental Planning and Assessment Regulation 2021 considerations

<b>Environmental Planning and Assessment Regulations 2021</b>	<b>Applicable to the proposal:</b>	<b>Considered the control as it relates to the proposal:</b>	<b>If this control is applicable, does the proposal comply?</b>
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 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

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

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

5

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



<b>Impact on:</b>	<b>Likely significant impact/s?</b>
	sedimentation and erosion control measures and the like to ameliorate such impacts.

**4.6.1 Council Policies applicable to the proposed development?**

<b>Council Policy</b>	<b>Consideration</b>
<a href="#"><u>Building Certificates Policy</u></a>	Recommended conditions include the requirement to obtain a Building Information Certificate for work already constructed without approval.
<a href="#"><u>Management of Contaminated Land Policy</u></a>	The applicant has demonstrated that the location of the dwelling subject to this application is not contaminated by previous land use and the land is considered suitable for the proposed use.
<a href="#"><u>Provision of Driveways Policy</u></a>	A Section 138 approval must be obtained to upgrade the existing driveway to Council's construction standards.
<a href="#"><u>Local Approvals Policy</u></a>	Recommended conditions include the requirement to obtain Section 68 approval for installation of an onsite sewage management system to service the dwelling.

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

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

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

The development application was publicly exhibited. There was **one** submissions made on the development application:

<b>Issue - Objections</b>	<b>Comment</b>
<p>The existing dirt and gravel driveway partially encroaches across the frontage of the neighbouring property and this driveway did not exist in 1988.</p> <p>The existing driveway should be realigned to regain the complete frontage to our property.</p>	<p>The existing driveway is located in Council's road reserve and is not considered to conflict with any adjoining land.</p> <p>A condition is recommended that will require the proponent to obtain a Section 138 approval to upgrade the existing driveways to ensure compliance with Council's standards.</p>



## **4.9 Public interest**

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

## **5. DEVELOPER CONTRIBUTIONS**

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

No Section 64 levies will be required.

### **5.2 Developer Contributions**

Section 7.11 Contributions will be payable.

## **6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

<b>Disclosure details</b>	<b>Response</b>
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, and alterations and additions to, existing dwelling to create dual occupancy (detached) and new swimming pool.

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

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



**Report No. 13.7 PLANNING - 10.2008.565.6 Section 8.2  
Review of refusal of modification to original  
consent for use of existing alterations and  
additions to dwelling house at 13 Gaggin  
Street NEW BRIGHTON**

5

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Ben Grant, Senior Planner  
**File No:** I2024/1307

<b>Review of Modification Application No.</b>	10.2008.565.6
<b>Applicant:</b>	Mr L Wilkinson
<b>Development:</b>	Section 8.2 Review of Refusal of Modification to Condition 1 for use of existing alterations and additions to Dwelling House, and modification to Condition 8 to correct typographical error for Flood Planning Level
<b>Parcel No.:</b>	11514
<b>Location:</b>	LOT: 317 DP: 755687, 13 Gaggin Street NEW BRIGHTON
<b>Date of Refusal:</b>	16 May 2024
<b>Original Assessing Officer:</b>	Jordan Vickers, determined by Council
<b>8.2 Assessment Officer</b>	Benjamin Grant
<b>Delegation for Determination</b>	Council Reason: Environmental Planning and Assessment Act 1979, Section 8.3 <i>Application for and conduct of review</i> sub section (6) <i>The review of a determination or decision made by a council is to be conducted by the council and not by a delegate of the council.</i>
<b>Issues</b>	A review application must be determined within 6-months of the date of the determination, which is the same timeframe within which an appeal can be made to the Court. The review application must therefore be determined before 16 November 2024.



## Summary:

This application seeks a review of Council's determination of modification application 10.2008.565.5 ("the MA") that was refused at the Council Planning Meeting of 16 May 2024.

5 The MA sought approval for:

(1) the use of an attached single car garage near Gaggin Street that had been constructed without approval,

(2) the use of an approved garage on the southern side of the dwelling as a bedroom and storeroom, including use of existing built works, and

10 (3) an amendment to Condition 8 of the consent to reduce the Flood Planning Level from 3.7m AHD to 3.59m AHD to align with recent flood modelling.

The matter has an extensive history which is catalogued in the original MA report.

[Agenda of Ordinary \(Planning\) Meeting - Thursday, 16 May 2024](#)

15 A set of amended plans have been provided with the review application which propose partial demolition of the unauthorised garage structure near Gaggin Street and replacement with an open carport and front roller door. The carport posts and roof eaves would be 1048mm and 700mm from the southern boundary respectively. The proposed use of the approved garage as a bedroom and storage space and amendment to the flooding planning level remain unchanged.

20 This assessment finds that the modified development is inconsistent with Council's development controls for car parking under Chapter 1: Part G of Byron Development Control Plan 2010 which require dwelling houses greater than 100m<sup>2</sup> to provide at least 2 on-site carparking spaces.

25 While the amended plans have partially resolved previous contentions relating to non-compliant setbacks and building height plane encroachments, the proposed use of the approved garage as a bedroom would result in a lack of appropriate carparking for the development. This is considered to be an undesirable outcome given the proposal stems from unauthorised development.

30 The proposed use of the rear carport to provide a second parking space is unable to be supported because the carport would be accessed via an unformed Crown road which does not provide safe or reliable vehicular access to the site.

35 It is recommended that the review application be refused. As the bedroom and garage have been constructed without consent, it is recommended that Council's Compliance Services team be informed of the outcome of the decision.







---

**RECOMMENDATION:**

- 5     **That Council, pursuant to Section 8.4 of the Environmental Planning & Assessment Act 1979, being the consent authority uphold the refusal of modification application 10.2008.565.5, with the reasons for refusal amended as follows:**
- 10     **1.     Pursuant to Section 4.15 (1)(a)(iii) of Environmental Planning and Assessment Act 1979, The development does not comply with Chapter 1 Part G of Byron Development Control Plan 2010 in relation to carparking.**
- 2.     Pursuant to Section 4.55(1)(b) of the Environmental Planning & Assessment Act 1979, the development has an adverse impact on the built environment.**
- 3.     Pursuant to Section 4.15 (1)(c) of the Environmental Planning & Assessment Act 1979, the proposed development as constructed is not suitable for the site.**
- 15     **4.     Pursuant to Section 4.15 (1)(c) of the Environmental Planning & Assessment Act 1979, the proposed development is likely to set an undesirable precedent and is not in the public interest.**

**Attachments:**

- 20     1     10.2008.565.6 Amended Plans for Review Application, E2024/76516 
- 2     10.2008.565.6 Updated Survey Plan, E2024/75072 
- 3     10.2008.565.6 Review Application, E2024/66463 
- 4     10.2008.565.6 Redacted Submissions, E2024/128115 

25



## Assessment

### 1. INTRODUCTION

#### 1.1 Background

5 This application seeks a review of Council's refusal of modification application 10.2008.565.5 ("the MA"), which sought approval for the use of existing alterations and additions and changes to a dwelling house at 13 Gaggin Street, New Brighton.

Specifically, the MA sought approval for:

- The use of an attached single car garage near Gaggin Street that had been constructed without approval.
- 10 • The use of an approved garage on the southern side of the dwelling as a bedroom and storeroom, including use of existing built works.
- 15 • An amendment to Condition 8 of the consent to reduce the Flood Planning Level from 3.7m AHD to 3.59m AHD to align with recent flood modelling.

#### 1.2 Previous determinations

A full history of the sequence of events leading up to the current review application is detailed in the original MA report.

[Agenda of Ordinary \(Planning\) Meeting - Thursday, 16 May 2024.](#)

20 The following determinations are relevant to the application:

- **Development Application 10.2008.565.1** – Development consent for alterations and additions to the dwelling, including the demolition and replacement of an existing garage that was issued on 31 October 2008. A new attached garage was to be constructed on the southern side of the house near Gaggin Street with a 300mm side boundary setback.
- 25 • **Modification Application 10.2008.565.2** – Modifications to the consent including relocation of the garage away from the Gaggin Street frontage were approved on 17 April 2009.
- 30 • **Construction Certificate 11.2008.565.1** – A construction certificate was issued for the development on 17 April 2009 which included notes requiring that the garage provides a setback of 450mm from the side boundary to the eaves and fascia. The building walls based on the drawings would have been setback further from the
- 35 boundary.



- **Modification Application 10.2008.565.3** – A second modification was approved on 5 February 2010 which allowed the use of a deck on the northern boundary that was built without approval. The plans included relocating the garage closer to the Gaggin Street frontage, however the garage relocation was not formalised as part of this application and accordingly the plans were marked up to show this as not approved.
- **Occupation Certificate 13.2008.565.1** – An interim occupation certificate was issued for development consent 10.2008.565.1 (as amended) on 23 November 2010. The certificate covers the garage and other approved alterations and additions but does not extend to the deck on the northern boundary.

As noted in the original assessment report, there are several anomalies in the construction of the garage in relation to height and setbacks when compared to the approved plans. The garage is setback only 3mm from the boundary at the closest point and has been constructed to a height of 3m instead of 2.5m as specified in the approval. Notwithstanding these apparent differences between the approval documents and the resulting built form, an occupation certificate was issued by a Registered Certifier in late 2010 and therefore the garage must be considered a lawful building in its current form. The time period within which an appeal could have been made to invalidate the occupation certificate has long since passed.

### 1.3 Compliance action

At some point over the past 5-10 years, the landowner converted the approved garage to a bedroom and storage space and constructed a new garage near Gaggin Street without consent. The matter came to Council's attention in 2022 following a compliance investigation.

The property is currently subject to a Demolition Order (75.2023.35.2) that was issued by Council on 11 April 2023. The Order requires demolition of the garage located near the Gaggin Street frontage and demolition of the unauthorised internal works undertaken to convert the approved garage into a bedroom.

### 1.2 Refusal of S4.55 10.2008.565.5

The MA was considered by Council at the Planning Meeting of 16 May 2024 where it was determined to refuse the application as per staff recommendation for the following reasons:

- a. Pursuant to Section 4.15 (1)(a)(iii) of Environmental Planning and Assessment Act 1979, The development does not comply with Part C2.5 Building height plane under Byron DCP 2010.
- b. Pursuant to section 4.15 (1)(a)(iii) of Environmental Planning and Assessment Act 1979, The development does not comply with Part 2.6 Setbacks to boundaries and 4.4 reduced boundary setbacks under Byron DCP 2010.
- c. Pursuant to Section 4.55(1)(b) of the Environmental Planning & Assessment Act 1979, the development has an adverse impact on the built environment.
- d. Pursuant to Section 4.15 (1)(c) of the Environmental Planning & Assessment Act 1979, the proposed development as constructed is not suitable for the site.



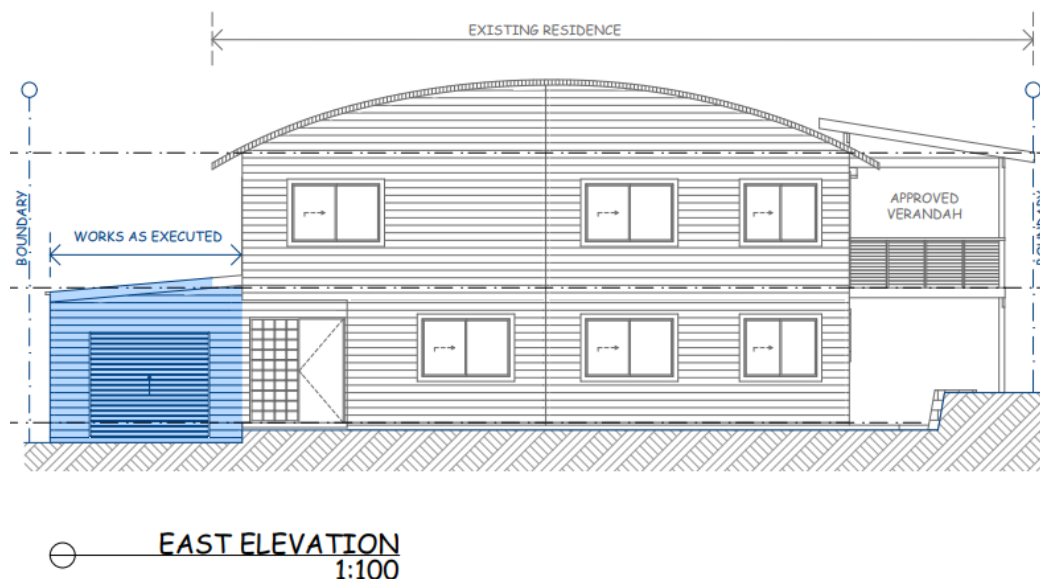
A key issue in the original assessment was the proximity of the bedroom and garage buildings to the southern boundary. The reduced setback and building height plane encroachments were considered to result in unacceptable amenity impacts on the neighbouring property. Potential problems with cleaning and maintenance were also raised as it is difficult to maintain the structures without crossing onto neighbouring land.

## 2. AMENDMENTS TO THE PROPOSAL

To address the reasons for refusal, a set of amended plans have been submitted with the review application which are detailed below:

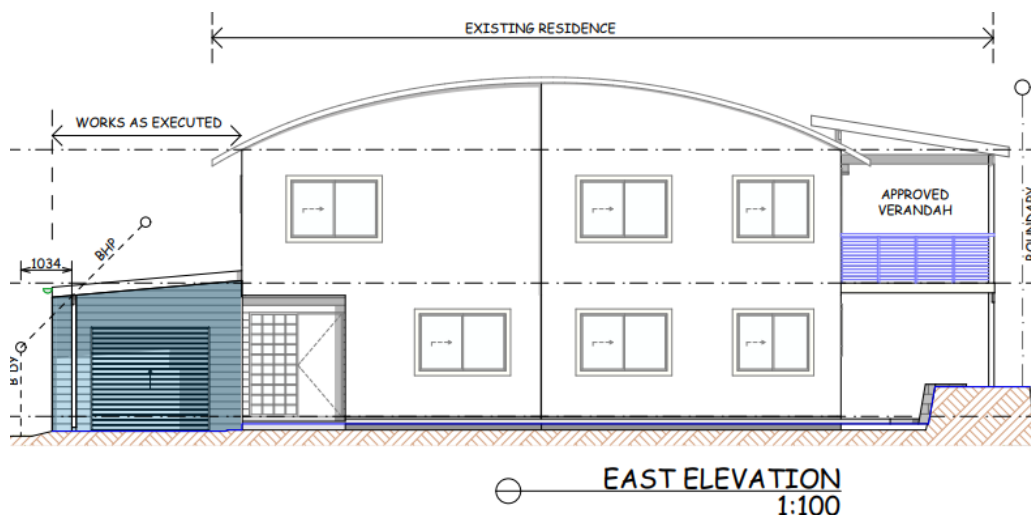
- The unauthorised garage structure near Gaggin Street is to be partially demolished and converted to an open carport with a front roller door. The carport posts would be 1048mm from the southern boundary and the carport roof eaves would be ~700mm from the southern boundary.
- The proposed use of the approved garage as a bedroom and storage space is to be retained in the same form as the original MA.
- Condition 8 of the consent is to be modified to ensure the flood planning level is reduced to 3.59m AHD in accordance with recent flood modelling.

A comparison of the original and amended MA plans is shown in Figures 1 - 4:

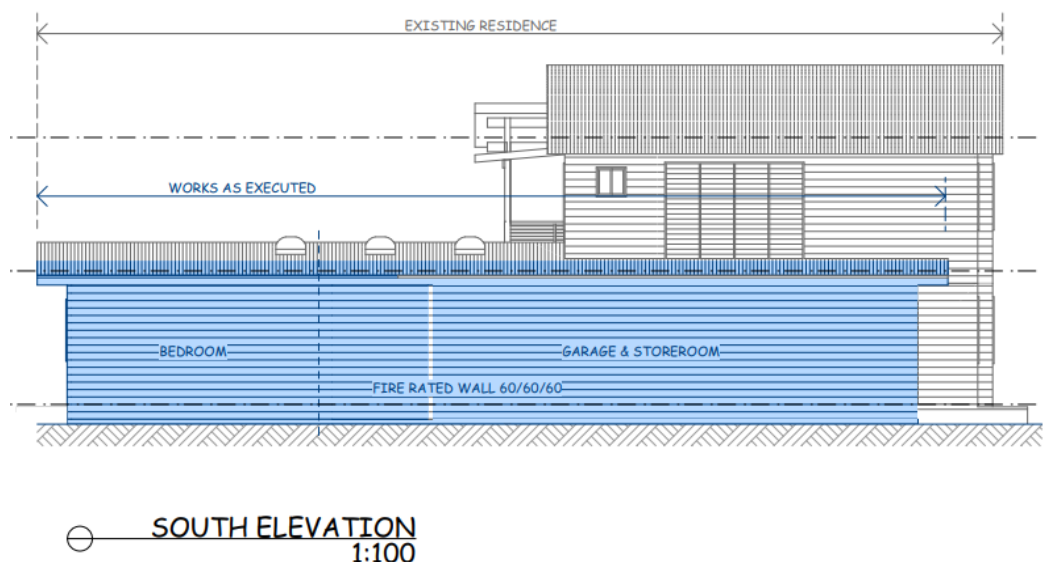


**Figure 1:** East elevation of the original MA plans. The existing garage structure is in blue.



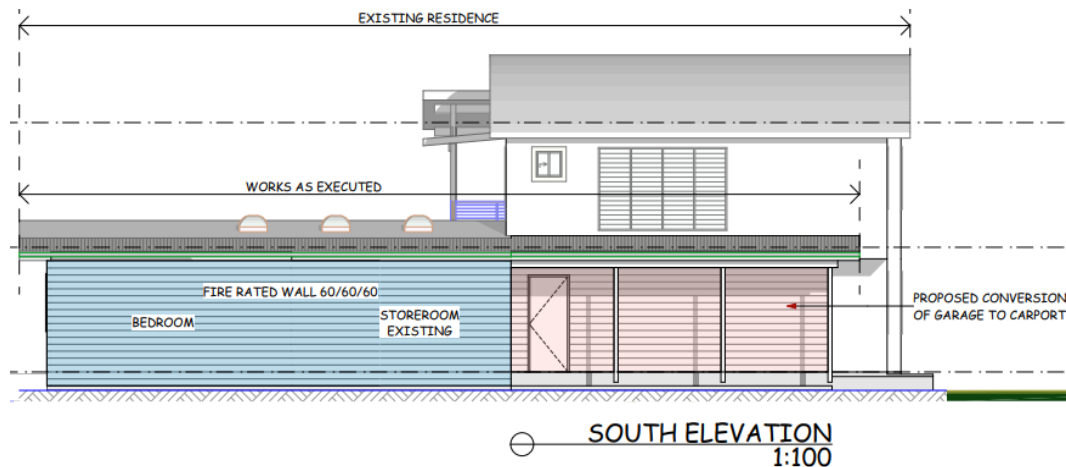


**Figure 2:** East elevation of the amended MA plans. The proposed carport would retain an enclosed façade.



- 5 **Figure 3:** South elevation of the original MA plans. The proposed garage and bedroom structure is in blue.





**Figure 4:** South elevation of the amended MA plans. The southern external wall of the unauthorised garage structure is to be removed (red). The existing approved building is to be retained and used as a bedroom (blue).

### 5 3. DESCRIPTION OF THE SITE

A site inspection was carried out on 21 October 2023.

Land is legally described	LOT: 317 DP: 755687	
Property address	13 Gaggin Street NEW BRIGHTON	
Land is zoned:	7(f2) Urban Coastal Lands within Byron LEP 1988	
Land area is:	1012 m <sup>2</sup>	
Property is constrained by:	Flood Liable Land, Bushfire prone land, Acid Sulfate Soils Class 3, High Environmental Value, Coastal Erosion Precinct 2 and 3.	
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

The subject land known as 13 Gaggin Street, New Brighton and legally described as Lot 317 on DP755687. The site has an area of 1011m<sup>2</sup> and is within the (7f2) (Urban Coastal Lands Zone) of the Byron LEP 1988. The property is currently improved by a Dwelling house and above-ground spa/swimming pool and has frontage to Gaggin Street and a rear



lane. The site is identified as flood liable and bushfire prone land and is within the Coastal Erosion Precinct overlay (precincts 2 & 3).



**Figure 5:** Aerial image of subject site.





**Figure 6:** View of site from Gaggin Street, looking west.



**Figure 7:** View of unauthorised garage (to be converted to carport).



5 **Figure 8:** View of approved garage structure (to be changed to bedroom).





**Figure 9:** View of existing structures from 11 Gaggin Street.

#### 4. DIVISION 8.2 – REVIEW OF DETERMINATION

Division 8.2 of the Environmental Planning and Assessment Act 1979 allows an applicant to request a review of the determination of a consent authority. If the application was determined by the Council, the review of the decision is also to be conducted by the Council and not by a delegate of the Council.

A review application must be determined within 6-months of the date of the determination, which is the same timeframe within which an appeal can be made to the Court.

The Modification Application subject of this review was refused by the Council at the Planning Meeting of 16 May 2024. The review application must therefore be determined before 16 November 2024.

#### 5. SUMMARY OF REFERRALS

Referral	Issue
Development Engineer	Council's Development Engineer recommended the amended design be refused because it results in a shortfall of on-site carparking. Under Part G of Byron Development Control Plan 2010, two on-site carparking spaces are required for a dwelling house with a floor area of more than 100m <sup>2</sup> . The proposed garage conversion results in a loss of one carparking space and contravenes Council's carparking controls.
Building Surveyor	Council's Building Surveyor did not raise any objections to the proposal from a building perspective. A building information certificate will be required for the bedroom conversion should consent be granted.



## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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

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

Is the person who made the application entitled to act on the Consent?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the modification of minimal environmental impact?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Is the development, as modified substantially the same as the development for which the consent was originally granted.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

5

10

#### 5.1 State/Regional Planning Policies, Instruments, EPA Regulations 2021

	Agree or No (add comments as required)
Proposed amendments raise no issues under the relevant SEPPS, Policies or clauses of the EPA Regulations 2021.	<p>Agree</p> <p><b>State Environmental Planning Policies</b></p> <p>The amended proposal is satisfactory in relation to the relevant State Environmental Planning Policies applying to the land. The updated plans submitted with the review application do not raise any issues of significance.</p> <p><b>EP&amp;A Regulation 2021</b></p> <p>Council's Building Surveyor noted that a fire safety upgrade is required due to the additional works in accordance with Clause 64 of the Regulation.</p>

#### 2.2. Byron Local Environmental Plan 1988

- 15 An assessment of the modified development against the relevant provisions of the Byron Local Environmental Plan 1988 is provided in the following sections.



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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### Division 3 Certain development

Provision	Compliance	Comment
24 Development of flood liable land	Yes	The site has a 2050 Flood Planning Level (FPL) of 3.59m AHD. The amended plans indicate a raised slab level of 3.77m AHD for the proposed bedroom which complies with the FPL and satisfies the relevant considerations for flooding under Clause 24.
32 Development within Zone No 7 (f2) (Urban Coastal Land Zone)	Yes	The modified development is satisfactory having regard to the matters for consideration under Clause 32 in relation to development with the 7(f2) (Urban Coastal Land Zone). The proposed carport is a lightweight structure that can be quickly demolished and removed in the event of an erosion emergency.

### Division 4 General provisions

Provision	Compliance	Comment
40 Height	Yes	The proposed structures are less than the 9m maximum height limit.
45 Provision of services	Yes	The modified development is capable of being adequately serviced by water, sewage, and drainage subject to conditions of consent.

5

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

There are no draft environmental planning instruments with relevance to the subject application.

#### **1.1. Byron Development Control Plan 2010**

10

An assessment of the modified development against the relevant provisions of the Byron Development Control Plan 2010 is provided in the following sections.



**Chapter 1: Part C Residential Development**

<b>Provision</b>	<b>Compliance</b>	<b>Comment</b>
C2.5 Element – Building Height Plane	Yes	<p>A key contention in the original assessment was a moderate BHP encroachment, which arose due to the location of the proposed bedroom and garage buildings close to the southern boundary.</p> <p>Concerns were raised over visual amenity, solar access, and difficulties with building maintenance as there is no practical way of accessing the external walls or gutters for cleaning without crossing onto neighbouring land.</p> <p>The amended plans have largely addressed this contention with a proposal to partially demolish and replace the unauthorised garage structure with an open carport. The new carport largely complies with the building height plane (save for a minor eave encroachment addressed in Element C4.2) and is considered to be an acceptable response in terms of built form.</p> <p>In relation to the proposed bedroom, a further review of Council's records confirmed that an interim occupation certificate was issued for this part of the building on 23 November 2010 which authorised its occupation and use as a garage.</p> <p>The MA does not propose any changes to the external form of the approved garage that would increase or worsen the impacts arising from the current BHP encroachment. The only new work comprises replacement of the metal fascia and gutters which would have negligible impact in relation to solar access, view loss or privacy.</p> <p>Overall, the proposed use of the existing garage building as a bedroom is considered to satisfy the Objectives and Performance Criteria of Element C2.5 for the reasons discussed above.</p>



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Provision	Compliance	Comment
C4.2 Element – On-Site Car Parking: Carports	Yes	<p>Element C4.2 provides that a carport may encroach the building height plane in relation to a boundary, as long as it does not affect the adequacy and safety of vehicular access and is satisfactory having regard to the matters under Element C2.5 in relation to overshadowing, view loss and privacy.</p> <p>The proposed carport structure is setback from the southern boundary by 700mm, resulting in a minor eave encroachment as indicated in <b>Figure 2</b>.</p> <p>Visually, the carport is relatively modest in scale and appearance and is generally compatible with the character and design of development in the surrounding locality. The structure meets the intent of Element C4.2 which affords flexibility for minor encroachments in circumstances where a carport is visually compatible, provides adequate and functional carparking, and does not unfairly impact on neighbouring residences in terms of solar access, view loss, or privacy.</p>
C2.6 Element – Setback from Street, Side and Rear Boundaries	No, but acceptable in relation to the approved garage building	<p><u>Street frontage setbacks</u></p> <p>Element C2.6 provides that car spaces including stacked carparking or visitor carparking are not permitted within the front setback.</p> <p>It is noted that the proposed development does not seek to include parking within the front setback, instead opting to provide one space within the proposed carport facing Gaggin Street, and one additional space within an existing carport facing a Crown road to the west. However, it is noted that stacked parking, should it be proposed or considered in the final determination of this application, does not comply with the requirements of Element C2.6.</p>



## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.7

Provision	Compliance	Comment
		<p><u>Side and rear setbacks</u></p> <p>The proposed carport posts have a setback of approximately 1m from the southern boundary and comply with BCA setback requirements.</p> <p>The proposed bedroom is located within an approved garage building that has an existing setback of between 260mm and 100mm from the southern boundary. Although the existing bedroom is within the normal 900mm setback distance, the MA does not propose any new building work within the setback area and the proposed change of use to a bedroom is unlikely to increase any amenity impacts arising from the exiting setback encroachment.</p>

#### Chapter 1: Part J Coastal Erosion Lands

Provision	Compliance	Comment
J2.2 Element – Precinct 2 - Between The Immediate Impact Line And The 50 Year Erosion Line	Yes	The site straddles erosion precincts 2 and 3. The modified development satisfies the Prescriptive Measures of Element J2.2 given the proposed carport is capable of being easily demolished in the event of an erosion emergency. The proposed use of the approved garage as a bedroom is also acceptable as it relates to the use of an existing lawful building.

#### Chapter 1: Part K Flood Liable Lands

Provision	Compliance	Comment
K2.1 Element - Flood Standard & K2.2 Element – Development Criteria	Yes	No change to the flooding assessment undertaken for the original MA arises from the amended plans. The proposed bedroom has a floor level of 3.64m AHD which



		complies with the Flood Planning Level of 3.59m AHD.
--	--	--

## Chapter 1: Part G Vehicular Circulation and Parking

Provision	Compliance	Comment
G2.1 Element – Parking Schedules	No	<p>Element G2.1 requires two car parking spaces to be provided for a dwelling house with a floor area greater than 100m<sup>2</sup>. One space must be capable of being covered.</p> <p>Owing to the garage conversion, the dwelling has only one compliant carparking space and does not comply with the minimum parking requirements of Element G2.1.</p> <p>It is noted that the applicant proposed the use of an existing carport off a Crown Road to the rear of the site to provide a second carparking space however this option is not supported.</p> <p>Refer to DCP issues section.</p>

### 1.2. DCP 2010 – Issues

5 The Statement of Environmental Effects notes that two carparking space are provided for the dwelling, being one space in the proposed garage (now a proposed carport) and one space in an existing carport at the rear of the site. A site inspection was undertaken to investigate the state of the access and the viability of the proposed rear car parking space.

10 As illustrated in **Figure 12**, the rear carport is accessed off an unformed Crown Road which is not clearly delineated and lacks a proper road surface or drainage infrastructure. Entry to the Crown Road off Ocean Avenue is also problematic due to the presence of an informal gravel carpark which frequently contains parked vehicles that impede vehicular access.

15 Given the state of the road and noting that no approval could be found for the rear carport in Council's records, it is not considered appropriate to endorse the use of this structure in association with the dwelling house. The Crown Road does not offer safe and efficient access to the proposed carparking space and there is no guarantee that the road could be upgraded to a suitable standard through the imposition of conditions of consent.





**Figure 12:** Carport and unformed Crown Road at the rear of the property.

The only other option is to provide stacked carparking within the Gaggin Street setback which contravenes Council's setback controls under Element C2.6 of DCP 2010 (as discussed in section 3.1 of this report). Supporting this option is not recommended given the current situation is essentially the result of unplanned and unauthorised development. There are no special circumstances or unique site features to justify reducing or changing the normal carparking requirements given that two compliant spaces could easily be provided but for the unauthorised garage conversion.

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

The proposed conversion of the garage to a bedroom would result in an unacceptable loss of carparking for the dwelling and is likely to adversely impact on the amenity of the built environment of the surrounding locality.

Insufficient information has been provided to demonstrate that the adjoining Crown road is suitable to provide vehicular access to the car parking spaces at the rear of the site. Road upgrades including sealing and the provision of drainage would likely be required and the potential impact of such work on surrounding properties has not been properly considered.



It is also unclear whether DPIE Crown Lands would consent to such works\ should it be proposed.

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

- 5 The site is not considered to be suitable for the modified development in its current form as there is inadequate room for carparking to be provided in an acceptable manner that complies with the relevant planning controls considering the intensified residential use of the site.

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

- 10 The Review Application was advertised and notified for a period of 14-days from 24 July 2024 to 6 August 2024 in accordance with the Byron Shire Community Participation Plan. Three submissions were received from the public which raised similar issues to those made for the original MA.

The issues are summarised and addressed in the table below.

Submissions	Comment
Setbacks and boundary encroachment	
Submissions noted that the rear rooms are in breach of Council's minimum side boundary, which is confirmed by survey plans showing a setback of 10cm from the boundary.	An updated survey was provided which demonstrated that the gutter is located entirely within the subject site, between 310mm and 3mm from the southern boundary.
It was noted that stormwater piping and water reticulation piping encroaches onto the neighbouring property.	It is unclear if the additional pipework noted in the submission encroaches the boundary. The matter can potentially be addressed with a condition should the Council grant consent to the MA. Alternatively, demolition of the garage as requested in the current order may assist.
The most recent survey which showed there was no boundary encroachment was also questioned.	
Unapproved height of proposed bedroom building	
The garage and illegal bedrooms have been constructed to a height of 3m which contravenes the approved plans.	It is acknowledged that the garage has been constructed to a height of 3m despite the plans showing an approved height of 2.5m. The setback of the garage is also not in accordance with the approved plans which require a garage eave setback of 450mm.



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Submissions	Comment
	Despite these anomalies, an interim occupation certificate was issued for the building in 2010. As such, there is limited scope to change the setbacks and height of the building as the current MA only relates to a proposed change of use for this element of the building.
Maintenance	
As the building is constructed within 0.1m of the southern boundary, maintenance of the building (notably eaves, building wall, stormwater, pest control etc.) must be undertaken from the adjoining allotment at the south. The submitter highlights concern regarding legal liability risk with work being undertaken from adjoining property.	<p>Issues with maintenance are noted. The unauthorised garage at the front of the site is to be partially demolished and converted to a carport which resolves maintenance issues for that structure.</p> <p>As noted elsewhere in this report, an occupation certificate has been issued for the approved garage building despite the reduced boundary setback. The proposed use of the bedroom as a garage would not alter or worsen the existing maintenance issues compared to the existing situation.</p>
Drainage	
Submissions noted that the drainage is unsatisfactory, as the current building utilises a non-standard gutter with a series of holes drilled into it. This effectively discharges stormwater into the adjoining southern property	Conditions can be imposed if necessary to ensure guttering and drainage is upgraded to prevent water from being discharged to neighbouring land.
Building Height Plane and Overshadowing	
Submissions noted that the illegal bed and storage rooms were constructed in breach of Council building height plane requirements. The southern walls of these rooms extend 1.2m directly above the boundary fence line. The submitted plans do not reflect the illegal height nor the lack of	<p>The proposed bedroom structure was lawfully approved as a garage and an interim occupation certificate has been issued for that part of the building.</p> <p>If is questionable whether the garage was constructed strictly in accordance with the approved plans however that issue is</p>



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Submissions	Comment
<p>boundary setback.</p> <p>The current built form fails to meet the performance criteria of DCP Element C4.4 that developments must not that developments must not adversely affect the micro-climate and amenity of adjoining developments.</p>	<p>beyond the scope of this assessment.</p>
Privacy	
<p>The illegal building continues to severely affect the adjoining neighbour's right to privacy. The owner of 13 Gaggin Street is unable access the entire southern length of his building from within his block and has until recently regularly entered or sent workers into the neighbouring property without permission to conduct work such as external wall cleaning, guttering, stormwater piping and reticulation installation and repairs, leaf guard repairs, pest control installation and inspections</p>	<p>Privacy is not considered to be a major issue given that the proposed bedroom has no windows on the southern elevation.</p>
Documents unreliable	
<p>Submitters commented that the documents submitted with the application were unreliable and contain numerous errors and inconsistencies.</p>	<p>The survey plan was prepared by a registered surveyor and Council is not in a position to question the accuracy of the survey.</p>
Demountable structure – Coastal erosion	
<p>Comments were received that the existing structure is not in accordance with Council's coastal erosion controls as it is not demountable.</p>	<p>The proposed carport is a lightweight structure that can be easily demolished if required.</p> <p>The existing garage structure has already been approved under MA 10.2008.565.2. The proposed use of the garage as a bedroom does not significantly impact on the ability to demolish and/or remove the building in an erosion emergency.</p>



Submissions	Comment
Precedent	
Submitters noted that the proposal will create an undesirable precedent if approved with regard to flood level, coastal erosion, and solar amenity of adjoining properties.	These issues have been considered and are discussed elsewhere in this report.

### 3.7 Public interest

5 Granting approval to unauthorised development which does not comply with Council's development controls is likely to set an undesirable precedent and is not in the public interest.

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

There is no nexus to levy additional development contributions.

### 2. CONCLUSION

10 This review application relates to Council's refusal of modification application 10.2008.565.5 ("the MA"), which sought consent for the use of unauthorised alterations and additions to a dwelling house at 13 Gaggin Street, New Brighton.

Amended plans have been submitted to address the reasons for refusal which include partial demolition of the unauthorised garage and construction of an open form carport near the Gaggin Street frontage.

15 While the amended plans are an improvement over the existing situation, inadequate information has been provided to demonstrate how sufficient carparking can be provided for the development given the loss of parking associated with the unauthorised garage conversion.

20 The modified development fails to comply with the minimum parking standards established under Element G2.1 of Byron DCP 2010 and is likely to result in adverse impacts on the built environment if approved.

The modification application is recommended for refusal for the reasons outlined in the recommendations of this report.



**Report No. 13.8      PLANNING - 10.2024.159.1 - Dual occupancy (detached) comprising existing dwelling and proposed relocated dwelling (including alterations and additions), carport and driveway- 301 Picadilly Hill Road COOPERS SHOOT**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Honor O'Harae, Assistant Planner

**File No:** I2024/1308

**Proposal:**

<b>DA No:</b>	10.2024.159.1
<b>Planning Portal ref</b>	PAN-436980
<b>Proposal description:</b>	Dual occupancy (detached) comprising existing dwelling and proposed relocated dwelling (including alterations and additions), carport and driveway
<b>Property description:</b>	LOT: 7 DP: 580515
	301 Picadilly Hill Road COOPERS SHOOT
<b>Parcel No/s:</b>	72340
<b>Applicant:</b>	Kate Singleton Pty Ltd & S J Connelly CPP Pty Ltd
<b>Owner:</b>	Ms M C Gale & Estate of Late I Oishi
<b>Zoning:</b>	RU1 Primary Production / RU2 Rural Landscape
<b>Date received:</b>	14 June 2024
<b>Integrated / Designated Development:</b>	Not Designated or Integrated Development
<b>Public notification or exhibition:</b>	<ul style="list-style-type: none"> <li>– Level 1 advertising under Council's Community Participation Plan.</li> <li>– Exhibition period: 02/07/2024 - 15/07/2024</li> </ul>



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	<ul style="list-style-type: none"> <li>– Submissions received: 0</li> <li>– Submissions acknowledged: <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</li> </ul>
<b>Planning Review Committee</b>	Application was not called up to a planning review committee
<b>Delegation to determine</b>	<p>Council</p> <p>Reason: Any variation to a development standard greater than 10% must be determined by the elected Council in accordance with the NSW Department of Planning, Housing and Infrastructure <i>Guide to Varying Development Standards</i> dated November 2023</p>
<b>Variation request to Development Standards under an EPI (e.g. clause 4.6)</b>	<p><b>Clause 4.6 Byron Local Environmental Plan (LEP) 2014</b></p> <p>Name of clause - Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2</p> <p>Clause number – 4.2D(2)(b)</p> <p>Percentage value of variation sought – 100%</p> <p>Percentage value of the variation recommended to be approved – 100%</p> <p>Brief justification for the variation – The variation is reasonable and orderly with consideration for positioning of the existing dwelling and carport within a very limited front setback. Shared access to the new dwelling and car port would be difficult and impractical in the available space. The site is suitable for the development and the variation raises no environmental impacts.</p>
<b>Estimated cost</b>	\$550,000.00
<b>Issues</b>	<p>Clause 4.6 variation to development standard Clause 4.2D(2)(b) to permit second driveway access. Conditions of consent are recommended to formalise the provision of not more than two driveway crossovers within the road reserve. Other unauthorised driveway crossings or works in the road reserve are recommended to be decommissioned.</p> <p>Buildings or other structures shown on plans that do not form part of this application have been clearly marked as excluded from this development assessment. It is recommended that excluded structures, be brought to the attention of council's compliance team, some of which may not be wholly located on the subject land.</p>



## Summary:

The Development Application (DA) proposes a dual occupancy (detached) comprising existing dwelling and a proposed new relocated 'Queenslander' style dwelling (including alterations and additions) and a new carport and driveway.

- 5 The applicant's Statement of Environmental Effects (SEE) explains that "*the property owner wishes to relocate, with support from the Northern Rivers Reconstruction Corporation, a house in Lismore that is from a flood-affected area to the subject site. The dwelling will be relocated, and alterations and additions will be made to the structure at the site. A dwelling house exists on the site and the subject application seeks development*
- 10 *consent for a "dual occupancy (detached)".*

*The proposed dwelling has a total floor area of 142.3m<sup>2</sup> and contains a kitchen / dining room / living room / 3 x bedrooms / 2 x bathrooms / laundry / decks. A two car carport is also proposed in association with the detached dual occupancy."*

- 15 A variation is sought to the numerical development standard of 'one access point to rural dual occupancies' under Clause 4.2D of Byron LEP 2014. The application requires Council determination for a variation to a development standard over 10%, being a 100% variation to provide for separate driveways to each of the detached dual occupancies respective car parking areas. Any variation to a development standard greater than 10% must be determined by the elected Council in accordance with the NSW Department of Planning, Housing and Infrastructure *Guide to Varying Development Standards* dated November
- 20 2023. More than one driveway access already exist. Conditions are recommended to upgrade and formalise the provision of no more than two driveway crossovers within the road reserve. Any other unauthorised driveway crossings or works within the road reserve will be required to be decommissioned.

- 25 The applicant has submitted a written request to vary the development standard that demonstrates strict compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental grounds to vary the controls. The development will not impair the use of the land for agriculture. The land is physically suitable for the development, and is capable of accommodating on-site disposal and
- 30 management of sewage for the development. The development will not have an adverse impact on the scenic amenity or character of the rural environment.

The variation to the development standard is supported by staff.

- 35 A recommendation is included in the report for staff to review the need for this development standard in Clause 4.2D(2)(b) 'one access point to rural dual occupancies' to remain. This is due to its apparent redundancy as evidenced by the number of variation requests being received since Council removed the 100m distance restriction to rural dual occupancy development in the Byron LEP 2014.

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

40

NOTE TO COUNCILLORS:



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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:

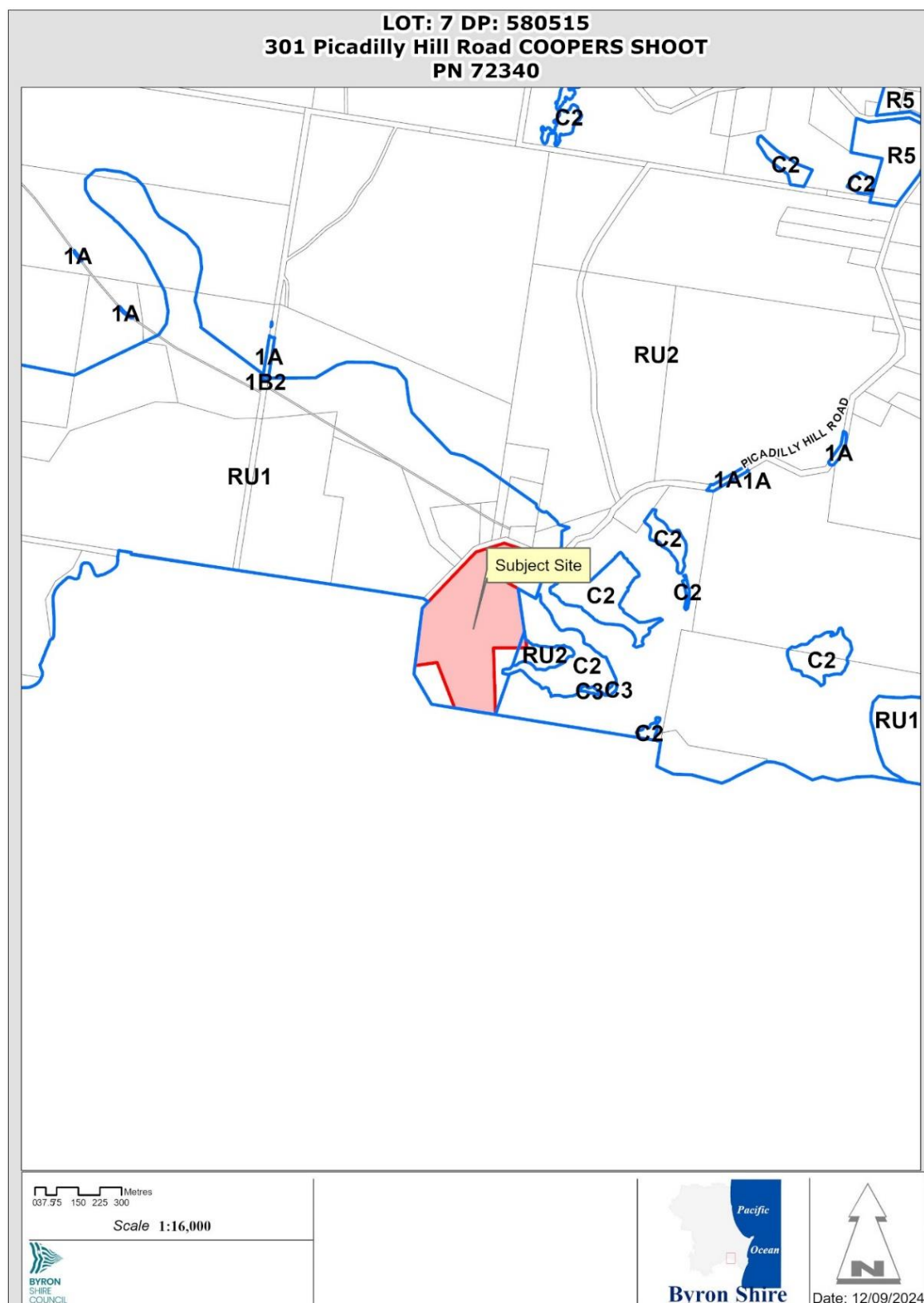
#### That:

1. Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2024.159.1 for Dual occupancy (detached) comprising existing dwelling and proposed relocated dwelling (including alterations and additions), carport and driveway, be granted consent subject to the conditions of approval in Attachment 1 # E2024/114096.
2. The redundancy of Byron Local Environmental Plan 2014 controls that require each dwelling of a dual occupancy on a rural lot to use the same vehicular access to and from a public road be reviewed by staff. With New DCP provisions to be considered instead to otherwise allow a second driveway to be approved where there are reasonable and sufficient environmental planning grounds. Both LEP and DCP amendments to be reported back to Council as future LEP and DCP House Keeping matters.
3. Other structures on the land be referred to the attention of Council's compliance team for investigation including structures located southeast of the existing dwelling (access visible on aerial imagery), the carport for the existing dwelling and an existing rainwater tank (both of which may not be wholly located on the subject land).

#### Attachments:

- 1 10.2024.159.1 Recommended Conditions of Consent, E2024/114096 
- 2 10.2024.159.1 Plans for Approval, E2024/114098 
- 3 10.2024.159.1 Clause 4.6 Request for Variation, E2024/113587 





**Figure 1: Locality Plan**



## 1. INTRODUCTION

### History/Background

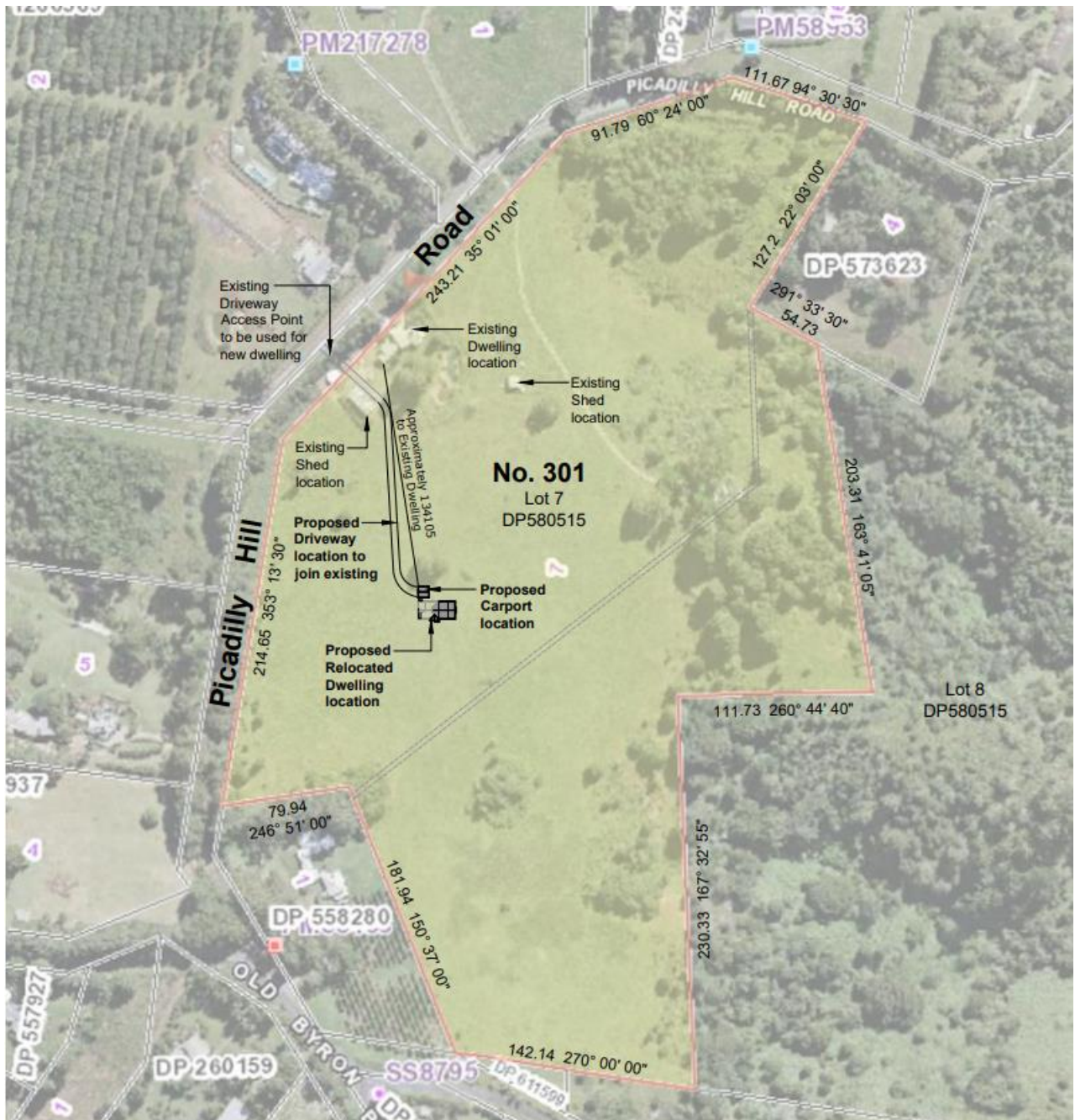
5 The subject allotment was approved under subdivision certificate no. 55/75 and therefore the subject allotment has a dwelling entitlement. There is no building record of approval for the existing dwelling. The original dwelling appears to be an old farm building built in the 1940's and therefore predates any Council planning controls requiring development consent

- 10
- 10.2002.13.1 approved renovations to the existing dwelling.
  - 10.2002.509.1 approved the addition of a detached bathroom to the existing dwelling.
  - 10.2013.446.1 approved internal alterations and the addition of a laundry and extra bedroom + bathroom to the main dwelling.

### Description of the proposed development

- 15 This application seeks approval for a dual occupancy (detached) comprising existing dwelling and proposed relocated dwelling (including alterations and additions), carport and driveway shown of the site plan in Figure 2. A full set of plans are included in Attachment 2 of this Report.





**Figure 2:** Proposed site plan

## Description of the site

A site inspection was carried out on 16 July 2024

Land is legally described	LOT: 7 DP: 580515
Property address	301 Picadilly Hill Road COOPERS SHOOT
Land is zoned:	RU1 Primary Production / RU2 Rural Landscape



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Land area is:	144,700 m <sup>2</sup> (14.47 hectares)	
Property is constrained by:	Bushfire prone land High Environmental Value Vegetation – located over 140 metres from the proposal A small part of the frontage to Piccadilly Hill Rd is in the Drinking Water Catchment	
	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:** Zoning map





Street access to existing dwelling (L) Proposed access for new dwelling (R)



5 Existing access to main dwelling google street view



Location of proposed dwelling and carport (facing south from the main dwelling)

**Figure 4:** Site inspection photos



## 2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
S7.11 / Contributions Planner	No objections subject to conditions.
Building Surveyor	No objections subject to conditions.

## 3. SECTION 4.14 – BUSH FIRE PRONE LAND

- 5 Under section 4.14 of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document 'Planning for Bush Fire Protection 2019'. The site is bush fire prone land. The development application is accompanied by a Report by Patrick Thornton and Peter Thornton (Bushfire Certifiers) dated 11 April 2024. A condition of consent is recommended requiring compliance with this report.

### Effect of 10/50 rule on significant vegetation

- 10 The site is within a 10/50 vegetation entitlement clearing area. The proposed new dwelling, once constructed, will expand the entitlement further out than for the existing dwelling however it is noted that the area has already been converted to agricultural grazing land (cattle) and is mostly cleared. Accordingly the proposal will not impact negatively on any significant vegetation as there is none located within 50m.

## 15 4. 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.

### 20 State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><i>Biodiversity and Conservation SEPP 2021</i></p> <p><u>Consideration: Chapter 4 Koala habitat protection 2021</u></p> <p>The site is not mapped in Council's adopted Koala Plan of Management. There is mapping of High Environmental Value Vegetation and Endangered Ecological Communities elsewhere on the lot, well away from the proposed dwelling. No trees or vegetation are</p>	☒	☐



<b>Considerations</b>	<b>Satisfactory</b>	<b>Unsatisfactory</b>
proposed to be removed under this application and the area has already been converted to cleared and managed agricultural land for cattle grazing.		
<p><i>Resilience and Hazards SEPP 2021</i></p> <p><u>Consideration: Chapter 4 Remediation of Land</u></p> <p>The site is mapped on Council's contaminated land register. The application was accompanied by a preliminary contaminated land assessment which concluded that "...there is no risk of contamination to either future residents or construction works". This was referred to Council's Environmental Health (EH) officer who concluded that "EH have assessed the report and deem it satisfactory".</p> <p>No further investigation is considered warranted.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>Sustainable Buildings SEPP 2022</i></p> <p>Consideration:</p> <p>The proposal includes Alterations and Additions to a relocated dwelling that exceeds \$50,000 cost of works threshold. BASIX Certificate A1745202_03 dated 27 April 2024 was submitted with the application. Relevant conditions of consent require compliance with this certificate.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

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

Part 1	<input checked="" type="checkbox"/> 1.1   <input checked="" type="checkbox"/> 1.1AA   <input checked="" type="checkbox"/> 1.2   <input checked="" type="checkbox"/> 1.3   <input checked="" type="checkbox"/> 1.4   <input checked="" type="checkbox"/> Dictionary   <input checked="" type="checkbox"/> 1.5   <input checked="" type="checkbox"/> 1.6   <input checked="" type="checkbox"/> 1.7   <input checked="" type="checkbox"/> 1.8   <input checked="" type="checkbox"/> 1.9
Part 2	<input checked="" type="checkbox"/> 2.1   <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table
Part 4	<input checked="" type="checkbox"/> 4.1E <input checked="" type="checkbox"/> 4.2A   <input checked="" type="checkbox"/> 4.2D   <input checked="" type="checkbox"/> 4.3   <input checked="" type="checkbox"/> 4.6
Part 6	<input checked="" type="checkbox"/> 6.2   <input checked="" type="checkbox"/> 6.5   <input checked="" type="checkbox"/> 6.6

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



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- 5
- (a) The proposed development is defined in the LEP 2014 Dictionary as a Dual Occupancy (detached);
  - (b) The land contains RU1 Primary Production and RU2 Rural Landscape according to the Land Zoning Map. The area for the proposed development is located within the RU1 zoned area;
  - (c) The proposed development is Permitted with Consent; and
  - (d) Regard is had for the relevant Zone Objectives as follows:

Zone Objective	Consideration
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base	The proposal does not compromise the natural resource base
To encourage diversity in primary industry enterprises and systems appropriate for the area	The proposal does not compromise the primary industry enterprise and systems potential of the site
To minimise the fragmentation and alienation of resource lands	The proposal does not fragment or alienate resource lands
To minimise conflict between land uses within this zone and land uses within adjoining zones	The proposal does not include any land use that conflicts with the existing zoning nor does it compromise adjoining zones
To encourage consolidation of lots for the purposes of primary industry production	The proposal does not include any lot consolidation
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 proposal does not include any tourism uses
To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality	The proposal will not compromise the scenic landscape or scenic quality of the locality. It is noted that the building is a relocated dwelling that is in keeping with similar development in the area.

#### Consideration: Clause 4.2A

- 10
- With respect to Clause 4.2A(4)(a) during assessment it was identified that an existing structure located to the southeast of the main dwelling and accessed by a clear driveway remains unidentified. A search of historical imagery shows two structures at the end of this driveway that may comprise another dwelling and carparking structure. It is recommended that this be brought to the attention of Council's Compliance team to investigate their use through the usual separate compliance investigation processes. Additionally plans



recommended for approval under this proposal include a notation that specifically omits all structures not included in this development assessment, as indicated in red on **Attachment 2**.

Consideration: Clause 4.2D

5 **4.2D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2**

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

(a) *to provide alternative accommodation for rural families and workers,*

10 (b) *to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land,*

(c) *to set out consent considerations for development of dual occupancies (detached) and secondary dwellings to address matters such as access, siting, land suitability and potential impacts.*

15 (2) *Development consent must not be granted to development for the purpose of a dual occupancy (detached) or secondary dwelling on land in Zone RU1 Primary Production or Zone RU2 Rural Landscape unless the consent authority is satisfied that—*

(a) *the development will not impair the use of the land, or neighbouring land, for agriculture or rural industries, and*

20 (b) ***each dwelling will use the same vehicular access to and from a public road, and***

(c) *(Repealed)*

(d) *the land is physically suitable for the development, and*

25 (e) *the land is capable of accommodating the on-site disposal and management of sewage for the development, and*

(f) *the development will not have an adverse impact on the scenic amenity or character of the rural environment.*

30 The application seeks approval to utilise a second existing access which does not comply with Clause 4.2D(2)(b). A variation is reasonable and orderly with consideration for positioning of the existing dwelling and carport within a very limited front setback. Shared access to the new dwelling and car port would be difficult and impractical in the available space. The site is suitable for the development and the variation raises no environmental impacts. This exception is further assessed as a variation to a development standard under clause 4.6, below.

35 It is noted that prior amendments to Byron LEP 2014 which repealed Clause 4.2D(2)(c) for dual occupancies (detached)—dwellings will be situated within 100 metres of each other provides more flexibility for siting and distance separating dwellings in rural zones.



There are in most cases ecological and environmental reasons to allow buildings to be sited some distance from one another, such as to avoid unnecessary building or earthworks near watercourses, disturbance to habitat.

- 5 For similar reasons, there is often environmental benefit in permitting the use of a separate driveway in rural areas and there is redundancy for controls requiring dwellings to utilise the same access to and from a public road.

Any application that proposes more than one driveway currently needs to be approved by the Elected Council and this is only because of the development standard under Clause 4.2D(2)(b).

- 10 A recommendation of this report for staff to investigate the effectiveness or redundancy of this development standard would allow for a further report to be brought to Council to explore what housekeeping amendments could be made.

- 15 Council may, at a future meeting, subsequently decide if housekeeping amendments to repeal this development standard and any associated development controls that would enable the merits of otherwise simple dual occupancy applications to be assessed and determined under staff delegation.

**Consideration: Clause 4.3 Height of Buildings**

- 20 The proposal does not raise any concerns with regards to this clause. The proposed dwelling will be a maximum of 7.2 metres at its highest point above ground level which does not exceed the specified maximum height of 9 metres.

**Consideration: Clause 6.2 Earthworks**

- 25 The proposal does not raise any concerns with regards to this clause. In particular the earthworks are minimised due to the building being relocated onto the site, as opposed to new construction. The extent of earthworks comprises concrete footings for the steel piers only.

**Consideration: Clause 6.5 Drinking water catchments**

- 30 The proposal does not raise any concerns with regards to this clause. The development is unlikely to have an adverse impact on the quality and quantity of water entering the drinking water storage basin. The site is not serviced by town sewer infrastructure and the waste water and solid waste generated by the dwelling will be managed via an appropriately designed onsite sewage management system (OSMS). Conditions of consent have been recommended that require separate Council approval for the OSMS that will service the future dwelling.

**Consideration: Clause 6.6 Essential services**

- 35 The proposal does not raise any concerns with regards to this clause. The site has adequate access to all essential services.



**Clause 4.6 Exceptions to Development Standards**

The applicant has sought a variation to Clause 4.2D(2)(b) by proposing a second vehicular access for the new dual occupancy dwelling.

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:

- There is already two driveways being used at the site; and
- The existing crossover to access the carport is inadequate for access to the proposed dual occupancy dwelling.

10 The full Clause 4.6 written request for variation is included as **Attachment 3** of this report.

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:

- 15
- The main dwelling at the site is an older building with a detached carport. Both the carport and the dwelling are located very close to Picadilly Hill Road with a minimal setback.
  - Strict compliance with the shared access from the main dwelling would likely mean that vehicles may need to reverse into or out of the existing driveway onto Picadilly Hill Road. This is not an optimum situation for the safety of road users.

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

The application has demonstrated that:

- a) The development is satisfactory having regard to the requirements outlined in clause 4.6;
- 25 b) The DA demonstrates that compliance with the development standard is unreasonable and unnecessary;
- c) The DA demonstrates that there are sufficient environmental planning grounds to justify contravening the standard;
- d) The DA demonstrates that the development is consistent with the objectives of the standard and the zone;
- 30 e) The DA demonstrates how the development produces a better planning outcome than one that strictly complied with the development standard; and
- f) The DA demonstrates what it is about the grounds of the request that are particular to the proposed development on this site, and that there has to be something particular to the development on this site to justify the variation.

35



### 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.

### 5 4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because it applies to the land to which LEP 2014 applies.

Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input checked="" type="checkbox"/> B2   <input checked="" type="checkbox"/> B3   <input checked="" type="checkbox"/> B4   <input checked="" type="checkbox"/> B8   <input checked="" type="checkbox"/> B14
Part C Chapters:	<input checked="" type="checkbox"/> C3   <input checked="" type="checkbox"/> C4
Part D Chapters	<input checked="" type="checkbox"/> D2

#### Consideration: Chapter B2 Tree and Vegetation Management

- 10 The site is not mapped in Council's adopted Koala Plan of Management however there is mapping of High Environmental Value Vegetation and Endangered Ecological Communities elsewhere on the lot, well away from the proposed dwelling (over 140 metres). No trees or vegetation are proposed to be removed under this application and the area has already been converted to cleared and managed agricultural land for cattle grazing.
- 15

#### Consideration: Chapter B3 Services

The site has adequate supply of services available.

#### Consideration: Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access

- 20 The site is a large rural allotment with plenty of available space for traffic, parking and access. The proposed carport will adequately provide the two required carparks for the dual occupancy, in accordance with the parking schedule rate of two car spaces required for the proposed three bedroom dwelling.

#### Consideration: Chapter B8 Waste Minimisation and Management

- 25 The site is capable of managing the waste generated during the construction phase and future use of the dwelling. Relevant conditions of consent have been recommended to achieve compliance with this chapter.

#### Consideration: Chapter B14 Excavation and Fill

- 30 Earthworks are minimised due to the building being relocated onto the site, as opposed to new slab on ground construction. The extent of earthworks comprises concrete footings for the steel piers only. There is no fill proposed.



## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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#### Consideration: Chapter C3 Visually Prominent Sites, Visually Prominent Development and View Sharing

5 The site is considered visually prominent under Part A of Byron DCP due to its height being over 60m AHD. Whilst no visual impact statement accompanied the DA the structure is a relocated Queenslander style dwelling, is small in scale and is visually consistent with other, similar development in the area. Further the structure is one-storey and will be well hidden from the public road by existing vegetation along Picadilly Hill Road. It is noted that the application was referred to adjoining lot owners and no submissions were received. A condition of consent will be imposed requiring the dwelling utilise 'muted bushland tones' so as not to compromise visual amenity.

#### Consideration: Chapter C4 Development in a Drinking Water Catchment

15 The development is unlikely to have an adverse impact on the quality and quantity of water entering the drinking water catchment. Conditions of consent have been recommended that require provision of an Onsite Sewage Management System (OSMS) to service the proposed dwelling, which must be separately approved by Council.

#### Consideration: Chapter D2 Residential Accommodation and Ancillary Development in Rural Zones

20 The development generally complies with the provisions of this chapter with regards to location, siting, setbacks, and character and visual impact. The proposal satisfies the specific objectives and criteria with regards to Chapter D2.5 (Dual Occupancies and Secondary Dwellings).

25 All relevant Parts/Chapters of Byron DCP 2014 have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development complies with all sections of these Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to certain prescriptive measures which are considered further (having regard to the DCP 2014 Section A1 Dual Path Assessment) as follows:

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
<b>D2.5.1 On-Site Car Parking</b> The proposal involves the new dwelling being accessed via a separate driveway than the existing main dwelling. This utilises an existing, informal driveway crossover at the site.  <i>Control: "Vehicular access to a dual occupancy and secondary dwelling development should</i>	The proposed development complies with the Objectives of the Section because:  The proposed formalisation of an existing second vehicular access provides adequate and visually compatible on-site accommodation of vehicles for the residents and visitors of the proposed dual occupancy dwelling as well	The proposed development complies with the Performance Criteria of this Section because:  It is noted that the existing main dwelling and associated carport is located in close proximity to Picadilly Hill Road with only a minimal setback. The lack of available space to accommodate shared



What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
<i>comprise a shared driveway"</i>	as maintaining access for the main dwelling.	driveway access within that setback represents an undesirable situation in terms of both safety and amenity.  The proposed second vehicular access is designed and located to avoid the requirement for reversing into or out of the driveway and potentially Picadilly Hill Road. Enforcement of the shared access control is not considered appropriate given the existing development and available space.

The proposed development is demonstrated to meet the relevant Objectives of DCP 2014.

## **4.5 Environmental Planning and Assessment Regulation 2021 considerations**

<b>Environmental Planning and Assessment Regulations 2021</b>	<b>Applicable to the proposal:</b>	<b>Considered the control as it relates to the proposal:</b>	<b>If this control is applicable, does the proposal comply?</b>
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 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

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



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

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

**4.6.1 Council Policies applicable to the proposed development?**

<b>Council Policy</b>	<b>Consideration</b>
<a href="#"><u>Management of Contaminated Land Policy</u></a>	The application was referred to Council's Environmental Health Officer who noted that the preliminary contamination assessment provided on the DA concluded that there is <i>"no risk of contamination to either future residents or construction workers"</i> .
<a href="#"><u>Resited/relocated buildings</u></a>	The application was referred to Council's Building Certifier who had no objections, subject to the requirement for a Construction Certificate and conditions requiring compliance with Council's re-sited buildings fact sheet. A condition of consent has been imposed requiring the provision of the relevant reports.

**5 4.7 The suitability of the site for the development**

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

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

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



## **4.9 Public interest**

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

## **5. DEVELOPER CONTRIBUTIONS**

### **5 5.1 Water & Sewer Levies**

No Section 64 levies will be required.

### **5.2 Developer Contributions**

Section 7.11 Contributions will be payable.



## 6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

## 7. CONCLUSION

The DA proposes dual occupancy (detached) comprising existing dwelling and proposed relocated dwelling (including alterations and additions), carport and driveway.

- 5 The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed. The site is a serviced, unconstrained property and is considered suitable for the proposed development.
- 10 The application appropriately addresses the relevant constraints applying to the site and is recommended for approval subject to the conditions listed in Attachment 1.



**Report No. 13.9 PLANNING - 26.2024.12.1 - Post Exhibition Submissions Report - 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:** Cameron Thiessen, Land Use Planner

**File No:** I2024/1309

**Summary:**

This Report presents the exhibition outcomes of the proposed amendments to Byron DCP 2014 Chapters *D5: Industrial Development* and *B4: Traffic Planning, Vehicle Parking, Circulation and Access* to include new provisions for Artisan Food and Drink Industry.

The draft Development Control Plan (DCP) chapters were exhibited from 17 September 2024 to 14 October 2024 and there were no public submissions received in response to the exhibition.

It is recommended that the amended Byron DCP 2014 Chapters *D5: Industrial Development* and *B4: Traffic Planning, Vehicle Parking, Circulation and Access* be adopted, as attached to this report.

**NOTE TO COUNCILLORS:**

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

**RECOMMENDATION:**

**That Council adopts the draft Byron Development Control Plan Chapters D5: Industrial Development and B4: Traffic Planning, Vehicle Parking, Circulation and Access, as contained in Attachment 1 (E2024/104454) and 2 (E2024/104523), and publishes the amended DCP on Council's website.**






# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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### **Attachments:**

- 5
- 1 26.2024.12.1 Draft Byron Shire DCP 2014 Chapter D5 Industrial Development RES 24-373, E2024/104454 
  - 2 26.2024.12.1 Draft Byron Shire DCP 2014 Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access RES 24-373, E2024/104523 
  - 3 Special Disclosure of Pecuniary Interest form, E2012/2815 
- 10



## **Report**

At the 1 August 2024 Council (Planning) Meeting, Council resolved to exhibit amendments to the Byron DCP 2014 in relation to a need to provide development controls for artisan food and drink industry.

- 5     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.

Following consideration of the 1 August 2024 Council report, resolution 24-373 resolved that Council:

- 10     1.     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.
- 15     2.     Receives a further report for consideration on the amendments following the public exhibition period.

## **Exhibition**

The draft DCP chapters were exhibited from 17 September 2024 to 14 October 2024.

During the exhibition period, no submissions were received.

## **Next steps**

- 20     If adopted, the Development Control Plan will come into effect once uploaded to Council's website.

## **Strategic Considerations**

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

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

## **Recent Resolutions**

- 25     •     23-373 (1 August 2024). Council (Planning) Meeting - 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. I2024/1030.



**Legal/Statutory/Policy Considerations**

If adopted this will amend Byron Development Control Plan 2014, Chapter D5: Industrial Development and Chapter B4: Traffic Planning, Vehicle Parking, Circulation and Access.

**Financial Considerations**

- 5 This is a Council initiated DCP amendment and will be funded from within existing budgets.

**Consultation and Engagement**

The outcome of the community engagement process has been outlined within this report.



**Report No. 13.10 PLANNING - 10.2023.465.1 - Demolition of two (2) existing dwellings and construction multi dwelling housing comprising of twenty four (24) dwellings including three (3) affordable dwellings, tree removal within site and compensatory ecological restoration works within the subject site and adjoining coastal wetlands – 56B, 58 & 60 Bangalow Road Byron Bay.**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Greg Yopp, Planner  
Patricia Docherty, Team Leader Planning Services - Commercial Industrial & Tourism

**File No:** I2024/1312

**Proposal:**

<b>Planning Portal ref</b>	PAN-394926
<b>Property description:</b>	LOT: 14 DP: 792128, LOT: 1 DP: 525896, LOT: 11 DP: 593328
	56B Bangalow Road BYRON BAY, 58 Bangalow Road BYRON BAY, 60 Bangalow Road BYRON BAY
<b>Parcel No/s:</b>	60550, 60430, 60320
<b>Applicant:</b>	PROPEL INVESTMENT MANAGEMENT PTY LTD
<b>Owner:</b>	Propel Byron Villa Development Pty Ltd
<b>Zoning:</b>	R2 Low Density Residential PART C2 Environmental Conservation / PART C3 Environmental Management are located outside the development area.
<b>Date received:</b>	12 January 2024
<b>Integrated / Designated Development:</b>	Not designated development or integrated development
<b>Public notification or</b>	– Level 2 advertising under Council's Community Participation



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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<b>exhibition:</b>	<p>Plan.</p> <ul style="list-style-type: none"> <li>– Exhibition period: 25 January to 15 February</li> <li>– Submissions received: Twenty (20) in support; Thirteen (13) in objection including a petition with 30 signatures.</li> <li>– Submissions acknowledged: <input checked="" type="checkbox"/> Yes   <input type="checkbox"/> No   <input type="checkbox"/> N/A</li> </ul>
<b>Planning Review Committee and other Councillor considerations</b>	<p>04/04/2024 – PRC recommended Development Application (DA) be determined under staff delegation.</p> <p>16/05/2024 – Adoption of PRC minutes of 04/04/2024 - Council resolved (24-198) that the DA was to be determined by Council.</p> <p>05/09/2024 – Mayoral Minute – Council resolved that the DA was to be determined by Council.</p>
<b>Delegation to determined</b>	<p>Council</p> <p>Reason: in accordance with Mayoral Minute of 05/09/2024 – Council resolved that this DA was to be determined by the elected Council.</p>
<b>Variation request to Development Standards under an EPI (e.g. clause 4.6)</b>	Not applicable
<b>Estimated cost</b>	\$9,001,755.00
<b>Issues</b>	<p>Affordable Housing (3 of 24 dwellings)</p> <p>Proximity to Coastal Wetland</p> <p>Traffic impact</p> <p>Roadworks including intersection upgrades required</p> <p>Submissions of objection and support</p>

### Summary:

The DA proposes demolition of two (2) existing dwellings and construction of multi dwelling housing comprising of twenty four (24) dwellings including three (3) affordable dwellings, tree removal within the site and compensatory ecological restoration works and weed management and fauna boxes within adjoining coastal wetlands. All dwellings and associated development are located inside the R2 Low Density Residential zone.

The application for infill housing on urban land is consistent with relevant State Environmental Planning Policy (SEPP) and Byron Local Environmental Plan (LEP) 2014 provisions, except for an inconsistency with Section 19 SEPP (Housing) 2021 involving a minor reduction in floor area for the proposed three affordable dwellings. The variation is



enabled under Section 4.15(3) of the Environmental Planning and Assessment Act 1979; and supported for reasons outlined in this report.

The proposal is generally consistent with Byron Development Control Plan (DCP) 2014 prescriptive measures with minor departures, as follows:

- 5 Section B1.2.1 Coastal Wetland buffer distance;  
Section D1.2.1 Building Height Plane for Dwellings 1 & 7;  
Section D1.2.2 Front Setback; and  
Section D1.2.7 Fences.

- 10 The proposed DCP variations are supported for reasons outlined in the report. Proposed tree removal within the subject allotment for the housing development and necessary asset protection zone (APZ) is to be offset by:

- a) compensatory landscape planting using native species within the subject lot; and  
b) ongoing weed management 70m within the adjacent coastal wetlands and installation of fauna boxes.

- 15 This is consistent with prescriptive measure 14 of Chapter B1 Biodiversity, where vegetation removal is proposed, compensatory planting ratios apply unless an equivalent habitat restoration or creation is proposed to equivalent biodiversity quality of that being removed. The ecological works including weed management will increase the extent of coastal wetland restoration that has already occurred for a similar infill housing  
20 development to the north of the site.

Traffic management is to be addressed through recommended and conditioned intersection upgrades to Bangalow Road and the unnamed new road including left turn only for traffic exiting onto Bangalow Road; left turn only for traffic coming from the south; right turn into the site for traffic coming from the north including a new right turn lane.

- 25 The unnamed road has recently been constructed to provide access to an approved infill housing development to the north. Widening of the carriageway of this section of road from 6.0m to 7.0m and construction of four (4) new parallel parking spaces are also recommended for approval.

- 30 Traffic management conditions are necessary to enable this infill housing proposal to proceed now, which will provide much need housing supply to the Byron Bay Town locality.

- 35 The conditions as drafted mitigate impacts from the proposed traffic generation resulting from the ultimate development yield on site which will exacerbate the already failed level of service on Bangalow Road. This is due to the current daily peak time traffic volumes along it.

Council should note that there are separate and ongoing investigations in relation to Byron Bay Town Traffic Management more broadly underway. The arrangements conditioned for this development in terms of turning movement restrictions etc may at some time in the future be able to be removed as a result of this work.



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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The application was publicly exhibited from 25 January to 15 February 2024 and 33 submissions were received (20 support; 13 object). Relevant matters for consideration are detailed in this report.

- 5 DA 10.2023.465.1 is recommended for approval subject to the conditions of consent in Attachment 1 (E2024/119605) of this report.

### NOTE TO COUNCILLORS:




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

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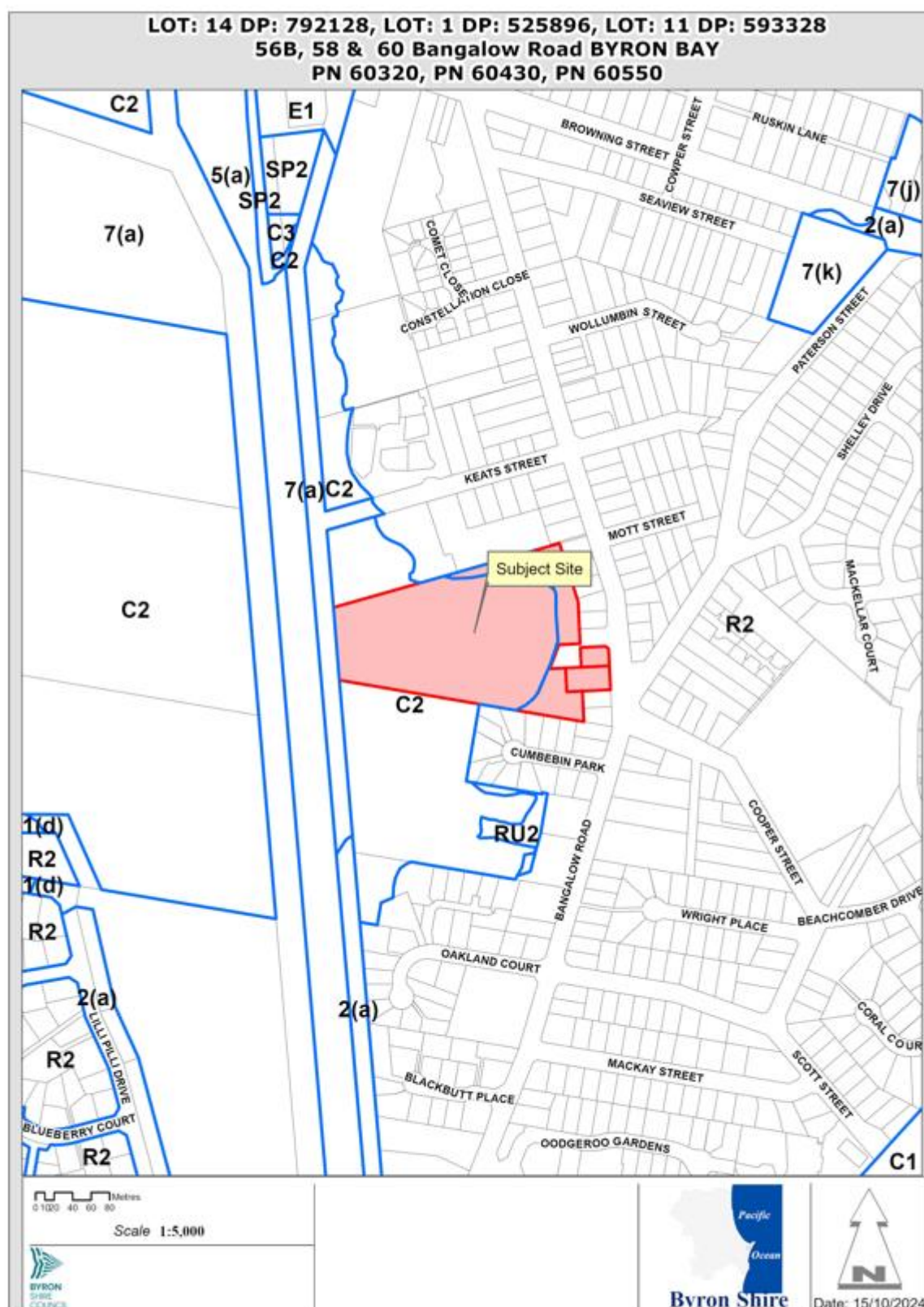
### RECOMMENDATION:

- 15 **That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2023.465.1 for demolition of two existing dwellings and construction of multi dwelling housing comprising of 24 Dwellings including three Affordable Dwellings, be granted consent subject to conditions located at Attachment 1 #E2024/119605 of this report.**

### 20 Attachments:

- 1 10.2023.465.1 Recommended Conditions of Consent, E2024/119605 
- 2 10.2023.465.1 Combined Architectural and Engineering Plans for Stamping Subject to Council Resolution, E2024/127162 
- 25 3 10.2023.465.1 Redacted Submissions, E2024/118395 





**Figure 1: Locality Plan**



## **1. INTRODUCTION**

### **History/Background**

The subject site shown in Figure 1: Locality plan currently consists of three allotments.

- 5 Note. there is an approved boundary adjustment (yet to be created allotments) between No. 60 and 56B Bangalow Road. A condition of consent requires this allotment to be registered prior to issue of a construction certificate (CC). Another condition prior to occupation certificate (OC) requires consolidation of lots (No. 58 and the boundary adjusted 60 Bangalow Road) as described in Table 1

**Table 1 – Allotment details**

<b>Residential address</b>	<b>Lot and DP</b>	<b>Parcel</b>	<b>Existing Area</b>	<b>Approved Area (boundary adjustment) 10.2023.473.1</b>
56B Bangalow Road Byron Bay	Lot 14 DP 792128	60550	34,737m <sup>2</sup>	N/A*
58 Bangalow Road Byron Bay	Lot 1 DP 525896	60430	645m <sup>2</sup>	645m <sup>2</sup>
60 Bangalow Road Byron Bay	Lot 11 DP 593328	60320	1,228m <sup>2</sup>	3442m <sup>2</sup>

- 10 \* Refer to Figure 7 for detail.

- 15 The development site relies upon development consent 10.2023.473.1 approved on 30/05/2024 for Two stage subdivision – Stage 1 boundary adjustment between two lots; Stage 2 One lot into six lot Community Title, at 56B and 60 Bangalow Road. If development consent is granted for the subject DA, it will be conditioned to require the registration of the Stage 1 boundary adjustment created under 10.2023.473.1.

Additional history for each of the three allotments is provided below.

### **56B Bangalow Road**

<b>Application / Register No</b>	<b>Description</b>	<b>Status</b>	<b>Date</b>
5.1991.404.1	DA Subdivision	Approved	08/09/1992
5.1993.175.1	DA Residential Flat Building	Refused	07/04/1997
10.2000.204.1 DA	Dwelling	Refused	12/09/2000
10.2001.478.1 DA	New Dwelling and Tree Removal	Approved	12/12/2001
10.2023.473.1	2 Stage subdivision - Stage 1 boundary	Approved	30/05/2024



## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Application / Register No	Description	Status	Date
DA	adjustment between two lots		

#### **58 Bangalow Road**

Application / Register No	Description	Status	Date
6.1988.2055.1 Building Application	Garage	Approved	07/03/1988
10.2010.147.1 DA	Use of unauthorised structure as storage Shed	Approved	19/05/2010
10.2010.159.1 DA	Deck and front boundary fence	Approved	21/05/2010

#### **60 Bangalow Road**

Application / Register No	Description	Status	Date
6.1988.2136.1 Building Applications	Carport	Approved	13/04/1988
9.2022.56.1 Tree Removal Permit	Tree Removal One (1) Tree	Approved	07/10/2022
10.2023.473.1 DA	2 Stage subdivision - Stage 1 boundary adjustment between two lots	Approved	30/05/2024

#### **5 Description of the proposed development**

The proposed development seeks consent for demolition of two existing dwellings and associated structures; and multi dwelling housing comprising of 24 dwellings. The dwelling mix includes 2 x one bedroom and 22 x two bedrooms. Three of the proposed dwellings (Dwellings 2, 8 & 10) are affordable under the SEPP (Housing) 2021.

10

Dwellings 6, 18 & 24 are adaptable to meet the needs of people with a disability.

The proposed adaptable dwellings include two single bedroom dwellings and one x two bedroom dwelling. The proposed affordable dwellings include three x two bedroom



dwellings. The Gross Floor Area (GFA) of the proposed twenty four dwellings ranges from 51m<sup>2</sup> to 95m<sup>2</sup>, with an average GFA of 76m<sup>2</sup>.

- 5 Figure 2 provides a site plan extract. Figure 3 provides a ground floor plan view of the proposed development, indicating the location of the affordable and adaptable dwellings. The full architectural plan set is located in Attachment 2 (E2024/80591) to this report.







**Figure 2:** Site Plan and Extended Site Plan Extract

5



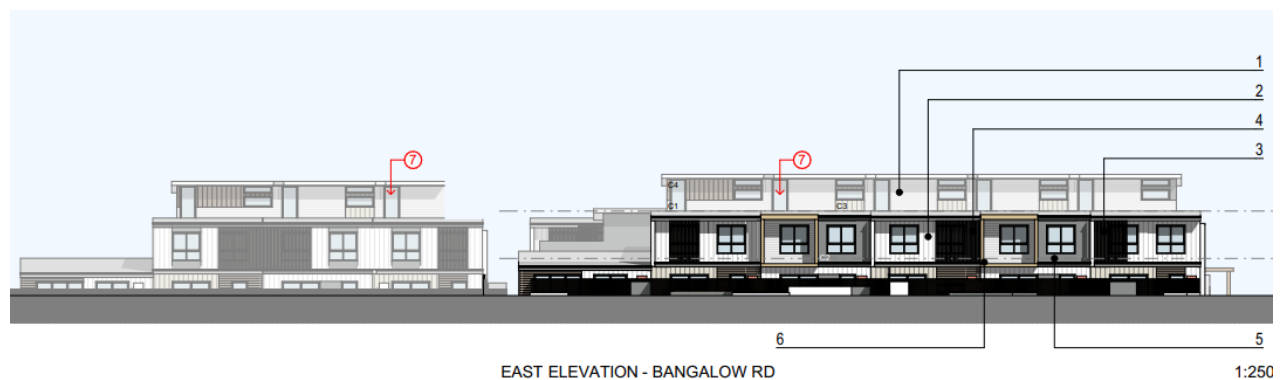


**Figure 3:** Plan view of proposed development (ground level)

Note. Blue shading – adaptable housing; yellow shading affordable housing

5

Figure 4 provides an eastern elevation (Bangalow Road view). Figure 5 provides perspectives from Bangalow Road, noting that upper storey elements are setback from boundaries and recessed into the central part of the site.



**Figure 4:** Eastern Elevation

10





**Figure 5:** Bangalow Road Perspectives (artistic render)

5

A total of 30 car parking spaces are proposed. The parking spaces are behind the building setback and are not visible from the public domain. Site access is to be obtained via the unnamed road which adjoins Bangalow Road to the north. This road construction was required as part of development consent 10.2019.20.1 and additional road widening and parking is included as part of this application. Road intersection upgrades are to occur on Bangalow Road for a safer access to the site. Acoustic fencing is proposed on the northern and southern site boundaries.

10

15

A total of 40 native trees, all within Zone R2 low density residential, are proposed for removal as part of this application. Compensatory ecological restoration works, and selected native landscaping is proposed within the subject site and weed management and fauna boxes are proposed in the coastal wetlands.



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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Typical servicing and infrastructure augmentations are also to occur to support the proposed development, including, but not limited to a sewer re-alignment within the site. The current sewer main traverses through the centre of the site and is to be repositioned to the front of the proposed dwellings within 56B and 60 Bangalow Road, Byron Bay.

5

### Description of the site

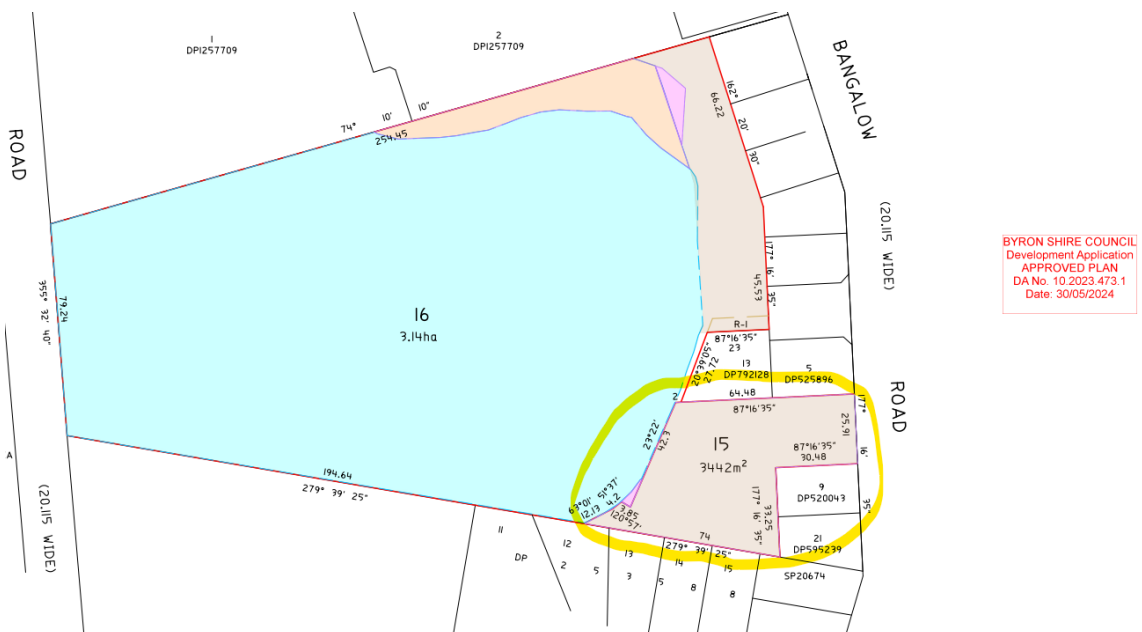
Land is legally described	LOT: 14 DP: 792128, LOT: 1 DP: 525896, LOT: 11 DP: 593328	
Property address	56B Bangalow Road BYRON BAY, 58 Bangalow Road BYRON BAY, 60 Bangalow Road BYRON BAY	
Land is zoned:	R2 Low Density Residential	
Land area is:	4087m <sup>2</sup> . This allotment is yet to be created and will be a result of the expanded 60 Bangalow Road (approved under DA 10.2023.473.1) with an area of 3442m <sup>2</sup> ; consolidated with 58 Bangalow Road with an area of 645m <sup>2</sup> . Refer to Figure 7 for extract from approved Stage 1 subdivision plan under DA 10.2023.473.1.	
Flood Liable Land	Conditions apply.	
Bushfire prone land	NSW RFS conditions apply.	
Acid Sulfate Soils Class 5	Conditions apply.	
Coastal Wetlands	There are no mapped coastal wetlands within the development site. Refer to Figure 8. The land is within “proximity area of coastal wetlands” in accordance with SEPP (Resilience and Hazards) 2021.	
High Conservation Value	Conditions apply.	
	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 6 provides an aerial view of the site with a land zoning overlay.



**Figure 6: Zone Map**



**Figure 7: Approved Stage 1 Subdivision Plan (extract) under DA 10.2023.473.1**





**Figure 8:** Coastal Wetlands outside site (cross hatched)

## 2. SUMMARY OF REFERRALS

Referral	Issue addressed in assessment
Environmental Health Officer	<p><u>Land use conflict/noise</u></p> <p>Noise Impact Assessment report for approval including the following measures:</p> <ul style="list-style-type: none"> <li>• Façade treatments to 8 of the future units to mitigate traffic noise;</li> <li>• Acoustic barriers; and</li> <li>• General recommendations to be considered for the design and installation of mechanical equipment.</li> </ul> <p>Other conditions recommended by EHO:</p> <ul style="list-style-type: none"> <li>• Communal recreational areas used between 7am and 10pm only; and</li> <li>• Acoustic certification confirming development has been designed and installed in accordance with the recommendations of the report.</li> </ul>
Development Engineer	<p><u>Traffic</u></p> <p>Intersection treatment unnamed road and Bangalow Road plan for approval:</p> <ul style="list-style-type: none"> <li>• Left turn only for traffic coming out of development turning into Bangalow Road.</li> <li>• Left turn only for traffic coming from the south along Bangalow</li> </ul>



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Referral	Issue addressed in assessment
	<p>Road into the development.</p> <ul style="list-style-type: none"> <li>Right turn into the development for traffic coming from the north along Bangalow Road. This includes new right turn lane.</li> </ul> <p>Widen carriageway of no name road from 6.0m to 7.0m and construct 4 x parallel parking.</p> <p><u>Parking</u></p> <ul style="list-style-type: none"> <li>Total 29 spaces required. 30 proposed – surplus</li> <li>3 affordable dwellings – 2 spaces (under Housing SEPP)</li> <li>21 other dwellings – 21 spaces including 3 accessible spaces</li> <li>Visitor – 6 spaces</li> <li>Conditions apply</li> </ul>
Natural Resource Planner	<p>No Coastal Wetlands on the subject allotment.</p> <p>Bush Fire Asset Protection Zones (APZ's) do not extend in coastal wetlands.</p> <p>DA was accompanied by an Ecological Assessment, prepared by Blackwood Ecological Services, dated September 2023. The report provides details of compensatory planting to compensate for removal of 40 native trees, partially mapped as coastal swamp forest.</p> <p>A condition requires the substitution of compensatory planting on the edge of the coastal wetlands with weed management and erection of fauna boxes. Ecological restoration works will not conflict with APZ requirements.</p>
S64 / Systems Planning Officer	No issues. Developer Servicing Charges apply for water, bulk water and sewer systems. Standard conditions apply.
S7.11 / Contributions Planner	No issues. S7.11 Developer Contributions are applicable. Standard conditions apply. Contributions for affordable housing are deferred.
Rural Fire Service (S4.14)	Bush Fire Safety conditions of consent apply.
Transport for NSW	The DA was referred to Transport for NSW (TfNSW). The referral was returned because the referral does not require referral or concurrence of TfNSW.
Essential Energy	Essential Energy provided general comments. No objection to the proposal.
Bundjalung (Arakwal)	<p>Referred for comment. No issues raised.</p> <p>An AHIMS search was submitted with the DA dated 17 July 2023.</p>



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Referral	Issue addressed in assessment
Jali LALC Tweed Byron LALC	Using a 50m buffer there are no Aboriginal sites or places declared in or near the location.

*\* Conditions provided in the above referrals are included in Attachment 1 (E2024/119605) of this Report*

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

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

Effect of 10/50 rule on significant vegetation

- 10 The land is identified as being in a designated 10/50 vegetation entitlement clearing area. Potential clearing under the 10/50 rule will not exceed clearing that is required for the establishment and maintenance of APZ's. Compensatory ecological restoration works are recommended as a condition of consent.

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

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

#### 4.1 State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<i>Biodiversity and Conservation SEPP 2021</i> Consideration: <u>Section 2.6 Clearing that requires permit or approval</u> There is no proposed clearing of land mapped as coastal wetland. The proposal does involve the clearing of around 40 native trees on urban zoned land. Ecological Assessment prepared by Blackwood Ecological Services dated September 2023 states "the proposed vegetation clearing will not exceed the area clearing threshold trigger or the Biodiversity Values map trigger". A condition of consent is recommended to require a detailed vegetation management plan to be prepared for the delivery of weed management and compensatory ecological restoration works.	<input checked="" type="checkbox"/>	<input type="checkbox"/>



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Considerations	Satisfactory	Unsatisfactory
<p><u>Chapter 4 Koala habitat protection</u></p> <p>The subject site is not within the Koala Management precinct under the Byron Coast Comprehensive KPoM. Therefore, the provisions of the SEPP apply. Ecological Assessment prepared by Blackwood Ecological Services dated September 2023 confirms that the site is larger than 1ha (prior to the creation of the subject allotment) and does not contain mapped potential Koala habitat. Therefore, no other action required. It is noted that the report points out that Swamp Mahogany occurs to the west of the subject allotment and is a preferred Koala food tree.</p>		
<p><i>Housing SEPP 2021</i></p> <p>Consideration: In-fill affordable housing</p> <p><u>15A Objective of division</u></p> <p>The proposed development facilitates the delivery of new in-fill affordable housing and is consistent with the objective.</p> <p><u>15C Development to which division applies</u></p> <p>The proposed development is permitted with consent</p> <p>The affordable housing component (3 dwellings) exceeds the 10% threshold. 3 x 75m<sup>2</sup> dwellings = 225m<sup>2</sup>. This represents 12.3% of the total GFA of 1,827m<sup>2</sup>.</p> <p>The site is within 800m of land in a relevant zone (Zone E1 Local Centre in this instance).</p> <p>The proposed affordable housing is not a requirement under another chapter of this policy, another EPI or planning agreement.</p> <p><u>16 Affordable housing requirements for additional floor space ratio</u></p> <p>The proposed development does not seek any additional FSR. Moreover, the FSR is 0.447:1 and the development standard in this location is 0.5:1. Under this section in the SEPP the DA could seek an additional 24.6% FSR. This equates to a maximum FSR of 0.623:1.</p> <p><u>18 Affordable housing requirements for additional building height</u></p> <p>The proposed development does not seek any additional building height. The maximum height of the building is under the 9m development standard. Under this section</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>



Considerations	Satisfactory	Unsatisfactory
<p>in the SEPP the DA could seek an additional 24.6% building height. This equates to a maximum building height of 11.214m</p> <p><u>19 Non-discretionary development standards – the Act, s 4.15</u></p> <p>This section prevents the consent authority from requiring more onerous standards for these matters. However, if the development does not comply this does not mean the consent authority cannot consent to the development in accordance with Section 4.15(3) of the EP&amp;A Act 1979.</p> <p>The development achieves compliance with the following non-discretionary, development standards:</p> <ul style="list-style-type: none"> <li>• Exceeds minimum site area of 450m<sup>2</sup>.</li> <li>• 30% of site is landscaped.</li> <li>• 16.32% deep soil planting, exceeding the required minimum of 15%.</li> <li>• 100% of deep soil zone is located at rear of site and included in the communal open space area. (More than 65%).</li> <li>• Living rooms and private open spaces in at least 70% of dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter.</li> <li>• Affordable dwellings (3) attract a total of 1.5 car parking spaces (rounded up to 2). The remainder of the Dwellings are assessed against Councils DCP.</li> <li>• A total of 29 car parking spaces are required. 30 spaces are provided including 3 accessible spaces.</li> <li>• The minimum floor areas specified in the Low Rise Housing Diversity Design Code do not apply - not a Residential Flat Building, nor a Dual Occupancy, Manor House or Multi Dwelling Housing (Terraces).</li> </ul> <p>The 3 affordable dwellings proposed are all unit 'type A', providing for 2 bedrooms and each unit has a GFA of 75m<sup>2</sup>. No minimum floor area in the "Low Rise Housing Diversity Design Guide". Consequently, floor areas set by section 19(2)(i) of the SEPP are used:</p> <p><i>i) ... the following minimum floor areas—</i></p> <p><i>(i) for each dwelling containing 1 bedroom—65m<sup>2</sup>,</i></p> <p><i>(ii) for each dwelling containing 2 bedrooms—90m<sup>2</sup>,</i></p> <p><i>(iii) for each dwelling containing at least 3 bedrooms—115m<sup>2</sup> plus 12m<sup>2</sup> for each bedroom in addition to 3 bedrooms.</i></p>		



<b>Considerations</b>	<b>Satisfactory</b>	<b>Unsatisfactory</b>
<p><u>The proposed affordable dwellings are 15m<sup>2</sup> smaller than the 90m<sup>2</sup> standard.</u></p> <p>The proposed non-compliance with the minimum floor area requirement is supported for the following reasons: Consistent with the objective of the Division in that the proposal facilitates the delivery of new low rise in-fill affordable housing;</p> <ul style="list-style-type: none"> <li>• Secondary dwellings under Byron LEP 2014 are limited to a GFA of 60m<sup>2</sup> in most instances and many of these include 2 bedrooms;</li> <li>• The subject 75m<sup>2</sup> affordable dwellings have a floor plan that provide a reasonable standard of liveability;</li> <li>• Smaller dwellings provide for more individual self-contained housing outcomes within the site.</li> </ul> <p><u>20 Design requirements</u></p> <p>The Low Rise Housing Diversity Design Guide for Development Applications (Design Guide for DAs) provides consistent planning and design standards for low rise diverse residential dwellings across NSW. The best practice controls and design standards set out in the Design Guide for DAs has been considered as part of this assessment.</p> <p>The proposed development is compatible with the desirable elements of character of the local area, including but not limited to, proximity to public transport, retail, health, education, religious and recreational services.</p> <p>The proposed development is consistent with the principals of:</p> <ul style="list-style-type: none"> <li>• Context and neighbourhood character</li> <li>• Built form and scale</li> <li>• Density</li> <li>• Sustainability</li> <li>• Landscape</li> <li>• Amenity</li> <li>• Safety</li> <li>• Housing diversity and social interaction</li> <li>• Aesthetics</li> </ul> <p><u>21 Must be used for affordable housing for at least 15 years</u></p> <p>A condition of consent will require the use of the 3 affordable dwellings for a period of at least 15 years to be managed by a registered community housing</p>		



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Considerations	Satisfactory	Unsatisfactory
provider.		
<p><i>Resilience and Hazards SEPP 2021</i></p> <p>Consideration:</p> <p><u>Section 2.8 Development on land in proximity to coastal wetlands or littoral rainforest</u></p> <p>The proposed development does not encroach into mapped Coastal Wetlands. The DA is not designated development. The subject site is not within a coastal use area; nor is it within a coastal environment area.</p> <p>No development will occur within the mapped coastal wetland. The biophysical, hydrological and ecological integrity of the adjacent coastal wetlands are maintained. An approved stormwater management plan is included in the conditions. A vegetated buffer adjacent to coastal wetland is provided. Ecological restoration works for tree removal will be a condition of consent, generally in accordance with the approved Ecological Assessment prepared by Blackwood Ecological Services dated September 2023. A focus will be on weed management, rather than compensatory planting adjacent to the coastal wetland. Additionally, the restoration works will also include the installation of fauna boxes within the coastal wetland. Compensatory planting works will be required within the subject allotment in accordance with the Landscape Plan prepared by Blackwood Ecological Services submitted with the DA, requiring native species to be planted within the site.</p> <p><u>Chapter 4 Remediation of land</u></p> <p>The site has a longstanding history of residential use and associated gardens and landscaping. There is no increase in sensitivity of land use. Council's Environmental Health officer has assessed the proposal and concluded that no further investigation is warranted.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>Planning Systems SEPP 2021</i></p> <p>Consideration:</p> <p><u>Schedule 6 Regionally significant development</u></p> <p>The proposal not regionally significant development. The proposal is general development, and the estimated development cost is not more than \$30 million. Council is the consent authority.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>



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Considerations	Satisfactory	Unsatisfactory
<p><i>Transport and Infrastructure SEPP 2021</i></p> <p>Consideration:</p> <p><u>Division 5 Electricity transmission or distribution</u></p> <p><u>Section 2.48 Determination of development applications – other development</u></p> <p>The DA was referred to Essential Energy as part of the proposed development is within 5m of exposed overhead electricity lines. General comments were provided and are recommended for inclusion in a schedule of the condition of consent.</p> <p><u>Division 17 Roads and traffic</u></p> <p><u>Section 2.119 Development with frontage to classified road</u></p> <p>Bangalow Road is located on classified Main Road MR545. The DA was referred to Transport for NSW (TfNSW), but no comments were required, confirmed by their response “This proposal does not meet the requirements for referral to TfNSW.”</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>Sustainable Buildings SEPP 2022</i></p> <p>Consideration:</p> <p>BASIX Certificate No. 1377058M_05, dated 4 October 2024</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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

- 5 LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. The LEP 2014 clauses that are checked below are of relevance to the proposed development:

Part 1	<input checked="" type="checkbox"/> 1.1   <input checked="" type="checkbox"/> 1.1AA   <input checked="" type="checkbox"/> 1.2   <input checked="" type="checkbox"/> 1.3   <input checked="" type="checkbox"/> 1.4   <input checked="" type="checkbox"/> Dictionary   <input checked="" type="checkbox"/> 1.5   <input checked="" type="checkbox"/> 1.6   <input checked="" type="checkbox"/> 1.7   <input checked="" type="checkbox"/> 1.8   <input checked="" type="checkbox"/> 1.9
Part 2	<input checked="" type="checkbox"/> 2.1   <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table
Part 4	<input checked="" type="checkbox"/> 4.1E <input checked="" type="checkbox"/> 4.3   <input checked="" type="checkbox"/> 4.4
Part 5	<input checked="" type="checkbox"/> 5.21   <input checked="" type="checkbox"/> 5.22
Part 6	<input checked="" type="checkbox"/> 6.1   <input checked="" type="checkbox"/> 6.2   <input checked="" type="checkbox"/> 6.6



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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 multi dwelling housing;
- (b) The land is within the R2 Low Density Residential according to the Land Zoning Map;
- 5 (c) The proposed development is permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

Zone R2 Objectives	Consideration
To provide for the housing needs of the community within a low density residential environment.	The proposed development provides for the housing needs of the community.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The proposed development will enhance the viability of other land uses that provide facilities or services to meet the day to day needs of residents.

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

Additional LEP assessment comments follow.

LEP Clause	Assessment
Clause 1.2 – Aims of Plan	Complies The proposed development is consistent with the Aims of the Plan. In particular: Clause 1.2(2)(a)(iii) – a recommended condition of consent requires compensatory weed management within the adjacent wetland. The proposal is consistent with the principle of conserving biological diversity and ecological integrity. Clause 1.2(2)(e) – The proposed development provides a diversity of housing choice and 3 affordable dwellings in an appropriate locality.
Clause 4.1E – Minimum lot sizes for certain residential accommodation Zone R2 – 1,000m <sup>2</sup>	Complies The subject allotment once a prior approved subdivision is registered, will have an area of 4,087m <sup>2</sup> .
Clause 4.3 - Height of buildings 9m Height of buildings under SEPP (Housing) 2021 – 11.214m	Complies The proposed development does not exceed 9m. Pursuant to clause 18 SEPP (Housing) 2021 the DA could seek an additional 24.6% building height. This equates to a maximum building height of 11.214m. This DA does not propose additional building height allowed under the SEPP.
Clause 4.4 – Floor	Complies



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LEP Clause	Assessment
space ratio 0.5:1 FSR under SEPP (Housing) 2021 – 0.623:1	The proposed development has an FSR of 0.447:1.  Pursuant to clause 16 SEPP (Housing) 2021 the DA could seek an additional 24.6% FSR. This equates to a maximum FSR of 0.623:1. Refer to SEPP compliance table in Section 4.1 of this report. This DA does not propose additional FSR allowed under the SEPP.
Clause 5.21 – Flood planning	Complies Part of the site is within the flood planning area. Standard flood conditions recommended.
Clause 5.22 – Special flood considerations	Complies The site does include land between the flood planning area and the probable maximum flood. The DA is not “sensitive and hazardous development” defined under this clause. Bangalow Road provides for the safe evacuation of people in the event of a flood. Habitable floor levels are all above the flood planning level.
Clause 6.1 – Acid sulfate soils	Complies Class 5 Acid sulfate soils. Council’s Environmental Officer did not raise any concerns. An Acid Sulfate Soils Plan of Management was submitted with the DA. It is recommended that this plan will be approved as part of condition No. 1.
Clause 6.4 - Earthworks	Complies The proposed development involves minor earthworks due to the gentle slope of the site. The cut for the dwellings will not exceed 1 metre. There is a net fill of 314m <sup>2</sup> , with limited cut for top soil stripping, swimming pool and stormwater infrastructure.
Clause 6.6 – Essential services	Complies Essential services including water, electricity, reticulated sewerage, stormwater system and suitable vehicle access can all be provided.
Clause 6.17 – Affordable housing in employment, mixed use and residential zones	Complies The proposed development is consistent with the affordable housing provisions of SEPP (Housing) 2021.  The affordable housing component (3 dwellings) exceeds the 10% threshold of the SEPP. 3 x 75m <sup>2</sup> dwellings = 225m <sup>2</sup> . This represents 12.3% of the total GFA of 1,827m <sup>2</sup> .  A condition of consent is recommended that requires a minimum period of 15 years for the affordable housing managed by a registered community housing provider.



**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 instruments that have been the subject of public consultation that relate to the subject site.

5

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

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because it applies to the land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are checked below are of relevance to the proposed development:

10

Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input checked="" type="checkbox"/> B1   <input checked="" type="checkbox"/> B3   <input checked="" type="checkbox"/> B4   <input checked="" type="checkbox"/> B7   <input checked="" type="checkbox"/> B8   <input checked="" type="checkbox"/> B9   <input checked="" type="checkbox"/> B11   <input checked="" type="checkbox"/> B13   <input checked="" type="checkbox"/> B14
Part C Chapters:	<input checked="" type="checkbox"/> C2
Part D Chapters	<input checked="" type="checkbox"/> D1
Part E Chapters	<input checked="" type="checkbox"/> E5

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

15

Additional DCP assessment comments follow.

<b>DCP Provisions</b>	<b>Assessment</b>
Chapter B1 – Biodiversity <u>B1.2.1 Development Envelope Controls</u> Setbacks from: Threatened Ecological Communities – 30m; Coastal Wetlands – 50m	Inconsistency with Prescriptive Measures, however, consistent with associated section objectives.  Proposed setback of 22m to 28m from Coastal Wetland to the built form.  The proposed variation from the prescriptive measure is supported for the following reasons: <ul style="list-style-type: none"> <li>• Mapped wetland area outside footprint of development;</li> <li>• Natural wetland areas to be retained and protected – condition of consent involves weed management;</li> <li>• Proposed development designed to avoid and minimise</li> </ul>



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DCP Provisions	Assessment
	<p>negative biodiversity impacts through such measures as compensatory weed management of adjacent wetland; equivalent habitat restoration; stormwater management; and minimal earthworks;</p> <ul style="list-style-type: none"> <li>SEPP (Resilience and Hazards) 2021 permits development within 100m of wetlands subject to criteria;</li> <li>Ecological Assessment prepared by Blackwood Ecological Services demonstrates compliance with relevant statutory requirements.</li> </ul> <p>This is consistent with prescriptive measure 14:</p> <p>Where vegetation removal is proposed, compensatory planting, consistent with the Biodiversity Planning Principles, is to be detailed.</p> <p>Compensatory ratios apply unless an equivalent habitat restoration or creation is proposed to equivalent biodiversity quality of that being removed.</p>
Chapter B3 - Services	<p>Complies</p> <p>Essential services including water, electricity, reticulated sewerage, stormwater system and suitable vehicle access can all be provided. Conditions apply.</p>
Chapter B4 – Traffic Planning, Vehicle Parking, Circulation and Access	<p>Complies</p> <p><u>Traffic</u></p> <ul style="list-style-type: none"> <li>Intersection treatment for no name road and Bangalow Road – plan for approval.</li> <li>Left turn only for traffic coming out of development turning into Bangalow Road.</li> <li>Left turn only for traffic coming from the south along Bangalow Road into the development.</li> <li>Right turn into the development for traffic coming from the north along Bangalow Road. This includes new right turn lane.</li> <li>Widen carriageway of no name road from 6.0m to 7.0m and construct 4 x parallel parking.</li> </ul> <p><u>Parking</u></p> <ul style="list-style-type: none"> <li>3 affordable dwellings – 2 spaces (under Housing SEPP).</li> <li>21 other dwellings – 21 spaces including 3 accessible spaces.</li> <li>Visitor – 6 spaces.</li> </ul>



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DCP Provisions	Assessment
	<ul style="list-style-type: none"> <li>Total 29 spaces required. 30 proposed – surplus.</li> <li>Conditions apply.</li> </ul> <u>Internal manoeuvring</u> <ul style="list-style-type: none"> <li>Satisfactory</li> </ul>
Chapter B7 – Mosquitoes and Biting Midges	Complies Conditions of consent
Chapter B8 – Waste Minimisation and Management	Complies Conditions of consent
Chapter B9 – Landscaping	Complies Landscape plan recommended for approval.
Chapter B11 – Planning for Crime Prevention	Complies The proposed layout of the multi dwelling housing will enable a good level of passive surveillance for residents. A high level of access control and territorial reinforcement with the provision of appropriate and well-designed fencing.
Chapter B13 – Access and Mobility <u>B13.2.2 – Multi Dwelling Housing, Attached Dwellings, Residential Flat Buildings, Shop Top Housing and Serviced Apartments</u> 10% of dwellings (rounded up) to be accessible Access in accordance with AS1428 Accessible car parking for each adaptable unit	Complies Dwellings 6, 18 & 24 are adaptable. The proposed adaptable dwellings (6, 18 & 24) include two x single bedroom dwellings and one x two bedroom dwelling. Condition recommended regarding adaptable dwellings; and accessible pathways. Three accessible car parking spaces proposed.
Chapter B14 – Excavation and Fill <u>B14.2 – Excavation and</u>	Complies



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DCP Provisions	Assessment
<u>Fill in all Zones</u> 1m 2m if within building 2m for pool	
Chapter C2 – Areas Affected by Flood <u>C2.3.2 Minimum Floor Levels</u> New dwellings Projected 2050 Flood Planning Level	Complies Habitable rooms above projected 2050 flood planning level. Standard conditions flood conditions apply.
Chapter D1 – Residential Accommodation in Urban, Village & Special Purpose Zones D1.2.1 Building Height Plane	Complies except for dwelling 1 & 7 Inconsistent with prescriptive measures. Minor inconsistency with prescriptive measures for dwellings 1 and 7 supported for following reasons: <ul style="list-style-type: none"> <li>• Minor encroachment</li> <li>• Encroachment into northern BHP and no overshadowing</li> <li>• Encroachment adjacent to no name road, no overlooking or overshadowing</li> <li>• Consistent with D1.2.1 Objectives and Performance Criteria</li> </ul>
D1.2.2 Setbacks from Boundaries 9m (6.5m single storey) from classified road 1.5m or BHP side and rear boundaries 3m between buildings	Inconsistent with prescriptive measures Front setback 5.4m – 6.m Side and rear setbacks consistent with BHP Objectives and Performance Criteria. 1.5m between buildings The proposed variations from prescriptive measures supported for following reasons: <ul style="list-style-type: none"> <li>• Front setback review of 48 nearby Bangalow Road dwellings indicates average setback 5.8m. The proposed setback is consistent with existing pattern of development.</li> <li>• Side and rear setbacks consistent with BHP Objectives and Performance Criteria.</li> <li>• Setback less than 3m (1.5m) between buildings is an economic use of space. Will require fire rated</li> </ul>



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DCP Provisions	Assessment
	<p>construction if under 1.8m.</p> <ul style="list-style-type: none"> <li>Consistent with D1.2.2 Objectives and Performance Criteria.</li> </ul>
<p>D1.2.3 Privacy</p> <p>Balconies and living areas within 4m of a boundary with floor level greater than 1m need to be screened</p>	<p>Complies</p> <ul style="list-style-type: none"> <li>All balconies/living areas 1m or greater above ground level are well in excess of 4m from side or rear boundaries, with the exception of dwelling 12.</li> <li>Privacy screen required on southern side of deck for dwelling No. 12.</li> <li>All other dwellings consistent with privacy provisions without the requirement for screens.</li> </ul>
<p>D1.2.4 Solar Access</p>	<p>Complies</p> <ul style="list-style-type: none"> <li>4 dwellings adjacent to southern boundary (dwellings 6, 12, 18 &amp; 24). Three of these are single storey. The only double storey dwelling (dwelling 12) has a second level deck adjacent to southern boundary.</li> <li>Southern dwellings comply with BHP prescriptive measures.</li> </ul>
<p>D1.2.6 Character and Visual Impact</p>	<p>Complies</p> <ul style="list-style-type: none"> <li>The proposed development, including landscaping addresses the climate.</li> <li>Street face of the building is of varied materiality and will contribute to the general attractiveness of the streetscape. Vertical articulation is utilised in the street facing Block A with two storey dwellings presenting to the street and three storey dwellings immediately behind.</li> <li>The proposed development does not negatively impact on privacy of adjoining landholders.</li> <li>Dwellings without access to ground level private open space have a verandah.</li> </ul>
<p>D1.2.7 Fences</p> <p>1.2m front</p> <p>1.8m side and rear</p>	<p>Inconsistent with prescriptive measures</p> <p>1.8m front</p> <p>2.4m acoustic fence southern side boundary</p> <p>2.1m acoustic fence northern side boundary</p> <p>The proposed variations from prescriptive measures supported for following reasons:</p>



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DCP Provisions	Assessment
	<ul style="list-style-type: none"> <li>Does not inhibit pedestrian visibility.</li> <li>Casual surveillance will be provided by other dwellings within the multi dwelling housing development.</li> <li>Front fence horizontally articulated with the inclusion of landscape bays, a variety of materials, including vertical timber slats with spacing that provides for casual surveillance.</li> <li>Side fences of 2.1m and 2.4m provide for acoustic privacy. Currently dense vegetation runs adjacent to the southern boundary, overshadowing adjoining southern dwellings. The removal of the vegetation and replacement with acoustic fencing will improve solar access for adjoining southern dwellings.</li> <li>The fencing will improve privacy and security of the ground level private open space.</li> </ul>
D1.2.9 Pedestrian and Cycle Access	<p>Complies</p> <ul style="list-style-type: none"> <li>Direct access to existing cycle network.</li> <li>Cycle racks included in the development.</li> </ul>
D1.2.11 Energy Efficiency	<p>Complies</p> <ul style="list-style-type: none"> <li>The proposed multi dwelling housing is a BASIX building and BASIX Certificate submitted.</li> </ul>
D1.2.12 Internal Access Between Storeys in Residential Development	<p>Complies</p> <ul style="list-style-type: none"> <li>All weather internal stairways.</li> </ul>
<p>D1.6 Multi Dwelling Housing, Residential Flat Buildings and Attached Dwellings</p> <p>D1.6.1 Private Open Space Courtyards</p> <p>Ground level 30m<sup>2</sup></p> <p>Minimum length and width 4m</p> <p>D1.6.2 Open Space Balcony</p> <p>15m<sup>2</sup></p> <p>Minimum length and</p>	<p>Complies</p> <ul style="list-style-type: none"> <li>Dwellings 1 – 6, 13 – 18 &amp; 24 all incorporate ground level POS at least 30m<sup>2</sup>, consistent with minimum dimensions.</li> <li>Dwellings 7 – 12 &amp; 19 – 23 do not have ground level courtyards, however they all include POS balconies consistent with prescriptive measures.</li> <li>Significant area of communal open space provided on the western (rear) of the allotment.</li> </ul>



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## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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DCP Provisions	Assessment
width 2.4m	
D1.6.3 Landscaping	Complies <ul style="list-style-type: none"> <li>Consistent with landscaping requirements of Chapter B9.</li> </ul>
D1.6.4 On-Site Car Parking	Complies <ul style="list-style-type: none"> <li>Consistent with car parking requirements of Chapter B4.</li> </ul>
D1.6.5 Sound Proofing	Complies <ul style="list-style-type: none"> <li>BCA requirement for sound resisting construction for common party wall.</li> <li>Adjacent dwellings located no closer than 1.5m. No sound attenuation treatment required.</li> </ul>
D1.6.6 Clothes Drying Facilities	Complies <ul style="list-style-type: none"> <li>Suitable outdoor clothes drying spaces exist for each dwelling.</li> </ul>
D1.6.7 Equity of Access and Mobility	Complies <ul style="list-style-type: none"> <li>Consistent with the requirements of Chapter B13.</li> <li>Conditions apply.</li> </ul>
D1.6.8 Pipes and Vents	Complies <ul style="list-style-type: none"> <li>Condition of consent</li> </ul>
D1.6.9 TV Antennae	Complies <ul style="list-style-type: none"> <li>Condition of consent</li> </ul>
D1.6.10 Character	Complies <ul style="list-style-type: none"> <li>Compatible with the development in the locality.</li> <li>The design of the development minimises loss of privacy.</li> </ul>
D1.6.11 Density	Complies <u>Prescriptive Measures</u> Prescriptive measure of 3 dwellings per 1000m <sup>2</sup> lot size does not apply as the proposal includes the provision of affordable housing (3 dwellings). <u>Performance Criteria</u> <ul style="list-style-type: none"> <li>The proposal assists with the provision of a range of housing that is compatible within the locality and suitable within Zone R2.</li> </ul>



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## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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DCP Provisions	Assessment
	<ul style="list-style-type: none"> <li>SEPP (Housing) 2021 sets the scale/density provisions for affordable housing with both additional height and FSR bonuses. The proposed development does not utilise either additional height or FSR allowances.</li> <li>The proposed development does not seek any additional building height. The maximum height of the buildings is under the 9m development standard pursuant to LEP 2014. Under Clause 18 of the Housing SEPP the DA could seek an additional 24.6% building height. This equates to a maximum building height of 11.214m.</li> <li>The proposed development does not seek any additional FSR. Moreover, the FSR is 0.447:1 and the development standard under LEP 2014 in this location is 0.5:1. Under Clause 16 of the Housing SEPP the DA could seek an additional 24.6% FSR. This equates to a maximum FSR of 0.623:1.</li> <li>The prescriptive measure, albeit non-applicable in this instance, of 3 dwellings per 1000m<sup>2</sup>, fails to take the GFA of each dwelling into consideration. This control, coupled with an FSR of 0.5:1 would allow 3 dwellings of 166m<sup>2</sup> per 1000m<sup>2</sup>. Using the Housing SEPP bonus FSR, this could be increased to 3 dwellings of 208m<sup>2</sup> per 1000m<sup>2</sup>. The GFA of the proposed twenty four dwellings ranges from 51m<sup>2</sup> to 95m<sup>2</sup>, with an average GFA of 76m<sup>2</sup>. Thus, it is concluded that the scale and density of the proposed development is compatible with the locality and suitable within Zone R2 Low Density Residential.</li> </ul> <p><u>Objectives</u></p> <ul style="list-style-type: none"> <li>The proposed multi dwelling housing is consistent with the bulk and scale of development in the locality and is consistent with the objectives of the zone. Refer to comments under “Performance Criteria” above for comments regarding scale/density of the development. Refer to Section 4.2 of this report for assessment of compliance with LEP 2014 zone objectives.</li> <li>Notwithstanding the fact that the proposed development does not utilise Housing SEPP bonuses of FSR and Building Height, the proposal is of an appropriate bulk and scale with the incorporation of vertical articulation (two storeys for street frontage and three storeys further to the west); skillion roof sloping towards the street for the street facing building; a mixture of materials, colours and design elements on street facing façade; slightly downhill sloping site; and landscaping within the front setback.</li> </ul>



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## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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DCP Provisions	Assessment
<p>D1.7 Affordable Housing</p> <p>D1.7.1 Affordable Housing in R2, R3, B2 and B4 Zones</p>	<p>Complies</p> <p><u>Performance Criteria</u></p> <ul style="list-style-type: none"> <li>• No Prescriptive Measures.</li> <li>• Consistent with LEP 2014 Clause 6.17 (refer to Section 4.2 of this report for detail).</li> <li>• A standard condition of consent is recommended that does not permit the use of the dwellings for as tourist and visitor accommodation or as short-term rental accommodation.</li> <li>• The proposed development is consistent with the affordable housing provisions of the Housing SEPP (refer to Section 4.1 of this report for detail).</li> </ul> <p><u>Objectives</u></p> <ul style="list-style-type: none"> <li>• Consistent with LEP 2014 Clause 6.17 (refer to Section 4.2 of this report for detail).</li> <li>• The proposed multi dwelling housing, including three affordable dwellings, adds to the diversity of dwelling types and sizes within the area that will assist in meeting the needs of a wide range of family and household types.</li> </ul>
<p>Chapter E5 Certain Locations in Byron Bay and Ewingsdale</p> <p>E5.8.3 Design Considerations</p> <p>E5.8.4 Character Narratives</p>	<p>Complies</p> <p>The proposal is consistent with relevant design principles where applicable:</p> <ul style="list-style-type: none"> <li>• Buildings are predominantly low-rise and small scale, integrating with the natural landform and landscape;</li> <li>• Building footprints and hard landscaping areas are limited to ensure sufficient vegetated areas are established to maximise the opportunities for habitat creation, recreation and general amenity particularly along street frontages;</li> <li>• Design and construction of homes are better equipped for future climate change impacts, such as bushfire, flooding...;</li> <li>• Development creates a cohesive streetscape in respect to building setback, massing, composition, architectural detailing, materials and colours and incorporating pitched roofs;</li> <li>• [Building] Elements ...establish a street rhythm ...and residences that are well connected to the streets...; and</li> <li>• Front fences and walls do not dominate the public domain; instead responding to and complementing the context and</li> </ul>



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## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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DCP Provisions	Assessment
	<p>character of the street.</p> <p>The development is consistent with the Character Narrative: Pocket B extends south and east from ... forming the Byron Bay suburban garden areas bounded by undulating to steep landforms, national park and wetland nature reserves. These features have influenced the departure from a traditional grid layout to more curvilinear streets following contour lines and the substantial use of cul-de-sacs and battleaxe lots. Housing types include a mix of detached and semi-detached houses as well as low rise terraces (townhouses) and apartments. The residential character is one of an eclectic array of architectural styles, with diverse coastal architectural themes. The built form is largely one or two storeys incorporating various building materials and styles. The areas...abundance of subtropical/coastal vegetation give it a distinctly leafy green and natural feel. It is important that any future infill development in 'transitional' areas respects ... landforms, while areas mapped in the environmentally sensitive category should complement the low scale character and qualities of the natural landscape.</p>

### 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 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 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

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



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

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

**5 4.6.1 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.

**4.6.2 Council Policies applicable to the proposed development?**

<b>Council Policy</b>	<b>Consideration</b>
<u>Water and Sewer Equivalent Tenements Policy</u>	Developer Servicing Charges apply to the proposed development.

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

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

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

- 15 The development application was publicly exhibited from 25/01/2024 to 15/02/2024. Council received twenty submissions in support and thirteen in objection. An assessment of the issues raised in the submissions is provided below. The submissions are located in Attachment 3 (E2024/118395) of this report.



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Issue	Assessment
Overlooking	<p>DCP 2014 Section D1.2.3 Privacy requires balconies and living areas within 4m of a boundary with floor level greater than 1m to be screened if overlooking is an issue.</p> <ul style="list-style-type: none"> <li>• All balconies/living areas 1m or greater above ground level are well in excess of 4m from side or rear boundaries, with the exception of dwelling 12.</li> <li>• Privacy screen required on southern side of deck for dwelling No. 12.</li> <li>• The multi dwelling housing development has been designed to minimise overlooking.</li> <li>• Acoustic fencing on both northern (2.1m) and southern (2.4m) boundaries.</li> </ul>
Inconsistent with Zone R2 objective – “to provide for the housing needs of the community within a low density residential environment”	<ul style="list-style-type: none"> <li>• Multi dwelling housing is permitted with consent in Zone R2</li> <li>• The provision of 24 multi dwelling houses, including 3 affordable dwellings and 3 adaptable dwellings is indeed consistent with the Zone R2 objectives.</li> </ul>
Inconsistent with Zone C2 objectives	<ul style="list-style-type: none"> <li>• The adjoining coastal wetlands is located on an adjoining allotment created under DA 10.2023.473.1 which will be registered prior to construction. An ecological restoration plan including weed management within the coastal wetlands is recommended as a condition of consent.</li> <li>• Appropriate storm water management required to minimise any potential change to the hydrological regime with the adjoining wetlands.</li> <li>• The proposed development does not involve any clearing within the coastal wetlands.</li> <li>• The proposed development is consistent with Zone C2 objectives.</li> </ul>
Breaches of Building Height Plane impact negatively on adjoining NW dwelling	<ul style="list-style-type: none"> <li>• There are no encroachments of the BHP in relation to any common boundary with the adjoining NW dwelling.</li> <li>• Refer to Section 4.4 of this report for further DCP assessment. Any encroachment within the BHP in other locations are considered minor and are consistent with the relevant DCP objectives and performance criteria.</li> </ul>
Out of character	<ul style="list-style-type: none"> <li>• The proposed development is consistent with DCP 2014</li> </ul>



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Issue	Assessment
with surrounding development	<p>D1.2.6 Character and Visual Impact.</p> <ul style="list-style-type: none"> <li>Refer to Section 4.4 of this report for DCP assessment.</li> </ul>
Inappropriate driveway	<ul style="list-style-type: none"> <li>Council Development Engineer has assessed the proposal and deemed, subject to conditions, the proposed driveway is satisfactory.</li> </ul>
Traffic along Bangalow Road	<ul style="list-style-type: none"> <li>The DA has been the subject of detailed traffic studies and reporting.</li> <li>Intersection treatment at corner of access road (no name) and Bangalow Road. Refer to Section 4.4 of this report for DCP assessment.</li> <li>The proposed development is consistent with DCP 2014 Chapter B4 – Traffic Planning, Vehicle Parking, Circulation and Access.</li> </ul>
Concern about overflow parking on street	<ul style="list-style-type: none"> <li>The proposed development is consistent with DCP 2014 Chapter B4 – Traffic Planning, Vehicle Parking, Circulation and Access.</li> </ul>
Inadequate compensatory planting	<ul style="list-style-type: none"> <li>The proposed development included significant compensatory planting adjacent to the coastal wetland and at the rear of several adjoining allotments. Council's recommended ecological restoration works focus more on weed management within part of the adjoining coastal wetlands rather than planning additional trees on the edge of the wetland. The rationale for this is that the wetland vegetation community almost covers the entire adjoining western allotment, and superior ecological outcomes can be achieved with weed management and the installation of fauna boxes. Additionally, the planting of additional trees adjacent to surrounding allotments would increase bush fire hazard.</li> <li>Ecological Assessment prepared by Blackwood Ecological Services demonstrates compliance with relevant statutory requirements.</li> <li>Refer to Section 4.4 of this report for DCP assessment.</li> <li>A landscaping plan is recommended for approval.</li> </ul>
The edge effect on adjoining coastal wetlands	<ul style="list-style-type: none"> <li>Addressed with appropriate stormwater management conditions.</li> <li>Compensatory ecological works.</li> <li>Buffers from significant vegetation such as coastal wetlands do not prohibit development, rather they require the</li> </ul>



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Issue	Assessment
	development in the proximity of the vegetation to minimise negative impacts which will be achieved in the proposed development by the proposed location of buildings and infrastructure, landscaping, stormwater management and ecological restoration. Conditions of consent enforce compliance.
No assessment made of relevant biodiversity legislation and controls	<ul style="list-style-type: none"> <li>The DA was accompanied by an Ecological Assessment prepared Blackwood Ecological Services dated September 2023. The report assessed the proposal against all of the relevant statutory and non-statutory requirements. The report does not raise any red flags regarding negative ecological impacts, subject to recommended conditions of consent.</li> </ul>
No details of stormwater management	<ul style="list-style-type: none"> <li>The DA was accompanied by a stormwater management plan.</li> <li>Appropriate conditions of consent apply.</li> </ul>
Concerns about bushfire asset protection zones	<ul style="list-style-type: none"> <li>APZ's will be contained within the subject allotment and do not extend into the adjoining coastal wetland.</li> <li>Some compensatory trees are proposed in the landscape plan within the subject allotment. Trees are permitted with APZs in accordance with Planning for Bush Fire Protection 2019.</li> <li>Compensatory weed management and fauna boxes are recommended (instead of compensatory planning at a ratio of 1:10) in part of the adjoining western coastal wetlands.</li> </ul>
Long construction period	<ul style="list-style-type: none"> <li>Appropriate conditions of consent limiting construction hours and construction noise.</li> </ul>
Noise	<ul style="list-style-type: none"> <li>Acoustic fencing proposed on northern (2.1m) and southern (2.4m) boundaries.</li> <li>Acoustic compliance report required as part of recommended conditions of consent.</li> <li>The use of communal recreational areas limited to between 7.00am and 10.00pm weekdays and 6.00am to 12.00pm on weekends and public holidays.</li> <li>New air conditioning units are very quiet.</li> <li>Background residential noise emanating from 24 dwellings within a 4,087m<sup>2</sup> site is considered reasonable within this residential zone.</li> </ul>
Light pollution	<ul style="list-style-type: none"> <li>The proposed dwellings are for normal residential use and</li> </ul>



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Issue	Assessment
	<p>are outside the 360 days/year Short Term Rental Accommodation Map pursuant to SEPP (Housing) 2021.</p> <ul style="list-style-type: none"> <li>Residential lighting emanating from 24 dwellings within a 4,087m<sup>2</sup> site is considered reasonable within this residential zone. Lighting in the communal recreation space is limited to low brightness security lights outside of the hours specified for use.</li> </ul>
Concern about the use of terms like “affordable” and “workers” in the Statement of Environmental Effects	<ul style="list-style-type: none"> <li>The proposed 24 multi dwelling housing development includes 3 affordable houses pursuant to SEPP (Housing) 2021. Appropriate conditions of consent recommended requiring a restriction on the title that will ensure that the 3 dwellings will be used as affordable housing for 15 years.</li> </ul>
The following constraints apply to the land: flood, acid sulfate soils, bushfire, high conservation value vegetation.	<ul style="list-style-type: none"> <li>Refer to DCP and LEP compliance table as to how these constraints will be addressed.</li> <li>The DA was referred to the NSW RFS and they have provided appropriate conditions of consent.</li> </ul>
Building height – some of the dwellings are 11.64m high	<ul style="list-style-type: none"> <li>The proposed development does not exceed the development standard of 9m. Refer to Section 4.2 of this report for LEP 2014 assessment.</li> </ul>
Over development of the site.	<ul style="list-style-type: none"> <li>The proposed development is not an overdevelopment of the site. The proposal complies with LEP 20214 floor space ratio (FSR) and building height development standards. Moreover, the proposal does not seek to utilise the FRS and building height concessions provided by SEPP (Housing) 2021.</li> <li>The proposed development has an FSR of 0.447:1. Pursuant to section 16 SEPP (Housing) 2021 the DA could seek an additional 24.6% FSR. This equates to a maximum FSR of 0.623:1. Refer to SEPP compliance table in Section 4.1 of this report. This DA does not propose additional FSR allowed under the SEPP.</li> <li>The proposed development does not exceed 9m. Pursuant to section 18 SEPP (Housing) 2021 the DA could seek an additional 24.6% building height. This equates to a maximum building height of 11.214m. This DA does not propose additional building height allowed under the SEPP.</li> </ul>
Worker	<ul style="list-style-type: none"> <li>Multi dwelling housing is permissible with consent in Zone</li> </ul>



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Issue	Assessment
accommodation should be located 10-15km from town	R2. <ul style="list-style-type: none"><li>Locating a diverse range of accommodation close to town centres assists with the creation of “walkable” centres. Thus, reducing vehicle commutes and travel times.</li></ul>

The following points were also raised in submissions as issues of support for the development:

- Affordable housing supply and development close to town – short commute to work/school.
- 5 • Increasing diversity in housing with the inclusion of 1- and 2-bedroom dwellings.
- The development will improve the streetscape, improved housing supply.

### 4.9 Public interest

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

## 10 5. DEVELOPER CONTRIBUTIONS

### 5.1 Water & Sewer Levies

Section 64 levies will be payable.

### 5.2 Developer Contributions

Section 7.11 Contributions will be payable.

## 15 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 demolition of two existing dwellings and multi dwelling housing comprising of 24 dwellings including three (3) affordable dwellings.

- 20 The application is consistent with the relevant SEPP’s and LEP 2014 provisions, with the exception of an inconsistency with section 19 SEPP (Housing) 2021 involving a minor reduction in floor area for the proposed three affordable dwellings. The variation: a) is



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enabled under Section 4.15(3) of the Environmental Planning and Assessment Act 1979; and b) is supported for reasons outlined in the report.

5 The application is generally consistent with DCP 2014 prescriptive measures with the following minor departures: Section B1.2.1 Coastal Wetland buffer distance; Section D1.2.1 Building Height Plane for Dwellings 1 & 7; Section D1.2.2 Front Setback; and Section D1.2.7 Fences.

10 The proposed variations are supported for reasons outlined in the report. Proposed tree removal within the subject allotment is to be offset by compensatory landscape planting using native species within the subject lot; and weed management and installation of fauna boxes within the adjacent coastal wetlands.

Traffic management into and out of the site is addressed by specific conditions in relation to driveway access and intersection treatment.

The Development Application is recommended for approval subject to the conditions located in Attachment 1 of this report.

15



**Report No. 13.11    PLANNING - 10.2024.239.1 - Change of use of existing vehicle repair station to a food and drink premises (cafe), and recreation facility (indoor) – 38 Tweed Street, Brunswick Heads**

**Directorate:** Sustainable Environment and Economy

**Report Author:** Jordan Vickers, Planner  
Patricia Docherty, Team Leader Planning Services - Commercial Industrial & Tourism

**File No:** I2024/1328

**Proposal:**

<b>DA No:</b>	10.2024.239.1
<b>Planning Portal ref</b>	PAN-453988
<b>Proposal description:</b>	Change of use of existing vehicle repair station to a food and drink premises (café) and a recreation facility (indoor)
<b>Property description:</b>	LOT: 1 DP: 303546
	38 Tweed Street BRUNSWICK HEADS
<b>Parcel No/s:</b>	66170
<b>Applicant:</b>	Ms C Chen
<b>Owner:</b>	Voglet Pty Ltd
<b>Zoning:</b>	MU1 Mixed Use
<b>Date received:</b>	30 July 2024
<b>Integrated / Designated Development:</b>	Not Integrated Development or Designated Development
<b>Concurrence required</b>	No
<b>Public notification or</b>	– Level 2 advertising under Council's Community Participation



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<b>exhibition:</b>	<p>Plan.</p> <ul style="list-style-type: none"> <li>– Exhibition period: 9/8/24 to 22/8/24</li> <li>– Submissions received: 13</li> <li>– Submissions acknowledged: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</li> </ul>
<b>Planning Review Committee</b>	The application did not get called up to a Planning Review Committee.
<b>Variation request to Development Standards under an EPI (e.g. clause 4.6)</b>	Not applicable
<b>Estimated cost</b>	\$112,657.00
<b>Delegation to determine</b>	<p>Council</p> <p>Reason: number of submissions, public interest, use of public infrastructure assets and upgrades requires Council determination</p>
<b>Issues</b>	<ul style="list-style-type: none"> <li>• No onsite car parking – proposed to formalise roadside parking nearby under Development Control Plan provisions</li> <li>• Noise impact – attenuation measures installed through Complying Development Certificate (CDC) works and conditions requiring compliance with Noise Impact Assessment report</li> </ul>

### Summary:

An application has been received seeking a change of use of existing vehicle repair station to a food and drink premises (café) and a recreation facility (indoor).

- 5 Most of the building at the development site will comprise the recreational facility (356.2m<sup>2</sup>), with the remainder of the space containing the café (46.8m<sup>2</sup>) and outdoor seating area (86.5m<sup>2</sup>). The proposal makes use of the existing building and recent Complying Development Certificates (CDC) have been issued by a private certifier for the fit out of the space (16.2024.2264.1). Landscaping and seating are proposed at the Tweed Street frontage.
- 10 Vehicle parking for the development is proposed involving upgrades within the road reserve at Fingal Street (approximately 45 metres north), where the developer proposes to formalise 29 parking spaces (road sealing, line marking, kerb & guttering). This approach is anticipated by Byron Development Control Plan (DCP) 2014 Section B4.2.7 Car Parking Credits and Street Parking and is supported by staff, as the result produces a material
- 15 public benefit.



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A Noise Impact Assessment submitted with the proposal has been reviewed and supported by Council's Environmental Health Officer, as well as a Plan of Management for each of the proposed businesses. Conditions of consent are recommended to ensure hours of operation are commensurate with surrounding residential land uses in the mixed-use zone. The proposal does not require a construction certificate for any building works and the works in the road reserve will require an application to Council under the Roads Act 1993 to be initiated within six (6) months of consent.

Thirteen (13) public submissions objecting to the proposal were received during public notification, highlighting concerns including, but not limited to, use of the road reserve for vehicle parking, noise impact of the facility on adjoining residential uses, the proposed use, hours of operation, and privacy (CCTV cameras).

Conversely, the applicant provided evidence of a petition of support for the proposal within the community which amassed 751 signatures of support for the proposal between 30 September 2024 and 15 October 2024 (circa 2 weeks).

The proposal is conscious of and responsive to public concerns, and it is considered that the development will provide a material, social and economic benefit to the community.

The application satisfactorily addresses the relevant planning controls applicable to the proposal and is supported by staff with a recommendation for approval subject to the conditions of consent attached to this report.

#### NOTE TO COUNCILLORS:

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

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#### RECOMMENDATION:

**That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2024.239.1 for change of use of existing vehicle repair station to a food and drink premises (café) and a recreation facility (indoor), and associated works to formalise thirty parking spaces in the public road reserve, be granted consent subject to the conditions attached (Doc# E2024/125302) to this report including the need for a Roads Act application to be lodged within six months of consent.**








# BYRON SHIRE COUNCIL

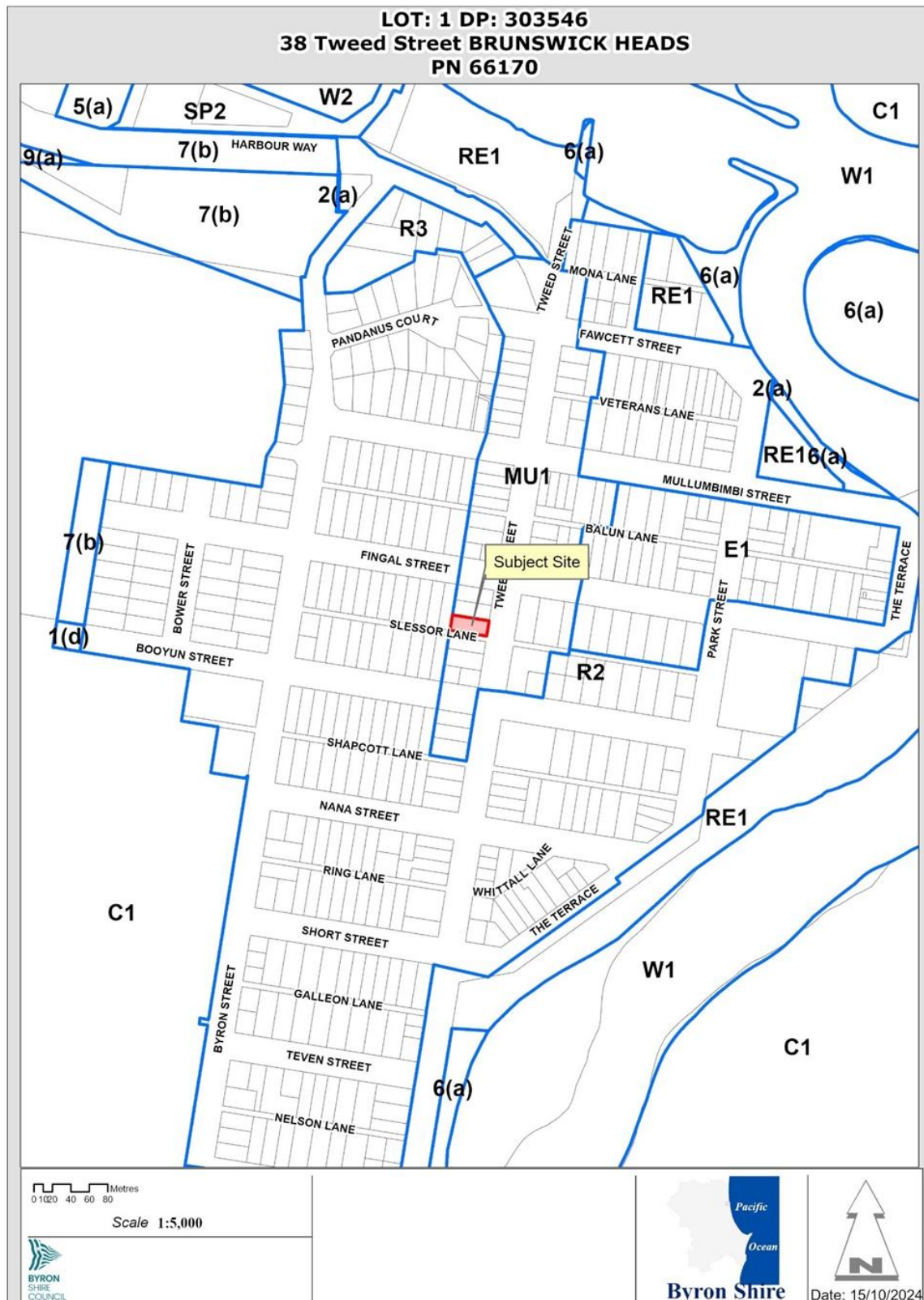
## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.11

### **Attachments:**

- 1 DA10.2024.239.1 Plans for approval, E2024/125253 
- 2 DA10.2024.239.1 Final Noise Impact Assessment, E2024/115188 
- 5 3 DA10.2024.239.1 Cafe - Plan of Management, E2024/115192 
- 4 DA10.2024.239.1 Gym Plan of Management, E2024/115189 
- 5 DA10.2024.239.1 Recommended conditions of consent, E2024/125302 
- 6 Submissions 10.2024.239.1\_Redacted





**Figure 1: Locality Plan**



**Assessment:****1. INTRODUCTION****History/Background**

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

DA No.	Description	Outcome	Date
6.1998.2311.1	Outbuilding		
6.1993.2352.1	Alts & Adds to shop	Approved	12/07/1993
10.1999.854.1	Car Show room	Approved	16/03/2000
16.2022.2043.1	CDC – Balconies, decks etc.	Approved	08/07/2022
16.2022.2079.1	CDC – Alts & Adds	Approved	12/10/2022
16.2024.2246.1	CDC – Tenancy 3 (gym)	Issued	24/04/2024
16.2024.2264.1	CDC – Internal fitout	Issued	02/07/2024

**5 Description of the proposed development**

This application seeks approval for Change of use of an existing vehicle repair station to a food and drink premises and a recreation facility (indoor). The majority of the building at the development site will comprise the indoor recreational facility (356.2m<sup>2</sup>) with the café and outdoor seating comprising the remainder of the space (46.8m<sup>2</sup> and 86.5m<sup>2</sup>) respectively. Recent CDCs have been issued by a private certifier for building work (16.2024.2264.1), landscaping and seating proposed at the Tweed Street frontage.

Vehicle parking for the development is proposed on public land, whereby the developer seeks under the development application to formalise the roadway and construct 29 vehicle parking spaces at nearby Fingal Street.



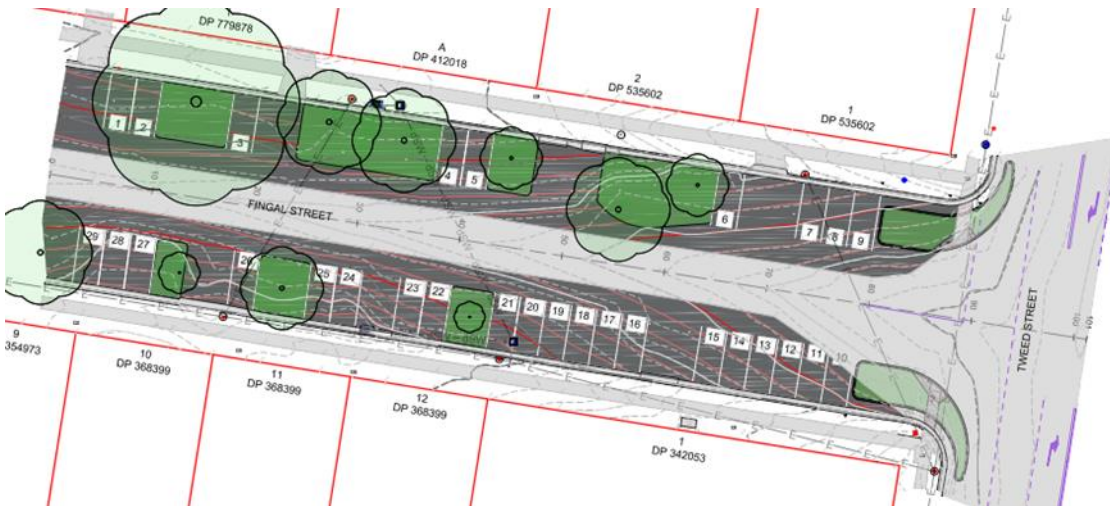
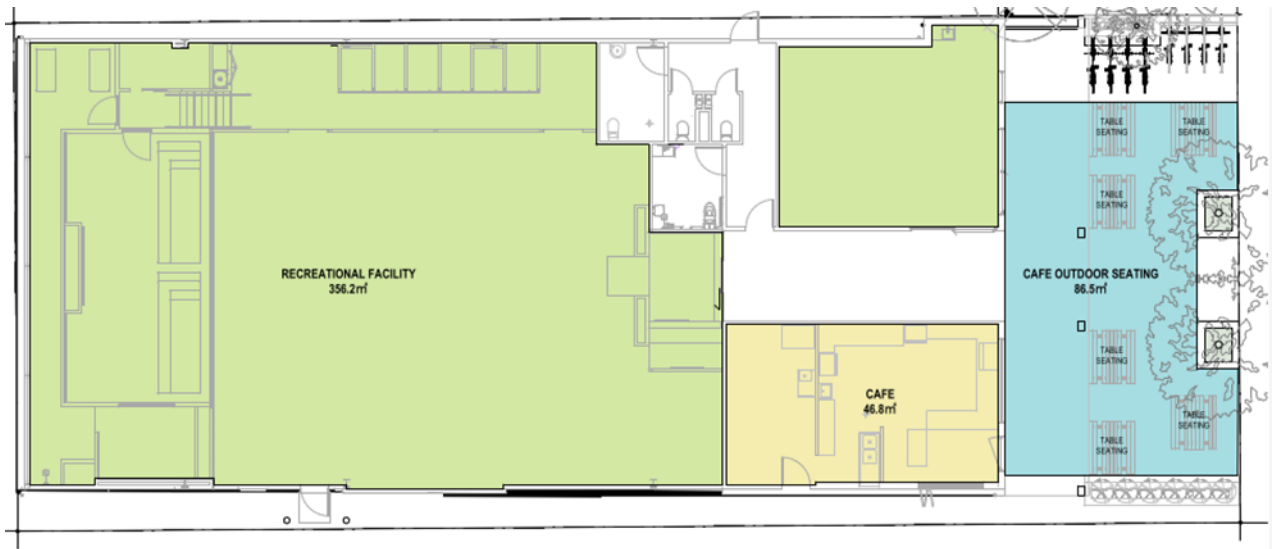


Figure 2: Proposed Plans

5

## Description of the site

The development site known as 38 Tweed Street, Brunswick Heads and legally described as Lot 1 on DP303546 has an area of 670.3m<sup>2</sup> and is within the MU1 Mixed Use zone of the Byron LEP 2014. The allotment is currently improved by an existing single storey building which has historically been used as a vehicle repair & body workshop. The allotment has dual frontage to Tweed Street at the east and Slessor Lane at the south and is surrounded in each direction by residential allotments comprised of dwelling houses, secondary dwellings and (some) dual occupancy developments.

The site is identified as containing Acid Sulfate Soils (Class 4) and is within the Coastal Environment Area of the Coastal Management SEPP.

The property is traversed by both Council sewage and stormwater infrastructure and is identified as a low risk contaminated land parcel (hydrocarbons) on Council's interactive mapping.





**Figure 3: Zoning**

A site inspection was carried out on 15 October 2024

Land is legally described	LOT: 1 DP: 303546		
Property address	38 Tweed Street BRUNSWICK HEADS		
Land is zoned:	MU1 Mixed Use		
Land area is:	670.3 m <sup>2</sup>		
Property is constrained by:	Acid Sulfate Soils Class 4		
	Is a BDAR required due to the location of the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	





Figure 4: Infrastructure on site: stormwater (orange) sewer (green)



Figure 5: Contaminated land GIS layers

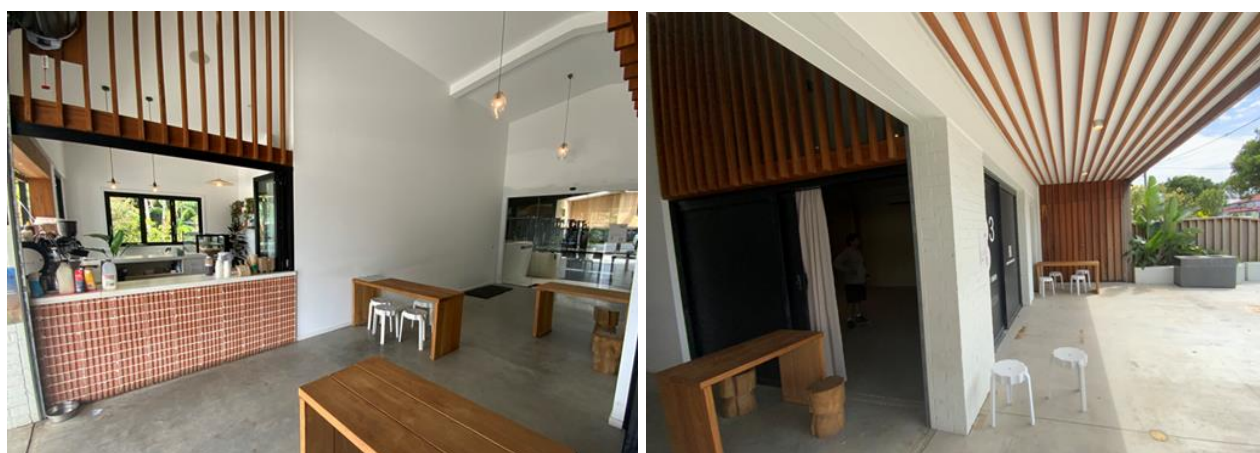
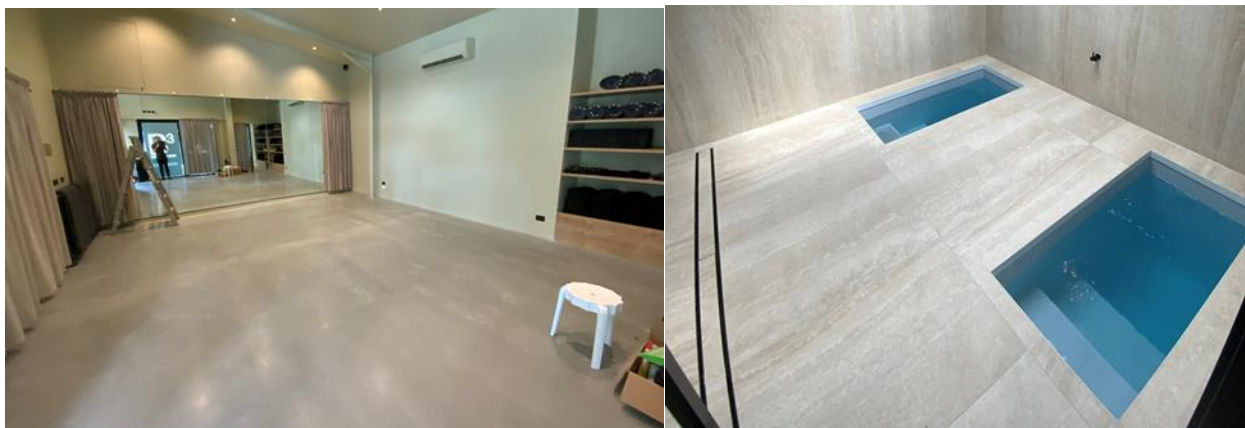
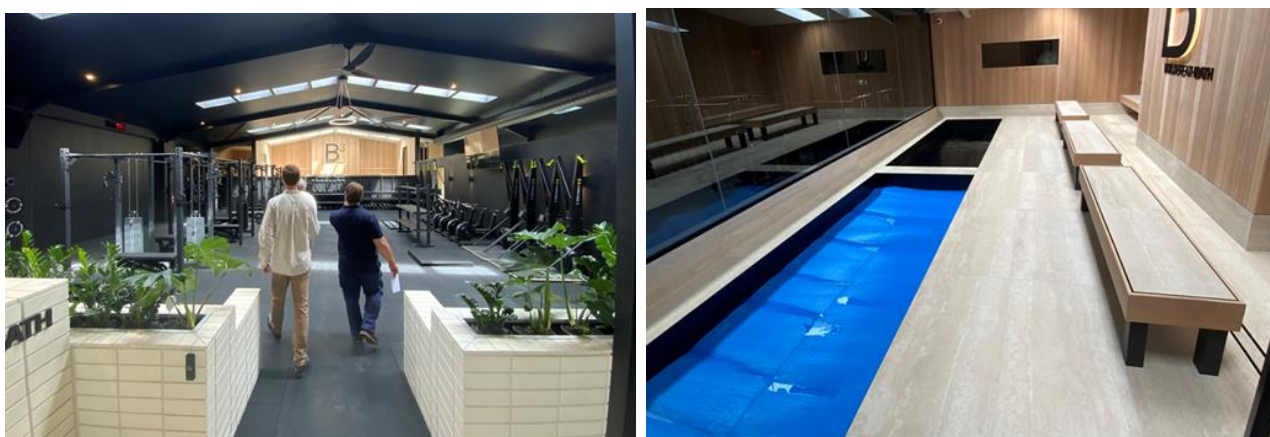


Figure 6: café and dining area





**Figure 7:** Yoga room (left) and plunge pool room (right)



**Figure 8:** Gym & Pool room



**Figure 9:** Slessor Lane





**Figure 10:** Fingal Street to be upgraded - existing parking

## 2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.

\* Conditions provided in the above referral are included in the Recommendation of this Report below

## 3. SECTION 4.14 – BUSH FIRE PRONE LAND

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

### **Effect of 10/50 rule on significant vegetation**

A search for the subject site was conducted on the Rural Fire Service website to determine the 10/50 status. The search identified the following:

*“The parcel of land you have selected is not located in a designated 10/50 vegetation clearing entitlement area. You cannot use the 10/50 exemption to clear vegetation on this parcel of land. Contact your local council or Local Land Services Office regarding any clearing authorisation required.”*

Accordingly, the landowner may not clear vegetation in accordance with the 10/50 Vegetation Clearing Code Of Practice For New South Wales.



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

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

### 4.1 State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><i>Resilience and Hazards SEPP 2021, Chapter 2: Coastal Management</i></p> <p>Consideration:</p> <p><u>Coastal Environment Area:</u> The property is within the Coastal Environment Area and the proposed development is unlikely to cause an adverse impact on:</p> <ul style="list-style-type: none"> <li>a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,</li> <li>b) coastal environmental values and natural coastal processes,</li> <li>c) the water quality of the marine estate (within the meaning of the <a href="#">Marine Estate Management Act 2014</a>), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,</li> <li>d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,</li> <li>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,</li> <li>f) Aboriginal cultural heritage, practices and places,</li> <li>g) the use of the surf zone.</li> </ul>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>Resilience and Hazards SEPP 2021, Chapter 4: Remediation of land</i></p> <p>Consideration:</p> <p>Council's Environmental Health Officer reviewed the application and accompanying information and the</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>



<b>Considerations</b>	<b>Satisfactory</b>	<b>Unsatisfactory</b>
development site is suitable for the proposed use.		

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

LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. The LEP 2014 clauses that are checked below are of relevance to the proposed development:

5

Part 1	<input checked="" type="checkbox"/> 1.1   <input checked="" type="checkbox"/> 1.1AA   <input checked="" type="checkbox"/> 1.2   <input checked="" type="checkbox"/> 1.3   <input checked="" type="checkbox"/> 1.4   <input checked="" type="checkbox"/> Dictionary   <input checked="" type="checkbox"/> 1.5   <input checked="" type="checkbox"/> 1.6   <input checked="" type="checkbox"/> 1.7   <input checked="" type="checkbox"/> 1.8   <input type="checkbox"/> 1.8A   <input checked="" type="checkbox"/> 1.9
Part 2	<input checked="" type="checkbox"/> 2.1   <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table
Part 4	<input checked="" type="checkbox"/> 4.3   <input checked="" type="checkbox"/> 4.4   <input checked="" type="checkbox"/> 4.5
Part 6	<input checked="" type="checkbox"/> 6.1   <input checked="" type="checkbox"/> 6.6

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 Recreation facility (indoor), Cafe;
- (b) The land is within the MU1 Mixed Use 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:

10

<b>Zone Objective</b>	<b>Consideration</b>
<ul style="list-style-type: none"> <li>• To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.</li> <li>• To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.</li> <li>• To minimise conflict between land uses within this zone and land uses within adjoining zones.</li> <li>• To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.</li> </ul>	<p>The proposal provides a mix of land use that generates employment opportunities. The building provides an active street frontage to engage pedestrians and contribute to the functional public space.</p> <p>The proposal has been submitted with a Noise impact assessment, Traffic Impact Assessment, and Plans of management for each of the proposed uses (café &amp; gym) to manage and mitigate conflicts.</p> <p>Council staff have reviewed these documents and confirm that the recommendations are suitable to manage these matters.</p>

The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The



proposed development complies with all clauses of LEP 2014 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

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

No variations

### **5 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 of relevance to the proposal or development site.

### **10 4.4 Byron Shire Development Control Plan 2014 (DCP 2014)**

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because it applies to the land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are checked below are of relevance to the proposed development:

Part B Chapters:	<input checked="" type="checkbox"/> B3   <input checked="" type="checkbox"/> B4   <input checked="" type="checkbox"/> B5   <input checked="" type="checkbox"/> B6   <input checked="" type="checkbox"/> B8   <input checked="" type="checkbox"/> B9   <input checked="" type="checkbox"/> B10   <input checked="" type="checkbox"/> B12
Part D Chapters	<input checked="" type="checkbox"/> D4
Part E Chapters	<input checked="" type="checkbox"/> E4

- 15 These checked Parts/Chapters have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development complies with all sections of these Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to certain prescriptive measures which are considered further (having regard to the
- 20 DCP 2014 Section A1 Dual Path Assessment) as follows:

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
Chapter B4 – Vehicle parking Chapter B9 - Landscaping Chapter B10 – Signage Chapter B12 – Social Impact	The proposed development complies with the Objectives of the Section as discussed below.	The proposed development complies with the Performance Criteria of this Section as discussed below.



### Chapter B4 – Vehicle parking

In accordance with Part 4.2.5 of Chapter B4, the proposal is required to provide the following number of vehicle parking spaces on the development site:

Land use	Spaces required (DCP)	Spaces required (proposal)
Recreation facility (indoor) = 356.2m <sup>2</sup>	1 space / 20m <sup>2</sup> of GFA	17.8 spaces
Food and drink premise = 133.3m <sup>2</sup>	1 space / 20m <sup>2</sup> of GFA	6.7 Spaces
<b>Total</b>		<b>24.5 Spaces</b>

- 5 Based on existing credits allocated to the site from the previous Development Consent DA10.1999.854.1 for 'mechanical and smash repairs' and 'sales and display of motor vehicles', it is considered the property has a credit of two parking spaces. At the time of approval that development generated a demand for 8 onsite spaces, but under the current provisions in Chapter B4 the development would generate a demand of 10 spaces; hence,
- 10 the 2-space credit as allowed under Chapter B4.2.7 Car Parking Credits and Street Parking in the DCP 2014.

Based on the above the development is therefore short 22.5 car parking spaces. In lieu of providing this parking onsite, the applicant is proposing to construct and formalise 29 spaces in Fingal Street. Under subclause 7 in Chapter B4.2.7, the following controls apply:

7. Council will consider proposals to increase on street parking capacity for the provision of some or all customer car parking spaces by increasing on street parking capacity where there is a material public benefit, and where:

- a) The net increase in formalised (ie paved &/or linemarked) on street parking is 25% greater than the number otherwise required on site;
- b) The resulting streetscape conforms with the principles of good urban design;
- c) The level of pedestrian, cycle and traffic amenity on the street is maintained; and
- d) The proposal is not detrimental to utility services.

Note: Council is more likely to give favourable consideration to such proposals if they provide an offsetting benefit to the public - such as property boundary setback dedication to allow conversion of existing parallel parking to angle parking. Other proposals that promote ESD policies will also be entertained.

In B4.2.7, 'current approved use' means a current use for which there is an effective development consent in place or an existing lawful use.

- 15 It is considered the existing 1999 consent remains the effective consent for the land in that it is commenced and hasn't been surrendered to Council. Based on the above 28.125 (22.5 x 1.25 = 28.125) spaces are needed.

- 20 The quantum of spaces proposed (29) complies with the above, with parking to be sealed and line marked to AS 2890.1 and carefully sited between the existing vegetation in the road reserve to ensure its long-term protection.



At present, the area is utilised as parking but somewhat inefficiently, as it is not marked, whilst the standard of the pavement is not compliant being predominantly gravel and dusty when dry and muddy when wet. It is considered that the parking does not meet any normal engineering requirements for the urban environment in which it is set, whilst the exiting  
5 vegetation is not adequately protected by formalised parking with vehicles presently able to park over the root zones.

The applicant is also proposing 8 bike racks within the front of the property enabling gym users to cycle in and out of the development instead of driving and parking.

Based on the above, the proposal is considered satisfactory and provides a material public  
10 benefit to Council and community. Conditions of consent are proposed and require detailed engineering plans to be submitted to Council for approval under S138 of the Roads Act 1993 and to ensure it is constructed to meet the relevant road standards and the Northern Rivers Local Government design specifications as adopted by Council.



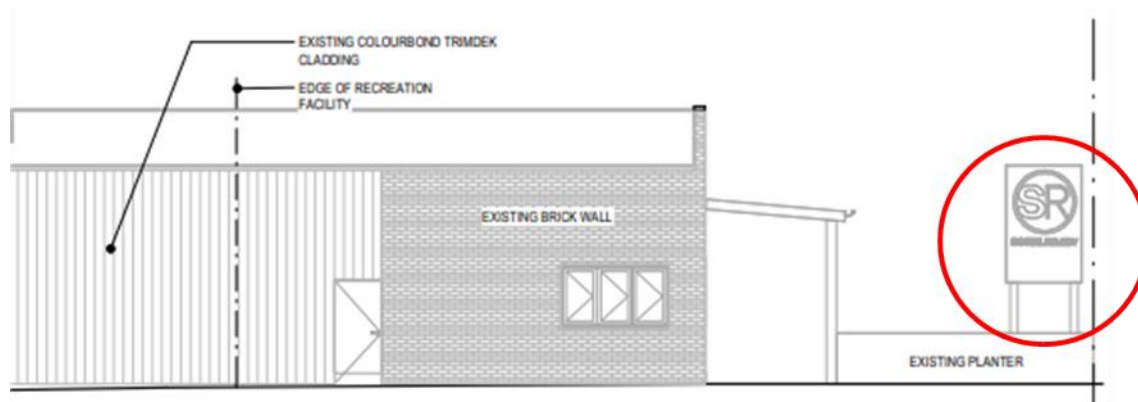
15 **Figure 11:** Extract Street View of Fingal Street showing area to be converted to formalised parking

A condition of consent is recommended noting that the 'consent does not provide any future parking credits' which may allow further dispensation to the prescribed parking demand for any future proposal at the site.

20 **B10 – Signage**

The submitted Statement of Environmental Effects posits that no signage is proposed as part of the proposal; however, submissions identify that proposal plans include signage at the Tweed Street frontage (see image below):





**Figure 12:** Signage elevation

DCP Chapter B10, Part 10.3.3, prescriptive measure 10 provides that a freestanding sign (or pole sign) is permitted for the premises with a maximum display area of 8m<sup>2</sup>, a height not exceeding 6m and must be a minimum height of 2.6m above ground level to the base of the display area.

No details are provided in the application (dimensions, illumination) regarding the signage shown on plans.

The applicant provided amended plans in response to this request for information removing signage from the architectural package.

### **B12 – Social impact**

Pursuant to Part B12.1.3(2), a Social Impact Assessment is required for development for the purpose of recreation facilities for 100 persons or more. However, numerous submissions opposing the development have been received during public notification of the proposal, identifying concerns regarding the social impact the development.

The applicant provided a Social Impact Assessment (SIA) in response to request for information which considers up to 40 patrons in the recreation facility and addresses the requirements of the Byron DCP 2014.

The proposed development is demonstrated to meet the relevant Objectives of DCP 2014.



## 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 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 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

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

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

### 4.6.1

Impact on:	Likely significant impact/s?
<b>Natural environment</b>	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
<b>Built environment</b>	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
<b>Social Environment</b>	No. The proposal will not have a significant social impact on the locality.
<b>Economic impact</b>	No. The proposal will not have a significant economic impact on the locality.
<b>Construction</b>	No. The development will generate minor impacts during its



<b>Impacts</b>	construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.
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#### **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.

#### **4.6.3 Council Policies applicable to the proposed development?**

- 5 Council Policies applicable to the proposed development have been considered through the assessment of this application with relevant conditions imposed where necessary.

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

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

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

The development application was publicly exhibited.

- 15 There were **13** submissions made on the development application which are discussed below:

➤ **No on-site car parking provided**

- 20 i. Submitters highlight that the development site does not accommodate any of the required vehicle parking spaces, and that any claimed parking credits at the site do not exist.
- ii. Further concerns are highlighted regarding the illegal parking that takes place at Slessor Lane and Tweed Street, and that this may be exacerbated by the venue becoming a destination.

**Officer comment:**

- 25 i. It is considered the existing 1999 consent remains the effective consent for the land in that it is commenced and has not been surrendered to Council. Based on existing credits allocated to the site from the previous Development Consent (DA10.1999.854.1) for 'mechanical and smash repairs' and 'sales and display of motor vehicles', it is considered the property has a credit of two parking spaces.
- 30 DCP 2014-part B4.2.7(7) allows a proponent to propose an increase to on street parking in lieu of "some or all customer car parking spaces" where the result is a material public benefit. At present, the area is inefficiently utilised as roadside parking as it isn't marked and the standard of the pavement is not compliant - being predominantly gravel and therefore dusty when dry and



muddy when wet. The existing parking does not meet any normal engineering requirements for the urban environment in which it is set, and the existing vegetation is not adequately protected by formalised parking with vehicles presently able to park over the root zones.

5           The applicant is also proposing 8 bike racks within the front of the property enabling gym users to cycle in and out of the development instead of driving and parking.

Based on the above, the proposal is considered satisfactory and provides a material public benefit to Council and community.

10           ii. It is unreasonable for Council to implicate and constrain a proposed development for unlawful parking currently occurring in the public realm. Nevertheless, conditions of consent will be applied requiring no stopping signs to be placed on the building within the laneway and maintained in perpetuity. Further, Council plan on modifying Slessor Lane to become a  
15           one-way, no stopping laneway.

➤ **Objection to Fingal Street vehicle parking**

- 20           i. Submitters object to the proposal making use of Fingal Street for vehicle parking. Submitters identify that this location is regularly used by residents and visitors, as well as customers of existing commercial venues (Old Maids & St Maries Pizza).
- ii. Submitters object to Fingal Street being used to justify vehicle parking for the development. Submitters are concerned that this approach to vehicle parking will set an undesirable precedent for uses in the MU1 zone using public land for vehicle parking.
- 25           iii. Submitters object to the vehicle parking in Fingal Street as it is flood prone and accommodates mature trees that are currently being damaged by vehicles. It is posited by submitters that any works in Fingal Street must provide root protection for these trees.
- 30           iv. Submitters object to Fingal Street being used as justification for vehicle parking before effort is made to provide parking closer to the development site (i.e. Tweed Street).

**Officer comment:**

- 35           i. The Byron DCP allows a proponent to propose vehicle parking in the public realm where the result is a material public benefit. The proposal will formalise otherwise informal parking spaces which currently are used haphazardly threatening mature vegetation and sometimes blocking driveways. Additionally, it will replace gravel which can become dusty and muddy with hardstand. The proposal is considered to provide a material public benefit. Use of this public location by existing businesses in the locality does not  
40           preclude the proponent from proposing formalisation of the area.
- ii. A development is assessed and considered on the merit of the proposal. The applicant has presented a solution that is contemplated by the Byron DCP and allows for the adaptive reuse of an established building while providing a material public benefit.



iii. Council's flood planning maps do not identify Fingal Street as Flood liable land. The proposed vehicle parking in Fingal Street is responsive to the location of existing mature trees and vehicle crossovers and provides separation between parking spaces and these features accordingly.

5 iv. Tweed Street does not have sufficient available space in proximity to the development site to accommodate the additional vehicle parking required. Further, upgrading the informal parking within Fingal Street will provide a demonstrable public benefit by replacing gravel with hardstand and formalising spaces to establish setbacks from mature vegetation.

10 ➤ **Objection to proposed use(s)**

Submitters object to the proposed use (recreation facility indoor), with particular regard for the intensity of the use at the site, the volume of customers attending the site, and the impact of this use on the availability of vehicle parking in the surrounding area.

15 **Officer comment:**

The proposed use is permitted with consent in the zone. Plans of management are submitted with the proposal and conditions of consent will be applied requiring compliance with them at all times. Further conditions of consent are recommended regarding limiting the hours of operation, and permissible hours for amplified music.

20 Vehicle parking is demonstrated to comply with the Byron DCP 2014 and will improve roadside vehicle parking in the local area by establishing hardstand, separation from street trees and appropriate stormwater management.

➤ **Objection to hours of operation and noise**

25 Submitters object to the proposed hours of operation, identifying that the hours are incongruent with surrounding uses and will contribute to noise impact for the surrounding locality.

30 Primary concerns regarding noise and hours of operation relate to the sound of music, gym equipment, pumps, motors and fans, and vehicles arriving and departing beginning from 5am and extending until 8pm. It is noted that this is not in keeping with the presiding residential character of the location. One submitter notes that a 7am opening time would be more consistent with the residential character, while another proposes that conditions be applied restricting amplified music between the hours of 8am and 6pm.

35 Submitters also identify concerns regarding a sliding door proposed on the Slessor Lane frontage, highlighting that this may contribute additional noise in the adjacent residential dwellings.

**Officer comment:**

40 The proposal is accompanied by a noise impact assessment and Plans of Management for both the café and the recreation facility which have been reviewed by Council's Environmental Health Officer. Conditions of consent are recommended requiring that the sliding door at Slessor Lane is acoustically treated, and that an acoustic compliance certification report be provided to Council prior to commencement of the use certifying that the development has been designed and constructed in accordance with the established noise criteria and recommendations.



➤ **Objection to claim of existing use rights & parking credits**

Submitters object to the submitted claim to existing use rights and the associated vehicle parking credits. Specifically, submitters highlight that the use considered to offer 'existing use rights' for the purpose of claiming vehicle parking credits (a service station from 1958) has not been in operation and does not afford credits.

Officer comment:

It is considered the existing 1999 (DA10.1999.854.1) consent remains the effective consent for the land in that it is commenced and has not been surrendered to Council.

➤ **Objection to additional traffic in Slessor Lane (pedestrian and vehicle) – impact on amenity and safety**

Submitters object to the proposed recreation facility highlighting concerns that the use will increase the number of vehicles using Slessor Lane for through-traffic. Concerns identified include the impact of increased vehicle traffic on local amenity and pedestrian safety.

One submitter noted specific concerns that their driveway will be blocked from vehicles parking in front of their property (only accessed at Slessor Lane) – noting this has already been happening with the operation of the café.

Officer comment:

Conditions of consent will be applied requiring no stopping signs to be placed on the building within the laneway and maintained in perpetuity. Slessor Lane is a no stopping area and noncompliance with this is a matter for Council's roadside parking compliance officers.

➤ **Objection to CCTV cameras affecting privacy**

Submitters object to the use of CCTV cameras about the building, identifying concerns regarding breach of privacy where these are directed toward adjoining dwellings.

Officer comment:

The applicant provided a Social Impact Assessment in response to a request for information which included the field of view of the CCTV camera at Slessor Lane. Adjacent premises are not visible from the CCTV camera. Conditions of consent will be recommended requiring CCTV cameras to not orient toward adjoining premises at all times.

➤ **Objection to information provided with the application**

Submitters object to the development, noting that the SEE proposes "civil and landscaping works associated with the installation of new vehicle parking on Tweed Street...", with no detail provided of the vehicle parking proposed at Tweed Street.

Officer comment:

Proposal plans show the inclusion of two new landscaping bays at the Tweed Street frontage which will require minor works. Vehicle parking at this frontage will remain as-is – informal roadside parking – whereas Fingal Street comprises an upgrade, resealing and kerbing of parking spaces. Detailed engineering plans are provided of the proposed Fingal Street roadside parking upgrade.



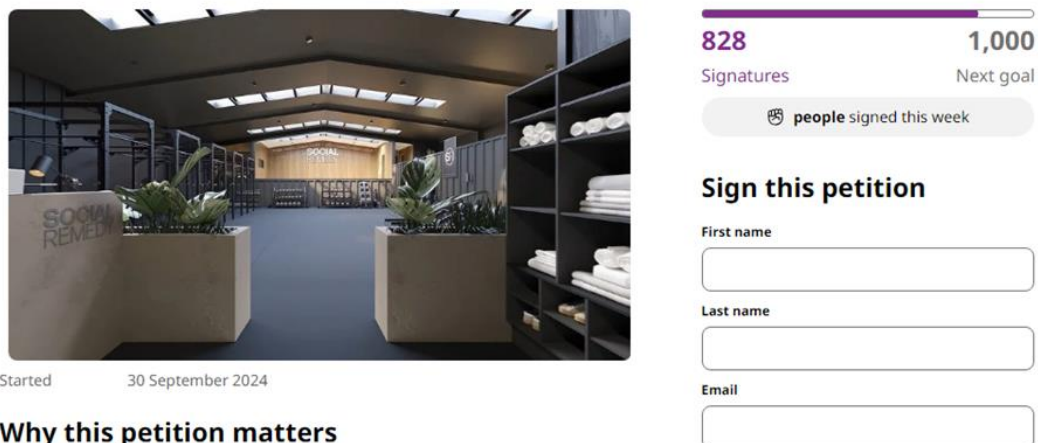
➤ **Public petition of support for proposal**

Though not provided within the official submission period for this application, it is noteworthy that the applicant provided evidence of an online petition which amassed 751 signatures of support for the proposal between 30 September 2024 and 15 October 2024 (circa 2 weeks). See link here: <https://www.change.org/p/help-b3-open/c>

**Officer comment:**

The online petition is indicative of significant public support for the use, contrary to the majority of submissions received during public notification. Up to 29 individual comments of support have been left on the webpage which speak to the benefit of a facility like this in the Brunswick community (as opposed to having to drive to Byron Bay) and the mental health benefits of such facilities in general.

**HELP B3 OPEN**



**Figure 13:** Extract from online petition 'Help B3 Open', showing 828 signatures on 21/10/2024.

## 4.9 Public interest

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

## DEVELOPER CONTRIBUTIONS

### 5.1 Water & Sewer Levies

Section 64 levies will be payable.

### 5.2 Developer Contributions

Section 7.12 Levy will be payable.



**DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

<b>Disclosure details</b>	<b>Response</b>
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 change of use of existing vehicle repair station to a food and drink premises (café) and a recreation facility (indoor).

- 5 The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed. The site is a serviced, unconstrained property and is considered suitable for the proposed development.
- 10 The application appropriately addresses the relevant constraints applying to the site and is recommended for approval subject to the conditions listed in Attachment 5.



## Report No. 13.12 PLANNING - DA 10.2024.178.1 - Alterations and Additions to Existing Tourist and Visitor Accommodation Unit at 1/137 Broken Head Reserve Road, Broken Head

5 **Directorate:** Sustainable Environment and Economy  
**Report Author:** Ben Grant, Senior Planner  
**File No:** I2024/1340

### Proposal:

<b>DA No:</b>	10.2024.178.1		
<b>Planning Portal ref</b>	PAN-440393		
<b>Proposal description:</b>	Alterations and additions to tourist and visitor accommodation and removal of two palms.		
<b>Property description:</b>	LOT: 1 SP: 81554		
	1/137 Broken Head Reserve Road BROKEN HEAD		
<b>Parcel No/s:</b>	240567		
<b>Applicant:</b>	Planners North		
<b>Owner:</b>	Mrs J M Thomas		
<b>Zoning:</b>	SP3 Tourist zone		
<b>Date received:</b>	21 June 2024		
<b>Integrated / Designated Development:</b>	<input checked="" type="checkbox"/> Integrated	<input checked="" type="checkbox"/> Designated	<input type="checkbox"/> Not applicable
<b>Concurrence required</b>	CNR-70397. <ul style="list-style-type: none"> <li>S100B approval NSW Rural Fire Service.</li> <li>S56 EPA Regulation 2021 – DCCEEW (BCD), DPE (Planning).</li> </ul>		
<b>Public notification or</b>	– Level 2 advertising under Council's Community Participation		



## BYRON SHIRE COUNCIL

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<b>exhibition:</b>	Plan. <ul style="list-style-type: none"><li>– Exhibition period: 4 July 2024 to 31 July 2024</li><li>– Submissions received: One (1) Objection</li><li>– Submissions acknowledged: <input checked="" type="checkbox"/> Yes   <input type="checkbox"/> No   <input type="checkbox"/> N/A</li></ul>
<b>Planning Review Committee</b>	Not applicable
<b>Variation request to Development Standards under an EPI (e.g., clause 4.6)</b>	Not applicable
<b>Estimated cost</b>	\$372,000.00
<b>Delegation to determine</b>	Council Reason: Designated Development for works on land mapped as containing littoral rainforest.
<b>Issues</b>	No issues.  The <i>Coastal Wetland and Littoral Rainforest Area Map</i> contains an error which identifies part of the site as being covered in littoral rainforest when in fact no such vegetation is present on the property.

### Summary:

5 The development application seeks consent for alterations and additions to an existing tourist and visitor accommodation building and removal of two palms at Unit 1, 137 Broken Head Reserve Road, Broken Head. The site is located within the Pavilions tourist facility located at the eastern end of Broken Head Reserve Road, approximately 250m from Broken Head beach.

10 The proposal mainly comprises internal alterations including the reconfiguration of doors, windows, glazing, decking. External works include a roof extension over the pool cabana, outdoor seating, and the removal of two exotic palms located in a garden bed near Broken Head Reserve Road.

15 The subject site is partially covered by a mapping overlay known as the *Coastal Wetland and Littoral Rainforest Area Map*, which operates under State Environmental Planning Policy (Resilience and Hazards) 2021. Clause 2.7 of the State policy declares that any development occurring on land within the mapped littoral rainforest area is designated development for the purposes of the Environmental Planning and Assessment Act 1979 (the Act).



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Designated developments are types of development where the environmental impact is considered to be potentially high and therefore a greater level of environmental assessment is required than would normally be the case. An environmental impact statement (EIS) is required for designated development in a form determined by the NSW Planning Secretary.

The development application is required to be determined by the Council for determination in accordance with the Byron Shire Community Participation Plan (CPP) which states that designated development cannot be determined by staff under delegation.

The development application was advertised and publicly exhibited for a period of 28-days between 4 July 2024 to 31 July 2024 in accordance with the CPP and Schedule 1 of the Act. One public submission was received objecting to the proposed development which is considered further within the body of this report.

This assessment finds that the proposed development will have negligible impact on the surrounding environment and is consistent with the requirements of the relevant state and local environmental planning instruments applying to the land. The *Coastal Wetland and Littoral Rainforest Area Map* contains an error which identifies part of the site as being covered in littoral rainforest when in fact no such vegetation is present on the property. An expanse of littoral rainforest is present on the adjacent dune area between the site and Broken Head beach however the proposed development will have no impact on this vegetation or any other ecologically sensitive areas in the surrounding locality.






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

### NOTE TO COUNCILLORS:

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

### RECOMMENDATION:

**That Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2024.178.1 for alterations and additions to tourist and visitor accommodation and removal of two palms, be granted consent subject to the conditions of approval detailed in Attachment 1 (E2024/123271). Attachments:**

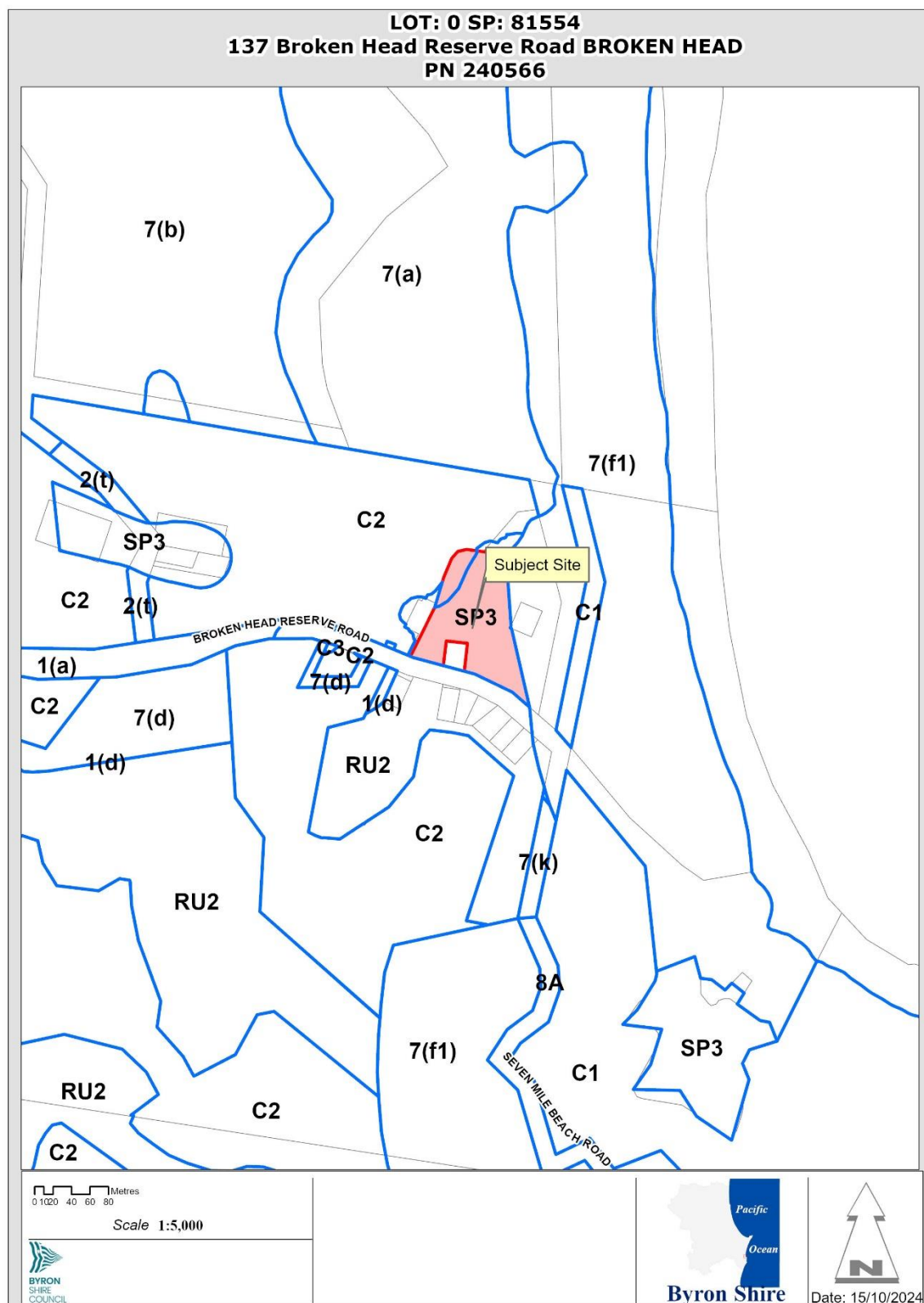
- 1 10.2024.178.1 Recommended Conditions of Consent, E2024/123271 
- 2 10.2024.178.1 Architectural Plans, E2024/62699 
- 3 10.2024.178.1 Environmental Impact Statement, E2024/62696 
- 4 10.2024.178.1 RFS General Terms of Approval, E2024/125452 
- 5 10.2024.178.1 Submission (Redacted), E2024/125459 



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## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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# 1. INTRODUCTION

## History/Background

5 The site originally contained a tourist facility known as Broken Head Leisure Resort which operated from 1995 to the mid-2000's. The current tourist facility known as 'Pavilions' was approved in July 2006 by the NSW Department of Planning as a state significant development under the provisions of the former SEPP No. 71, with construction being completed in early 2009.

10 The tourist facility is strata subdivided into separate lots for each accommodation unit. The building in Strata Lot 1 was originally approved as a manager's residence but was later changed to a tourist accommodation dwelling in March 2021 via development application 10.2020.186.1.

## Previous determinations

The following determinations are relevant to the subject application:

- **DA 5.1995.139.1** – Tourist facility (holiday cabins) approved 7 November 1995.
- 15 • **DA 25.2005.3.1** – 2 lot subdivision and 9 holiday 'pavilions', approved 9 July 2006.
- **DA 25.2005.3.2** – Modification to consent, approved 28 August 2008.
- **DA 10.2007.593.1** – Dwelling house approved 11 March 2008.
- **DA 10.2007.593.2** – Modification to right of carriageway, refused 3 October 2008.
- **DA 10.2016.132.1** – Swimming Pool, Spa and Cabana, approved 24 June 2016.
- 20 • **DA 10.2020.186.1** – Change of Use to Tourist Accommodation, approved 31 March 2021.

## Description of the proposed development

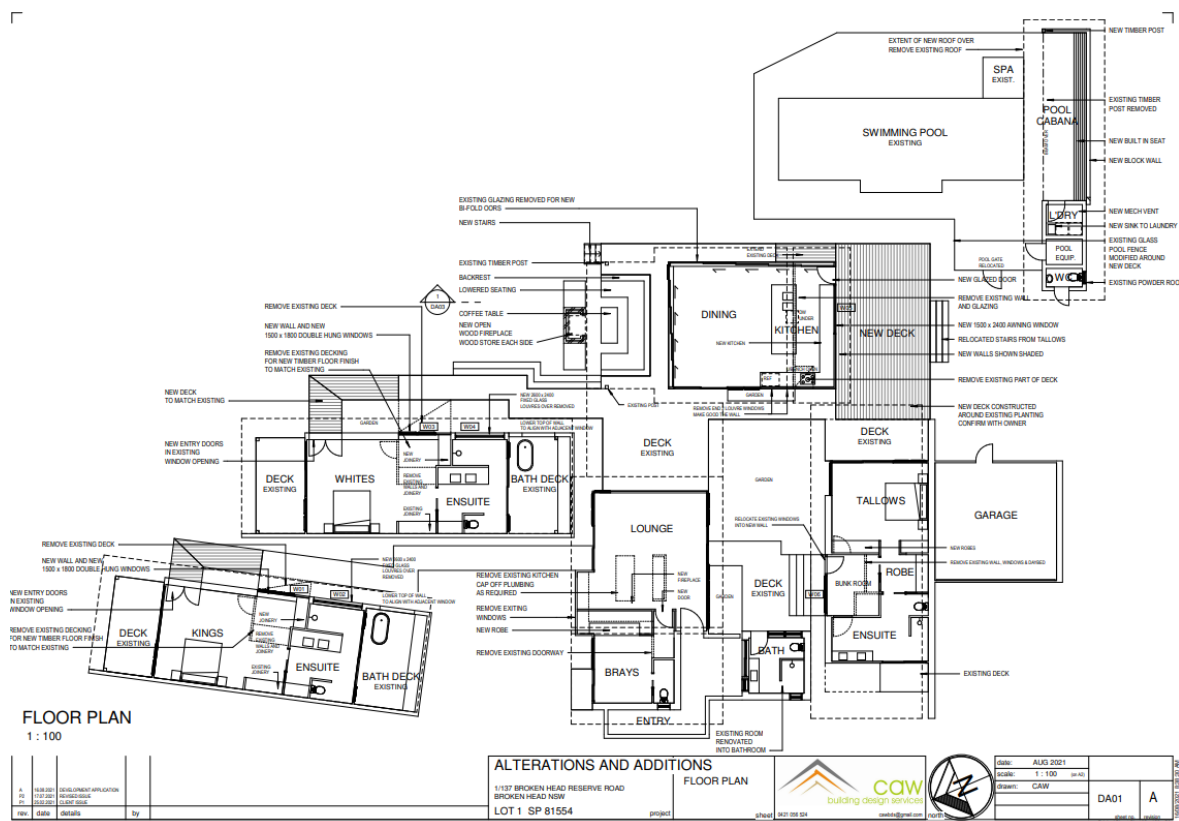
25 This application seeks approval for alterations and additions to an existing tourist and visitor accommodation building and removal of two palms at Unit 1, 137 Broken Head Reserve Road, Broken Head.

The proposed works include:

- Placing new entry doors into some existing window openings.
- Removing existing decking and providing for a new timber floor.
- Providing new timber decking and glass louvres.

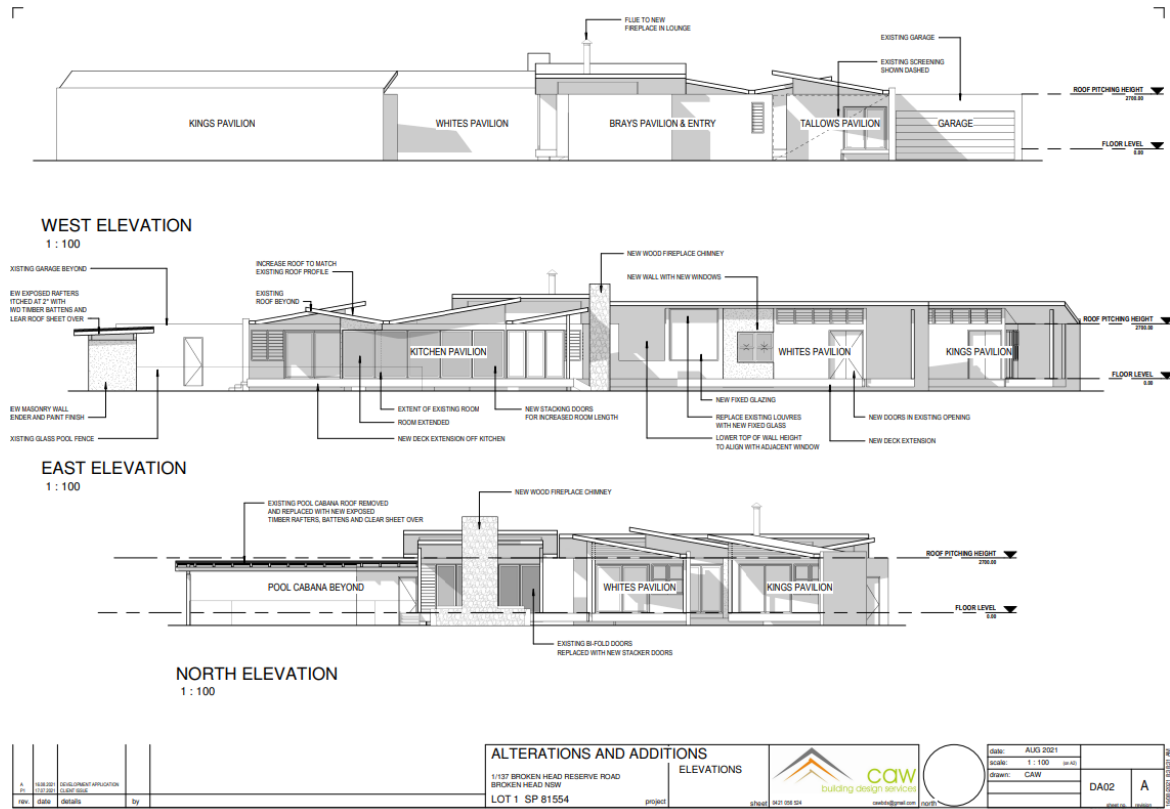


- Changing doorway locations and altering some existing joinery.
  - Making a new fire place.
  - Removing some existing glazing and providing folding doors.
  - Making some new built in seating and walling adjacent to the swimming pool.
- 5
- Extending a new roof over the pool cabana.
  - Providing a new laundry sink and new mechanical ventilation.
  - Remove 1 Golden Cane Palm and 1 Chinese Fan Palm.



**Figure 1: Extract of proposed Floor Plan.**





**Figure 2:** Extract of proposed elevations.

A site inspection was carried out on 11 July 2024.

Land is legally described	LOT: 1 SP: 81554	
Property address	1/137 Broken Head Reserve Road BROKEN HEAD	
Land is zoned:	SP3 Tourist and Visitor Accommodation	
Land area is:	1505 m <sup>2</sup>	
Property is constrained by:	Bush Fire Prone Land, High Conservation Value Vegetation, Coastal Erosion Precinct 3.	
	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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which	<input type="checkbox"/> Yes <input checked="" type="checkbox"/>



might affect the proposal?	No
----------------------------	----

## Description of the site

The site is legally described as Lot 1 in Strata Plan 81554, otherwise known as 1/37 Broken Head Reserve Road, Broken Head. The site is part of an existing tourist facility known as Pavilions located at the eastern end of Broken Head Reserve Road, approximately 250m from Broken Head Beach.

The tourist facility contains seven tourist and visitor accommodation units that have been strata subdivided onto separate lots. The building within Lot 1 is similar to the other accommodation buildings in the Pavilions facility, being comprised of three interconnected modules containing three bedrooms, lounge, and open plan kitchen dining area which opens onto a swimming pool and outdoor entertaining area.

The site is bound to the north and west by a mix of littoral rainforest and coastal swamp forest vegetation which extends between the resort and Taylors Lake. To the south on the opposite side of Broken Head Reserve Road is small group of ten dwelling houses of varying ages and architectural styles. To the east is an expanse of littoral rainforest which extends across the dune area to Broken Head beach.

The subject site is partially covered by the *Coastal Wetlands and Littoral Rainforest Area Map* which operates under Chapter 2 of State Environmental Planning Policy (Resilience and Hazards) 2021.



**Figure 3:** Extract of EIS showing arial photo with Littoral Rainforest Map overlay (green).





**Figure 4:** View of main building and surrounding garden.



**Figure 5:** Interior of main building.





**Figure 6:** Indoor/outdoor living spaces.



**Figure 7:** Existing swimming pool and cabana.





**Figure 8:** Adjoining grassed area on neighbouring land.





**Figure 9:** Two exotic Palms to be removed as part of the proposed development.

## 2. SUMMARY OF REFERRALS

### Internal referrals

Referral	Issue
Systems Planning Officer	Council's Systems Planning Officer noted the proposed development does not generate additional load on Council's water and sewerage system and therefore no additional levies are applicable.
Ecological Consultant	Council's Ecological Consultant noted that the proposed development would have negligible impact and was acceptable from an ecological perspective.

### 5 External referrals

Referral	Issue
Rural Fire Service (s100B)	General Terms of Approval and a Bush Fire Safety Authority were issued by the RFS on 12 August 2024.
NSW Department of Planning & Environment	No comments were received from NSW Department of Planning and Environment.
NSW Department of Environment, Energy, Climate Change and Water	No objections were raised by the Biodiversity, Conservation and Science Group (BCS) of the NSW Department of Climate Change, Energy, the Environment and Water.
Bundjalung of Byron Bay Aboriginal Corporation	The application was referred to Bundjalung of Byron Bay Aboriginal Corporation and Jali Aboriginal Corporation for comments on 27 June 2024. No comments were received.

## 3. BIODIVERSITY CONSERVATION ACT 2016

### Part 7 Biodiversity assessment and approvals under Planning Act

Two small areas in the south-east corner of the site are within the Biodiversity Values Map (BV Map) as indicated in **Figure 10**.

- 10 No native vegetation within the biodiversity values mapped area will need to be removed as part of the construction or operational phases of the development and no vegetation removal is required to establish an asset protection zones for bush fire protection in accordance with the Bush Fire Safety Authority.



The proposed development is not likely to significantly affect threatened species, ecological communities, or their habitats in accordance with Part 7 of the Biodiversity Conservation Act and does not exceed the Biodiversity Offsets Scheme Threshold.



- 5 **Figure 10.** Aerial Map with BV Map (purple) overlay. No native vegetation within the mapped area is required to be removed.

## 4. MARINE ESTATE MANAGEMENT ACT 2014

- 10 The proposed development involves only minor works and is unlikely to have a significantly adverse effect on plants or animals within the Cape Byron Marine Park. Referral to the NSW Minister for the Environment under s56 of the Marine Estate Management Act 2014 is not required.

## 5 SECTION 4.46 INTEGRATED DEVELOPMENT

### Rural Fires Act 1997

- 15 The proposed development requires a Bush Fire Safety Authority under s100B of the Rural Fires Act 1997 and is integrated development in accordance with s4.46 of the Act. General Terms of Approval and a Bush Fire Safety Authority (BFSA) were issued by the RFS on 12 August 2024. The BFSA did not impose any requirements for the creation or maintenance of asset protection zones as this is already provided for under existing consent conditions for the Pavilions development.




## 6. 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.

### 6.1 State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><b>Biodiversity and Conservation SEPP 2021</b></p> <p><b>Chapter 4 Koala habitat protection 2021</b></p> <p><u>Byron Coast Comprehensive Koala Plan of Management</u></p> <p>The subject site is highly disturbed and is not identified as containing any potential or core koala habitat in the Byron Coast Comprehensive Koala Plan of Management (CKPoM).</p> <p><b>Minor development</b></p> <p>The proposed development is of a minor nature and does not involve vegetation removal apart from two Palms located in a garden bed adjacent to the swimming pool. In accordance with Part 2 of the KCPoM, Council can grant consent to the application without requiring a koala plan of management or further detailed investigation.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><b>Resilience and Hazards SEPP 2021</b></p> <p><b>Chapter 2 Coastal management</b></p> <p>The subject site is within the <i>coastal use area</i>, <i>coastal environment area</i> and <i>coastal wetlands and littoral rainforest area</i> as defined under s2.4 of the Resilience and Hazards SEPP.</p> <p>A portion of the existing tourist and visitor accommodation unit is within the littoral rainforest map.</p> <p>The submitted EIS notes that the littoral rainforest mapping was reviewed by the Department of Environment and Heritage who concluded that the mapping was incorrect. Littoral rainforest exists on surrounding land but is not present within the subject site.</p> <p>Despite the mapping error, the proposal nevertheless triggers the requirements for designated development</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>



Considerations	Satisfactory	Unsatisfactory
<p>under s2.7(2) of the Resilience and Hazards SEPP which states that 'any development' within the mapped area is designated development.</p> <p>The EIS was reviewed by the Department of Climate Change, Energy, the Environment and Water (Biodiversity Conservation Division) and no objections were raised in relation to the EIS findings.</p>  <p><b>Figure 11:</b> Littoral Rainforest Area Map overlay.</p> <p>The proposed development is considered to be acceptable having regard to the matters for consideration under ss. 2.7-2.18 of SEPP (Resilience and Hazards) 2021.</p> <p>The proposed development is of a minor nature and will not:</p> <ul style="list-style-type: none"> <li>adversely affect the biophysical, hydrological, and ecological integrity of the adjacent littoral rainforest vegetation.</li> <li>affect the quantity or quality of ground and surface water entering the adjacent littoral rainforest vegetation.</li> <li>affect existing public open space and public access to the beach.</li> </ul>		



Considerations	Satisfactory	Unsatisfactory
<ul style="list-style-type: none"> <li>affect any Aboriginal cultural heritage, practices, or places.</li> <li>adversely affect the visual amenity of the coast or result in overshadowing or loss of views from public places.</li> </ul> <p><b>Chapter 4 Land contamination</b></p> <p>The subject site was investigated for land contamination as part of original development application for the Pavilions tourist facility in 2005 and was found to be satisfactory. The subject land has previously been assessed as being suitable for residential and tourism uses in its current state and does not require remediation.</p>		
<p><b>Sustainable Buildings SEPP 2022</b></p> <p>A BASIX certificate has been supplied with the development application as BASIX Optional Development. it is note that BASIX is not mandatory as the proposed development is not residential accommodation.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

## 6.2 Byron Local Environmental Plan 2014 (LEP 2014)

LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. The LEP 2014 clauses that are checked below are of relevance to the proposed development:

5

Part 1	<input checked="" type="checkbox"/> 1.1   <input checked="" type="checkbox"/> 1.1AA   <input checked="" type="checkbox"/> 1.2   <input checked="" type="checkbox"/> 1.3   <input checked="" type="checkbox"/> 1.4   <input checked="" type="checkbox"/> Dictionary   <input checked="" type="checkbox"/> 1.5   <input checked="" type="checkbox"/> 1.6   <input checked="" type="checkbox"/> 1.7   <input checked="" type="checkbox"/> 1.8   <input checked="" type="checkbox"/> 1.8A   <input checked="" type="checkbox"/> 1.9   <input checked="" type="checkbox"/> 1.9A
Part 2	<input checked="" type="checkbox"/> 2.1   <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table   <input checked="" type="checkbox"/> 2.4   <input checked="" type="checkbox"/> 2.5   <input checked="" type="checkbox"/> 2.6   <input checked="" type="checkbox"/> 2.7   <input checked="" type="checkbox"/> 2.8
Part 4	<input checked="" type="checkbox"/> 4.3   <input checked="" type="checkbox"/> 4.4   <input checked="" type="checkbox"/> 4.5
Part 5	<input checked="" type="checkbox"/> 5.13   <input checked="" type="checkbox"/> 5.21
Part 6	<input checked="" type="checkbox"/> 6.1   <input checked="" type="checkbox"/> 6.2   <input checked="" type="checkbox"/> 6.4   <input checked="" type="checkbox"/> 6.6   <input checked="" type="checkbox"/> 6.8

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



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- (a) The proposed development is defined in the LEP 2014 Dictionary as tourist and visitor accommodation.
- (b) The land is within the SP3 Tourist zone according to the Land Zoning Map.
- (c) The proposed development is permitted with consent; and
- 5 (d) Regard is had for the Zone Objectives as follows:

Zone Objective SP3 Tourist	Consideration
To provide for a variety of tourist-oriented development and related uses.	The proposed development is compatible with the SP3 zone objectives.
To encourage tourist development in designated areas to reduce impacts on residential amenity in other zones.	

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

### Part 4 Principal development standards

Development control	Compliance	Comment						
4.3 Height of buildings	Yes	The existing buildings have a maximum height of 5.5m which complies with the maximum 9m height limit applying to the site. No change to the maximum height of buildings is proposed as part of the proposed development.						
4.4 Floor space ratio	Yes	<div><div>A Floor Space Ratio of 0.2:1 applies the site.</div><div>The proposed development has a floor space ratio of 0.17:1 as detailed below:</div><table><tr><td>Site Area</td><td>1556m<sup>2</sup></td></tr><tr><td>Existing Floor Area</td><td>260m<sup>2</sup></td></tr><tr><td>Additional Floor</td><td>0m<sup>2</sup> (no additional</td></tr></table></div>	Site Area	1556m <sup>2</sup>	Existing Floor Area	260m <sup>2</sup>	Additional Floor	0m <sup>2</sup> (no additional
Site Area	1556m <sup>2</sup>							
Existing Floor Area	260m <sup>2</sup>							
Additional Floor	0m <sup>2</sup> (no additional							



		Area	GFA).
		Floor Space Ratio	0.17:1

**Part 6 Additional local provisions**

Development control	Compliance	Comment
6.6 Essential services	Yes	The site has access to reticulated water, sewer electricity, and telecommunications.

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

- 5 There are no draft instruments with relevance to the development application.

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

- 10 DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because it applies to the land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are checked below are of relevance to the proposed development:

Part A	<input checked="" type="checkbox"/> Preliminary
Part B Chapters:	<input checked="" type="checkbox"/> B1   <input checked="" type="checkbox"/> B3   <input checked="" type="checkbox"/> B4   <input checked="" type="checkbox"/> B7   <input checked="" type="checkbox"/> B8   <input checked="" type="checkbox"/> B9   <input checked="" type="checkbox"/> B13   <input checked="" type="checkbox"/> B14
Part C Chapters:	<input checked="" type="checkbox"/> C2   <input checked="" type="checkbox"/> C3
Part D Chapters	<input checked="" type="checkbox"/> D3

- 15 These checked Parts/Chapters have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development complies with all sections of these Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to certain prescriptive measures which are considered further (having regard to the DCP 2014 Section A1 Dual Path Assessment) as follows:



What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
<p><b>B1.2.1 Development Envelope Controls</b></p> <p><u>Threatened Ecological Communities</u></p> <p>Part B1.2.1 specifies a 30m setback between development and threatened ecological communities.</p> <p>The proposed development is approximately 15m from littoral rainforest EEC in the SE corner of the site.</p> <p><u>Wildlife Corridors</u></p> <p>Part B1.2.1 specifies a 20m setback between development and wildlife corridors.</p> <p>The existing tourist facility is entirely within the Broken Head Block Wildlife Corridor.</p>	<p>The proposed development complies with the Objectives of the Section because:</p> <ul style="list-style-type: none"> <li>The proposed development is for minor alterations and additions to an existing tourist facility and will not involve removal of any native vegetation.</li> <li>Littoral Rainforest EEC in the surrounding area will be unaffected by the proposed development, as will native fauna passing through the site within the Broken Head Wildlife Corridor.</li> <li>The proposed development will not result in any net loss of biodiversity values in the surrounding area, consistent with the Objectives of this part.</li> </ul>	<p>The proposed development complies with the Performance Criteria of this Section because:</p> <ul style="list-style-type: none"> <li>There are no performance criteria for this part of the DCP.</li> </ul>

The proposed development is demonstrated to meet the relevant Objectives of DCP 2014.

### **Chapter B3 Services**

DCP Requirement	Complies?	Comment
B3.2.1 Provision of Services	Yes	The site is fully serviced and has adequate vehicular access.



**Chapter B9 Landscaping**

<b>DCP Requirement</b>	<b>Complies?</b>	<b>Comment</b>
B9.6.1 Landscaping of Tourist and Visitor Accommodation	Yes	The existing and proposed landscaping design will provide a pleasant, landscaped environment for guests which is compatible the coastal character of the surrounding locality.

**Chapter D3 Tourist Accommodation**

<b>DCP Requirement</b>	<b>Complies?</b>	<b>Comment</b>
D3.2.1 Location and Siting	Yes	The proposed development is appropriately located and will not have a significantly adverse impact on the natural features of the site or surrounding environment.
D3.2.2 Character and Design in Residential, Village and Tourist Zones	Yes	The proposed development satisfies the Objectives and Performance Criteria for Sections D1.2.1 – D1.2.7 of DCP 2014 in the same way as they apply to residential accommodation.

## **6.5 Environmental Planning and Assessment Regulation 2021 considerations**

5

Section 61 - Additional matters that consent authority must consider

A condition is recommended that requires any demolition works to be carried out in accordance with AS2601–2001 the demolition of structures.

Section 62 - Consideration of fire safety

10 Section 62 is not applicable as the proposed use does not involve a change of use.

Section 63 – Consent authority may require upgrade of buildings

The existing building is suitable for the proposed use and does not require upgrading to comply with the Building Code of Australia (BCA). Details of BCA compliance for the new works will be addressed as part of the construction certificate assessment.



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

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

## **5 6.7 The suitability of the site for the development**

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

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

- 10 The development application was advertised and publicly exhibited for a period of 28-days between 4 July 2024 to 31 July 2024 in accordance with the Byron Shire Community Participation Plan and Schedule 1 of the Environmental Planning and Assessment Act 1979. A copy of the application was also referred to the NSW Rural Fire Service, the NSW Department of Planning, and the NSW Department of Environment, Energy, Climate
- 15 Change and Water, Bundjalung of Byron Bay Aboriginal Corporation (BoBBAC) and Jali Local Aboriginal Land Council.

There was one (1) public submission made on the development application which is considered below:



Issue	Discussion
<p><b>Use of fireplace and fire pit</b></p> <p>The DA 10.2024.178.1 includes an application for a wood fireplace and chimney.</p> <p>The property already has an outdoor fire pit. When the pit is in use, it produces smoke which affects the health of surrounding residents.</p> <p>The existing firepit and fire place in the DA should be removed. Wood burning contributes to global warming and should be banned in Byron Shire.</p>	<p>There is no nexus to prohibit the use of the existing fire pit or proposed fireplace as part of this assessment.</p> <p>It is noted that Council is already empowered under the Protection of the Environment Operations Act (POEO) to take action in circumstances where smoke is causing a nuisance.</p>

## 6.9 Public interest

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

## 6.10 Requirements for designated development

- 5 Section 4.16 (9) of the Act provides that a consent authority must not determine an application for designated development until after the submission period has expired, or, if a submission is made within the submission period, until after 21 days following the date on which a copy of the submission is forwarded to the Planning Secretary.
- 10 Submissions were forwarded to the Planning Secretary in accordance with Section 60 of the Regulation on 4 October 2024.

## 7. DEVELOPER CONTRIBUTIONS

### 7.1 Water & Sewer Levies

No Section 64 levies will be required.

### 7.2 Developer Contributions

- 15 The proposed development is for a non-residential purpose and has an estimated development cost of more than \$100,000. Section 7.12 Levies will be payable.



## 8. 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"/>

## 9. CONCLUSION

- 5 The development application seeks consent for alterations and additions to an existing tourist and visitor accommodation building and the removal of two palms at Unit 1, 137 Broken Head Reserve Road, Broken Head. The site is located within the Pavilions tourist facility located at the eastern end of Broken Head Reserve Road, approximately 250m from Broken Head beach.
- 10 The proposal mostly comprises internal alterations including the reconfiguration of doors, windows, glazing, decking. Additional external works include a roof extension over the pool cabana, outdoor seating, and the removal of two exotic palms located in a garden bed near Broken Head Reserve Road.
- 15 This assessment finds that the proposed development will have negligible impact on the surrounding environment and is consistent with the requirements of the relevant state and local environmental planning instruments applying to the land. The *Coastal Wetland and Littoral Rainforest Area Map* contains an error which identifies part of the site as being covered in littoral rainforest when in fact no such vegetation is present on the property. An expanse of littoral rainforest is present on the adjacent dune area between the site and
- 20 Broken Head beach. The proposed development will have no impact on this vegetation or any other ecologically sensitive areas in the surrounding locality.



5

**Report No. 13.13 PLANNING - DA 10.2024.226.1 - Demolition of existing Dwelling House, New Dwelling House to create Dual Occupancy (detached) and Ancillary Works - 158 Skinners Shoot Road Skinners Shoot**

**Directorate:** Sustainable Environment and Economy  
**Report Author:** Dylan Johnstone, Development Investigations Lead  
**File No:** I2024/1423

**Proposal:**

**DA No:** 10.2024.226.1

**Planning Portal ref** PAN-451003

**Proposal description:** Demolition of Existing Dwelling House, New Dwelling House to create a Dual Occupancy (Detached) and Ancillary Works

**Property description:** LOT: 199 DP: 755695  
 158 Skinners Shoot Road SKINNERS SHOOT

**Parcel No/s:** 122530

**Applicant:** Perry Homes

**Owner:** Ms M D McGrane

**Zoning:** C2 Environmental Conservation / PART RU2 Rural Landscape / PART DM Deferred Matter – 7(d) (Scenic / Escarpment Zone) Byron LEP 1988

**Date received:** 22 July 2024

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

**Concurrence required** No

**Public notification or** – Level 2 advertising under Council’s Community Participation



## BYRON SHIRE COUNCIL

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<b>exhibition:</b>	Plan. <ul style="list-style-type: none"><li>– Exhibition period: 31/07/24 – 13/08/24</li><li>– Submissions received: Nil</li><li>– Submissions acknowledged: <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</li></ul>
<b>Concurrent approvals included with DA</b>	<input type="checkbox"/> N/A <input type="checkbox"/> W & S (68) <input checked="" type="checkbox"/> OSMS (68) <input type="checkbox"/> ST (68) <input type="checkbox"/> RA (138) Other:
<b>Planning Review Committee</b>	Not applicable
<b>Variation request to Development Standards under an EPI (eg clause 4.6)</b>	<b>Clause 4.6</b> Name of clause - Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2 Clause number – 4.2D(2)(b) Percentage value of variation sought – 100% Percentage value of the variation recommended to be approved – 100% Brief justification for the variation – The variation is reasonable and orderly with consideration for existing provision of driveways. No environmental impacts and it is unnecessary to comply with the standard as it is proposed to utilise an existing historical second access to Skinners Shoot Road. The site is suitable for the development and the variation raises no environmental impacts.
<b>Estimated cost</b>	\$518,749.00
<b>Delegation to determine</b>	Council
<b>Issues</b>	<ul style="list-style-type: none"><li>• Clause 4.6 variation to Clause 4.2D(2)(b) to permit second driveway access</li><li>• Variation to Chapter B14 of DCP 2014 to permit excavation and fill greater than 1.0m</li><li>• Unauthorised garage / carport located in Council road reserve to be demolished</li></ul>



## Summary:

This Development Application (DA) seeks consent for demolition of existing dwelling house, new dwelling house to create a dual occupancy (detached) and ancillary works.

- 5 The application proposes a variation to a development standard in accordance with clause 4.6 of Byron LEP 2014. The development standard to be varied is the requirement for each dwelling to use the same vehicular access to and from a public road prescribed by clause 4.2D (2) (b). The application proposes to utilise a second unapproved access to the site from Skinners Shoot Road which represents a 100% variation and any variation greater than 10% must be determined by the elected Council in accordance with the NSW Department of Planning, Housing and Infrastructure *Guide to Varying Development Standards* dated November 2023.

- 15 The applicant has submitted a written request to vary the development standard that demonstrates strict compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental grounds to vary the controls. The development will not impair the use of the land for agriculture. The land is physically suitable for the development, and is capable of accommodating on-site disposal and management of sewage for the development. The development will not have an adverse impact on the scenic amenity or character of the rural environment.

The variation to the development standard is supported by staff.

- 20 A recommendation is included in the report for staff to review the need for this development standard in Clause 4.2D(2)(b) '*one access point to rural dual occupancies*' to remain. This is due to its apparent redundancy as evidenced by the number of variation requests being received since Council removed the 100m distance restriction to dual occupancy development in the Byron LEP 2014.
- 25 The application was advertised and notified between 31 July to 13 August 2024 in accordance with the Byron Shire Community Participation Plan with no submissions received.

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

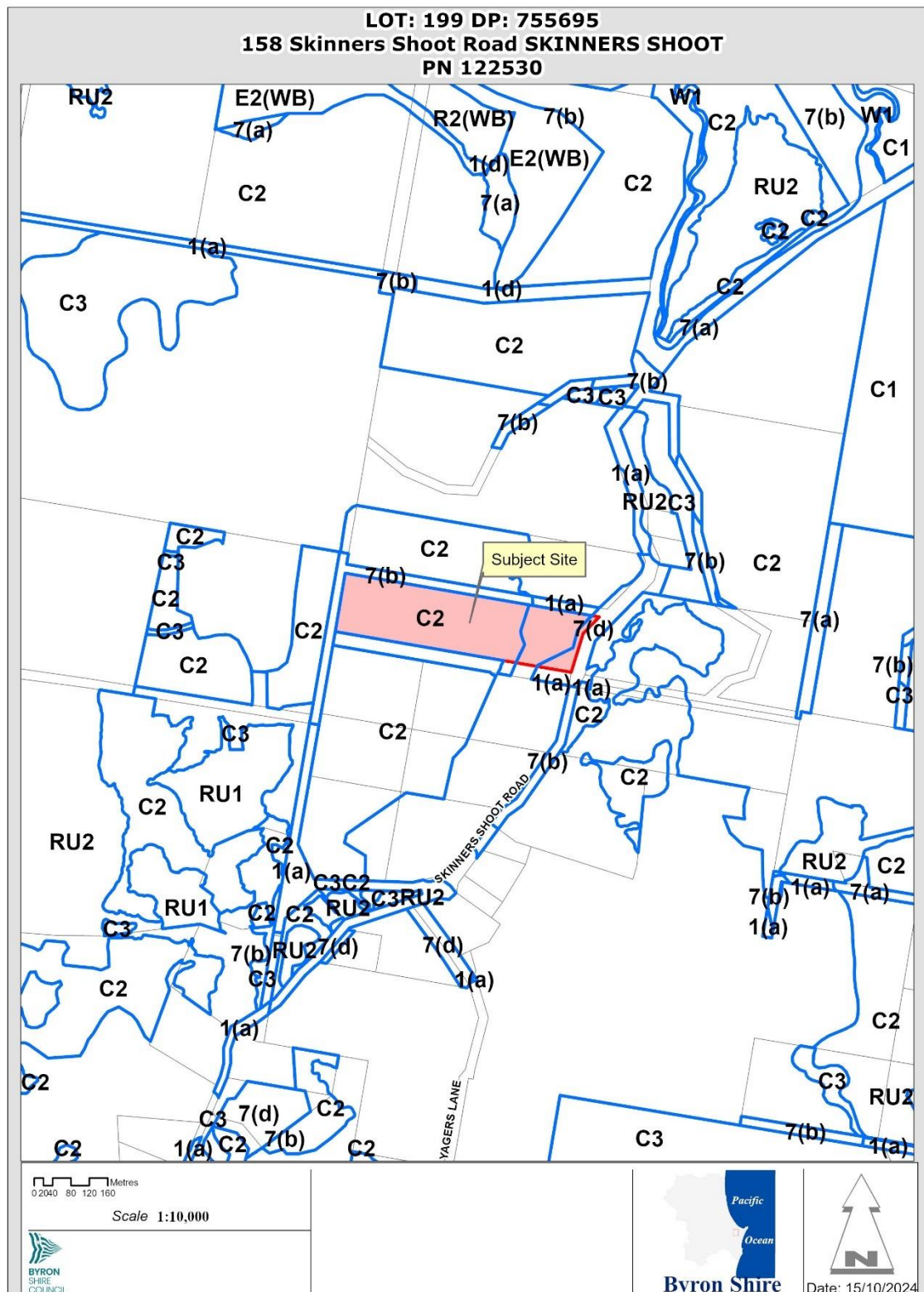
- 30 NOTE TO COUNCILLORS:

- 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.



13.13





**Figure 1: Locality Plan**



## Assessment:

### 1. INTRODUCTION

#### History/Background

The following previous determinations have been made on the subject site:

- 5       • BA **6.1987.2610.1** for a garage was approved 2 February 1987.
- DA **10.2010.590.1** for alteration/additions to existing dwelling was approved 23 November 2010.
- DA **10.2019.259.1** for demolition of existing dwelling and sheds and construction of new dwelling house was approved 16 May 2019.
- 10       • Consent **10.2019.259.1** has never been commenced.
- DA **10.2021.179.1** for Demolition of Existing Dwelling House and Construction of New Dwelling House and Swimming Pool was approved 21 July 2021. The existing dwelling house to be demolished was located in the southern portion of the site.
- 15       • Consent **10.2021.179.1** includes a condition that consent **10.2019.259.1** must be surrendered prior to issue of a Construction Certificate. Consent **10.2019.259.1** was surrendered and a Construction Certificate was issued for consent **10.2021.179.1** on 14 October 2021.
- 20       • Consent **10.2021.179.1** includes conditions requiring the existing dwelling house in the northern portion of the site to be decommissioned prior to issue of an Occupation Certificate for the new dwelling. The new dwelling has been constructed but Council does not have a record of an Occupation Certificate being issued.

#### Description of the proposed development

- 25       This application seeks approval for Demolition of Existing Dwelling House and New Dwelling House to create a Dual Occupancy (Detached)

Council doesn't have a record of an approval for the existing dwelling house which is an old fibro dwelling likely over 60 years old. It is proposed to demolish this dwelling.





**Figure 2:** Existing dwelling proposed to be demolished

- 5 The proposed new dwelling house consists of three bedrooms and includes a double garage. The proposed dwelling is single storey and is to be of brick construction on a concrete slab with a colourbond roof. Cut and fill works are required to create a level building pad. The maximum depth of excavation works is 1.27m, with fill up to a maximum height of 1.08m. The dwelling will have a maximum building height of 6.132m.



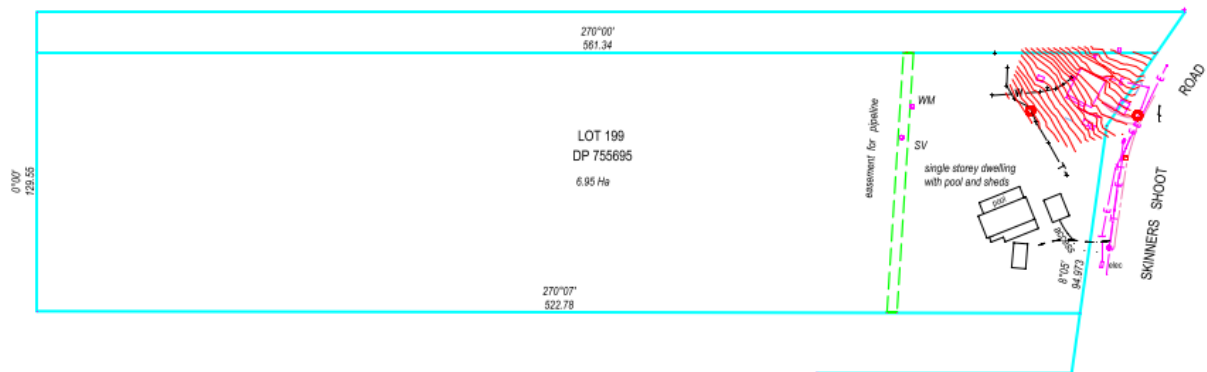
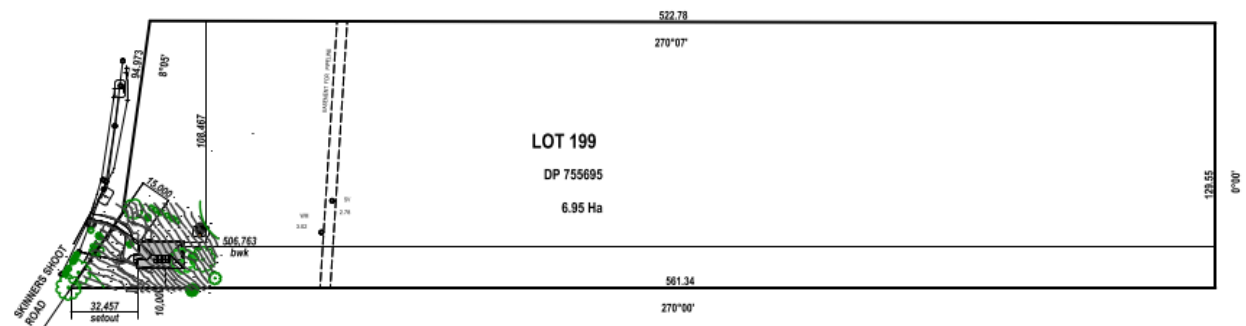


Figure 3: Existing site plan



5

Figure 4: Proposed site plan

## Description of the site

A site inspection was carried out on 21 October 2024.

10

Land is legally described	LOT: 199 DP: 755695
Property address	158 Skinners Shoot Road SKINNERS SHOOT
Land is zoned:	C2 Environmental Conservation / PART RU2 Rural Landscape / PART DM Deferred Matter – 7(d) (Scenic / Escarpment Zone) Byron LEP 1988
Land area is:	8.094 ha
Constraints and Attributes:	Flood Liable Land

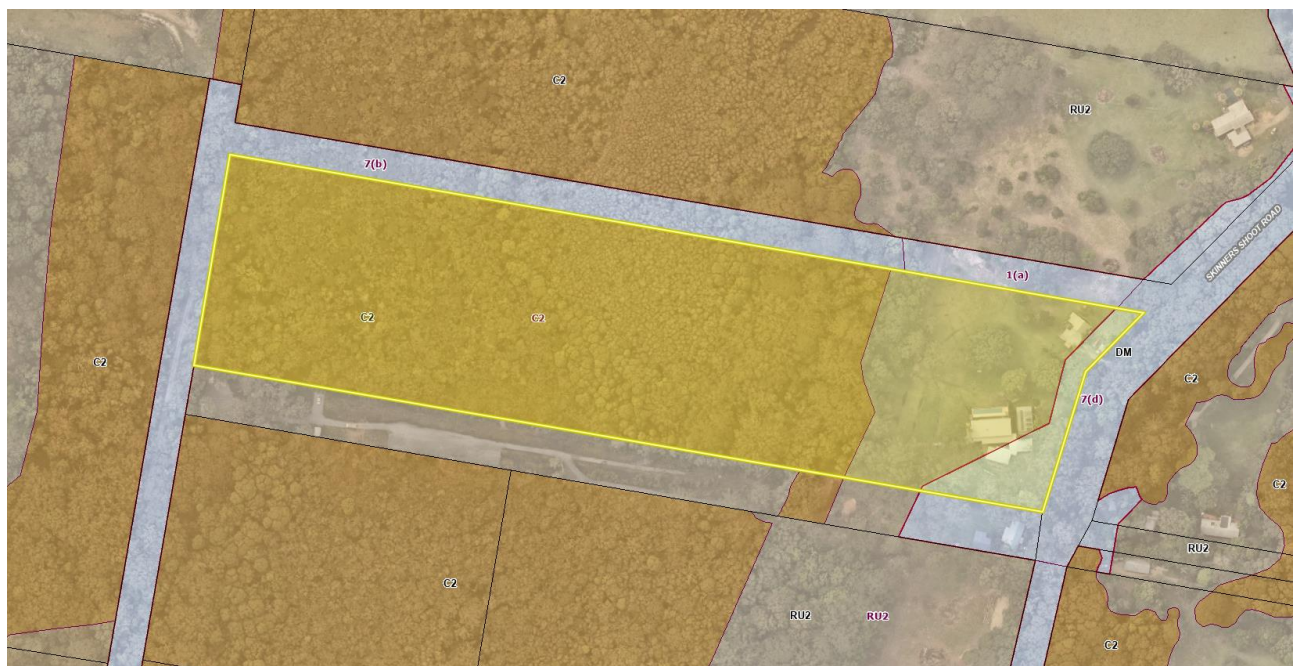


# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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	Bushfire prone land Acid Sulfate Soils Class 2 & 5 Biodiversity Values map Koala habitat map High Conservation Value 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



**Figure 5:** Zoning map





Existing access & garage/carport in  
Council road reserve to be demolished  
looking N

View of existing dwelling from location of  
proposed dwelling looking SW

5 **Figure 6:** Site photos

## 2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
S64 / Systems Planning Officer	No objections subject to conditions.
S7.11 / Contributions Planner	Contributions calculated by planner.
Rural Fire Service (4.14)	No objections subject to conditions.

## 10 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 development application was referred to the NSW Rural Fire Service, which provided conditions which are reflected in the Recommendation of this Report below.

15



Effect of 10/50 rule on significant vegetation

This land is excluded from the operation of the 10/50 Code as it has been identified as being partially within mapped koala habitat.


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

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

### 10 4.1 State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><i>Biodiversity and Conservation SEPP 2021</i></p> <p>Consideration:</p> <p>Chapter 3 Koala habitat protection 2020</p> <p>Although koala habitat is mapped as occurring within the site, it is considered that the specific land on which the development is proposed is not a potential koala habitat as defined by the SEPP because it does not contain an area of native vegetation where Schedule 2 Feed Tree Species constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.</p> <p>The submitted Bushfire Assessment Report prepared by Firetech Bushfire Consulting demonstrates that no native vegetation removal is required within the Asset Protection Zone around the proposed dwelling. A condition is recommended to ensure this. It is therefore considered that the proposal is subject to Clause 3.6(3)(a) which states “if the Council is satisfied that the land is not a potential koala habitat, it is not prevented, because of this Policy, from granting consent to the development application”.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>



Considerations	Satisfactory	Unsatisfactory
 <p><b>Figure 7:</b> Koala habitat map</p>		
<p><i>Resilience and Hazards SEPP 2021</i></p> <p>Consideration:</p> <p>Chapter 4 Remediation of Land</p> <p>The applicant has demonstrated that the location of the dwelling subject to this application is not contaminated by previous land use and the land is considered suitable for the proposed use. No further investigation is considered warranted.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><i>Sustainable Buildings SEPP 2022</i></p> <p>Consideration:</p> <p>BASIX Certificate required for:</p> <ul style="list-style-type: none"> <li>• <b>New dwellings</b></li> <li>• Alterations &gt; \$50,000.00</li> <li>• Pools &gt; 40,000 kl</li> </ul> <p>A BASIX certificate has been provided and a condition of consent requires the development to comply with the requirements of that certificate.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>



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

LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. The LEP 2014 clauses that are checked below are of relevance to the proposed development:

5

Part 1	<input checked="" type="checkbox"/> 1.1   <input checked="" type="checkbox"/> 1.1AA   <input checked="" type="checkbox"/> 1.2   <input checked="" type="checkbox"/> 1.3   <input checked="" type="checkbox"/> 1.4   <input checked="" type="checkbox"/> Dictionary   <input checked="" type="checkbox"/> 1.5   <input checked="" type="checkbox"/> 1.6   <input checked="" type="checkbox"/> 1.7   <input checked="" type="checkbox"/> 1.8   <input checked="" type="checkbox"/> 1.9
Part 2	<input checked="" type="checkbox"/> 2.1   <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table   <input checked="" type="checkbox"/> 2.7
Part 4	<input checked="" type="checkbox"/> 4.1E   <input checked="" type="checkbox"/> 4.2A   <input checked="" type="checkbox"/> 4.2D   <input checked="" type="checkbox"/> 4.3   <input checked="" type="checkbox"/> 4.6
Part 6	<input checked="" type="checkbox"/> 6.1   <input checked="" type="checkbox"/> 6.2   <input checked="" type="checkbox"/> 6.6

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 dual occupancy (detached);
- 10 (b) The land is within the C2 Environmental Conservation / PART RU2 Rural Landscape / PART DM Deferred Matter – 7(d) (Scenic / Escarpment Zone) Byron LEP 1988 according to the Land Zoning Map (the proposed dwelling is located within the RU2 zone);
- (c) The proposed development is permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

<b>Zone Objective</b>	<b>Consideration</b>
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base	The application proposes minimal disturbance to the natural resource base.
To encourage diversity in primary industry enterprises and systems appropriate for the area	The proposal does not have a significant impact on the agricultural viability of the land.
To minimise the fragmentation and alienation of resource lands	The proposal does not fragment or alienate resource lands.
To minimise conflict between land uses within this zone and land uses within adjoining zones	The proposal does not present any significant land use conflict.
To encourage consolidation of lots for the purposes of primary industry production	The proposal does not include any lot consolidation.
To enable the provision of tourist accommodation, facilities and other small-	The application proposes residential use only.



Zone Objective	Consideration
scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality	
To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality	The proposal will not have a significant impact on the scenic quality of the locality.

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) except as outlined below.

5 **4.2D Erection of dual occupancies (detached) and secondary dwellings in Zones RU1 and RU2**

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

(a) *to provide alternative accommodation for rural families and workers,*

10 (b) *to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land,*

(c) *to set out consent considerations for development of dual occupancies (detached) and secondary dwellings to address matters such as access, siting, land suitability and potential impacts.*

15 (2) *Development consent must not be granted to development for the purpose of a dual occupancy (detached) or secondary dwelling on land in Zone RU1 Primary Production or Zone RU2 Rural Landscape unless the consent authority is satisfied that—*

(a) *the development will not impair the use of the land, or neighbouring land, for agriculture or rural industries, and*

(b) ***each dwelling will use the same vehicular access to and from a public road, and***

20 (c) *(Repealed)*

(d) *the land is physically suitable for the development, and*

(e) *the land is capable of accommodating the on-site disposal and management of sewage for the development, and*

25 (f) *the development will not have an adverse impact on the scenic amenity or character of the rural environment.*



The application proposes to utilise an existing access to Skinners Shoot Road which is separate from the approved access to Skinners Shoot Road utilised by the existing approved dwelling. Council has no record of approval for the second access. Therefore the application seeks approval to utilise a second existing access which does not comply with Clause 4.2D(2)(b). This exception is further assessed as a variation to a development standard below.

It is noted that prior amendments to Byron LEP 2014 which repealed Clause 4.2D(2)(c) *for dual occupancies (detached)—dwellings will be situated within 100 metres of each other* provides more flexibility for siting and distance separating dwellings in rural zones.

There are in most cases ecological and environmental reasons to allow buildings to be sited some distance from one another, such as to avoid unnecessary building or earthworks near watercourses, disturbance to habitat.

For similar reasons, there is often environmental benefit in permitting the use of a separate driveway in rural areas and there is redundancy for controls requiring dwellings to utilise the same access to and from a public road.

Any application that proposes more than one driveway currently needs to be approved by the Elected Council and this is only because of the development standard under Clause 4.2D(2)(b).

A recommendation of this report for staff to investigate the effectiveness or redundancy of this development standard would allow for a further report to be brought to Council to explore what housekeeping amendments could be made.

Council may, at a future meeting, subsequently decide if housekeeping amendments to repeal this development standard and any associated development controls that would enable the merits of otherwise simple dual occupancy applications to be assessed and determined under staff delegation.

### Clause 4.3 Height of Buildings

The proposal does not raise any concerns with regards to this clause. The proposed dwelling will be a maximum of 6.132 metres at its highest point above ground level which does not exceed the specified maximum height of 9 metres.

### Clause 6.1 Acid Sulfate Soils

The site is mapped as containing Class 2 and 5 Acid Sulfate Soils however the location of the proposed dwelling is not located within this mapping and no further assessment is required.

### Clause 6.6 Essential services

The proposal does not raise any concerns with regards to this clause. The site has adequate access to all essential services.

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

The applicant has sought a variation to Clause 4.2D(2)(b) by proposing to utilise an existing unapproved second vehicular access to the public road network. The existing



dwelling will retain its existing approved southern access to Skinners Shoot Road while the proposed dwelling is requested to utilise its own separate northern access to Skinners Shoot Road.

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:

- The use of two separate driveways to access each respective dwelling ensures that potential impacts associated with extending the internal driveway do not occur. The slope of the land coupled with existing vegetation make an extension of the internal driveway unsuitable due to the earthworks and vegetation removal this would require.

It is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental grounds to vary the development standard for the following reasons:

- The existing second access is well established and is currently being used to access this area of the site.
- The existing second access will provide a safer and more efficient means of evacuating the site in the event of a bush fire emergency by providing a shorter route to the public road network. The existing second access will also provide a more direct path to the dwelling for a fire truck to more efficiently protect the asset in the event of a bush fire emergency.
- The existing second access has been assessed as being safe in terms of sight distances in both directions to approaching vehicles on Skinners Shoot Road.
- The existing second access can reasonably be upgraded to comply with Council's construction standards and Planning for Bush Fire Protection 2019 requirements subject to recommended conditions.

Further, the proposal is in the public interest having regards to the objectives of the development standard being to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land, and to set out consent considerations for development of dual occupancies (detached) and secondary dwellings to address matters such as access, siting, land suitability and potential impacts.

By allowing a separate driveway access to Skinners Shoot Road for the subject dwelling, the development will remain of a scale and nature that is compatible with the rural character and environmental capabilities of the land.



The concurrence of the Planning Secretary is not required.

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

- a) The development is satisfactory having regard to the requirements outlined in clause 4.6;
- 5      b) The development is satisfactory having regard to applicable Department of Planning, Infrastructure and Environment Circulars;
- c) The development is satisfactory having regard to relevant caselaw;
- d) The DA demonstrates that compliance with the development standard is unreasonable;
- 10     e) The DA demonstrates that there are sufficient environmental planning grounds to justify contravening the standard;
- f) The DA demonstrates that the development is in the public interest;
- g) The DA demonstrates that the development is consistent with the objectives of the standard and the zone;
- 15     h) The DA demonstrates how the development produces a better planning outcome than one that strictly complied with the development standard; and
- i) The DA demonstrates what it is about the grounds of the request that are particular to the proposed development on this site, and that there has to be something particular to the development on this site to justify the variation.
- 20     The full Clause 4.6 written request for variation is included as **Attachment 3** of this report

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

- 25     LEP 1988 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. The LEP 1988 clauses that are checked below are of relevance to the proposed development:

Part 1	<input checked="" type="checkbox"/> 1   <input checked="" type="checkbox"/> 2   <input checked="" type="checkbox"/> 2A   <input checked="" type="checkbox"/> 3   <input checked="" type="checkbox"/> 4   <input checked="" type="checkbox"/> 5   <input checked="" type="checkbox"/> LEP 1988 Dictionary   <input checked="" type="checkbox"/> 7
Part 2	<input checked="" type="checkbox"/> 8   <input checked="" type="checkbox"/> 9
Part 3	<input checked="" type="checkbox"/> 17   <input checked="" type="checkbox"/> 24   <input checked="" type="checkbox"/> 30   <input checked="" type="checkbox"/> 52

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

- (a) The development is defined in the LEP 1988 Dictionary as dual occupancy (ancillary driveway access);



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## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

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- (b) The land is within the LEP1988 7(d) (Scenic / Escarpment Zone) according to the map under LEP 1988;
- (c) Utilisation of the existing access is permitted as ancillary development to the dual occupancy to be located on land zoned RU2 under LEP 2014; and
- 5 (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

Zone Objective	Consideration
(a) to protect and enhance the scenic qualities of the Shire of Byron which enhance the visual amenity by controlling the choice and colour of building materials, position and bulk of buildings, access roads and landscaping,	<p>The proposed utilisation of an existing access will retain the existing scenic qualities and amenity of the locality.</p> <p>The proposal will not have a visually disruptive or detrimental effect on the locality.</p> <p>Utilisation of the existing access will minimise soil erosion.</p> <p>The site is gently sloping and not known to be geologically hazardous.</p>
(b) to prohibit development within the zone that is likely to have a visually disruptive effect on the scenic quality and visual amenity of the Shire,	
(c) to enable development for certain purposes where such development would not have a detrimental effect on the scenic quality and visual amenity of the Shire,	
(d) to minimise soil erosion from escarpment areas and prevent development in geologically hazardous zones, and	
(e) to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.	

### Ancillary driveway located on land zoned 7(d) (Scenic / Escarpment Zone)

- 10 The proposal to utilise the existing second driveway access will not have any significant environmental, amenity or traffic safety impact and is consistent with the objectives of the zone as outlined above

It is also noted that the topography of the subject portion of land zoned 7(d) is approximately 7-8m AHD and the zoning is considered to be an anomaly as such zoning is typically limited to escarpment areas with a topography of 60m AHD or greater.

- 15 The proposed development complies with all clauses of LEP 1988 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).



## Clause 64A Exceptions to Development Standards

Not applicable.

### 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.

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

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because it applies to the land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are checked below are of relevance to the proposed development:

Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input checked="" type="checkbox"/> B1   <input checked="" type="checkbox"/> B3   <input checked="" type="checkbox"/> B4   <input checked="" type="checkbox"/> B6   <input checked="" type="checkbox"/> B7   <input checked="" type="checkbox"/> B8   <input checked="" type="checkbox"/> B9   <input checked="" type="checkbox"/> B14
Part D Chapters	<input checked="" type="checkbox"/> D2

#### B1 Biodiversity

The land contains areas mapped as koala habitat however the location of the proposed development is demonstrated to meet the required ecological setback distance of 20m.

Further, the submitted Bushfire Assessment Report prepared by Firetech Bushfire Consulting demonstrates that no native vegetation removal is required within the Asset Protection Zone around the proposed dwelling. A condition is recommended to ensure this.

#### B4 Traffic Planning, Vehicle Parking, Circulation and Access

Submitted plans have demonstrated that a double garage is proposed to service the dwelling.

There is an existing garage / carport associated with the existing dwelling to be demolished. The garage / carport is located on Council's road reserve and recommended conditions require it to be demolished.

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

The application has demonstrated compliance with the relevant Objectives and Prescriptive Measures of this Chapter.



- 5 These checked Parts/Chapters have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development complies with all sections of these Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to certain prescriptive measures which are considered further (having regard to the DCP 2014 Section A1 Dual Path Assessment) as follows:

What Section and prescriptive measure does the development not comply with?	Does the proposed development comply with the Objectives of this Section? Address.	Does the proposed development comply with the Performance Criteria of this Section? Address.
<b>B14 Excavation and Fill</b> The application proposes excavation to a maximum depth of 1.27m, with fill up to a maximum height of 1.08m in order to site the proposed dwelling on a level surface. This does not comply with the maximum 1.0m depth for general excavation works.	The proposed development complies with the Objectives of the Section because:  The proposal satisfies the Objectives of B14.2 as the excavation and fill works do not present any compatibility issues with the character of the area and does not detract from the existing and desired future character of Skinners Shoot. The proposed earthworks will not result in any significant visual impact on the landscape.	The proposed development complies with the Performance Criteria of this Section because:  The proposal satisfies the Performance Criteria as the excavation and fill works will not have any adverse visual impacts, will not overshadow or impact on the privacy of any adjoining land, does not present any risk of geotechnical instability / landslip and any resulting stormwater will be appropriately disposed of.

The proposed development is demonstrated to meet the relevant Objectives of DCP 2014.

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

- 10 DCP 2010 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because its purpose is to provide planning strategies and controls for various types of development permissible in accordance with LEP 1988. The DCP 2010 Chapters/Parts that are checked below are of relevance to the proposed development:

Chapter 1 Parts:	<input checked="" type="checkbox"/> A  <input checked="" type="checkbox"/> C  <input checked="" type="checkbox"/> F  <input checked="" type="checkbox"/> G  <input checked="" type="checkbox"/> K  <input checked="" type="checkbox"/> N
Chapters:	<input checked="" type="checkbox"/> 17



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

5

## 4.5 Environmental Planning and Assessment Regulation 2021 considerations

<b>Environmental Planning and Assessment Regulations 2021</b>	<b>Applicable to the proposal:</b>	<b>Considered the control as it relates to the proposal:</b>	<b>If this control is applicable, does the proposal comply?</b>
Section 61 - Additional matters that consent authority must consider	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA
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

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

## 10 4.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

### 4.6.1

<b>Impact on:</b>	<b>Likely significant impact/s?</b>
<b>Natural environment</b>	No. The proposal will not have a significantly adverse impact on the natural environment of the locality.
<b>Built environment</b>	No. The proposal will not have a significantly adverse impact on the built environment of the locality.



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

#### **4.6.2 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.

#### **5 4.6.3 Council Policies applicable to the proposed development?**

<b>Council Policy</b>	<b>Consideration</b>
<a href="#"><u>Management of Contaminated Land Policy</u></a>	The applicant has demonstrated that the location of the dwelling subject to this application is not contaminated by previous land use and the land is considered suitable for the proposed use.
<a href="#"><u>Provision of Driveways Policy</u></a>	A Section 138 approval must be obtained to upgrade the existing driveways to Council's construction standards.
<a href="#"><u>Local Approvals Policy</u></a>	Concurrent Section 68 approval for installation of an onsite sewage management system to service the dwelling to be issued with any consent granted.

#### **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**

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**

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

No Section 64 levies will be required.

### **5.2 Developer Contributions**

Section 7.11 Contributions will be payable.

## **10 6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

<b>Disclosure details</b>	<b>Response</b>
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 Demolition of Existing Dwelling House. New Dwelling House to create a Dual Occupancy (Detached) and Ancillary Works.

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

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



**Report No. 13.14 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:** I2024/1451

**Summary:**

At the Council (Planning) Meeting of 12 October 2023 it was resolved as part of **23-461** that Council:

10

*“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.”*

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**RECOMMENDATION:**

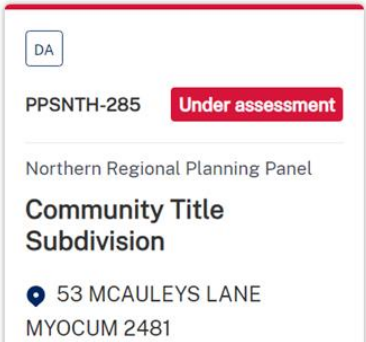
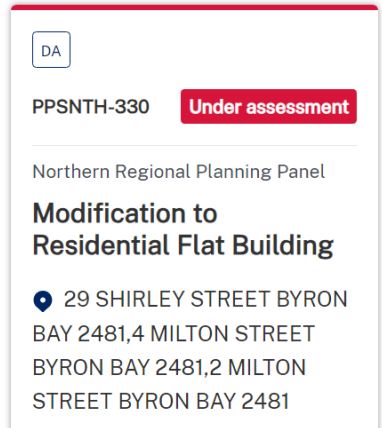
25 **That Council notes the status report on Development Applications (DAs) with bodies like the Northern Regional Planning Panel (NRPP).**



## 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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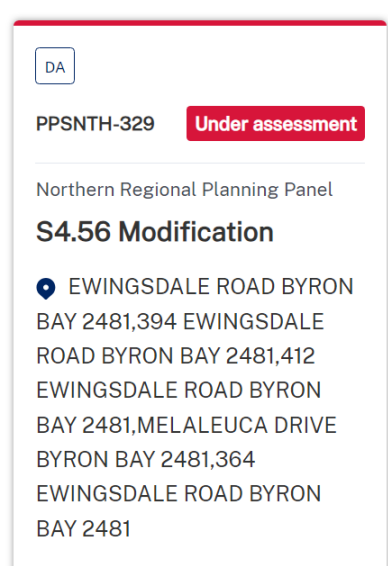
Planning Authority	Application Description and link	Status
Northern Regional Planning Panel	 <p><a href="#">Community Title Subdivision   Planning Portal - Department of Planning and Environment</a></p> <p>Link to DA tracker for DA 2023.454.1 information and documents here: <a href="#">Application Tracker</a></p>	<p>Submitted 12/12/2023</p> <p><a href="#">Record of Briefing - PPSNTH-285.pdf</a></p> <p>Under assessment</p>
Northern Regional Planning Panel	 <p><a href="#">Modification to Residential Flat Building   Planning Portal - Department of Planning and Environment</a></p> <p>Link to DA tracker for DA 10.2022.371.2 information and documents here: <a href="#">Application Tracker</a></p>	<p>Submitted 16/09/2023</p> <p><a href="#">Record of Briefing - PPSNTH-330.pdf</a></p> <p>Tentative determination date 10/12/24</p>



# BYRON SHIRE COUNCIL

## STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.14

Planning Authority	Application Description and link	Status
Northern Regional Planning Panel	 <p><a href="#">S4.56 Modification   Planning Portal - Department of Planning and Environment</a></p> <p>Link to DA tracker for DA 10.2017.661.2 information and documents here: <a href="#">Application Tracker</a></p>	<p>Submitted 12/07/24</p> <p><a href="#">Record of Briefing - PPSNTH-329 - 22 October 2024.pdf</a></p> <p>Tentative determination date 10/12/24</p> <p>Class 1 legal appeal lodged – without prejudice meeting scheduled for 25/11/24 and conciliation conference on 30/11/2025</p>

## 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



### **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*
- 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:
  - 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
  - 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.

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

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.



## BYRON SHIRE COUNCIL

### STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.14

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.

- 5     *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.

- 10    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)

- 15    [Att C - Amended RPP Operational Procedures.docx](#)

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  
20    decision as to whether it will be making a submission to the Panel. The elected Council's 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.

- 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  
25    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.

- 30    [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:

- 35    *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.*



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.

- 5 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.

### **Financial Considerations**

None relevant to this report.

### **Consultation and Engagement**

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

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