

Agenda Ordinary (Planning) Meeting

Thursday, 13 February 2025



BYRON
SHIRE
COUNCIL

Agenda Ordinary (Planning) Meeting

held at Council Chambers, Station Street, Mullumbimby
commencing at 3:00 PM

Public access relating to items on this agenda can be made between 3:00pm and 3:30pm on the day of the meeting. Requests for public access should be made to the General Manager or Mayor no later than 12:00 midday on the day prior to the meeting.

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

Mark Arnold
General Manager

CONFLICT OF INTERESTS

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

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

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

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

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

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

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

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

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

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

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

Disclosure and participation in meetings

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

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

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

Non-pecuniary Interests - Must be disclosed in meetings.

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

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

RECORDING OF VOTING ON PLANNING MATTERS

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

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

OATH AND AFFIRMATION FOR COUNCILLORS

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

BYRON SHIRE COUNCIL

BUSINESS OF ORDINARY (PLANNING) MEETING

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4. REQUESTS FOR LEAVE OF ABSENCE

5. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

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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

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 Protection of Critical Wildlife Habitat:
Upholding No Cat and Dog Covenant
at 146 Old Bangalow Road
(Woodlands)**

File No: I2025/51

I move that Council:

1. Affirms its support for maintaining the existing covenant prohibiting cats and dogs at 146 Old Bangalow Road (Woodlands), recognizing the property's crucial role in local biodiversity conservation.
2. Writes to the NSW Minister for the Environment, Penny Sharpe, requesting:
 - a) Recognition of "exceptional circumstances" for communities situated within significant wildlife corridors and containing threatened species habitat;
 - b) Support for maintaining existing environmental protection covenants that prohibit domestic animals in ecologically sensitive areas; and
 - c) Acknowledgment that such covenants provide vital wildlife sanctuaries and are essential for preserving threatened species and avoiding the biodiversity crisis that the Minister has acknowledged in Parliament.
3. Reaffirms its commitment to upholding Development Approval conditions (DA 10.2003.422.1) that were specifically designed to protect the site's ecological values.

Signed: Cr Michelle Lowe

Councillor's supporting information:

146 Old Bangalow Rd (Woodlands) is a large 88-hectare property that is a critical part of the Byron Shire Council wildlife corridor. When the community was established 30 years ago, a covenant was put in place to ban cats and dogs in order to protect local wildlife. This covenant has been successful in preventing negative impacts on the environment and local biodiversity.

BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.1

Byron Shire has been recognized as a biodiversity hotspot and was the first in the state to implement environmental protection zones in planning instruments. Since the 1980s, there has been a strong focus on environmental protection, which has resulted in the shire gaining a reputation for outstanding biodiversity commitment and community priority for environmental protection.

From the Blackwood Ecological Report - Biodiversity assessment, 2024 (attached), we can see that the Woodlands property and surrounding area is home to numerous threatened and endangered plant species, highlighting its exceptional ecological value. Notable species include the critically endangered *Rhodamnia rubescens* (Scrub Turpentine) and *Rhodomyrtus psidioides* (Native Guava), both of which are listed as critically endangered at both state and federal levels. The site also supports several endangered fruit-bearing species such as *Davidsonia jerseyana* (Davidson's Plum) and rare orchids including *Phaius australis* (Southern Swamp Orchid) and *Diuris byronensis* (Byron Bay Diuris). The presence of economically and culturally significant species like *Macadamia integrifolia* (Macadamia Nut) and *Macadamia tetraphylla* (Rough-shelled Bush Nut) further emphasizes the site's importance. These threatened species form part of a complex ecological community that has evolved over millions of years and requires careful protection from disturbance, including the impacts of domestic animals.

The Woodlands property and surrounding area serves as crucial habitat for an extraordinary diversity of threatened fauna, with 60 species recorded within a 5km radius. Among these are several critically endangered species including the Mitchell's Rainforest Snail (*Thersites mitchellae*), the Beach Stone-curlew (*Esacus magnirostris*), and the Laced Fritillary butterfly (*Argynnis hyperbius*). The site provides vital habitat for the endangered Koala (*Phascolarctos cinereus*), and numerous vulnerable bat species including the Grey-headed Flying-fox (*Pteropus poliocephalus*) and several microbat species that play crucial roles in ecosystem health through pollination and pest control. The area also supports a rich diversity of threatened birds, including three species of fruit-dove (*Ptilinopus* species), the Glossy Black-Cockatoo (*Calyptrorhynchus lathami*), and several significant owl species. The presence of ground-dwelling mammals such as the Long-nosed Potoroo (*Potorous tridactylus*) and the Spotted-tailed Quoll (*Dasyurus maculatus*) further emphasizes the need to protect this habitat from domestic pets, as these species are particularly vulnerable to predation by cats and dogs.

In 2004, Council adopted the Byron Shire Biodiversity Conservation Strategy (BCS), which was recognized with a National Local Government Award for Excellence in 2006. The BCS was supported by extensive scientific investigation and identified free-ranging domestic animals as significant threats to areas of conservation value, noting their impact on local populations of mammals, birds, and reptiles.

The Woodlands property was specifically identified as including High Conservation Value vegetation within a wildlife corridor and habitat for endangered species. When Council considered the site for development, it determined that the site's ecological significance warranted the restriction of domestic animals due to the threat to wildlife. This was formalized in the Development Approval (DA 10.2003.422.1) in 2008, which explicitly prohibited the keeping of cats and dogs within any of the neighbourhood lots and the community lot.

In 2021, a legal case in Sydney resulted in changes to Strata law, enabling residents of apartment blocks to keep cats and dogs unless "exceptional circumstances" exist. However, the term "exceptional circumstances" has not been clearly defined. The unique ecological characteristics of Woodlands, including its role in the wildlife corridor, its High Conservation Value vegetation, and the presence of endangered species like the koala, qualify as exceptional circumstances that should allow the property to retain its no-pet covenant.

Legal Context:

The property's no-pet covenant was established through:

- 10 - Development Approval DA 10.2003.422.1 (2008)
- Condition 28(a) specifically prohibiting cats and dogs within any neighbourhood lots and community lot
- Environmental Enhancement and Management Plan requirements (Condition 8)
- Original covenant registration 30 years ago

15 Environmental Significance:

1. Biodiversity Value

- 60 threatened fauna species within 5km radius
- Multiple critically endangered species present
- Essential habitat for koalas and other vulnerable species
- 20 - Significant population of threatened flora species

2. Strategic Importance

- Critical component of Byron Shire wildlife corridor
- High Conservation Value vegetation present
- Recognized in Byron Shire Biodiversity Conservation Strategy
- 25 - Successful 30-year history of environmental protection

3. Current Threats

- Recent changes to Strata law potentially undermining existing protections
- Documented impacts of domestic animals on native wildlife
- Recent wildlife attacks in nearby areas
- 30 - Increasing development pressure on wildlife corridors

BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.1

Rationale:

- The property is an important part of the local wildlife corridor, which helps maintain biodiversity and ecosystem health.
- 5 • The presence of endangered species such as the koala makes it a priority for protection from threats posed by domestic animals, particularly cats and dogs, which are known to negatively impact wildlife.
- The community at 146 Old Bangalow Rd has maintained its commitment to ecological preservation for over 30 years, and this covenant has been crucial in supporting that effort.
- 10 • Strata law changes should not undermine the ability of communities like this one to protect their natural environment and safeguard the survival of endangered species.

Byron Shire Council has a responsibility to protect its natural environment, including threatened and endangered species, and to support communities in their efforts to do the same. Lobbying the State Government and Minister for the Environment to uphold the no cat and dog covenant on 146 Old Bangalow Rd is a necessary step to ensure that this ecologically significant area is preserved for future generations.

Staff comments

by Shannon Burt, Director Sustainable Environment and Economy, and Sarah Nagel, Manager Public and Environmental Services:

20 The motion is presented in three parts.

1 Council affirms its support for maintaining the existing covenant prohibiting cats and dogs at 146 Old Bangalow Road (Woodlands), recognizing the property's crucial role in local biodiversity conservation.

25 **3 Council reaffirms its commitment to upholding Development Approval conditions (DA 10.2003.422.1) that were specifically designed to protect the site's ecological values.**

In this regard it is important to understand the legal nuances of this particular development consent matter.

30 In DA 10.2003.422.1 Council approved a thirteen-lot rural / residential Community Title Subdivision in November 2008. The Approval included condition 28, which required the neighbourhood / management statement for the Community Title Subdivision to specify that the keeping of cats and dogs is prohibited within any of the neighbourhood lots and the community lot.

28. Neighbourhood /Management Statements

Two copies of the neighbourhood / management statements are to be submitted with the application for a subdivision certificate. The statements must provide for the following:

a) Restriction on cats and dogs

A provision of the neighbourhood / management statement must specify that the keeping of cats and dogs is prohibited within any of the neighbourhood lots and the community lot.

Relevant Legislation

The *Community Land Development Act 2021* (**CS Development Act**) and *Community Land Management Act 2021* (**CS Management Act**) commenced 1 December 2021.

- 5 However, the effect of the savings and transitional provisions is that the existing management / neighbourhood statement is able to be considered in accordance with the 2021 Acts.

10 Section 128 of the CL Management Act sets out the by-laws that may be included in a management statement. Section 128(3) also provides that “*A management statement has no force or effect to the extent that it is inconsistent with this or any other Act or law.*”

15 If the neighbourhood association (or other manager) sought to amend the neighbourhood / management statement so that it did not comply with condition 28, that would be contrary to section 4.2 of the *Environmental Planning and Assessment Act 1979* in that the development would not be being carried out in accordance with the consent (section 4.2(1)(b)). Condition 28(a) says that a “provision of the neighbourhood / management statement must specify that the keeping of dogs and cats is prohibited.....” A neighbourhood / management statement absent that by-law would be in breach of condition 28(a).

20 In this instance, Council has only the ability to require compliance with consent condition 28(a) as drafted (being that a provision is provided in the management statement). Not the enforcement of the restriction required by the provision. This advice has been consistently given to the Woodlands Community.

2 Writes to the NSW Minister for the Environment, Penny Sharpe, requesting:

- 25 a) **Recognition of "exceptional circumstances" for communities situated within significant wildlife corridors and containing threatened species habitat;**
- b) **Support for maintaining existing environmental protection covenants that prohibit domestic animals in ecologically sensitive areas; and**
- 30 c) **Acknowledgment that such covenants provide vital wildlife sanctuaries and are essential for preserving threatened species and avoiding the biodiversity crisis that the Minister has acknowledged in Parliament.**

Staff can draft a letter on behalf of Council to the Minister.

BYRON SHIRE COUNCIL

NOTICES OF MOTION

9.1

Financial/Resource/Legal Implications:

As stated above. Financial or other legal implications unknown at this time.

Is the proposal consistent with any Delivery Program tasks?

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth	4.1: Manage responsible development through effective place and space planning	4.1.1: Development assessment - Manage development through a transparent and efficient assessment process	4.1.1.1	Assess and determine development assessments in accordance with the relevant legislation

Notice of Motion No. 9.2 Community Battery Project

File No: I2025/36

5

We move that Council:

1. Establishes a Community Battery Working Group to include representatives of key community groups (e.g. Zero Emissions Byron), Essential Energy, interested Councillors and Council staff, to initiate a Community Battery Project, and partner with this group for parts 2-4 of this motion;
2. Allocates funding of \$40,000 in the next Quarterly Budget Review to undertake a feasibility study into installing a community battery for Byron Shire, including options for equitable operating models, technologies and sites within the Shire;
3. Identifies and applies for appropriate grants to support the project; and
4. Plans for community engagement and education based on the results of the feasibility study.

Signed: Cr Elia Hauge and Cr Michelle Lowe

Councillor's supporting information:

BACKGROUND

Crs Hauge & Lowe express our deep gratitude to Zero Emissions Byron and the passionate community members who have initiated this project and contributed to this motion.

What is a community battery?

A community battery is an energy storage system designed to benefit all participating community members whether they be households and businesses with solar panels, renters or households yet to install panels. The system stores excess energy from rooftop solar panels during the day to provide low-cost energy during peak evening demand. This ensures clean, affordable energy is available even when the sun isn't shining.

How would Byron Shire benefit from a community battery?

A community battery can reduce the cost of electricity for electricity users, reduce emissions and support a transition to Net Zero, increase energy resilience and increase community control over energy production.

Cost Benefits

Depending on the operating model, the system would provide direct financial benefits to Council and/or to the community. A feasibility study is needed to determine the most appropriate model, but options such as virtual storage subscriptions can be offered to electricity users across the Shire, providing lower cost electricity. It's essential that the selected operating model addresses energy disadvantage for community members and households who can't otherwise participate in the renewable energy transition (e.g. low-income households, renters).

- 5
- 10 Large, grid-scale community batteries have an economy of scale because they are hundreds of times bigger than household batteries, connect to the grid in appropriate places, and give access to more competitive tariff arrangements as they operate as a large-market customer. By reducing peak demand and the need for expensive infrastructure upgrades (poles and wires), community batteries can lower electricity distribution costs for utilities, potentially leading to long-term cost savings for all electricity
- 15 users.

Emissions Reduction Benefits

Community batteries help maximise the use of renewable energy by storing excess solar power generated during the day for use later in the evening. This reduces reliance on coal and gas-fired power during peak periods. They allow households who cannot install solar panels to enjoy the benefits of renewable energy, which in turn reduces pressure on the electricity grid. They also absorb excess energy that might cause voltage spikes in the electricity grid and contribute to increased rooftop solar hosting capacity in the local network, supporting Council's transition to Net Zero emissions.

- 20

Energy Resilience and Independence Benefits

A community battery would support the transition to a more decentralised, democratised, sustainable and resilient energy system through participation in more informed local decisions. This is particularly important during climate disasters like floods and fires when regional/national transmission networks are interrupted. The batteries can provide backup power capacity and help regulate voltage while reducing strain on transmission infrastructure during extreme weather events.

- 25
- 30

An equitable, participatory operating model would increase local community connection to low-cost renewable electricity and counter potential disadvantages for certain socio-economic groups through a more democratic, community-controlled energy system.

How does a community battery align with Council's strategic plans?

5 A community battery aligns with Community Objectives 3 (Nurtured Environment) and 5 (Connected Infrastructure) in the 2032 Community Strategic Plan (and 2035 Draft Community Strategic Plan). Specifically, it supports strategies 3.4 "Support and empower the community to adapt to and mitigate the impact on climate change" and 5.3 "Ensure infrastructure meets future needs and invest in emerging technologies." It aligns with Delivery Program priorities 3.4.1 (Climate change mitigation), 3.4.2 (Climate change adaptation) and 3.4.4 (Net Zero Emissions). The project would also advance multiple actions in the 2024-25 Operational Plan including: 3.4.1.2 (Implementing Revolving Energy Fund projects), 3.4.1.3 (Responding to Climate Change Mitigation and Adaptation grant opportunities), and 3.4.4.3 (Reducing corporate carbon emissions through sustainable procurement).

15 The project is supported by Part 3.11 of Council's Climate Change Strategic Planning Policy (2014) which states that "council will pursue grant opportunities to further examine climate change issues as they affect planning and infrastructure provisions". It aligns with Part 3.5 of the 2025 Net Zero Emissions Strategy which considers council's role in reducing community emissions. Part 5.1 of Council's Climate Adaptation Plan also identifies "Resilient Energy Systems" as both an adaptation and mitigation initiative.

Staff comments

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

Sustainability Team staff have been assisting ZEB & Bayside Community Group (BCG) with early ideation and scoping for their community battery idea. Meetings were held at Council last year with the team who connected the ZEB and BCG with some example models/reports on community batteries.

25 In principle the proposal involves a community battery that would service Bayside Estate and would take advantage of excess solar generation during the day and improve energy security. The batteries store excess solar energy for families and households to use during peak times.

30 Based on staff experience a feasibility study is a necessary next step to develop a proof of concept to support a grant application to install, connect and operate a community battery.

There are various grant streams for community batteries including:

35 [Australian Renewable Energy Agency \(ARENA\)](#) which is providing lots of learning re: feasible models from a finance and governance perspective. To be eligible for ARENA funding, each community battery must be between 50 kW and 5 MW in size and connected to the distribution network.

There are also grants to install Community Batteries from Commonwealth Department of Business [Community Batteries for Household Solar Program - Delivery of Election Commitments Stream 1 | business.gov.au](#)

These grants are subject to criteria and grant program timing.

In addition to the above there are various trials of community batteries being run by different energy providers.

[Community battery trial - Ausgrid](#)

Participating customers can virtually store up to 10kWh of excess solar energy each day.

- 5 This excess energy is credited against their electricity use for that day.

The credit is calculated at the end of each day and paid to the participant each quarter via bank transfer. There are no costs to participate, and customers don't need to change their electricity retailer.

Essential Energy also have information and support for [Community Batteries](#)

- 10 They have two community battery trials underway:

- Australian Government's Communities Batteries for Household Solar Program
- Pole-mounted batteries in partnership with Origin Energy

- 15 With regards to a 'Community Battery Working Group', clarification on who is responsible for convening and overseeing the group is required. Particularly if the group is to receive direct funding from Council for a feasibility study.

One suggestion is that this proposed group become a Committee Working Group of the Climate Change and Resource Recovery Advisory Committee CCaRRAC .

The current Committee Terms of Reference below:

17. Committee Working Groups

Committee Working Groups may be established as sub-groups to consider special interest items. Committee working groups are to be established by Council at the recommendation of the Committee to address issues clearly identified by the Committee.

The Committee Working Group will meet as required to consider the specific matter/s.

Staff involvement in working groups is not required however could be provided at the discretion of the Director. Council will provide a suitable meeting space for the working group.

The Committee Working Group may prepare reports and recommendations to the committee for its consideration.

Committee Working Groups operate in accordance with the *Code of Conduct for Council Committee Members, Delegates of Council and Council Advisers*.

- 20 The membership of the CCaRRAC already includes Councillors, staff and ZEB. It would be easy enough then to selectively invite BCG as intended by the motion.

Financial/Resource/Legal Implications:

There is no budget allocation to support this motion.

A review of budgets and or available funding sources will be undertaken to see if the required \$40,000 can be identified as part of the 31 March 2025 Quarterly Budget Review. It needs to be recognised if it is Council's desire to proceed with this Notice of Motion as recommended, it may mean that another current priority or funded item will need to be either reduced in scope, removed, delayed, or deferred to another budget period.

The outcome of this review to identify the \$40,000 funding required will be included if it can be accommodated in the 31 March 2025 Quarterly Budget Review for consideration at the Finance Advisory Committee Meeting on 15 May 2025 and Ordinary Council Meeting on 22 May 2025.

Is the proposal consistent with any Delivery Program tasks?

CSP Objective	CSP Strategy	DP Action
3: Nurtured Environment	3.4: Support and empower the community to adapt to, and mitigate the impact on climate change	3.4.4: Net Zero - Work towards achieving Council's 100% net zero-emissions target

Notice of Motion No. 9.3 Request for Report on Reopening of Parking at South Beach Lane, Brunswick Heads and changes to No Parking Hours

5 **File No:** I2025/52

I move that Council requests a report from staff regarding:

- 10 1. The feasibility of reopening South Beach Lane, Brunswick Heads, for public parking and incorporating it into the existing paid parking scheme, including consideration of:
- 15 a) Installing 11pm-6am No Parking restrictions
b) Implementing time-limited parking options (2P or 4P) during operational hours
c) Required maintenance works and associated costs
d) Integration with existing paid parking infrastructure
- 20 2. The process and implications of delegating authority to the General Manager for:
a) Implementation of regulatory signage through the Local Traffic Committee (LTC)
b) Coordination of maintenance works
c) Alignment of operational hours with existing Brunswick Heads paid parking zones
- 25 3. The impacts of adjusting the current No Parking hours from 1am-6am to 11pm-6am across all relevant areas of Brunswick Heads or suggests other times that may better suit Brunswick and the particular circumstances
- 30 4. A proposed framework for reviewing the effectiveness of any implemented changes, including:
a) Revenue projections and infrastructure reinvestment opportunities
b) Traffic management and congestion impacts
c) Enforcement strategies and compliance monitoring
d) Safety and behavioural considerations
- 35 5. The report should include consultation with relevant stakeholders and assess any financial, social, or operational implications of the proposed changes.

Signed: Cr Sarah Ndiaye

Councillor's supporting information:

In May 2024, Council resolved (**RES 23-202**) to remove parking along South Beach Lane in Brunswick Heads to address illegal camping and anti-social behaviour. Since then, several significant changes have occurred:

- 5 1. Implementation of paid parking across Brunswick Heads (September 2024)
2. Introduction of 1am-6am No Parking restrictions (**RES 23-485**)
3. Planned reconstruction of South Beach Road (February-July 2025)

These changes have created new circumstances that warrant review of the current parking arrangements, including:

- 10 - Improved management of overnight parking through existing restrictions
- Increased pressure on parking resources due to upcoming road works
- Potential revenue opportunities for local infrastructure investment
- Current enforcement challenges with 1am-6am restrictions
- Reports of unsafe parking practices due to limited availability
- 15 The requested report should consider these factors and provide recommendations for addressing current parking challenges while ensuring community safety and practical enforcement capabilities.

20 In May 2024, a Mayoral Minute was passed (**RES 23-202**) to remove parking along South Beach Lane in Brunswick Heads due to concerns regarding illegal camping and anti-social behaviour in the area. The closure was intended to address these issues, and physical barricades were installed to prevent parking. At that time, the area was a known hotspot for illegal camping, which created safety and cleanliness concerns for residents and visitors alike.

25 However, since the implementation of paid parking across Brunswick Heads (effective 30 September 2024), the parking landscape has changed. The paid parking system now provides a clear framework for managing parking and enforcing rules, significantly reducing the previous problems associated with camping and other anti-social activities. As a result, the ongoing closure of South Beach Lane parking has become an unnecessary constraint.

30 Council is facing increased pressure on its parking resources, particularly with the planned reconstruction of South Beach Road, which will begin in February 2025 and last through July 2025. This major project will reduce available parking in the area, further exacerbating the already difficult parking situation during the busy summer months. There are numerous reports of drivers circling for long periods in search of parking, leading to dangerous situations, particularly in the vicinity of South Beach Lane, where the narrow roads and limited space make it difficult to navigate. These unsafe scenarios are a direct consequence of the lack of sufficient parking options.

40 The closure of South Beach Lane for parking also represents a loss of significant potential revenue. Council could be generating thousands of dollars weekly from this area, money that could be reinvested into Brunswick Heads facilities and infrastructure. Given the

changing circumstances, particularly with the introduction of paid parking and the improvements to overnight parking restrictions (1am-6am No Parking Zone), it is now a logical and viable option to reopen this area for public parking and incorporate it into the existing paid parking system.

- 5 The ongoing closure of this area not only removes valuable parking capacity but also adds pressure to already congested nearby streets. By reopening South Beach Lane for parking, we can provide much-needed alternative parking options for residents and visitors, alleviate traffic and parking congestion, and capture lost revenue for the benefit of the local community.

10 **Current Situation**

1. The South Beach Road reconstruction project (February-July 2025) will significantly reduce available parking in the area, compounding existing parking pressures.
2. The 1am-6am No Parking restrictions (**RES 23-485**) that apply throughout Brunswick Heads have addressed the prior concerns about illegal camping, making it safer to
15 reopen South Beach Lane as a parking area.
3. Closing South Beach Lane for parking has resulted in:
 - Lost Revenue: Thousands of dollars in potential revenue are not being collected, money that could be used to improve local infrastructure.
 - Increased Parking Pressures: Remaining parking areas are being overburdened,
20 creating congestion and unsafe conditions.
 - Unsafe Parking Scenarios: Without sufficient parking options, drivers are forced to park in less suitable areas, leading to dangerous situations, especially during peak times.

Proposed Change to Night-Time No Parking Hours

- 25 The current 1am-6am No Parking restrictions across Brunswick Heads (**RES 23-485**) are proving challenging for enforcement and compliance. By the time patrols are carried out at 1am, most local businesses are closed, and there is minimal vehicle movement, which makes it more difficult for officers to monitor and enforce these restrictions effectively.

30 In response to these challenges and in order to align better with local business hours and practical enforcement capabilities, it is proposed that the night-time No Parking restriction be adjusted to 11pm-6am across all areas currently subject to the 1am-6am No Parking restriction. This change would make enforcement more manageable and ensure that overnight parking restrictions are implemented earlier, when they are more relevant to the community's needs. Compliance staff and community may suggest other times.

- 35
- The South Beach Lane area can now be safely reopened for parking, following the success of the 1am-6am No Parking restrictions which have mitigated the previous issues with illegal camping and anti-social behaviour.
 - The implementation of paid parking in the area ensures that parking is better managed and regulated, providing a viable mechanism for monitoring and enforcement.

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- The revenue generated from reopening this area will directly contribute to the maintenance and improvement of local infrastructure in Brunswick Heads.
- Providing additional parking capacity during the South Beach Road reconstruction will help alleviate pressure on other nearby parking areas and ensure safe and convenient access for visitors and residents alike.
- Changing the No Parking hours to 11pm-6am will improve compliance, as this timeframe better aligns with local business operations and practical enforcement capabilities.

Reopening South Beach Lane for parking under the existing paid parking system presents a balanced approach to managing the increasing demand for parking in Brunswick Heads. It addresses safety concerns, provides a revenue stream for local infrastructure, and ensures that the community and visitors have access to convenient parking alternatives during the critical reconstruction period. Additionally, adjusting the night-time No Parking hours to 11pm-6am will enhance enforcement and better reflect local needs.

Previous Resolutions

RES 23-202: Resolution to remove parking from South Beach Lane due to concerns of illegal camping and anti-social behaviour.

RES 23-485: Resolution to implement a 1am-6am No Parking Zone along South Beach Lane and South Beach Road, Brunswick Heads.

Staff comments

by Samuel Frumpui, Manager Works:

Council Resolution **23-202** and the implementation of paid parking has resulted reduction in illegal camping in the immediate area of South Beach Road.

Staff acknowledge the impacts of the current South Beach Road reconstruction project and this will reduce the number of available car spaces in the South Beach Road precinct during the construction period from February to August 2025.

The consideration of the reopening of the South Beach Lane to parking has the potential to relieve some of the associated parking impacts of the works to residents and visitors to the area.

Staff will undertake the necessary investigative and analysis work to produce a report which responds to the proposed resolution in this NOM to also include: -

1. The feasibility of reopening and integration of South Beach Lane, Brunswick Heads into the existing Brunswick Heads paid parking scheme including limitation to the road reserve parking only (i.e. no encroachment into the adjacent Crown Reserve).

- a. Scoping and budgeting of works required to reopen South Beach Lane to Paid Parking.

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- b. Outline required South Beach Lane design/development and required approvals pathways
- c. Estimated delivery Program
- 2. Estimated revenue potential of the additional paid parking in the precinct.
- 5 3. Impact assessment of adjusting the current 'No Parking hours from 1am-6am' to 'No Parking hours 11pm-6am' across all relevant areas of Brunswick Heads and potential cost implications.
- 4. Items to include in an operational review of effectiveness of any implemented changes after 3 months of implementation.



Financial/Resource/Legal Implications:

- 5 The cost of preparation of the report will be funded by the Brunswick Heads Parking Scheme.

Is the proposal consistent with any Delivery Program tasks?

Yes

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CSP Objective	CSP Strategy	DP Action	Code	OP Activity
1: Effective Leadership	1.2: Engage and involve community in decision making	1.2.1: Community-led decision making - Engage with community to inform Council decision making	1.2.1.1	Provide opportunities for the community to have input, comment and feedback to Council on projects and matters of interest
5: Connected Infrastructure	5.2: Connect the Shire through integrated transport services	5.2.4: Parking - Manage parking through effective controls that support Movement and Place Plans and are coordinated with other initiatives such as park and ride	5.2.4.1	Undertake regular and frequent parking patrols to increase availability and turnover in the town and village centres and compliance with mobility parking
5: Connected Infrastructure	5.2: Connect the Shire through integrated transport services	5.2.4: Parking - Manage parking through effective controls that support Movement and Place Plans and are coordinated with other initiatives such as park and ride	5.2.4.3	Deliver South Beach Road carpark upgrade
5: Connected Infrastructure	5.2: Connect the Shire through integrated transport services	5.2.4: Parking - Manage parking through effective controls that support Movement and Place Plans and are coordinated with other initiatives such as park and ride	5.2.4.6	Implementation of Paid Parking Scheme in Brunswi Heads

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Report No. 13.1 PLANNING - 26.2024.6.1 - Planning Proposal for 40 The Tunnell Road, Billinudgel

5 **Directorate:** Sustainable Environment and Economy

Report Author: Cameron Thiessen, Land Use Planner

File No: I2024/1708

Summary:

10 This report presents a proponent-initiated Planning Proposal (Attachment 1) for Council's consideration. The objective of the proposal is to amend the Byron Local Environmental Plan (LEP) 2014 to rezone part of the subject site at 40 The Tunnell Road, Billinudgel, from RU2 Rural Landscape to E4 General Industrial.

15 The land is identified in the **North Coast Regional Plan 2041** as an "Investigation Area – employment land" and in the **Byron Shire Business and Industrial Lands Strategy (BILS)** as "Area 1: Billinudgel Industrial Estate minor expansion area." The proposal aligns with both these strategies.

20 In September 2020, Byron Shire Council adopted a **Local Strategic Planning Statement (LSPS)**, which was approved by the NSW Department of Planning, Housing and Infrastructure (DPHI). The LSPS aims to "*Secure a sustainable supply of suitable employment lands and ensuring growth in appropriate areas*". It references the BILS, which identifies this land for business and industrial use. This proposal supports these goals and increases the supply of employment land in Billinudgel.

25 The proposal is consistent with Council's 10-Year **Community Strategic Plan 2022 (CSP)**, and it has also been assessed against relevant State Environmental Planning Policies (SEPPs) and section 9.1 Directions. Any inconsistencies can be addressed with further information, if required.

Land constraints such as flooding, stormwater, ecological impacts, bushfire risks, and traffic concerns have been addressed to the satisfaction of internal staff.

30 It is recommended that Council proceeds with the planning proposal and submits it to the NSW DPHI for Gateway determination.







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:

- 5 **That Council:**
1. **Proceeds with the Planning Proposal (Attachment 1), that would amend Byron LEP 2014 to rezone the subject land from RU2 Rural Landscape to E4 General Industrial and apply other relevant planning controls;**
 - 10 2. **Forwards the Planning Proposal, as updated to include a Floor Space Ratio map for the proposed E4 General Industrial area, to the NSW Department of Planning Housing and Infrastructure for Gateway determination;**
 3. **Pending a positive Gateway determination and completion of adequate studies and further supporting information, undertakes public exhibition of the planning proposal in accordance with the determination requirements;**
 - 15 4. **Considers a Submissions Report post-exhibition that includes any recommended changes to the Planning Proposal for final adoption.**

Attachments:

- | | | | |
|----|--|--|---|
| 1 | 26.2024.6.1 DRAFT Planning Proposal - 40 The Tunnell Road, Billinudgel, E2025/8710 |  | |
| 20 | 2 | 26.2024.6.1 Urban Growth Area Variation Principles, E2024/134204 |  |
| | 3 | 26.2024.6.1 Hydraulic Assessment, E2025/7010 |  |
| | 4 | 26.2024.6.1 Ecological assessment, E2024/133676 |  |
| | 5 | 26.2024.6.1 Combined Bushfire, Stormwater, Traffic and Contamination Reports, E2025/8512 |  |
| 25 | 6 | Template - Form of Special Disclosure of Pecuniary Interest, E2012/2815 |  |

Background and Subject Land

Council received a planning proposal in August 2024 requesting an amendment to the Byron LEP 2014 to rezone land from RU2 Rural Landscape to E4 General Industrial. The land is described as part of Lot 15 DP1236885. The street address is 40 The Tunnell Road, Billinudgel, however, the access to the proposed rezoned area is off Lucky Lane. The Lucky Lane frontage is approximately 70 metres, and it is approximately 4,220m² in area (Figure 1). The overall lot is approximately 5.31ha with the balance will remain in its current RU2, C2 and C3 zones.

The site has been disturbed in the past by agriculture and currently contains a filled area that corresponds with the proposed rezoning area. The filled area was the subject of an approved Development Application in 2023 (10.2022.219.1) for a *“Truck Depot including Use of Existing Fill Material and 2.4m High Front Fence, and Construction of New Site Office Building”*. The filled area does not contain any native vegetation but the surrounding land to the west and south is mapped as HEV and the proposal includes a Bushfire APZ to the western and southern edges of the filled area, resulting in an approximate developable area of 2,574m².

The subject land is identified in the **North Coast Regional Plan 2041** as an "Investigation Area – employment land" and is also identified as "Area 1: Billinudgel Industrial Estate minor expansion area" in the **Byron Shire Business and Industrial Lands Strategy** (BILS) adopted by Council as a final in October 2020 and agreed by DPHI.



Figure 1 LEFT: Subject site (taken from councils Business and Industrial Lands Strategy), RIGHT: Current aerial view of the subject site showing development approved under DA 10.2022.219.1.

Planning Proposal

A Planning Proposal is a document that explains the intended effect and justification of a proposed amendment to an LEP.

- 5 The planning proposal lodged by the proponent requests an amendment to the Byron LEP 2014 to rezone the northeastern corner of the subject land from Zone RU2 Rural Landscape to Zone E4 General Industrial. It is proposed to retain the existing 9 metre height limit, however a Floor Space Ratio (FSR) of 0.75:1 and 1000m² Minimum Lot Size (MLS) will be applied which is consistent with the adjacent E4 zoned land.

- 10 The change to E4 General Industrial will permit a suite of employment related land uses the same as those permitted on the adjacent land in the Billinudgel industrial estate.

The following mapping illustrates the existing and proposed maps for Zoning and Minimum Lot Sizes for the subject site.

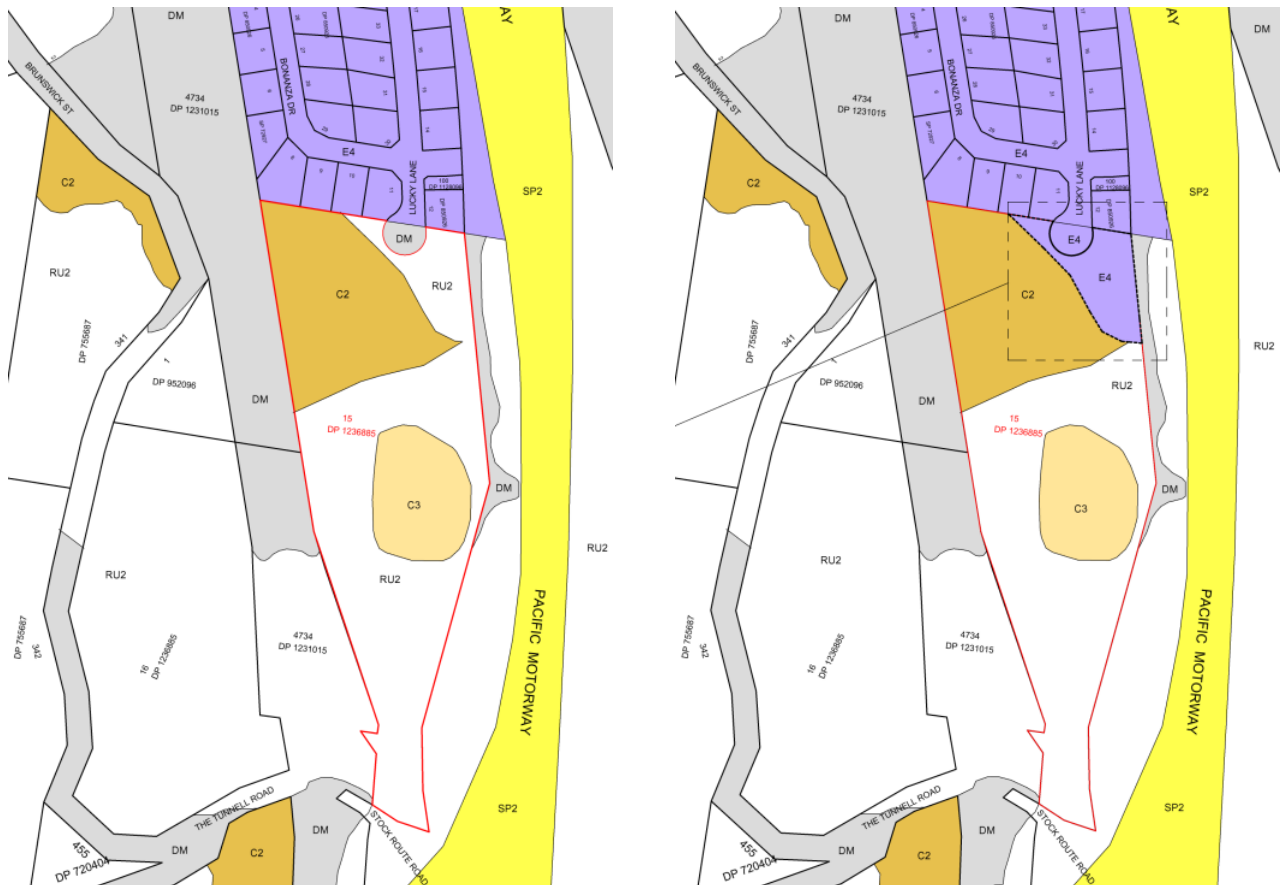


Figure 2 Existing Zoning (Left) and Proposed Zoning (Right) maps

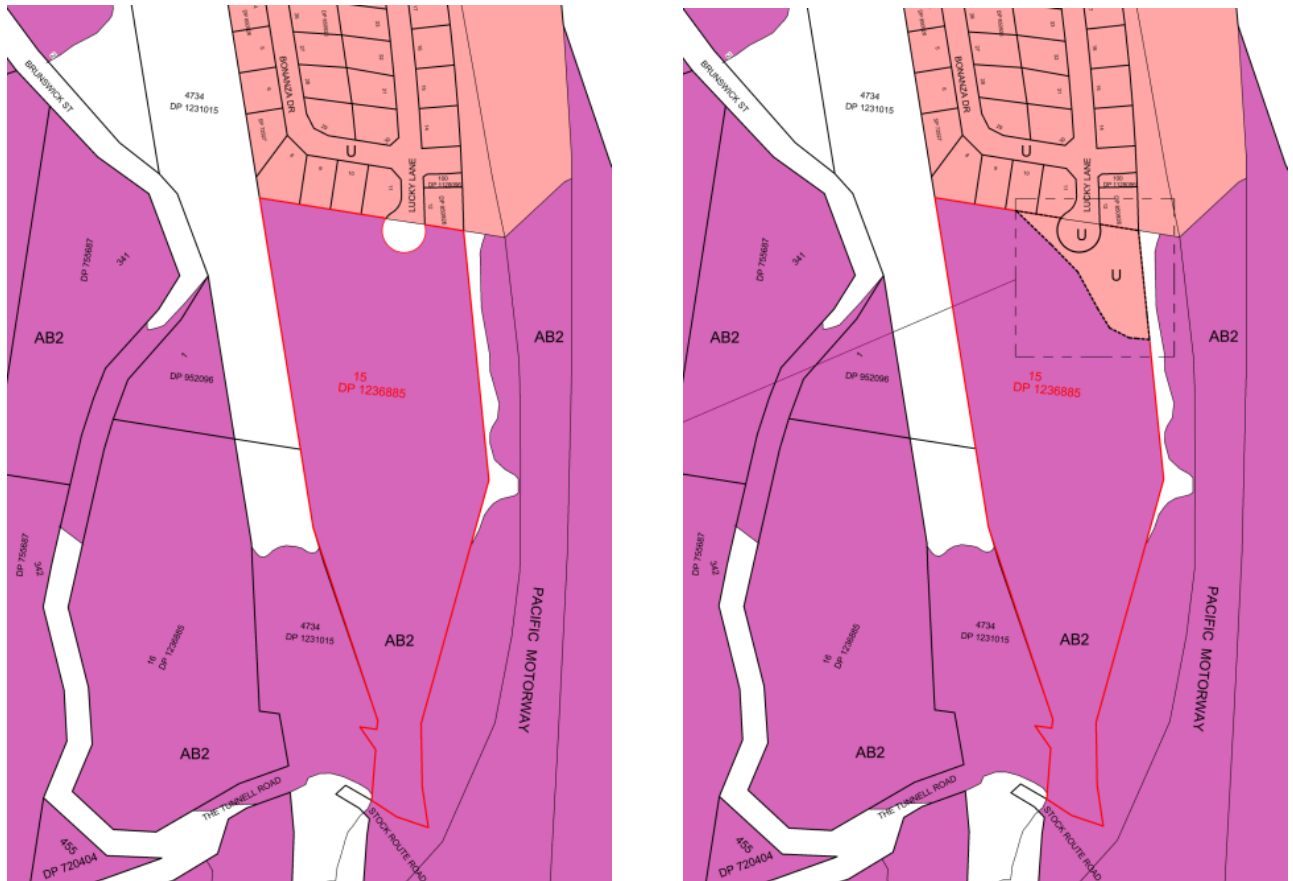


Figure 3 Existing (Left) and Proposed (Right) Lot Size maps

The planning proposal will need to be updated to include a Floor Space Ratio map (0.75:1) for the proposed E4 General Industrial Zone, pending a decision by Council to proceed.

5

Planning Framework

North Coast Regional Plan

The subject site is not located within the Urban Growth Area boundary for existing employment land under the **North Coast Regional Plan 2041 (NCRP)** but is located immediately adjacent to it and is mapped as “Investigation Area – employment land”. Being outside of an urban growth area makes it inconsistent with the NCRP, however, a planning proposal inconsistent with the mapping can be justified with an application consistent with the Urban Growth Area Variation Principles. This has been provided by the applicant (Attachment 2.).

The most relevant **NCRP** objective is *Objective 11: Support cities and centres and coordinate the supply of well-located employment land*. A relevant strategy of objective 11 is “11.4 New employment areas are in accordance with an employment land strategy endorsed by the Department of Planning and Environment”.

Rezoning the subject land will allow it to be used for a range of employment purposes that will support jobs growth in Billinudgel.

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On this basis, the planning proposal is justifiably inconsistent with the NCRP.

Byron Shire Business and Industrial Lands Strategy (BILS)

5 The subject land is identified as “Area 1: Billinudgel Industrial Estate minor expansion area” in the Byron Shire Business and Industrial Lands Strategy (BILS) adopted by Council as a final in October 2020 and agreed by DPHI (Figure 4). The extract below outlines the strengths, key issues, further investigations, and anticipated delivery time for the area.

Area 1: Billinudgel Industrial Estate minor expansion area

Area Number	1.
Description	Part of Lot 15 DP1236885
Image of investigation area	
Potential developable land¹.	2000m ²
Preferred role	Industrial urban service land (IN1)
Strengths/ advantages	<ul style="list-style-type: none"> • adjoins existing industrial estate • proximity to existing workforce • on existing public transport route • capacity to be connected to existing infrastructure and transport network.
Key issues and further investigations	<ul style="list-style-type: none"> • land containing HEV vegetation to be excluded and designated as Environmental Zone • flooding, stormwater drainage and land mapped as high hazard flood prone to be excluded • connection to existing infrastructure • possible extension of cul-de-sac head • investigations to ensure that any proposed development is consistent with relevant State and regional planning provisions this may include the management of areas of high environmental value, flooding and heritage/cultural significance.
Anticipated delivery timeframe	Short term

¹to ensure appropriately located and timely delivery of industrial land in the future, it is necessary to identify suitable investigation areas. The use of term 'developable land' in the tables is a composite of possible industrial site/building land as well as land that may be required for roads and other infrastructure services, landscaped buffers, open space and recreational needs. It also includes potentially additional unsuitable constrained lands yet to be identified through more detailed site investigations.

Figure 4 Area 1 extract from BILS 2020.

Local Strategic Planning Statement

- Byron Council adopted a Local Strategic Planning Statement in September 2020, and it was subsequently agreed to by DPHI. The LSPS aims to “*Secure a sustainable supply of suitable employment lands and ensuring growth in appropriate areas*” (page 45). It
- 5 references the BILS document including a map identifying the subject land as a business and industrial land investigation area.

The relevant planning priority in the LSPS (page 47) is:

“4. Deliver an adequate supply of employment land through local growth management strategies and local environmental plans to support jobs growth.”

- 10 This planning proposal will be adding to the supply of employment land for Billinudgel and is consistent with the adopted LSPS.

Site Specific Issues

Flooding

- 15 The subject land sits within the Marshalls Creek Flood model catchment. The land and surrounding properties are flood prone in a range of events, as is most of the Billinudgel urban area. However, the proposed E4 General Industrial area has previously been filled (under DA10.2022.219.1) to be used for a truck depot.

- 20 Flooding can be further assessed at the DA stage, but the modelling submitted and reviewed by council staff shows that the site as filled will not have significant adverse impacts on the rest of the floodplain and is suitable for rezoning from RU2 to E4.

Bushfire

- 25 The subject land is mapped as Bushfire Prone, Vegetation Category 1. A Bushfire Report submitted with the planning proposal concludes that the suggested protection measures detailed in the report, including an Asset Protection Zone as shown in Fig. 5, are deemed adequate to support the proposed rezoning for RU2 to E4.



Figure 5 Map showing the proposed APZ from the Bushfire Report (shaded light green)

Traffic and roads

5 The Lucky Lane site lies to the west of the Ocean Shores residential area (separated by the Pacific Motorway) and is walking and cycling distance from this residential area via a Pedestrian/Cycle bridge over the Pacific Motorway. Public transport runs near the site along Brunswick Valley Way.

10 The subject land has good access to the Pacific Motorway via Bonanza Drive and Wilfred Street which will allow freight transport to access the zoned land without passing through any residential areas.

The submitted Traffic Impact Statement suggests that the minor 'infill' nature of this increase in employment lands will not cause a significant impact upon the local road network and this is supported by council staff.

Water and sewerage

15 Water and sewer are available in Lucky Lane and can be extended to the subject land. The site is already serviced by water infrastructure. The existing sewerage system has sufficient capacity without upgrades. The previous filling of the site to achieve flood immunity will allow for gravity feed of wastewater from the future development to the Lucky Lane drainage stormwater system.

Land contamination

The applicant has supplied a preliminary site investigation of the land which has been reviewed by council staff and accepted with no further requirements and deemed suitable for re-zoning.

5 Aboriginal cultural heritage

Due to the already developed and modified condition of the proposed E4 area, engagement with the Tweed Byron LALC and the Bundjalung of Byron Bay Aboriginal Corporation (BOBBAC) will be undertaken as part of the post Gateway exhibition of this planning proposal.

10 Ecology

The applicant has provided an Ecological Assessment which has been reviewed by Council's ecologist and accepted with no further requirements.

Next steps

There are three options for Council to consider:

- 15 1. Proceed with the planning proposal at Attachment 1 to this report which will permit a suite of employment related use on the subject land with Council consent. This option is subject to any requirements imposed by DPHI in its Gateway determination; or
2. Proceed with the planning proposal in a modified form other than the version attached to this report; or
- 20 3. Not proceed with the planning proposal and advise the applicant accordingly.

There is sufficient information to support the planning proposal in Attachment 1 to this report and proceed to a Gateway submission. No additional studies are required prior to public exhibition and agency consultation.

- 25 Should Council wish to proceed with the planning proposal, it will be necessary to include a Floor Space Ratio map (0.75:1) for the proposed E4 General Industrial Zone.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
Community Objective 4: We manage growth and change responsibly	4.1: Support the visions and aspirations of local communities through place-based planning and management	4.1.3: Manage development through a transparent and efficient assessment process	4.1.3.11	Prepare and assess Planning Proposals and Development Control Plans, and amend Local Environmental Plan maps

Recent Resolutions

N/A

5 Legal/Statutory/Policy Considerations

S. 9.1 Directions and SEPPs

The planning proposal is justifiably inconsistent with some Section 9.1 directions because it:

- 10 • will affect land within an existing rural zone
- will rezone flood prone land from a rural to an urban zone
- has not yet been referred to RFS for bushfire consideration
- restricts the potential development of resources on the site (e.g. mining and extractive industries)
- 15 • is not in the existing urban growth area as mapped in the North Coast Regional Plan (NCRP).

These justifiable inconsistencies are all discussed in more detail in the planning proposal (Attachment 1).

Financial Considerations

- 20 If Council chooses to proceed with the planning proposal, it will be at the proponent's expense as it is a proponent-initiated planning proposal requiring full cost recovery of the remaining stages. If the applicant chooses not to pay, then the planning proposal will not proceed. If Council chooses not to proceed then the matter does not incur any additional costs.

Consultation and Engagement

Exhibition of the planning proposal will be in accordance with Byron Community Participation Plan and any conditions as a result of a Gateway Determination by NSW DPHI.

5

Report No. 13.2 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: I2024/1717

Summary:

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

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

20 **RECOMMENDATION:**

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

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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.

5

Planning Authority	Application Description and link	Status
Northern Regional Planning Panel	<p>PPSNTH-285</p> <p>Community Title Subdivision</p> <p>53 McAuleys Lane Myocum 2481</p> <p>Community Title Subdivision Planning Portal - Department of Planning and Environment (nsw.gov.au)</p> <p>Link to DA tracker for DA 2023.454.1 information and documents here:</p> <p>Byron Shire Council - Application Tracker (nsw.gov.au)</p>	<p>Submitted 12/12/2023</p> <p>Record of Briefing - PPSNTH-285.pdf</p> <p>Determination meeting date to be confirmed</p>
Northern Regional Planning Panel	<p>PPSNTH-405</p> <p>Review of Determination (Refusal)</p> <p>- Temporary extension to existing coastal protection works</p> <p>144 Bayshore Drive Byron Bay 2481</p> <p>Review of Determination (Refusal) - Temporary extension to existing coastal protection works Planning Portal - Department of Planning and Environment</p> <p>Link to DA tracker for DA 2023.287.2 information and documents here:</p> <p>Byron Shire Council - Application Tracker</p>	<p>Submitted 13/01/25</p> <p>Review of determination (refusal) comprising the temporary extension of an existing geobag wall on private property.</p> <p>The Development Application was refused on 26 September, 2024 by the Northern Regional Planning Panel.</p> <p>Under assessment.</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

5 Legal/Statutory/Policy Considerations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appeals from Planning Panel determinations

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

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

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

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

25 **Financial Considerations**

None relevant to this report.

Consultation and Engagement

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

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

Report No. 13.3 PLANNING - DA 10.2024.425.1 - Subdivision of Road Reservation to Rectify Building Encroachment – 144 Jonson Street, Byron Bay

5 **Directorate:** Sustainable Environment and Economy

Report Author: Nick Horan, Planner

File No: I2024/1722

Proposal:

DA No:	10.2024.425.1
Planning Portal ref	PAN-481702
Proposal description:	<p>Staged Development</p> <p>Stage 1: Subdivision for Road Closure,</p> <p>Stage 2: Consolidation of Closed Road Allotment with Lot 6 DP 258071</p>
Property description:	Part of Browning Street Road Reserve.
	144 Jonson Street, Byron Bay
Parcel No/s:	239675
Applicant:	Mr P J Wallace
Owner:	Bay Farm Investments Pty Ltd / Byron Shire Council
Zoning:	E1 Local Centre
Date received:	21 November 2024
Concurrence required	Yes – CNR-76198. S100B Rural Fires Act 1997.
Public notification or exhibition:	<ul style="list-style-type: none"> – Level 2 advertising under Council’s Community Participation Plan. – Exhibition period: 4 December 2024 to 17 December 2024. – Submissions received: Nil. – Submissions acknowledged: <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A
Variation request to Development	Clause 4.6

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Standards under an EPI (e.g. clause 4.6)	Name of clause – Minimum Subdivision Lot Size Clause number – 4.1 Percentage value of variation sought – 78% Brief justification for the variation – Rectify Building Encroachment.
Delegation to determine	Council

Summary:

The Development Application (DA) proposes subdividing a road reservation to fix an historical building encroachment. The site was part of the old Norco Butter Factory Complex and later included in the Byron Bay Bypass extension in 2021. A recent survey in 2024 found that the building at 144 Jonson Street extends into the Browning Street Road Reserve. This application seeks approval to correct this issue.

A Clause 4.6 variation request was submitted to vary the minimum lot size of 200m² to create the: 43.76m² land parcel. Compliance with the development standard is unnecessary and unreasonable in this instance as the undersized property will be immediately consolidated with the remainder of 144 Jonson Street, therefore bringing it into compliance. As the building is heritage listed under Byron LEP 2014, demolition of the encroachment is not a desirable outcome.

The proposal raises no issues, and the application is recommended for approval subject to conditions of consent (Attachment 1).



NOTE TO COUNCILLORS:

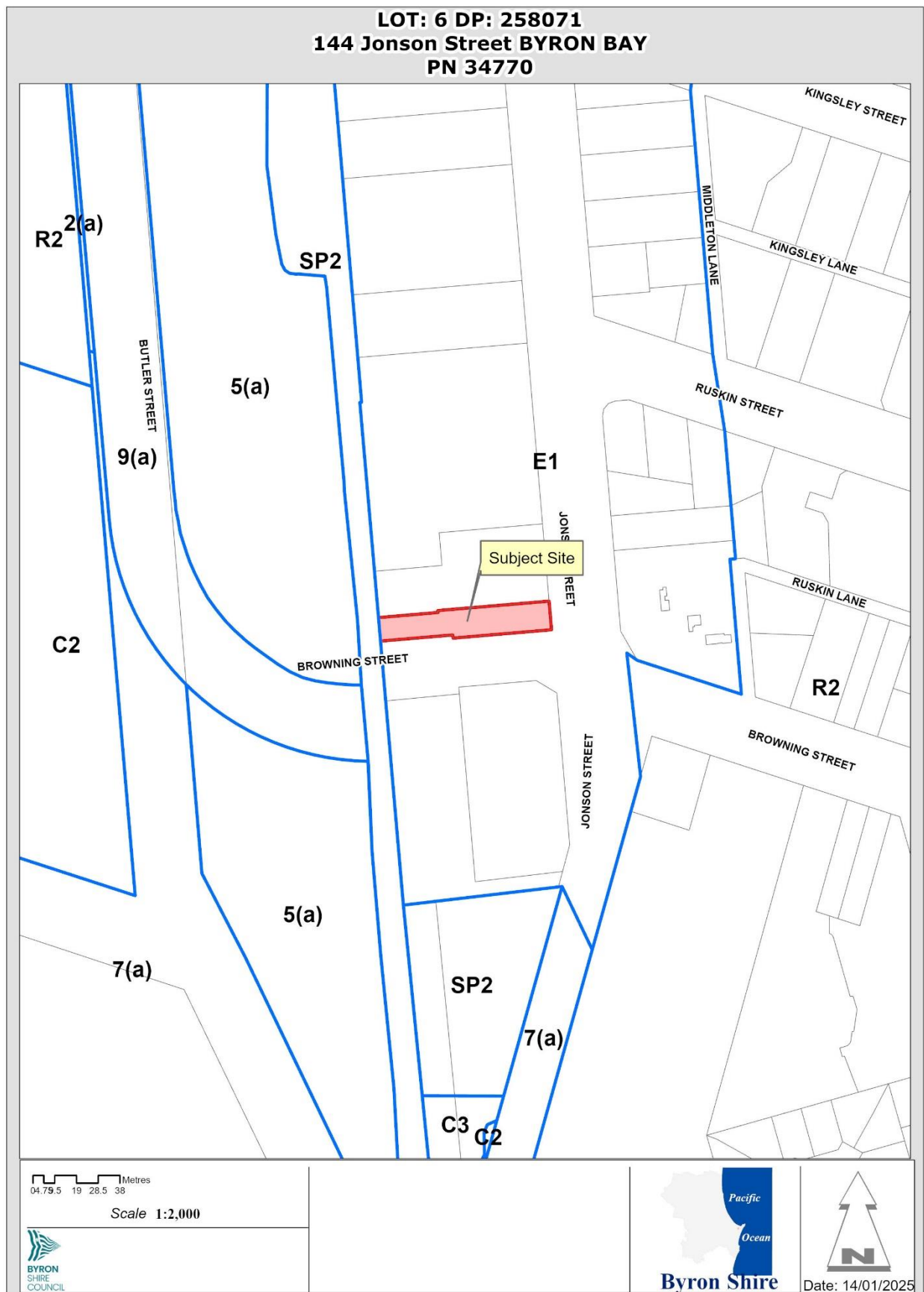
In accordance with the provisions of S375A of the Local Government Act 1993, a division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes 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. 10.2024.425.1 for Staged Development - Subdivision of Road Reservation to Rectify Building Encroachment, be granted consent subject to the conditions contained in attachment 1 (#E2025/4498).

Attachments:

- 1 DA10.2024.425.1 Conditions of Consent, E2025/4498 
- 5 2 DA10.2024.425 Subdivision Plans, E2025/4504 



Assessment:

1. INTRODUCTION

History/Background

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

APPLICATIONS & REGISTERS

<u>Application / Register No</u>	<u>Description</u>	<u>Status</u>	<u>Date</u>
<u>10.2018.248.1</u> Development Application	Change of Use to Recreation Facility (Indoor)	APPR	29/06/2018
<u>10.2021.441.1</u> Development Application	Use of a Large Two (2) Storey Mural and Illuminated Signage on a	APPR	14/09/2021

5

10

Historically it is understood the building was constructed in the inter war years (WW1-WW2) and was used for processing dairy and small goods products by Norco. The site itself dates back to the 1894 when a building and vats were installed on the land for storing and cooling cream. Norco operated a buttery on the site up until 1972 with the building being used for a range of other commercial uses. (for further details See Community Based Heritage Study Volume 3 Listings [Community-Based Heritage Study - Byron Shire Council](#))

Description of the proposed development

15

This application seeks approval for Staged Development - Stage 1: Subdivision for Road Closure, Stage 2: Consolidation of Closed Road Allotment with Lot 6 DP 258071.

The subject site was historically part of Lot 7 in DP 258071 which was one of several lots forming part of the old Norco Butter Factory Complex at the southern end of Jonson Street. More recently, the land formed part of the Browning Street Road reservation and was incorporated into the Byron Bay Bypass extension in 2021.

20

It has recently come to light that the building located on the adjacent property at 144 Jonson Street encroaches into the Browning Street Road Reserve. The encroachment appears to be a historical anomaly that was unknown until recent survey work carried out in 2024.

25

A clause 4.6 variation request was submitted to vary the minimum lot size of 200m² to create the: 43.76m² land parcel. Compliance with the development standard is unnecessary and unreasonable in this instance as the undersized property will be immediately consolidated with the remainder of 144 Jonson Street.



Figure 1: Aerial image of Browning Street extension circa February 2012. The site is highlighted red.



Figure 2: Aerial image of Byron Bay Bypass circa October 2024. The subject land is highlighted in red.

Description of the site

5 The development site known as 144 Jonson Street, Byron Bay and comprised of Lot 6 on DP258071 which is located in the Local Centre (E1) zone of the Byron LEP 2014. The property is currently comprised of one allotment (referred above) which is improved by a building used for commercial purposes. The land is bushfire prone.

A site inspection was carried out on 13 January 2025



View of site from Browning Street Footpath, looking east towards Jonson Street.



View of site from Browning Street Footpath, looking west towards the Butler Street Bypass.



View of site from Browning Street Footpath.

BYRON SHIRE COUNCIL

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

13.3

Land is legally described	Parcel No: 34770 Lot 6 DP258071	
Property address	144 Jonson Street, BYRON BAY	
Land is zoned:	E1 Local Centre	
Land area is:	874.9788m ²	
Property is constrained by:	Bush Fire Prone Land	
	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 of the subject site (E1)

2. SUMMARY OF REFERRALS

Referral	Issue
Development Engineer	No objections subject to conditions.
Rural Fire Service (100B/4.14/4.14)	No objections. No conditions

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

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

State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><i>Resilience and Hazards SEPP 2021</i></p> <p><i>Chapter 2 Coastal management</i></p> <p>The proposed subdivision is within the coastal wetland proximity area. The proposed development will not alter existing surface or ground water regimes and will have negligible impact on the coastal environment.</p> <p><i>Chapter 4 Remediation of land</i></p> <p>The site is not identified on the Council or EPA contaminated land registers and is considered suitable for ongoing use in its current state without requiring remediation.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><u>Transport and Infrastructure SEPP 2021</u></p> <p>Section 2.119 Development with frontage to classified road.</p> <p>Vehicular access to the subject site will be obtained off the existing driveway facing Jonson Street.</p> <p>The safety and efficiency of the classified road will not be adversely affected by the development as a result of the design of the vehicular access to the land, or the emission of smoke or dust from the development, or the</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Considerations	Satisfactory	Unsatisfactory
nature or frequency of vehicles using the classified road to gain access to the land. The development is not of a type that is sensitive to traffic noise or emissions.		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

- (a) The proposed development is defined in the LEP 2014 Dictionary as subdivision;
- 5 (b) The land is within the E1 Town Centre according to the Land Zoning Map.
- (c) The proposed development is permitted with consent; and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
<ul style="list-style-type: none"> • To provide a range of retail, business and community uses that serve the needs of people who live in, work in, or visit the area. • To encourage investment in local commercial development that generates employment opportunities and economic growth. • To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area. • To encourage business, retail, community, and other non-residential land uses on the ground floor of buildings. • To maximise public transport patronage and encourage walking and cycling. 	The proposed closure and consolidation of the road area with the commercial lot aligns well with the objectives of the zone.

Clause 4.1 – Minimum subdivision lot size

- 10 This clause prescribes a minimum lot size of 200m² for this allotment in accordance with the Minimum Lot size Map.

As the proposed allotment is 43.76m², the application is supported by a 4.6 variation request. Variation to the Clause 4.1 development standard is justified in this instance as discussed below.

Clause 4.6 Exceptions to Development Standards

Applicant has sought a variation to the minimum lot size of 200m² by proposing an allotment of 43.76m².

- 5 It is reasonable and necessary to create the undersized lot as it will inevitably be consolidated into the adjoining premises and the resulting lot will be greater than 200m².

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:

- 10 Creation of the undersized allotment is only an interim step in the process of the allotment being acquired by the adjacent landowner and consolidated with their property.

To acquire this portion of road reserve, the undersized allotment must be created to be amalgamated.

The outcome of the development overall will rationalise the existing property by amalgamating the numerous allotments into a single lot on the title.

- 15 The development aligns with the objectives of the Town Centre (E1) zone.

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

The concurrence of the Planning Secretary is not required.

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

Clause 5.10 Heritage Conservation

The building is heritage listed under Byron LEP 2014. As such demolition of the encroachment is not a desirable outcome. It is considered the proposal is consistent with the objectives of this clause.

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

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

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

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

4.5 Environmental Planning and Assessment Regs 2021

Proposal raises no issues under the regulations.

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

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

4.7 The suitability of the site for the development

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

10 4.8 Submissions made in accordance with this Act or the regulations.

No submissions were received.

4.9 Public interest

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

15 4. DEVELOPER CONTRIBUTIONS

The proposal generates no nexus to developer contributions.

5. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

6. CONCLUSION

- 20 The proposed Subdivision of Road Reservation to Rectify Building Encroachment, is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no issues in terms of environmental impacts whilst the subdivision as proposed does not offend or compromise the public interest.

- 25 The application is recommended for approval subject to conditions of consent (Attachment 1).

Report No. 13.4 PLANNING - 10.2024.24.1 Restaurant, Artisan Food and Drink Industry, Farm Building, Removal of Two Trees and Associated Works at 103 Yagers Lane Skinners Shoot

5

Directorate: Sustainable Environment and Economy
Report Author: Patricia Docherty, Team Leader Planning Services - Commercial Industrial & Tourism
File No: I2025/1

10 **Proposal:**

DA No: 10.2024.24.1
Planning Portal ref PAN-410318
Proposal description: Restaurant, Artisan Food and Drink Industry, Farm Building, Tree Removal of 1 x Umbrella Cheese Tree and 1 x Guioa and Associated Works
Property description: LOT: 7 DP: 8385, LOT: 8 DP: 8385
 103 Yagers Lane SKINNERS SHOOT
Parcel No/s: 177620, 177630
Applicant: NEWTON DENNY CHAPELLE PTY LTD
Owner: B Schreiber
Zoning: RU2 Rural Landscape
Date received: 21 March 2024
Type of development Integrated Development
 Reason: controlled activity approval on waterfront land (within 40 metres of a watercourse) under Section 91 of the Water Management Act 2000
Concurrence required **Yes** - Referrals on NSW Planning Portal CNR No. 67157: **Essential Energy** for works in proximity to electricity infrastructure under Section 2.48 of the Transport and Infrastructure State Environmental Planning Policy (SEPP) 2021; and
Department of Planning and Environment - Water for General Terms of Approval under Section 91 the Water Management Act 2000 for controlled activity on waterfront land within 40 metres of

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13.4

a watercourse (being a tributary of Belongil Creek) These are included in their entirety in a schedule of recommended conditions of consent attached to this development assessment report.

- Public notification or exhibition:**
- Community significant development and Level 3 advertising under Council's Community Participation Plan.
 - Council Exhibition period: 3-30 April 2024 (28 days)
 - Submissions received: Total 141 (64 support) (77 oppose)
 - Submissions acknowledged: ☒ Yes

Planning Review Committee Not applicable

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

Estimated cost \$22,227,459

Delegation to determine Council
Reason: Cost of development in excess of \$10 Million is not within current staff delegations

- Issues**
- Scale of development
 - Hours of operation,
 - Noise
 - Traffic and road safety

Summary:

5 This Development Application (DA) proposes a restaurant, artisan food and drink industry, farm building, tree removal (1 x Umbrella Cheese Tree and 1 x Guioa) and associated works on a 13.19-hectare property, zoned RU2 Rural Landscape in Skinners Shoot. The proposed uses are permissible in the RU2 Rural Landscape Zone.

10 Restaurants in rural zones are community significant development and require pre-lodgement consultation under Byron Shire Council Community Participation Plan. The site is in the locality of Skinners Shoot and is accessible by public road from Byron Bay Town Centre via Skinners Shoot Road and Yagers Lane. Both roads are no through roads which provide local access primarily to residents and other small scale tourist businesses.

15 The applicant specifically requests approval of Council to construct a new building within part of the footprint of a former piggery for the purpose of a restaurant and to construct new structures to be utilised as an artisan food and drink industry and farm building. The proposal includes building works, carparking, earthworks & retaining walls, landscaping, horticulture, one business identification sign, art installations, solar panels and vegetation management works. The full set of proposed plans and sustainability commitments are in Attachment 1 of this report.

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A detailed draft operational management plan is in Attachment 2 of this report and provides further information on how the premises will operate in accordance with the Byron LEP and DCP 2014.

5 The restaurant proposes to seat 45 people in the dining area, with an additional 15 patrons waiting or lingering before and after meals. At no time will there be more than 60 patrons in the restaurant area. The proposed maximum capacity of the artisan food and drink industry is 15 people. The restaurant proposal is similar to other rural restaurants approved in the Byron Shire hinterland with selective hours, patrons and private transfers, including Frida's Field (60 seat rural restaurant on a 48.16-hectare lot, approved 2018) and 10 The Hut (50 seat restaurant on 8,581m² lot approved 2006).

15 The proposed opening hours for dining are Wednesday to Sunday from 12 noon for lunch, closing at 11pm, with an earlier 10pm close on Sundays. The artisan food and drink industry proposes to open 7 days 10am to 3pm for 'meet and greet the chef' and to serve simple café meals ancillary to the artisan food and drink industry use. The manager lives on the property. It is considered the proposal satisfies the provisions for small scale 20 tourism development including restaurants in rural areas under Clause 6.8 Byron LEP 2014 and Chapter D4 of Byron DCP 2014.

25 Information relating to a traffic safety of Yagers Lane and Skinners Shoot Road was also addressed and considered by Council development engineer following a detailed joint site inspection of the current road conditions with Council and TTM Group (Applicant's Consultant Engineers). Upon consideration of these findings, there are sufficient planning grounds to support the development subject to conditions of consent for the reasons outlined in this report. This includes requirements for road upgrades to Yagers Lane and Skinners Shoot Road intersection that are required as a direct result of the proposed 30 development.

35 It is noted that the remainder of Skinners Shoot Road back to Byron Bay was generally satisfactory but the carriageway within the road reserve has been somewhat narrowed due to the encroachment of tree foliage, branches, vegetation and overgrown shrubs encroaching into the road carriageway. This has been referred for attention of Council's Infrastructure Services Works for further investigation and action as appropriate including 40 any signage that may need to be replaced. Other upgrades will be considered in the context of shire wide priorities and asset management plans to be included in future operational budgets. It is considered these works are beyond the responsibility of the developer and there is no clear nexus to impose conditions to that effect.

35 The application is for integrated development for works on waterfront land, being a tributary of Belongil Creek. General terms of approval (GTA) from the NSW Department of Planning and Environment – Water for controlled activity works on waterfront land have been issued under Section 91 the Water Management Act 2000.

40 A wastewater management plan demonstrates the site is capable of providing suitable on-site sewage management. The applicant has not sought any approvals under s68 of the Local Government Act 1993 or Section 138 of the Roads Act 1993. Such approval may be sought separately and independently to the development application.

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13.4

Aboriginal Heritage and monitoring arrangements have been agreed in response to a request from Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) - BoBBAC. Following a request for additional information from Arakwal, a site meeting took place on Wednesday, July 31, 2024, between the proponents and representatives of Arakwal. In order to further develop matters discussed at the site meeting and in subsequent correspondence with BoBBAC, conditions of consent are recommended to give effect to and understanding between the parties that will require obligations to be met and opportunities to be explored for meaningful and ongoing engagement with the site. Conditions agreed relate to all stages before, during and after construction.

- 5 The site comprises disturbed vegetation of cleared grassland, native and exotic plantings and landscaped areas, with a high frequency of exotic species across the site. A biodiversity assessment confirms that the proposal does not trigger the Biodiversity Offsets Scheme (BOS) with regard to impacting Biodiversity Value land or exceeding native vegetation clearing thresholds, therefore a Biodiversity Development Assessment Report (BDAR) is not required. A test of significance completed under s7.3 of the Biodiversity Conservation Act 2016 determined that the proposal would be unlikely to result in significant biodiversity impacts and a BDAR is not required. Native and exotic plantings areas are not consistent with any Plant Community Type or Threatened Ecological Communities. Three threatened flora species were recorded beneath a mature Moreton Bay Fig and will be retained. No Koala feed trees, or mapped areas of potential Koala habitat occur within the works footprint; requirements of the Byron Coast Comprehensive Koala Plan of Management do not apply. No hollow-bearing trees occur within the works footprint.

- 25 The applicant requests that a condition of development consent requiring offset plantings to be provided on site at the ratio of 1:20. This is an acceptable response to the removal of two planted native trees. The conditions also require a range of mitigation measures to minimise biodiversity impacts including installation of signage at the site exit for patrons attention upon leaving the site to be aware of Koalas – suggested wording: “Koalas use this area – please drive carefully” (or words of similar intention).

- 30 An amended acoustic report was submitted during assessment in responded to a request for additional information. It is demonstrated that the development can operate and comply with the relevant noise criteria and recommends that a detailed assessment of mechanical plant be conducted during the design phase; lists operational controls to be undertaken by the operator; and Waste collection and deliveries be undertaken during daytime hours amongst other operational requirements that are reflected in the recommended conditions of consent.

The application appropriately addresses the relevant constraints applying to the site and the proposal provides for small scale tourism that is consistent with the Byron Shire Council Draft Business, Industry and Visitor Economy Strategy Key themes:

- 40
 - Foster Business Engagement
 - Celebrate Our Business and Brand Identity
 - Plan for a Sustainable Economy

The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no

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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.

- 5 The proposal for a restaurant, artisan food and drink industry and farm shed is recommended for approval subject to the conditions listed in Attachment 3 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.

15 RECOMMENDATION:

- 20 That pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2024.24.1 for Restaurant, Artisan Food and Drink Industry, Farm Building, Tree Removal 1 x Umbrella Cheese Tree and 1 x Guioa and Associated Works, be granted consent subject to the conditions of approval attached to this report (Doc # E2025/6619).

Attachments:

- 25 1 10.2024.24.1 - Plans and Sustainability Design Details, E2025/376 
2 10.2024.24.1 - Draft Operations Management Plan, E2024/93408 
3 10.2024.24.1 - Recommended Conditions of Consent, E2025/6619 
4 10.2024.24.1 - Redacted submissions, E2025/7716 

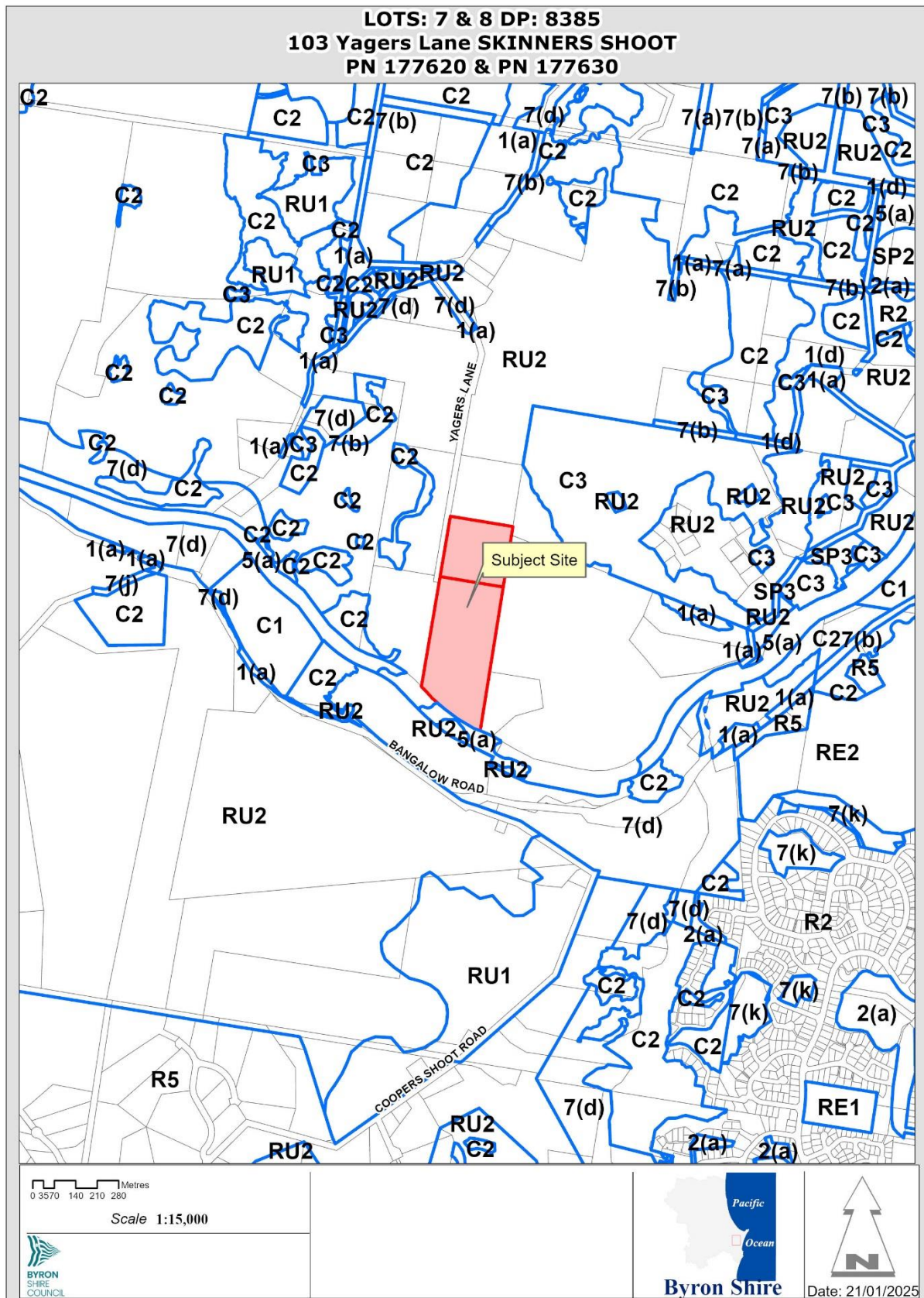


Figure 1: Locality Plan

Report

Assessment:

1. INTRODUCTION

5 1.1 History/Background

16.2023.2149.1 Complying Development Certificate for Demolition was approved 16.05/2023.

10 10.2024.284.1 Development Application for Dual Occupancy (detached) was granted deferred commencement consent 23/12/2024. This consent requires a Building Information Certificate (BIC) to be issued for the use of the existing dual occupancy dwellings on the land prior to the consent being operational. The applications for a BIC and On-Site Sewage Management have been received and are being assessed by Council.

1.2 Description of the proposed development

15 This application seeks approval for a Restaurant, Artisan Food and Drink Industry, Farm Building, Tree Removal 1 x Umbrella Cheese Tree and 1 x Guioa and Associated Works at a former piggery site at the southeast end of Yagers Lane in Skinners Shoot. (Detailed plans can be found in Attachment 1)



Figure 2: Site Plan

20 Detailed summary of the proposal as follows:

Restaurant involving reuse of part of a former piggery building and the construction of a new building incorporating the existing concrete slab and retaining elements of the former piggery (Total Gross Floor Area (GFA) of 900m²):

- 60 guest (45 seated plus 15 waiting) by appointment only.
- 20 staff
- Roof will be fitted with a 99.54 kW solar system involving 237 roof mounted solar panels and battery storage.

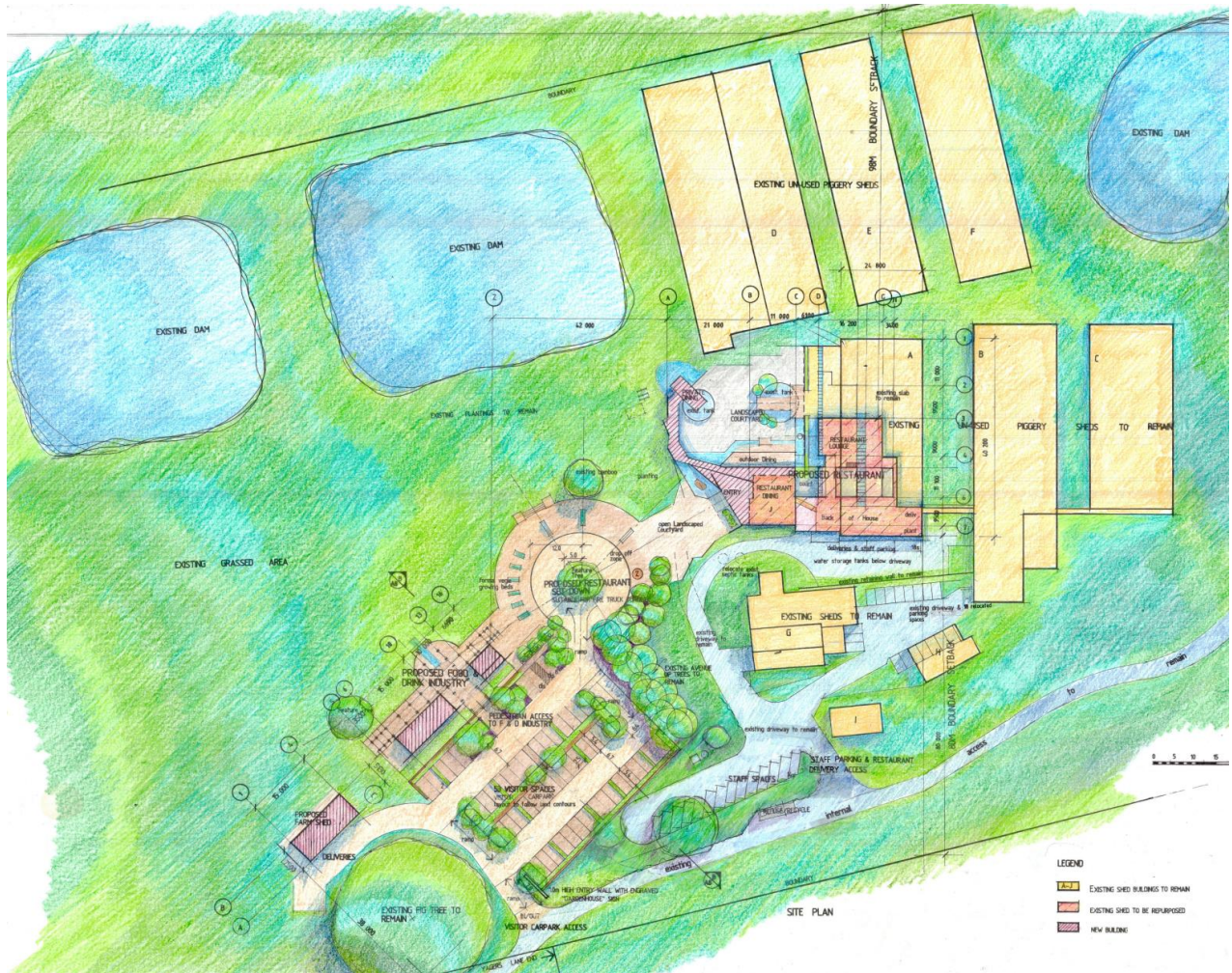


Figure 3: Part Site Plan (Existing piggery sheds in yellow to remain in-situ)

Artisan food & drinks industry - Two separate buildings northwest of restaurant for manufacture of food products for sale primarily online and ancillary sales on the premises. The main building contains a commercial kitchen (including production & packing areas). The associated sales area and tasting space (in the form of a small 15 seat shared table café space - 'meet the makers') is to operate by appointment only. The buildings will both be constructed of stone, recycled timber and glass with a metal roof (Total GFA of 110m² (Food manufacture/Sales/Café – 61m²/38m²/11m²):

- 15 guest seating capacity - no 'drop in' customers will be permitted
- 5 staff

Farm building - northeastern end of the carpark for storage of landscaping and horticultural materials and equipment associated with the vegetable and flower beds on site. This building will have a GFA of 113m² including a staff WC and will be constructed of recycled timber and glass with a metal roof.

13.4



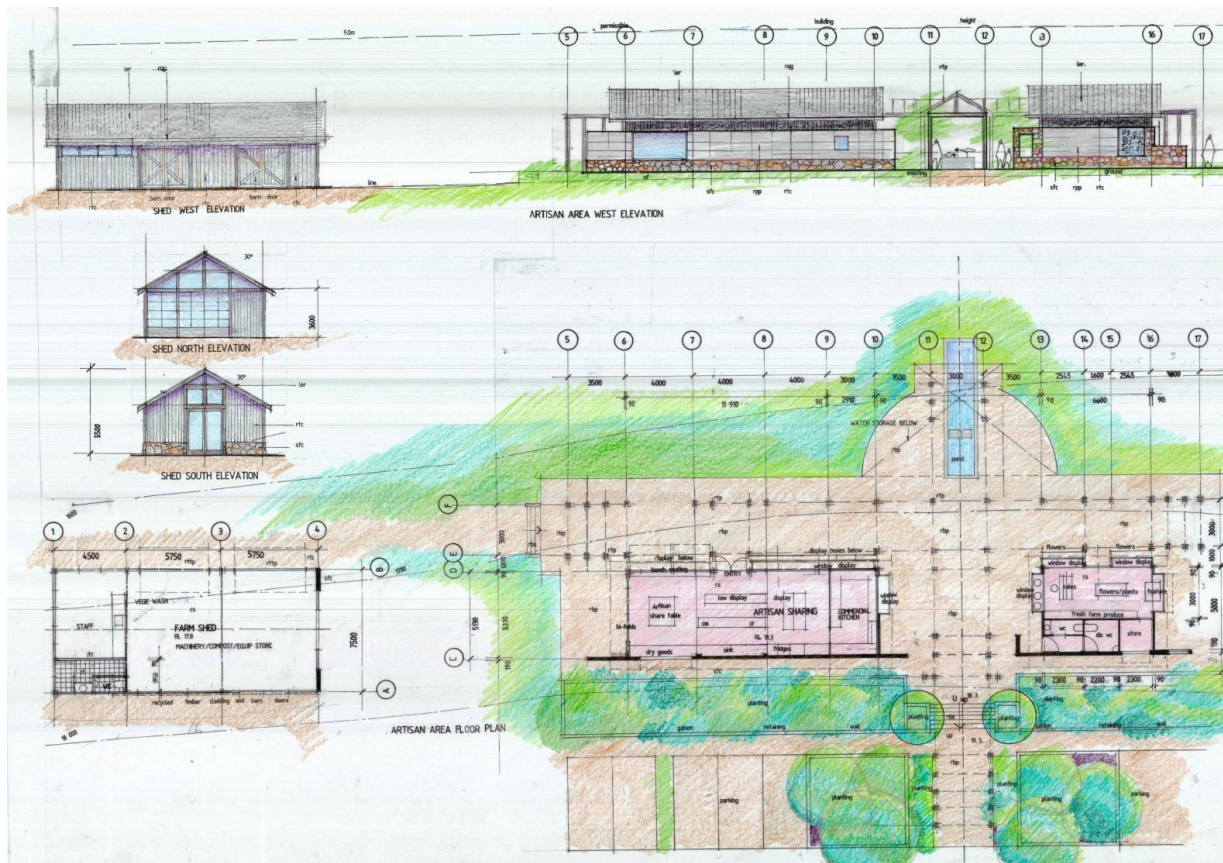


Figure 5: Artisan industry buildings and farm shed

Associated works include:

- 5 At grade car parking area - 82 spaces. A dedicated guest-drop off area is provided at the entrance to the restaurant, this is also designed to accommodate Rural Fire Service turning area in the event of a fire emergency
Loading and waste management are provided on site. Waste bins will be presented to the site frontage for collection.
- 10 Minor earthworks – for parking area and adjacent buildings comprise a combination of cut & fill with a maximum cut of 1.2m and fill of 900mm. Retaining walls to a maximum height of 1.2m will be required to be constructed in accordance with structural engineering specifications. The applicant states that it is expected cut / fill balance will be generally neutral and that limited (if any) fill will be required to be imported to the site.
- 15 Business Identification Signage - A single business identification sign is proposed. This sign will be located on a rock entrance structure and simply state the name of the business.
Horticulture to grow a range of fruits, vegetables, spices and flowers for use in the proposed restaurant and artisan food industry.
- 20 The site is located across two existing rural lots and lot consolidation will be required.

1.3 Description of the site

A site inspection was carried out on 18 June 2024

Land is legally described	LOT: 8 DP: 8385, LOT: 7 DP: 8385	
Property address	103 Yagers Lane SKINNERS SHOOT	
Land is zoned:	RU2 Rural Landscape	
Land area is:	13.19 Hectares (Ha) (41479.8409m ² + 90493.3989 m ²)	
Constraints and Attributes:	Bushfire prone land; High Environmental Value; Not between Flood Planning Area / Probable Maximum Flood - Not subject to flood related development controls; (road access is considered in this report); Easement on the land that provides access to Essential Energy infrastructure on land to the east of the site; and Small watercourses and dams including a tributary to Belongil Creek (integrated development referral to DPIE Water is considered in this report).	
	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

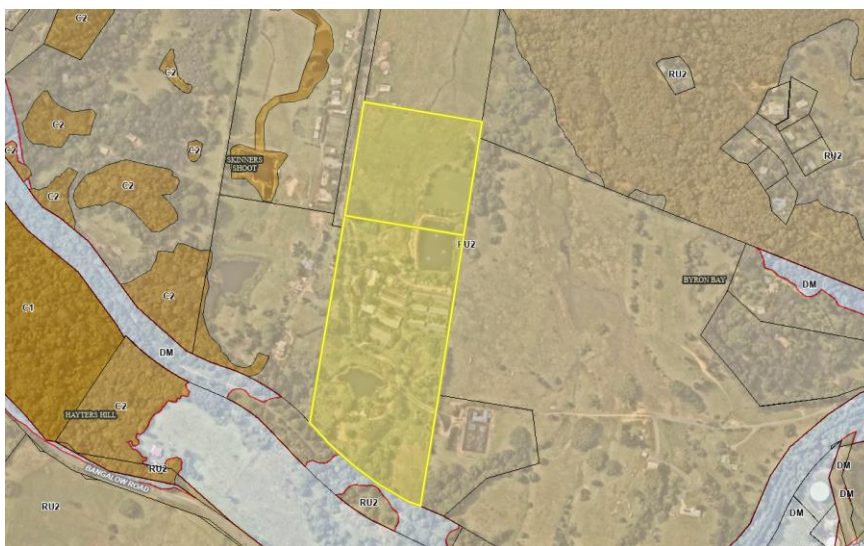


Figure 6: Zoning map (RU2 Rural Landscape)



Figure 7: Location of Restaurant looking south, looking west and former pig stalls (bottom)



Figure 8: Location of proposed, artisan industry, shed and car park area



5 **Figure 9:** Site Location Aerial

2. SUMMARY OF REFERRALS

Referral	Outcome
Environmental Health Officer	No objections subject to conditions.
Development Engineer	No objections subject to conditions.
Building Surveyor	No objections subject to conditions.
Resource Recovery	No objections subject to conditions.
Arts and Creative Industries	This application does not trigger the requirements for public art under chapter B15 of the DCP. However, the proponent wishes to include an art plan as part of their development. Doc # E2024/12648 was referred to the Arts and Creative industries advisory committee for information only on 20 June 2024. The minutes were reported to Council on 15 August 2024
Arakwal	No objections subject to conditions.
Rous County Council	No objections subject to conditions.
Department of Planning & Environment- Water-Integrated Development	No objections subject to General Terms of Approval.
Essential Energy	No objections subject to conditions.

NSW Department of Planning and Environment – Water

- 5 The relevant general terms of approval (GTA) from the NSW Department of Planning and Environment – Water for controlled activity works on waterfront land, being a tributary of Belongil Creek, has been issued under Section 91 the Water Management Act 2000. The GTA letter issued by Department of Planning and Environment-Water does not constitute an approval under the Water Management Act 2000. The development consent holder must apply to the Department of Planning and Environment-Water for the relevant approval after development consent has been issued by Council and before the commencement of any work or activity.

Traffic

- 15 Information relating to a traffic safety audit of Skinners Shoot Road was addressed and considered by Council development engineer following a detailed joint site inspection of the current road conditions with Council and TTM Group (Consultant Engineers). This includes upgrades to Yagers Lane and Skinners Shoot Road intersection. Narrowing of carriageway at Skinners Shoot Road due to tree foliage, branches, shoots and overgrown shrubs encroaching into the road carriageway has been referred for attention of Council's Infrastructure Services Works.

Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) (BoBBAC)

- 20 Following a request for additional information from Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) (BoBBAC), a site meeting took place on Wednesday, July 31, 2024 between representatives and the proponent. In order to arrange / further develop the matters discussed at the site meeting, ongoing email communication is to occur with

BoBBAC and conditions of consent are recommended to give effect to this understanding between the parties. In summary, following the meeting, a summary of discussion was provided as follows:

Before Construction

- 5
- Site Officer walk-over & test pitting of those portions of site to be disturbed.
 - Cultural Induction required for building and civil construction workers.
 - Opportunities for Arakwal to engage in the 'detail' of the project – both with respect to artist involvement and landscape design / plantings.

During Construction

- 10
- Cultural Site Monitors to be on site when site disturbance occurs.

After Construction

- Arakwal would welcome the opportunity for meaningful and ongoing engagement with the site (Welcome to Country, Smoking Ceremonies etc) noting that they are the people able to speak for Country.
- 15
- Arakwal would also welcome the opportunity for ongoing employment opportunities on site for the local community.

Other details about the extent of site disturbance were provided directly to BOBBAC.

No other issues were raised that cannot be addressed by the relevant conditions of consent recommended in this report.

20 **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 is accompanied by a Bushfire Risk Assessment Report by Bushfire Consultancy Australia dated June '22 which provides conditions.. Condition of consent is included in the Recommendation of this Report requiring that the development must comply at all times with the requirements of the Bushfire Risk Assessment Report by Bushfire Consultancy Australia dated June '22.

- 30
- This assessment includes an analysis of the hazard, threat and subsequent risk to the development proposal and provides recommendations that satisfy the Aims, Objectives and Performance requirements of the Building Code of Australia, Planning for Bushfire Protection 2019 and AS3959-2018 Construction of buildings in bushfire prone areas.

Effect of 10/50 rule on significant vegetation - No effect.

35 **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.

4.1 State Environmental Planning Policies (SEPP)

Considerations	Satisfactory
<p><i>Biodiversity and Conservation SEPP 2021</i></p> <p>Consideration:</p> <p>Chapter 3: Koala habitat protection 20203 is relevant to the site due to the rural zoning.</p> <p><i>This Chapter aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline—</i></p> <p><i>(a) by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and</i></p> <p><i>(b) by encouraging the identification of areas of core koala habitat, and</i></p> <p><i>(c) by encouraging the inclusion of areas of core koala habitat in conservation zones.</i></p> <p>Byron Shire Council prepared the Byron Coast Comprehensive Koala Plan of Management (BCCKPoM), which is an approved Koala Plan of Management endorsed under the Policy. The site occurs within the Byron Coast Koala planning area and relates to land > 1 hectare, however, does not contain potential koala habitat and is not mapped within the West Byron Koala Management Precinct. On this basis, the BCCKPoM requires no further consideration.</p>	☒
<p><i>Resilience and Hazards SEPP 2021</i></p> <p>Consideration:</p> <p>Chapter 4: Remediation of land</p> <p>In support of the application, the applicant submitted a Preliminary Site Investigation prepared by Ecoteam (revision no. R1, Document no. 22257). The scope of the report was to determine whether soil contamination is likely to have occurred from past land usage, assess risk to human health and to determine the need for further investigation.</p> <p>The report identified zinc and copper concentration exceed limits in 3 of 52 samples. The hotspots are located where future driveways, footpaths, and grassed access tracks will be development and concludes that there are no pathways for movement and no sensitive ecological receptors. The report recommends that no further soil investigation or remediation activities are required for metal and pesticide contamination. Council's Environmental Health staff have reviewed the report and agree with the</p>	☒

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Considerations	Satisfactory
<p>conclusions and recommendations made within the report.</p> <p>The report identifies asbestos containing material on the roofs of existing piggery sheds and other structures. The report confirms that the owner has been informed that there are asbestos materials onsite and is committed to professionally removing asbestos prior to development works commencing.</p> <p>Should the development be supported, recommendations have been made requiring submission of a hazardous material survey prior to demolition, conditions pertaining to the handling of asbestos during demolition and submission of an asbestos clearance certificate prior to occupation of the buildings.</p>	
<p><i>Primary Production SEPP 2021</i></p> <p>Consideration:</p> <p>Chapter 2: Primary production and rural development</p> <p>The aims of this Chapter are as follows—</p> <p>(a) to facilitate the orderly economic use and development of lands for primary production,</p> <p>(b) to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,</p> <p>(c) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,</p> <p>(d) to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,</p> <p>(e) to encourage sustainable agriculture, including sustainable aquaculture,</p> <p>(f) to require consideration of the effects of all proposed development in the State on oyster aquaculture,</p> <p>(g) to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.</p> <p>The site is not identified as State significant agricultural land in the North Coast Regional Plan 2041. The site is zoned Rural Landscape and not Primary Production. The proposed development is not inconsistent with the aims of the SEPP relevant to the site and the proposal. The reuse of a</p>	<p>☒</p>

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Considerations	Satisfactory
former piggery for small scale tourism uses permissible on the land is considered to support the aim to reduce land use conflicts or sterilisation of rural land by balancing consideration of the wider Shire provision of primary production, nearby and on site residential development and the protection of native vegetation, biodiversity and water resources. Small scale horticultural (exempt development) and ongoing vegetation management and landscaping activities are consistent with the rural landscape setting.	
<i>Transport and Infrastructure SEPP 2021</i> Consideration: Chapter 2: Infrastructure, Subdivision 2 Development likely to affect an electricity transmission or distribution network, Section 2.48 Determination of development applications—other development The application was referred to Essential Energy due to the proximity to underground high voltage traversing the existing driveway. Essential Energy requirements have been included in the recommended conditions of consent to ensure a suitable degree of caution is undertaken for any works in proximity to all powerlines.	<input checked="" type="checkbox"/>
<i>Sustainable Buildings SEPP 2022</i> Chapter 3: Standards for non-residential development – Note. The provisions of this chapter do not apply to the development as the land is wholly mapped within the RU2 – Rural Landscape zone under the Byron LEP 2014.	<input checked="" type="checkbox"/>

4.2 Byron Local Environmental Plan 2014 (LEP 2014)

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

- 5 (a) The proposed development is defined in the LEP 2014 Dictionary as Restaurant or café, artisan food and drink industry, farm building, business identification signage and horticulture*;
- (b) The land is within the RU2 Rural Landscape according to the Land Zoning Map;
- (c) The proposed development is permissible with consent (note. *Horticulture is exempt development under clause 3.1 and Schedule 2); and
- (d) Regard is had for the Zone Objectives as follows:

Zone Objective	Consideration
<ul style="list-style-type: none"> • To encourage sustainable primary industry production by maintaining and enhancing the natural resource base. 	<p>The proposed development will not affect the capability of the land for primary production purposes. The development will maintain and enhance the rural landscape character by reusing the former piggery structures and adapting the existing cleared areas for a new use. The proposed development for small-scale tourism uses that are permissible with consent is not inconsistent with the objectives of the zone.</p>
<ul style="list-style-type: none"> • To maintain the rural landscape character of the land. 	
<ul style="list-style-type: none"> • To provide for a range of compatible land uses, including extensive agriculture. 	
<ul style="list-style-type: none"> • To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality. 	
<ul style="list-style-type: none"> • To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality. 	

- 10 The definition of the proposed uses and other relevant controls applicable under Byron Local Environmental Plan 2014 are as follows:

- 15 **restaurant or cafe** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided, but does not include the preparation and serving of food and drink to people that occurs as part of—
- (a) an artisan food and drink industry, or
- (b) farm gate premises.

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

(c) facilities for holding tastings, tours or workshops.

farm building means a structure the use of which is ancillary to an agricultural use of the landholding on which it is situated and includes a hay shed, stock holding yard, machinery shed, shearing shed, silo, storage tank, outbuilding or the like, but does not include a dwelling.

5 **horticulture** means the cultivation of fruits, vegetables, mushrooms, nuts, cut flowers and foliage and nursery products for commercial purposes, but does not include a plant nursery, turf farming or viticulture.

business identification sign means a sign—(a) that indicates—

- 10 (i) the name of the person or business, and
(ii) the nature of the business carried on by the person at the premises or place at which the sign is displayed, and
(b) that may include the address of the premises or place and a logo or other symbol that identifies the business, but that does not contain any advertising relating to a person who does not carry on business at the premises or place.

15 This property contains a large number of substantial rural buildings, dams and tanks associated with the historic use of the land as a very large intensive piggery. The current application seeks to adaptively reuse some of these structures to provide a restaurant and associated uses on the land. There are two dwellings on the land. The relevant provisions of Byron Local Environmental Plan 2014 related to the proposal are considered as follows:

20

Clause 3.1 Exempt Development

Horticulture in the RU2 zone that meets the provisions of this clause, and standards specified in Schedule 2 of the LEP are exempt development (do not require any type of consent).

25 A condition of consent is recommended to require that the location of the horticulture is not to occur within 20 metres of any watercourses that traverse the site, to comply with the standards specified Under Schedule 2 Exempt Development:

Horticulture

(1) *Must be in Zone RU1 Primary Production or Zone RU2 Rural Landscape.*

30 (2) *Must not be located within 20m of a watercourse.*

Clause 4.3 Height of Buildings

The maximum permissible building height on the land in metres. The proposed single storey buildings are all lower than 9 metres.

Clause 5.4 Controls relating to miscellaneous permissible uses

35 Subclause 10 of this clause, requires the following:

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

40 (a) *40% of the gross floor area of the industry, or*

(b) 250 square metres,

whichever is the lesser.

- 5 The gross floor area of the Artisan Food and Drink Industry (excluding the 11m² 'meet the maker / café' component) has a floor area of 99m². Of this, 38m² (38.38%) comprises sales and display which complies with this clause.

Flood considerations- Given the location of the site with access from a local road that traverses flood prone land, evacuation measure has been considered in accordance with the due diligence requirements of Clause 5.21 /5.22 of the LEP:

Clause 5.21 Flood Planning/5.22 Special flood considerations

- 10 The site is not mapped flood prone land. Parts of the access road at Skinners Shoot is subject to flooding. To enable the safe occupation and efficient evacuation of people in the event of a local or regional flood event, the applicant has prepared a flood emergency advice document. The recommendations within the report relating to flooding events will be implemented by a Flood Emergency Response Plan that incorporates appropriate
- 15 measures to manage risk to life in the event of a flood. This matter has been considered by Council's Development Engineer and suitable conditions are recommended.

Clause 6.2 Earthworks

- 20 Minor earthworks – for parking area and adjacent buildings comprise a combination of cut & fill with a maximum cut of 1.2m and fill of 900mm. Retaining walls to a maximum height of 1.2m will be required to be constructed in accordance with structural engineering specifications. The applicant states that it is expected cut / fill balance will be generally neutral and that limited (if any) fill will be required to be imported to the site. The on-site sewage management works will also require some disturbance to the land for sub surface irrigation area to the north of the site.

- The Onsite Waste Water Management Plan for the project. As far as we're aware, Council's Environmental Health Officer is comfortable with the proposed approach (ie no information requests have been received relating to this element of the project from an environmental health perspective); and
- The following plate shows the cut / fill required for the carpark area. As illustrated, the design seeks to work 'with' the slope and provides for a series of relatively minor cut / fill elements.

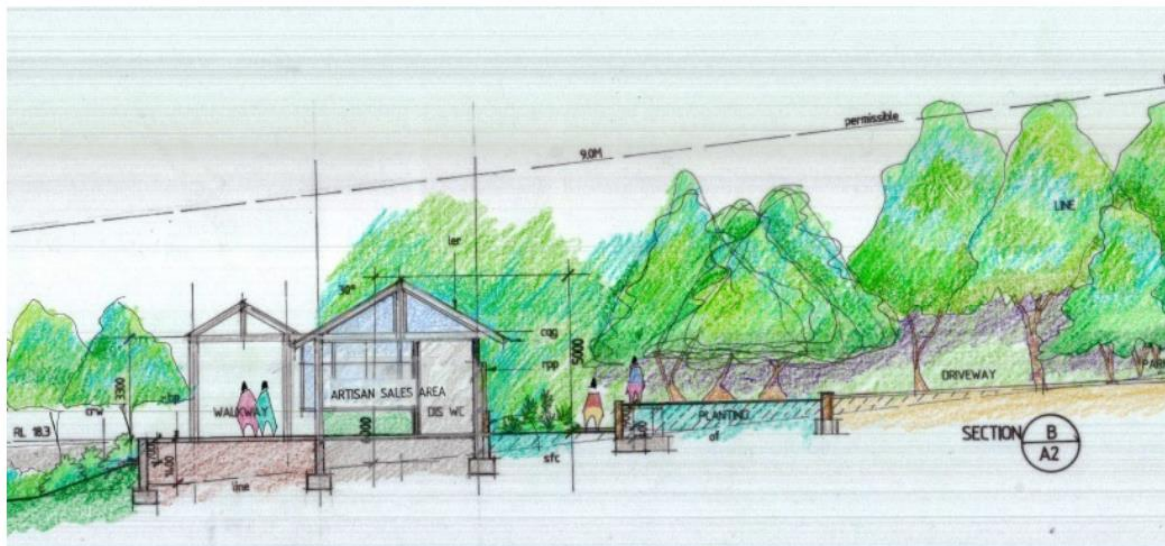


Figure 11: Details related to excavation provided to BoBBAC

Any potential for disturbance of relics will be subject to site monitoring as agreed, as follows:

- 5 Before Construction
 - Site Officer walk-over & test pitting of those portions of site to be disturbed.
 - Cultural Induction required for building and civil construction workers.
 - Opportunities for Arakwal to engage in the 'detail' of the project – both with respect to artist involvement and landscape design / plantings.
- 10 During Construction
 - Cultural Site Monitors to be on site when site disturbance occurs.

Clause 6.6 Essential services

- 15 The site is services and has access to supply of water, electricity, vehicle access and suitable measures will be implemented to manage stormwater and sewer. The applicant submitted an On-Site Wastewater Management Feasibility Assessment prepared by Greg Alderson Associates dated January 2024 (Report no: 21421_WW_REVB). The assessment demonstrates that there is sufficient land available for the LAA. The report has been assessed and deemed satisfactory subject to conditions of consent.

20

Clause 6.8 Rural and nature-based tourism development

(1) *The objective of this clause is to ensure that tourism development in rural and natural areas is small scale and does not adversely impact on the agricultural production, scenic or environmental values of the land.*

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

*...(b) Zone **RU2 Rural Landscape**.*

(3) *Development consent must not be granted to tourism development on land to which this clause applies unless the consent authority is satisfied that—*

10 (a) *there is, or will be, **adequate vehicular access** to and from a road, other than a classified road, taking into account the scale of the development proposed, and*

(b) *the development is **small scale and low impact**, and*

(c) *the development is **complementary to the rural or environmental attributes** of the land and its surrounds, and*

15 (d) *the development will **not have a significant adverse impact on agricultural production, amenity or significant features of the natural environment**.*

...(4) Development consent must not be granted to development for the purpose of tourism development on land to which this clause applies unless—

(a) *a lawfully erected dwelling house or dual occupancy is situated on the land, or*

(b) *a dwelling house may be erected on the land under this Plan.*

20 (5) *Development consent must not be granted to development under subclause (4) if the development—*

(a) *includes an ancillary caretaker's or manager's residence, or*

(b) *is for the purpose of more than 1 bed and breakfast accommodation.*

(6) *In this clause—*

25 *small scale means a scale that is small enough to be generally managed and operated by the principal owner living on the property.*

tourism development includes, but is not necessarily limited to, development for any of the following purposes—

...g) restaurants or cafes,

(h) *rural industries that provide services, or the sale of goods, on site to visitors.*

30 The proposal includes a restaurant and artisan food and drink industry in the RU2 Rural Landscape zone, therefore satisfactory compliance with Clause 6.8 must be considered by Council being the consent authority, before granting consent to the development.

35 The restaurant proposes to seat 45 people in the dining area, with an additional 15 patrons waiting or lingering before and after meals. At no time will there be more than 60 patrons in the restaurant area. The restaurant proposal is similar to other rural restaurants approved in the Byron Shire hinterland with selective hours, patrons and private transfers, including

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Frida's Field (60 seat rural restaurant on a 48.16 hectare lot, approved 2018) and The Hut (50 seat restaurant on 8,581m² lot ,approved 2006).

- 5 The proposed opening hours for dining are Wednesday to Sunday from 12 noon for lunch, closing at 11pm, with an earlier 10pm close on Sundays. The manager lives on the property.

- 10 The proposal is accessed from Yagers Lane which is not a classified road. A Traffic Impact Assessment and Road Safety Audit provided a comprehensive assessment of the proposal from a traffic and road safety perspective. The Traffic Impact Assessment concludes as follows: "Based on the assessment contained within this report, TTM see no traffic engineering reason why the relevant approvals should not be granted". 2 We note that the Audit identifies only relatively minor maintenance works associated with roadside verge and weed maintenance and signage. These finding have been supported by Council
- 15 Development Engineering following detailed site inspection and assessment, and in communication with Council Infrastructure Services.

Extensive detailed technical reports have been provided and considered to be satisfactory by Council staff experts to consider that the proposal is 'low impact and small scale, subject to relevant conditions of consent, including the following:

- 20 • Biodiversity Assessment;
- Contaminated Land Assessment;
- Draft Operational Management Plan
- Noise Impact Assessment;
- Land Use Conflict Risk Assessment;
- 25 • Onsite Waste Water Management Plan;
- Stormwater Management Plan
- Road Safety Audit;
- Traffic Impact Assessment;
- Water Quality Management Plan; and
- 30 • Waste Management Plan.

The proponent has prepared Draft Operational Management Plan (OMP) for the project that demonstrates the management and operation of the proposed development that demonstrates the proposals is of a scale small enough to be managed and operated by the principal owner living on the property.

- 35 The OMP identifies key personnel under the management of the principal owner living on the property as being:
- head chef (who will be involved with both the restaurant and artisan area)

- head grower (who will manage the horticultural production on the land).
- A small team involved with the ongoing maintenance of the buildings, gardens and surrounds.

Primarily, the OMP identifies that the management duties allocated to the owner involve daily meetings with staff and on site checking over 3 main areas:

- Restaurant and the extension of its operation in the Artisan Food and Drink Industry area; • Supply of on-site food production for the Restaurant and Artisan areas; and
- Weekly meetings and maintenance plan management with the on-site building and garden maintenance team.

This demonstrates that the proposed development can be managed and operated within a standard 40-hour work week by the owner and that from time to time some additional hours may be required which the owner will be on hand to do other than times of leave where others will be delegated to manage the development.

With regards the development being complimentary to the rural or environmental attributes of the land and its surrounds, the site context is that of a former extensive commercial piggery located at the end of a rural road with no other through traffic except for the immediately adjoining residential neighbour and Essential Energy Infrastructure passing the site. The land is not in a visually prominent location. The restaurant will be constructed on an existing concrete pad which was once part of two piggery sheds.

The adaptive reuse of parts of the buildings and materials on the site and other improvement including landscaping and ongoing management of the rural landscape, is considered an improvement in the context of the site, its history and surrounds.

In support of the application, the applicant submitted an Environmental Noise Impact Assessment prepared with the application and an additional amended Environmental

Noise Impact Assessment prepared by Tim Fitzroy & Associates dated 30 July 2024 (reference: 41/2022_nia). The report demonstrates that the development can operate and comply with the relevant noise criteria. The report recommends the following:

- A detailed assessment of mechanical plant be conducted during the design phase;
- Lists operational controls to be undertaken by the operator; and
- Waste collection and deliveries be undertaken during daytime hours;

In addition to the above recommendations, the report details how the development will be operated. There is adequate separation and building screening for the site to have amplified music. A condition has been recommended specifying that no speakers are to be externally located to minimise the likelihood of excessive noise from music. The following will be addressed by recommended conditions:

- Reference to approved acoustic report;
- Hours of operation as proposed;
- Acoustic certification report that confirms plant and equipment has been installed to comply with noise criteria;

- Attendance to premises is by reservation only;
- Restaurant Max total patrons 60 persons;
- Speakers associated with the restaurant must not be externally located. (Standard amenity condition amended to specify this)

5 A Land Use Conflict Risk Assessment prepared by Tim Fitzroy & Associates dated 16 January 2024 (reference: 41/2022_lucra) recommends that a Noise Management Plan (NMP) be implemented. A condition is recommended requiring that the use must operate in accordance with the noise management measures outlined above.

10 A lawfully erected dwelling or dual occupancy may be erected on this land under Clause 6.15 of the LEP:

6.15 Use of certain land in Skinners Shoot

(1) *This clause applies to certain land in Skinners Shoot.*

(2) *Despite clause 4.2A, development consent may be granted to development for the following purposes on the following land—*

15 ... (b) *a single dual occupancy (detached) on Lot 8, DP 8385, 103 Yagers Lane.*

20 The dual occupancy on the land has approval under a deferred commencement consent, number 10.2024.284.1, determined on 23/12/2024. This consent requires a Building Information Certificate (BIC) to be issued for the use of the existing dual occupancy dwellings on the land prior to the dual occupancy consent being operational. The applications for a BIC and On-Site Sewage Management have been received and are being assessed by Council. A condition is recommended that the consent is operational, and an occupation certificate issued for the dwellings prior to the issue of an occupation certificate for the small-scale tourism uses being issued with an occupation certificate.

25 The development will be managed by the owner living on the premises and does not propose a caretaker residence, bed and breakfast.

It is considered that the proposed development is entirely satisfactory with regards to the provisions of Clause 6.8 Rural and nature-based tourism development.

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

30 None applicable.

4.4 Byron Shire Development Control Plan 2014 (DCP 2014)

B1 Biodiversity

35 The applicant provided a biodiversity assessment prepared by ReconEco Pty Ltd in accordance with requirements of Part 4 of the Environmental Planning and Assessment Act 1979. The proposal does not trigger the Biodiversity Offsets Scheme (BOS) with regard to impacting Biodiversity Value land or exceeding native vegetation clearing thresholds, therefore a Biodiversity Development Assessment Report (BDAR) is not

required. A test of significance completed under s7.3 of the Biodiversity Conservation Act 2016 determined that the proposal would be unlikely to result in significant biodiversity impacts and a BDAR is not required on this basis.

The following findings were submitted, and relevant conditions of consent are recommended, in response:

- *The site comprises disturbed vegetation of cleared grassland, native and exotic plantings and landscaped areas, with a high frequency of exotic species across the site. These areas are not consistent with any Plant Community Type or Threatened Ecological Communities.*
- *Three threatened flora species were recorded beneath a mature Moreton Bay Fig and will be retained – Stinking Cryptocarya (Cryptocarya foetida), Scrub Turpentine (Rhodamnia rubescens) and Green-leaved Rose Walnut (Endiandra muelleri subsp. bracteata).*
- *The site provides low quality habitat due to a low diversity of native flora.*
- *Fruiting native rainforest trees and exotic trees planted at the site may provide marginal foraging habitat for frugivore bird species (i.e. Rose-crowned Fruit Dove) and Grey-headed Flying Fox; unused agricultural buildings may provide potential opportunistic roosting habitat for microbat species.*
- *No Koala feed trees or mapped areas of potential Koala habitat occur within the works footprint; requirements of the Byron Coast Comprehensive Koala Plan of Management do not apply.*
- *No hollow-bearing trees occur within the works footprint.*
- *The works may require the removal of two planted native trees to enable construction works to repurpose existing buildings.*
- *A range of mitigation measures to minimise biodiversity impacts have been prescribed*

The applicant requests that a condition of development consent requiring offset plantings to be provided on site at the ratio of 1:20 is an acceptable response to the removal of two trees. A condition of consent requires a range of mitigation measures to minimise biodiversity impacts.

B3 Services

As discussed above, the site has access to supply of water, electricity, vehicle access and suitable measures will be implemented to manage stormwater and sewer. The applicant submitted an On-Site Wastewater Management Feasibility Assessment prepared by Greg Alderson Associates dated January 2024 (Report no: 21421_WW_REVB). The assessment demonstrates that there is sufficient land available for the LAA. The report has been assessed and deemed satisfactory subject to conditions of consent.

B4 Traffic Planning, Vehicle Parking, Circulation and Access

A Traffic Impact Assessment was submitted by the applicant which found that Yagers Lane as currently constructed exceeds its current design capacity of 150 vehicle trips per day (vpd) with survey data indicating the lane is currently carrying at 169 vpd. The proposal will add a further 248 vpd to the laneway necessitating an upgrade to the lane in accordance with the adopted design specifications (Northern Rivers Local Government Design and Construction Guidelines) for road carrying between 150-500 vpd. This will require the lane to be widened to 6 metres with 1 metre shoulders. The intersection of Yagers Lane and Skinners Shoot Road also requires attention and conditions of consent recommended to improve sight lines, installation of signage, line marking and lighting.

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In terms of Skinners Shoot Road it was found to be generally satisfactory, however general maintenance is required to the existing carriageway formation. It is considered this is beyond the responsibility of the developer in this instance and there is no nexus to impose conditions of consent in this instance on this section of road, with that responsibility falling onto Council.

In relation to parking the proposal requires a theoretical total of 122 car parking spaces based on floor area alone. The applicant has proposed a total of 82 spaces. Considering the limits on patron numbers for the rural restaurant and artisan food café, a variation to the car parking requirements is supported in this instance, noting that there is area available on the property for informal parking in the unlikely event that the formal car park is filled.

B6 Buffers and minimising land use conflict

A Land Use Conflict Risk Assessment prepared by Tim Fitzroy & Associates dated 16 January 2024 (reference: 41/2022_lucra). The LUCRA identified the following key items as potential land use conflicts as a result of the proposed development:

- Free Range Poultry & Cattle Grazing – 164 Old Bangalow Road
- Electrical Substation – Electric and magnetic Fields (EMF)
- Air quality – hydrocarbons from vehicles & cooking odours
- Surface water, Ground water and Soil and Sediment runoff
- OSMS - Surface water impacts from the proposed onsite sewer management system
- Stormwater Management
- Noise
- Traffic
- Residential Dwellings Tourist Accommodation (Glamping Tents)

The LUCRA found all potential conflicts to be an 'acceptable risk' subject to the recommendations made within the LUCRA and recommendations made within the supporting specialist reports – acoustic report, OSMS report, Traffic, Stormwater & Biodiversity.

Council Environmental Health staff reviewed the LUCRA report, deemed it satisfactory and agree with the conclusion of the report that identified conflicts can be effectively managed.

B8 Waste management

A detailed waste management plan has been provided to address management of waste during construction and operation of the development. Relevant conditions of consent are recommended.

B10 Signage

A single business identification sign is proposed. This sign will be located on a rock entrance structure and simply state the name of the business.

- 5 The proposal incorporates a 1m (h) x 7m (l) wall at the entrance to the premises. The word 'GARDENHOUSE' will be engraved onto the wall in a size proportional to the structure. The signage is considered to be a suitable to the locality.

B9 Landscaping

A detailed landscaping plan has been submitted with the application.

- 10 The site contains tens of thousands of existing planted species, and the proposed landscaping plan will further enhance the site and the proposed buildings, whilst maintaining all trees except for two trees required to be removed and compensatory planting proposed at a ratio of 1:10. An existing large Fig Tree is proposed to be retained and protected as an integral feature of the development. A Arboreal Impact assessment confirmed that the tree will not be adversely impacted by the development.

15 **B11 Planning for Crime Prevention**

The application provided the following details in support of the development:

The entrance to the property clearly defines the premises as 'private', rather than 'public' land;

- 20 All attendance at the site will be by reservation only. No 'casual' or 'drop in' visitation is permitted;

The premises will be overseen by the manager residing on site who will be responsible for ensuring that the premises is operated in a manner respectful or the surrounding locality; and

- 25 Low level lighting will be provided within the carpark area for guest arriving or departing after dark;

CCTV cameras will be positioned at strategic locations on the site.

B13 Access and Mobility

- 30 The proposal is all on one level and designed to be provide compliant access throughout. This is considered satisfactory for the purposed of development assessment, with the understanding that detailed design stage prior to issue of a construction certificate will require this to be executed throughout in accordance with current regulations.

D4 Commercial and Retail Development

The proposal complies with the relevant provisions of this chapter, in particular Section D4.2.9 Restaurants and cafes in rural areas:

The development in the existing former piggery is designed to be compatible with the surrounding landscape and clustered around the existing edge of the piggery and the proposed car park, with access to the dwellings on site.

- 5 The proposed horticultural activity on the land is intended to value add to produce either harvested or manufactured on the property to reduce food miles and to limit the carbon footprint of the development.

In accordance with Clause 6.8 of the LEP the development is low scale and able to be generally managed and operated by the owner living on the property.

D5 Industrial Development

- 10 The proposal complies with the relevant provisions of this chapter, in particular Section D5.2.12 Artisan Food and Drink Industry, which recently came into effect on 13/12/2024:

Prescriptive Measures

1. Details of the industrial activity proposed within the artisan food and drink industry demonstrating the dominant use is industrial in nature.

- 15 Complies: The manufacture of food products is the dominant use in relation to this artisan food and drink industry.

The breakdown of areas, is as follows:

Artisan Industry: Commercial kitchen, prep, packing, storage, WC. 61m²

Artisan Industry: Sales & Display 38m²

- 20 Cafe 11m²

Total 110m²

2. The floor area of any ancillary food and drink area (including bars) to be no more than 30% of the gross floor area of the artisan food and drink industry development.

Complies: The ancillary meet the maker café area is 11m²

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

a. hours of operation;

b. opening hours to the public;

c. details on tours, tastings, workshops;

- 30 *d. staff numbers; and*

e. total maximum patrons.

Complies: A plan of management has been prepared that provides details to satisfy the above.

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

5 Consideration: Council's Environmental Health officer undertook an assessment of this development and has recommended that more detailed fit out plans are to be prepared prior to issue of a construction certificate in this particular development. Note. The development application was submitted months before the current controls came into effect on 13 December 2024

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

Complies: Ample parking is provided for a limited number of 15 patrons to attend by appointment only.

15 The proposal meets the prescriptive measures and demonstrates that the artisan food and drink industry will manufacture produce with the dominant activity being the production of food in the commercial kitchen and will be managed in accordance with a plan of management.

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 type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA
Section 62 - Consideration of fire safety	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA
Section 64 - Consent authority may require upgrade of buildings	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA Condition of consent.
Section 63 - Considerations for erection of temporary structures	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA

20 ** 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

4.6.1

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

5

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?

Council Policy	Consideration
<u>Management of Contaminated Land Policy</u>	<p>The applicant submitted a Preliminary Site Investigation to determine whether soil contamination is likely to have occurred from past land usage, assess risk to human health and to determine the need for further investigation. The report recommends that no further soil investigation or remediation activities are required for metal and pesticide contamination. Council's Environmental Health staff have reviewed the report and agree with the conclusions and recommendations made within the report.</p> <p>Should the development be supported,</p>

Council Policy	Consideration
	recommendations have been made requiring submission of a hazardous material survey prior to demolition, conditions pertaining to the handling of asbestos during demolition and submission of an asbestos clearance certificate prior to occupation of the buildings.
<u>On-site Sewage Management Systems in Reticulated Sewer Area</u>	The applicant is required to apply for approval under Section 68 of the Local Government Act 1993 for on-site effluent disposal prior to issue of a Construction Certificate. A wastewater management plan has been submitted to demonstrate the site is capable of providing suitable on-site sewage management.
<u>Provision of Driveways Policy</u>	The applicant is required to submit a s138 application for driveway works and other works in the road reserve. The property owner shall be responsible for the construction and maintenance of driveways to private property and associate works at their own expense. Construction of the driveway on public land shall be in accordance with Council's code for the construction of driveways and accesses. Maintenance of all driveways shall be the responsibility of the property owner. Where driveways are not constructed or maintained to a satisfactory standard, Council may require the property owner to upgrade the driveway.

4.7 The suitability of the site for the development

The site is adequately serviced and suitable for the development subject to detailed conditions of consent.

4.8 Submissions made in accordance with this Act or the Regulations

- 5 The development application was publicly exhibited. There were **141** submissions made on the development application:
- 64 For
 - 77 Against

The redacted submissions are attached to the report in full for Councillors reference.

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Issue	Comment/Consideration
<p>1. Scale</p> <p>2. Noise</p> <p>3. Hours of operation</p> <p>4. Road Safety</p> <p>5. Contamination including Asbestos Concerns</p> <p>6. Wildlife and Koala Concerns</p> <p>7. Flooding</p>	<p>1. Scale</p> <p>Refer to assessment in Sections 4.2 and 4.4 against Clause 6.8 of BLEP 2014, and D4.2.9 of BDCP 2014.</p> <p>2. Noise</p> <p>Refer to Sections Section 4.2 and 4.4 for assessment Clause 6.8 of BLEP 2014, and D4.2.9 of BDCP 2014.</p> <p>Note. A amended acoustic report was submitted during assessment in responded to a request for additional information. It is demonstrated that the development can operate and comply with the relevant noise criteria and recommends that a detailed assessment of mechanical plant be conducted during the design phase; lists operational controls to be undertaken by the operator; and Waste collection and deliveries be undertaken during daytime hours amongst other operational requirements that are reflected in the recommended conditions of consent.</p> <p>3. Hours of operation</p> <p>Hours of operation and management of the development is to be managed in accordance with a plan of management. Refer to assessment in Sections 4.2 and 4.4 against Clause 6.8 of BLEP 2014, and D4.2.9 of BDCP 2014. The proposed opening hours for dining are Wednesday to Sunday from 12 noon for lunch, closing at 11pm, with an earlier 10pm close on Sundays. The artisan food and drink industry proposes to open 7 days 10am to 3pm for 'meet and greet the chef' and to serve simple café meals ancillary to the artisan food and drink industry use. The manager lives on the property.</p> <p>3. Road Safety</p> <p>The applicant prepared an updated Traffic Impact Assessment and Road Safety Audit which addresses, issues of road safety. Works are required to Yagers Lane and the Yagers Lane / Skinners Shoot intersection (rather than Skinners Shoot Road). Information relating to a traffic safety audit of Skinners Shoot Road was also addressed and considered by Council development engineer following a detailed joint site inspection of the current road conditions with Council and TTM Group (Applicant's Consultant Engineers).</p> <p>Upon consideration of these findings, there are sufficient planning grounds to support the development subject to conditions of consent for the reasons outlined in this report.</p>

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Issue	Comment/Consideration
	<p>This includes requirements for road upgrades to Yagers Lane and Skinners Shoot Road intersection that are required as a direct result of the proposed development. Narrowing of carriageway at Skinners Shoot Road due to tree foliage, branches, shoots and overgrown shrubs encroaching into the road carriageway has been referred for attention of Council's Infrastructure Services (IS)/Works). The issue of wider road safety improvements to reduce vegetation encroachment including side arm operated trimmer, streetsweeper cleaning of leaf litter etc and continual assessment for temporary repairs on Skinners Shoot Road is being investigated by Infrastructure Services. Council operations staff will review existing road signage in terms of replacement etc. Other upgrades will be considered in the context of shire wide priorities and asset management plans to be included in future operational budgets. There is no nexus for upgrades to be undertake by the proponents of the development on Skinners Shoot Road as a direct result of the proposed development other than the road upgrades to Yagers Lane and Skinners Shoot Road intersection.</p> <p>5. Contamination/Asbestos</p> <p>Refer to Section 4.1 for assessment against <i>Resilience and Hazards SEPP 2021</i>. Management measures will be in place and are conditioned accordingly.</p> <p>6. Wildlife and Koala Concerns</p> <p>Refer to assessment in Sections 4.4 against Chapter B1 Biodiversity.</p> <p>The site comprises disturbed vegetation of cleared grassland, native and exotic plantings and landscaped areas, with a high frequency of exotic species across the site. A biodiversity assessment confirms that the proposal does not trigger the Biodiversity Offsets Scheme (BOS) with regard to impacting Biodiversity Value land or exceeding native vegetation clearing thresholds, therefore a Biodiversity Development Assessment Report (BDAR) is not required. A test of significance completed under s7.3 of the Biodiversity Conservation Act 2016 determined that the proposal would be unlikely to result in significant biodiversity impacts and a BDAR is not required. Native and exotic plantings areas are not consistent with any Plant Community Type or Threatened Ecological Communities. Three threatened flora species were recorded beneath a mature Moreton Bay Fig and will be retained.</p>

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Issue	Comment/Consideration
	<p>No Koala feed trees or mapped areas of potential Koala habitat occur within the works footprint; requirements of the Byron Coast Comprehensive Koala Plan of Management do not apply. No hollow-bearing trees occur within the works footprint.</p> <p>The applicant requests that a condition of development consent requiring offset plantings to be provided on site at the ratio of 1:20. This is an acceptable response to the removal of two planted native trees.</p> <p>The conditions also require a range of mitigation measures to minimise biodiversity impacts including installation of signage at the site exit for patrons attention upon leaving the site to be aware of Koalas – suggested wording: “Koalas use this area – please drive carefully” (or words of similar intention).</p> <p>7. Flooding</p> <p>The site is not flood prone land. Refer to assessment in Sections 4.2 against BLEP 2014 Clause 5.21 Flood Planning and 5.22 Special flood considerations</p> <p>The site is not mapped flood prone land. Parts of the access road at Skinners Shoot is subject to flooding. To enable the safe occupation and efficient evacuation of people in the event of a local or regional flood event, the applicant prepared a flood emergency advice document. The recommendations within the report relating to flooding events will be implemented by a Flood Emergency Response Plan that incorporates appropriate measures to manage risk to life in the event of a flood. This matter has been considered by Council’s Development Engineer and suitable conditions are recommended.</p>
<p>Among the supporting submissions, three key topics consistently emerged:</p> <ol style="list-style-type: none"> 1. Local Employment Opportunities 2. Vegetation and Landscaping Plans extensive native planting already happened on the site. 3. Conservation and Sustainability <p>The submissions in support of the development are noted.</p>	

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**

Section 64 levies will be payable if the development connects the approved uses to Rous County Council Water Supply. A condition of consent is included recommending that a certificate of compliance is sought by the owner to Rous.

5.2 Developer Contributions

10 Section 7.12 Levy will be payable.

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

CONCLUSION

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 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 conditions of consent.

**Report No. 13.5 PLANNING - Post Exhibition Submissions
Report - Planning Proposal 26.2023.5.1 for
68 Rankin Drive, Bangalow - Rezone land for
Housing and activate the dedication of land
for Affordable Housing under Byron Shire
Affordable Housing Contribution Scheme 01**

Directorate: Sustainable Environment and Economy

Report Author: Alex Caras, Land Use Planning Coordinator

File No: I2025/6

Summary:

On 22 February 2024 Council considered and endorsed a Planning Proposal to amend Byron Shire Local Environmental Plan 2014 for land known as 68 Rankin Drive, Bangalow, described as Lot 261 DP1262316 and Lot 11 DP807867. The Planning Proposal extends the existing R2 Low Density Residential Zone on the above lots and rezones the eastern portion of the land to R3 Medium Density Residential. Other proposed changes include Floor Space Ratio map, Minimum Lot Size Map and an Affordable Housing Contribution Scheme Map.

The Department Planning Housing and Infrastructure (DPHI) issued a Gateway determination on 4 July 2024, which required mapping amendments to the proposed R3 zone in the far eastern corner of the site. Follow up discussions were held with DPHI and the Planning Proposal was placed on public exhibition from 22 November to 20 December 2024. Agency consultation was undertaken in accordance with the Gateway determination.

Two (2) agency responses and ten (10) public submissions were received, with two adjoining landowners objecting to the proposal. Key issues raised are summarised in this report along with the planner's response.

This report recommends that the Planning Proposal as revised to include a reference to the Affordable Housing Contribution Scheme Map in 'Part 2 Explanation of provisions' be forwarded to the DPHI for finalisation, as well as apply no FSR controls to the proposed R3 Medium Density Residential zone.

Once the Planning Proposal finalised, subsequent subdivision applications will activate the dedication of land for Affordable Housing under Byron Shire Affordable Housing Contribution Scheme 01.

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:

- 5 1. **Adopts the Planning Proposal in Attachment 1 (E2025/8346), as revised to:**
- a) **include a reference to the *Affordable Housing Contribution Scheme Map* in ‘Part 2 Explanation of provisions’; and**
- b) **apply no FSR controls to the proposed R3 Medium Density Residential zone on the subject land, consistent with Resolution 24-058.**
- 10 2. **Forwards the adopted Planning Proposal and supporting information to the NSW Department of Planning Housing and Infrastructure requesting finalisation.**

Attachments:

- 15 1 26.2023.5.1 Planning Proposal 68 Rankin Drive Bangalow _Final Version for ADOPTION, E2025/8346 
- 2 26.2023.5.1 Gateway Determination, E2024/137222 
- 3 26.2023.5.1 Pre and Post Gateway Comparision of Affordable Housing Contribution Assessment Areas - 68 Rankin Dr Bangalow, E2025/8062 
- 20 4 26.2023.5.1 68 Rankin Rd Consolidated Submissions Redacted (inc. attachments)_Redacted, E2025/5600 
- 5 26.2023.5.1 Agency responses, E2025/9016 
- 6 Form of Special Disclosure of Pecuniary Interest, E2012/2815 

25

Report

Background

On 22 February 2024 Council considered and resolved to proceed (**Res 24-058**) with a Planning Proposal to amend Byron Shire Local Environmental Plan 2014 for land known as 68 Rankin Drive, Bangalow, described as Lot 261 DP1262316 and Lot 11 DP807867. The Planning Proposal extends the existing R2 Low Density Residential Zone on the above lots and rezones the eastern portion of the land to R3 Medium Density Residential.

Once rezoned, future residential subdivision of the land will provide for larger lots on the steeper and more elevated western area of the site, and smaller medium density lots on the flatter eastern area. At the subdivision application stage, a portion of the medium density lots will be dedicated to Byron Shire Council for affordable rental housing through Council's Affordable Housing Contributions Scheme 01. This is the first Planning Proposal on private land to activate the dedication of land for affordable housing under the Scheme.

The subject land (Figures 1 and 2 below):

- has a total area of 4.014ha
- is currently zoned a mix of R2 Low Density Residential, RU1 Primary Production and RU2 Rural Landscape
- is located on the northern extremity of the Bangalow residential area and bordered by Satinash Crescent to the west, Hinterland Way to the north and Rankin Drive to the South
- is situated within the urban growth area identified in the North Coast Regional Plan 2041
- is largely cleared and does not contain environmentally sensitive areas



Figure 1 – Subject Land

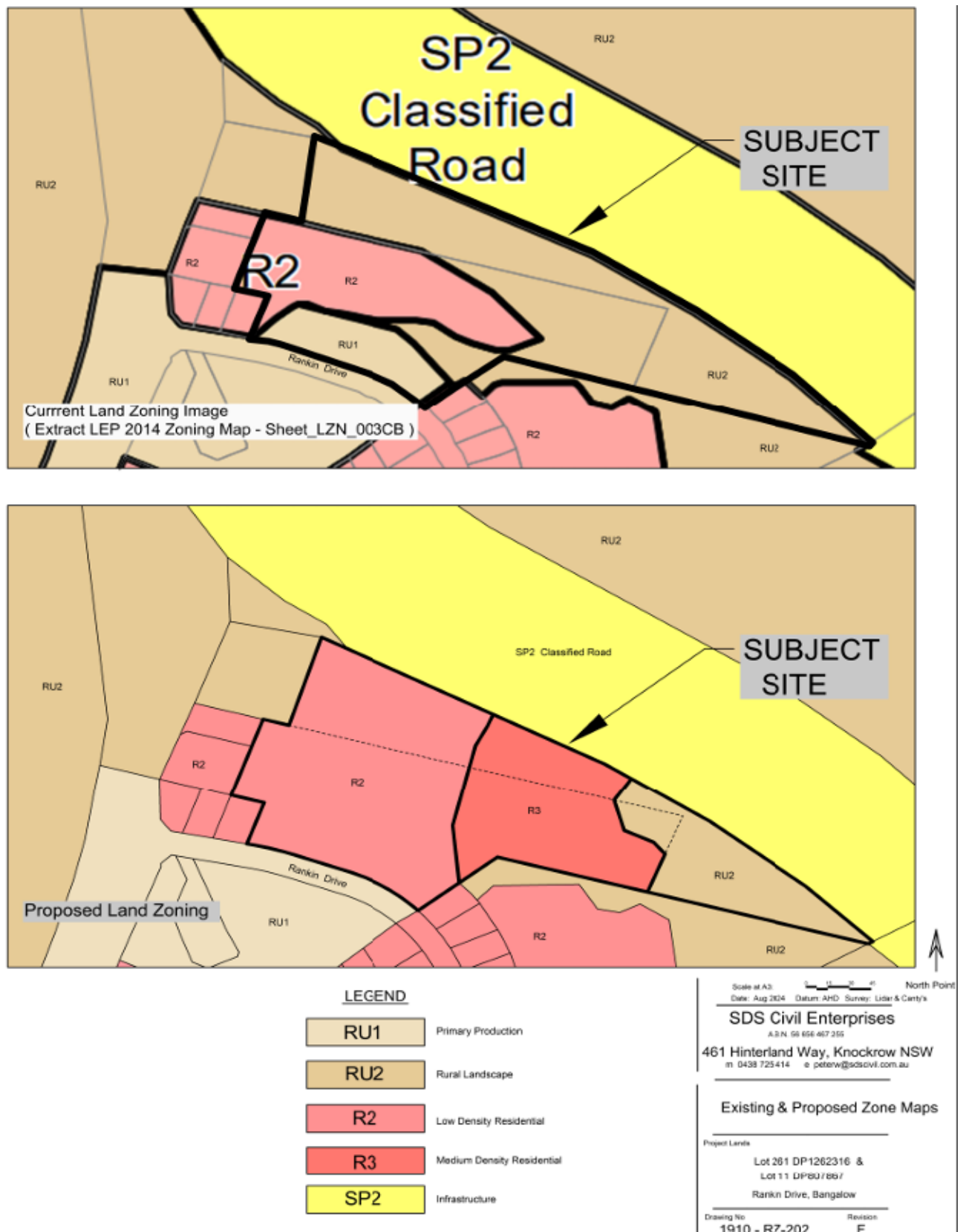


Figure 2 – Existing & Proposed Zone Maps

Other proposed LEP map changes include:

- i) **Floor Space Ratio map** applying the following planning controls to the subject land:

Proposed Zone	Floor Space Ratio Map
R2 Low Density Residential	0.5:1 (consistent with steeper sloping land in surrounding R2 zone)
R3 Medium Density Residential	No FSR to apply (to allow greater flexibility for housing diversity/densities)

The above FSR controls were included in the planning proposal submitted for Gateway determination. However, the publicly exhibited version identified a 0.6:1 FSR for the R3 Medium Density Zones due to both applicant-error and staff-oversight, as shown in the Figure 3 below.

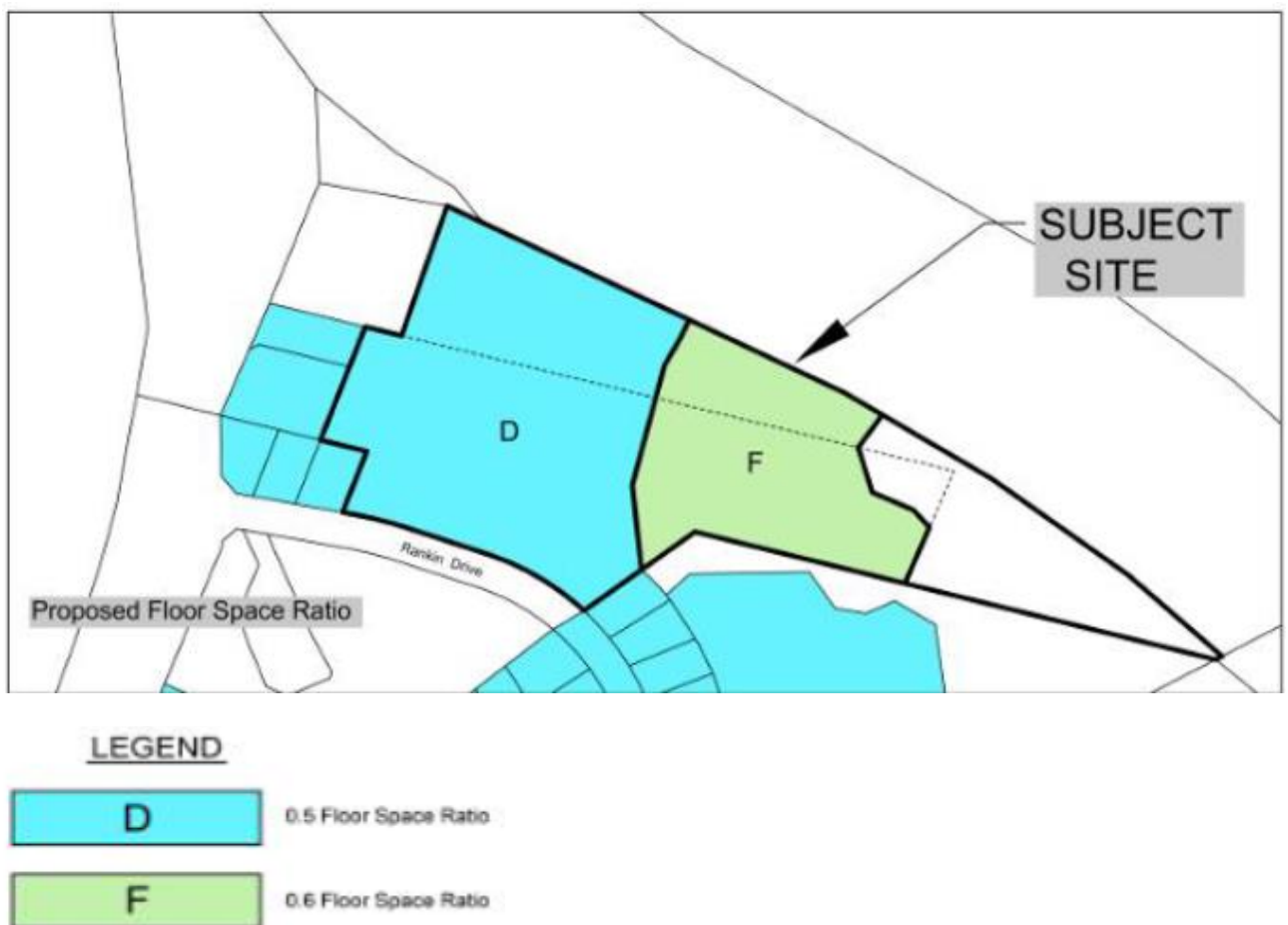


Figure 3 –Proposed Floor Space Ratio Map

- 10 This has been corrected in the revised planning proposal in Attachment 1 on the basis that:

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- Council has delegated authority to make changes to the planning proposal post-exhibition;
- This reflects Council's original intention **not to apply any FSR controls** to the proposed R3 zone (i.e. to allow greater flexibility for housing diversity/densities), as per Res **24-058**;
- Floor space ratio controls were not among the issues identified in any public/agency submissions.

Advice from DPHI about this supports the above approach.

ii) **Minimum Lot Size map** applying the following planning controls to the subject land:

- 800m² (S) for the steeper R2 areas of the site, as this lot size already applies to part of the existing R2 Low Density Residential land on the site
- 600m² as an extension to the existing R2 zone having same lot size on western side
- most eastern portion of land, 7,345m², to remain RU2 zone with a minimum lot size of 4,000m²

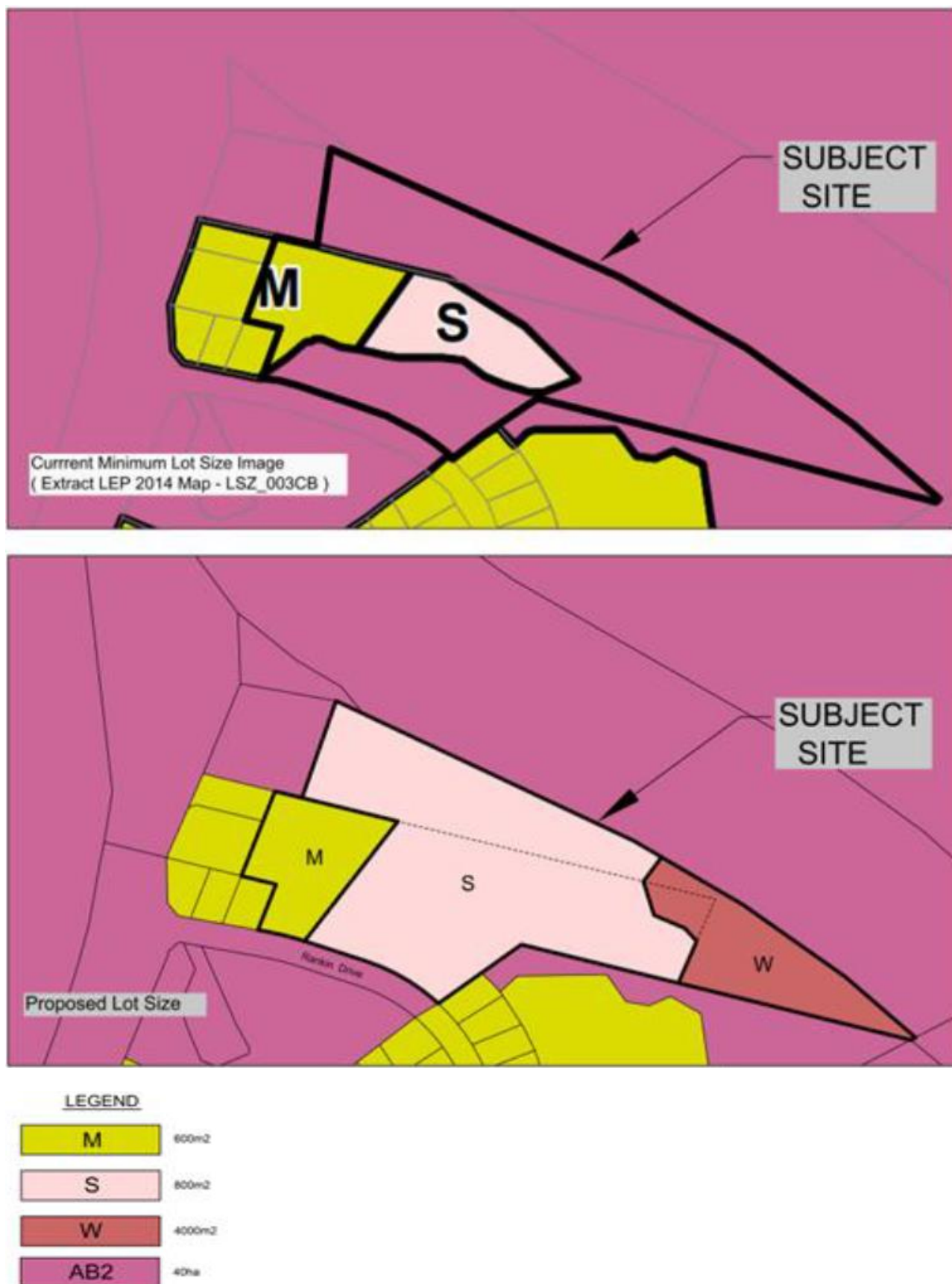


Figure 4 –Proposed Minimum Lot Size Map

- iii) Affordable Housing Contribution Scheme Map identifying the subject land as an “Affordable housing contribution area”.



- 5 No change is proposed to the existing 9m Height of Building control applying to this land.

Gateway Determination

- 10 The Department Planning Housing and Infrastructure (DPHI) issued a Gateway determination on 4 July 2024, which required mapping amendments to the proposed R3 zone in the far eastern corner of the site (see Attachment 2). Among the mapping amendments required was to “remove the triangular area of land located in the eastern corner of Lot 11 DP 807867 that lies outside Area 11 of the Byron Shire Residential Strategy and the Byron Shire Affordable Housing Contribution Scheme and any other part affected by high flood hazard (H5 or H6) in the Probable Maximum Flood event”. This
- 15 resulted in the net reduction of approximately 4,000m² of proposed R3 Medium Density Residential Zone on the subject land.

A comparison of the ‘contribution assessment areas before and after the Gateway amendments are contained in Attachment 3)

Public Exhibition

The Planning Proposal was placed on public exhibition from 22 November to 20 December 2024. Notification letters were sent to adjoining landowners and Agency consultation was carried out in accordance with the Gateway determination (dated 4 July 2024).

- 5 The exhibited documents can be viewed on Council's website [here](#).

Eleven (11) public submissions were received (refer Attachment 4), with two adjoining landowners objecting to the planning proposal.

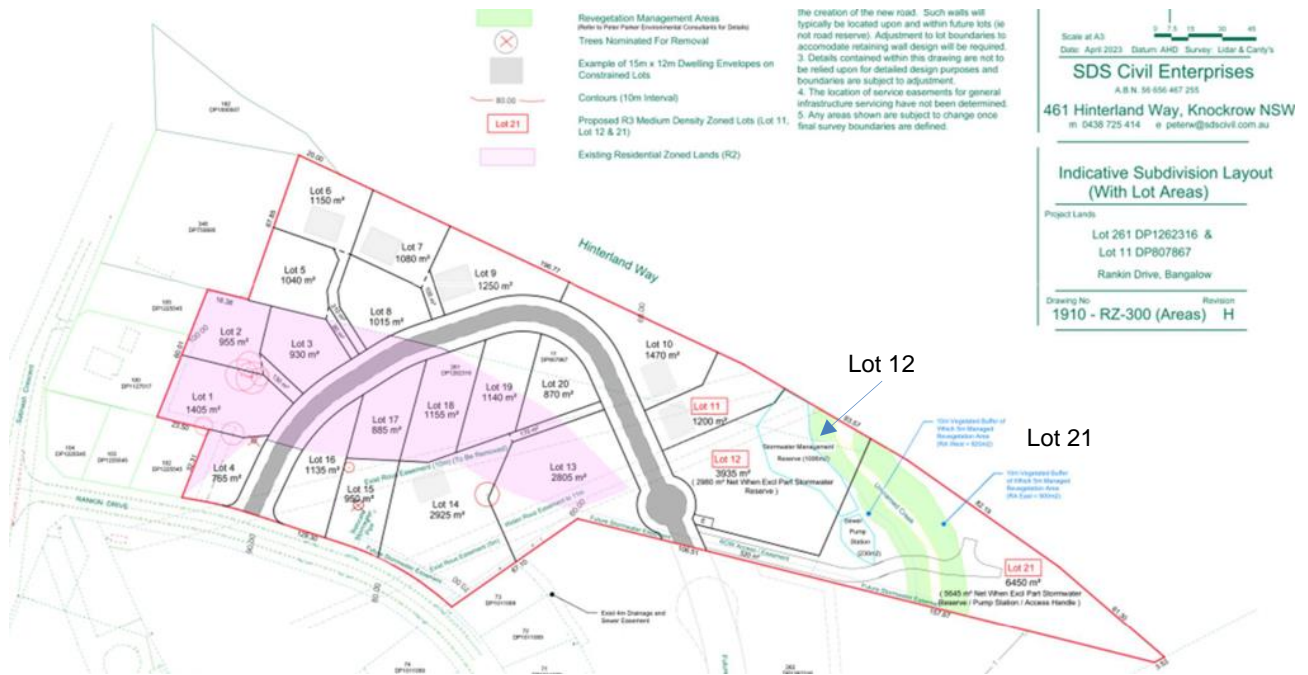
Public submissions

Key reasons given for submissions in support of the planning proposal were as follows:

- 10
- matter of urgency as the country is in an affordable housing crisis
 - Shire is crying out for more residential land and opportunities for affordable housing
 - demonstrates a forward-thinking approach to accommodating the growing needs of the community and represents a positive step forward in ensuring the community remains vibrant, sustainable and diverse
- 15
- will help alleviate the pressure on the current housing market by providing more opportunities for people to live in the community
 - the fact that larger blocks are proposed on the higher parts of the land for lower residential densities (in keeping the 'look and feel' of the area), while the R3 zoning of the lower portion of the land to facilitate affordable housing is considered
- 20 appropriate.

Key concerns raised in submissions objecting to the planning proposal, along with the planner's response, were as follows:

- 25
1. **Land Use Compatibility** – concerns about existing flooding in the lower areas of the subject land, particularly flooding risks on proposed lots 21 and 12 (see Figure 4 below) and future impacts of climate change.



Planning Response:

A comprehensive flood assessment was undertaken to demonstrate that pre- and post-development flood impacts can be addressed within the subject land in accordance with the relevant flood risk management and planning framework. The assessment was reviewed by DPHI and resulted in the riparian part of Lot 12 (shaded green) and all of Lot 21 being removed from the planning proposal. This was done to ensure existing and proposed residential areas are not affected by high flood hazard in the Probable Maximum Flood event.

2. Loss of Privacy and Noise Disruptions – both during and after future development. This was raised by one of the adjoining landowners that works night shifts and weekends as a doctor, citing concerns about sleep impacts during construction phase of future development and stating that “Without a clear plan and mitigation strategies in place, these disturbances will have a serious impact on my ability to rest and perform my duties effectively and safely”.

Planning Response:

Construction hours, noise and other related conditions that must be complied with during future subdivision works will be determined at the development application stage. Adjoining landowners will be notified and given the opportunity to provide comments on future subdivision applications for the subject land.

3. Riparian areas (eastern part of subject land) – recommends replacing the camphor laurel trees and other vegetation along the intermittent waterway with native species, which in turn would help preserve privacy for existing residents, reduce erosion and flooding risks, and improve the local biodiversity.

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The need to undertake riparian plantings and other environmental enhancements will be assessed at the development application stage and if required, will be included as a condition of the development consent (ie. as part of a Vegetation/Biodiversity Management Plan).

- 4. Location of future roads or access points** – this relates to Figure 3.1 below of the exhibited Engineering Services Report, which shows a possible future road connection through the adjoining Lot 262 DP1262316 to the existing Corlis Crescent stub located south of the site. The landowner of Lot 262 DP1262316 has objected to any future road connection through this land.

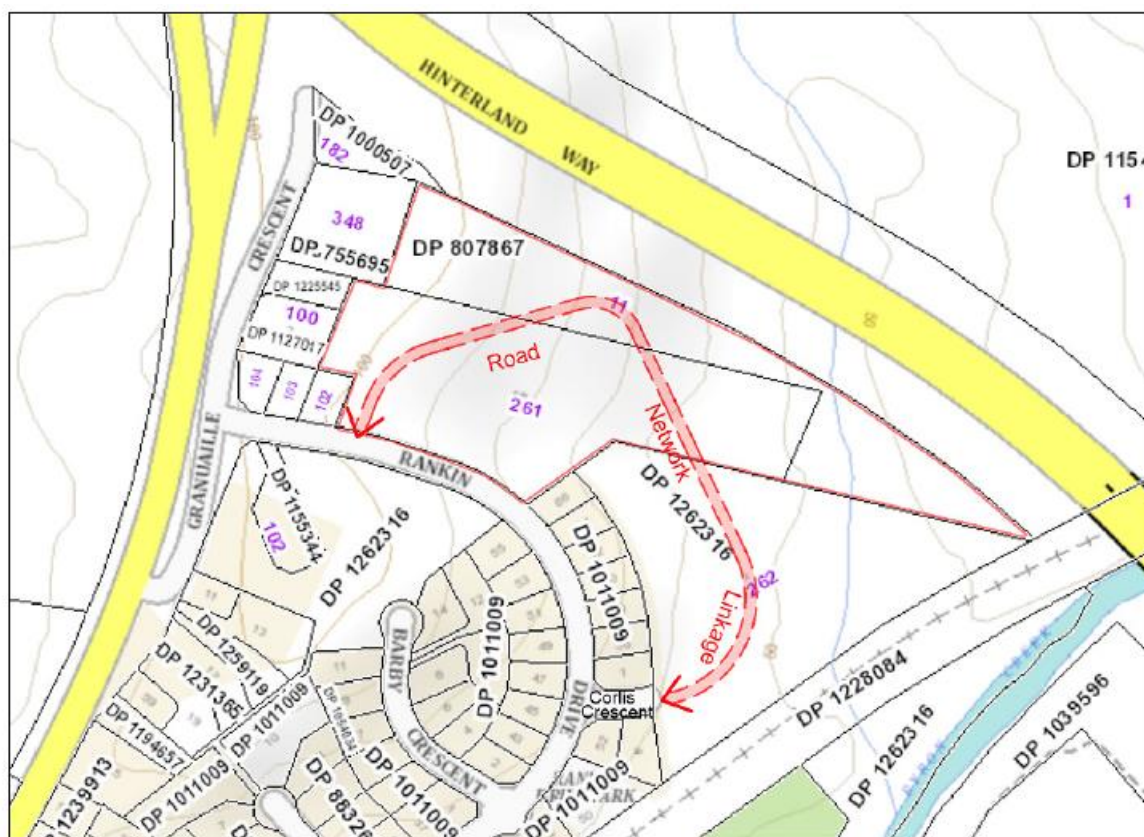


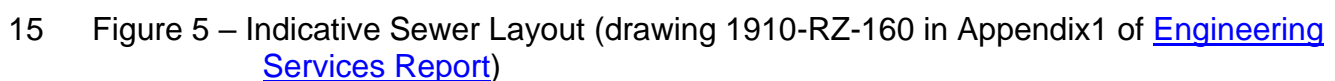
Figure 3.1 – Road Network Linkage

The purpose of this planning proposal is to rezone 68 Rankin Drive to enable residential development. It does not lock-in or pre-empt the outcomes of a future subdivision DA for the subject land (or the adjoining Lot 262 DP1262316 to the south) and hence Figure 3.1 above should be regarded as 'indicative only'. Any future development of the adjoining Lot 262 DP1262316 will be the subject of a separate planning proposal and or development application.

- 5. Future sewer upgrades and access points** – this relates to the Indicative Sewer Layout in Appendix 1 (p25) of the exhibited Engineering Services Report (see extract

5 Planning Response:

10 The purpose of this planning proposal is to rezone 68 Rankin Drive to enable residential development; it does not lock-in or pre-empt the outcomes of a future subdivision DA for the subject land (or the adjoining land to the south). Rather the 'Indicative Sewer Layout' referred to above is only meant to show that the subject lands can be adequately serviced by water and sewer, but it clearly does not represent a pre-determined outcome of this planning proposal. Again, adjoining landowners will have opportunity to provide comments on any future subdivision applications for the subject land.



6. Future road upgrades required to Satinash Crescent and Granuaille Road –
noting the road from Granuaille road to Rankin Drive has no street drainage and is in

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extremely poor condition and that Satinash Crescent needs substantial repair work to remedy the extremely poor condition of the current road surface.

Planning Response:

- 5 Local road upgrades will be considered at the development application stage and if required, this will be conditioned as part of the approval process.

Public Submission matters requesting clarification

- I) Will there be a through road from the existing Corlis Crescent to the access road further up Rankin Drive?

10 Planning Response:

This will depend on the outcomes of a separate planning proposal and development application for the adjoining Lot 262 DP1262316, where the latter assessment will determine suitability of any road connection/s to Corlis Crescent.

- 15 II) Will Satinash Crescent be upgraded as part of the development? It will receive a lot more traffic once the development proceeds and is in very poor condition?

- III) Will adequate drainage be provided as the proposed development is on very steep land?

- IV) Will speed limiting devices be installed on Rankin Drive to cope with the probable increase in traffic.

20 Planning Response to items II)-IV):

- 25 The purpose of this planning proposal is to rezone 68 Rankin Drive to enable residential development. It does not lock-in or pre-empt the outcomes of a future subdivision DA for the subject land Any local road upgrades, drainage and traffic calming measures and will be considered at the development application stage.

Agency Submissions

Responses were received from NSW Rural Fire Service and Rous County Council (Attachment 5), with a summary of key matters raised and planner's response to these in the table below.

Agency and Matters Raised	Council Staff Response
NSW Rural Fire Service Has no concerns or issues in relation to bush fire.	Noted.
Rous County Council	

Agency and Matters Raised	Council Staff Response
<p>1. Planning proposal makes no reference to Clause 6.5 – Drinking water catchments of the Byron LEP that sets out the catchment management objectives for any development within the Shire</p> <p>2. <u>Ecological matters</u> – recommends that a restoration plan (that aims to establish an appropriately vegetated riparian zone inclusive of the koala trees) be made so that this commitment is detailed and requirements clearly laid out as part of any subsequent approval.</p> <p>3. <u>Water quantity and quality</u> – considers that a key element in meeting stormwater quality and quantity objectives is to maximise at source treatment via dwelling rainwater reuse (i.e., tanks) and propose water gardens (i.e., bioretention areas) to be constructed on each allotment.</p> <p>Although the approach outlined in planning proposal demonstrates compliance with Councils pollutant reduction targets and would result in a reduction in average annual runoff volume from the site, this needs to be detailed along with clearly specified requirements as part of any subsequent approval.</p>	<p>The supporting Hydraulic Assessment report identifies measures to address stormwater quality and quantity to meet Chapter B3 of DCP 2014 (Element B3.2.3- Stormwater Management) and Northern Rivers Local Government Design and Construction Guidelines.</p> <p>Notwithstanding this, a more detailed assessment against the matters set out in clause 6.5 will be undertaken at the development application stage.</p> <p>Noted. This will be considered at the development application stage where any Vegetation and Riparian Zone Management Plan requirements will be conditioned as part of the development approval.</p> <p>Noted. Chapter B3 of DCP 2014 identifies a range of water quality treatment measures including roof water tanks, infiltration devices, filtration & bio-retention devices, porous paving, grassed swales, better landscape practices, ponds & wetlands and stormwater tanks. The suitability of treatment measures will be assessed at the DA stage and depend largely on-site conditions.</p> <p>More detailed stormwater quantity and quality management measures will be considered at the development application stage and related requirements conditioned as part any subsequent approval/s.</p>

Conclusion and recommendations

This is the first Planning Proposal to activate the dedication of private land to Council for affordable housing under AHCS 01. The planning proposal is consistent with the applicable State, regional and local planning framework and has the potential to yield 30+ residential dwellings. After considering the key issues raised in public submissions, no changes are recommended to the exhibited planning proposal other than including a reference to the *Affordable Housing Contribution Scheme Map* in 'Part 2 Explanation of provisions', prior to forwarding to the Department of Planning, Housing and Infrastructure for finalisation.

Strategic Considerations

Community Strategic Plan and Operational Plan

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

Relevant Resolutions

- Res 21-284 ([5 August 2021](#))
- Res 24-058 ([22 February 2024](#))

Legal/Statutory/Policy Considerations

Requirements under the Environmental Planning and Assessment Act and Regulation as applicable.

LEP 2014 [clause 6.18](#) and Byron Shire [Affordable Housing Contributions Scheme](#).

Financial Considerations

Owner initiated Planning Proposals are subject to full cost recovery via Council's Fees and Charges.

Consultation and Engagement

Consultation was carried out in accordance with the gateway determination requirements.

Report No. 13.6 PLANNING - Determination of certain s4.55 Applications during the Council recess

Directorate: Sustainable Environment and Economy

Report Author: Shannon Burt, Director Sustainable Environment and Economy

5 **File No:** I2025/42

Summary:

Council at the Ordinary Meeting 12 December 2024 resolved **24-613** as follows:

- 10
1. Delegates to the General Manager the determination of s4.55 modification applications that are to address errors, anomalies, redundancies, or minor changes to Development Applications that were approved by Council, and result in minimal change to design or impact to that originally approved.
 2. Receives a report back at the first available meeting with details of any DA approvals made under this delegation.

15 This report is in response to point 2 of the Resolution.

RECOMMENDATION:

20 **That Council notes the details of the DA approvals made under delegation during the Council recess.**

Report

Council at the Ordinary Meeting 12 December 2024 resolved **24-613** as follows:

- 5 1. Delegates to the General Manager the determination of s4.55 modification applications that are to address errors, anomalies, redundancies, or minor changes to Development Applications that were approved by Council, and result in minimal change to design or impact to that originally approved.
- 10 2. Receives a report back at the first available meeting with details of any DA approvals made under this delegation.

Two DA approvals were made under the above delegation.

DA10.2021.425.5 at 24 Bayside Way, Brunswick Heads to Modify Requirements for Issue of Subdivision Certificate. This included introducing a staging plan to the approval – no changes to the house designs or number of dwellings were proposed.

- 15 This approval was issued on 9 January 2025.

DA10.2019.616.7 at 139 Jonson Street, Byron Bay to delete condition 5 which Prohibits Residential Dwellings from Being Used for Short-term Rental Accommodation (STRA). A modified condition instead of deletion has been applied to the consent (no.89) to reflect the current regulatory requirements for STRA under the Housing SEPP 2021.

- 20 The approval was issued on 24 January 2025.

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	4.1.1: Development assessment - Manage development through a transparent and efficient assessment process	4.1.1.1	Assess and determine development assessments in accordance with the relevant legislation

Recent Resolutions

- **24-613**

Legal/Statutory/Policy Considerations

Staff acting in accordance with delegations.

5 Financial Considerations

Not applicable.

Consultation and Engagement

Not applicable.