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21 September 2022  
Our Ref: 1836.4184

The General Manager  
Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 2482

Dear Sir

**RE: Revised Statement of Environmental Effects Development Application No. 10.2022.372.1 for Craft Beer and Cider Festivals at the North Byron Hotel Lot 4 DP 243218 & Lot 4 DP 1215893, No. 61 Bayshore Drive Byron Bay**

PLANNERS NORTH has been engaged by the owners of the abovementioned land to provide Town Planning advice with respect to the preparation and lodgement of a Development Application with Byron Shire Council in regard to land described as Lot 4 DP 243218 and Lot 4 DP 1215893 Bayshore Drive, Byron Bay. This application is accompanied by relevant landowner authorities provided at **Appendix A**. **Appendix B** contains plans of the proposal. An Event Management Plan is provided at **Appendix C**. **Appendix D** contains a Traffic Management Plan for the event.

#### **THE SITE**

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The subject site is described in Real Property terms as Lot 4 DP 243218 and Lot 4 DP 1215893. Lot 4 DP 243218 has an area of 7649m<sup>2</sup> and contains the North Byron Hotel comprising a bar / bistro and bottle shop.

Lot 4 DP 1215893 is located approximately 350 metres to the north of the Sun Bistro and is presently vacant. Significant vegetation is located along the western boundary of the property. The site is approximately 2.2 hectares in area.

Surrounding development in the vicinity of the North Byron Hotel includes residential dwellings, "Habitat" a work / live and commercial development and the Byron Bay Railway Company operations and platform. Development in the vicinity of Lot 4 DP 1215893 comprises Elements resort.

#### **SITE HISTORY**

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Development Application No. 40/2011 for a single storey hotel (bar / bistro) and bottle shop was approved by Council on 8 September 2011.

A Section 96 Application to amend the building design was approved by Council on 14 February 2013. Further amendments to modify conditions relating to acoustic management and conditions regarding security personnel were approved on 14 August 2015 and 18 November 2016. A Section 96 Application to correct a description was approved on 29 November 2016.

Development Application No. 743/2017 for a shipping container to contain business premises was approved on 6 February 2018.

Development Application No. 10.2018.132.1 for Craft Beer and Cider Festival limited to a two (2) year trial period with a maximum of three (3) festivals in each twelve (12) month period was approved by Council on 30 November 2018. The consent contained a Condition No. 3 stating that the consent ceases two (2) years after the date the consent operates.

# NORTH BYRON HOTEL EVENT

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Occupation Certificate 13.2018.132.1 for the Craft Beer and Cider Festival for May 2019 was issued on 30 May 2019.

## THE PROPOSAL

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The subject application seeks development consent to hold events and festivals on the site. The key difference between the Craft Beer and Cider Festival previously approved, and the subject proposal, is an increase in patron numbers to 1500 and increase in hours of operation until 9pm.

Development Consent is sought for a three (3) year trial period with a maximum of three (3) festivals in each twelve (12) month period. In accordance with the previous consent a maximum of six (6) festivals comprising three (3) in any twelve (12) month period measured from the date the consent operates will be enabled on the site. The proposed date for the initial festival is 11-13 November 2022.

The initial festival will comprise the Caper Byron Bay Festival. This festival will cater for a maximum capacity of 1500 patrons per day and will operate as follows:

- Friday 11 November 2022, 3pm - 9pm
- Saturday 12 November 2022, 10am – 9pm
- Sunday 13 November 2022, 10am – 9pm

Only one event was held in accordance with the previous consent. No issues of concern were raised in relation to the operation of the event.

The previous consent also provided for Council to be notified of the intention to hold each festival at least 28 days prior to the commencement of the festival. The events were also conditioned to avoid conflict with other events and festivals via Condition 6 that provided that no events or festivals were to be undertaken between:

- 20<sup>th</sup> December – 7<sup>th</sup> January
- The week leading into Easter, Easter and the week after Easter, and
- The Byron Bay Writer's Festival

As indicated on the plans accompanying the Development Application, the event will involve the erection of temporary structures on the site. A maximum of 1500 tickets will be sold, and the event will aim for a strong local attendance.

Consultation with the local Police will also be undertaken prior to the event, which will be carried out in strict accordance with the current New South Wales Responsible Service of Alcohol requirements.

The location of proposed temporary structures is identified on the plan accompanying the application. The temporary structures include gazebos, tents, temporary food stalls and temporary toilet facilities.

The proposal also incorporates an area for sustainability talks and children's activities.

Section 68 applications will be submitted to Council for the temporary structures identified on the site plan. Council staff also advise that a Section 138 approval will be required for the Traffic Management Plan.

It is proposed to provide car parking for the event on Lot 4 DP 1215893. This area is capable of accommodating the existing carparking provided on the North Byron Hotel site as well as that generated by the event with capacity for approximately 520 spaces. A Traffic Management Plan is provided at **Appendix D** and includes management of pedestrian movement from the car parking area to the site. It is also noted that the site is located within close proximity to the Byron Bay train and it is anticipated that a proportion of those visiting the festival will travel to or from the event by train. Additional services will also be provided prior to, during and post the event.

As detailed in the Traffic Management Plan, the Cavanbah Centre is also available for car parking with a shuttle bus service.

## **S.4.15 EVALUATION**

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### **SECTION 4.15(1)(a) STATUTORY CONSIDERATIONS**

Pursuant to Section 4.15 of the Environmental Planning & Assessment Act, 1979, a number of statutes are potentially applicable to any single development proposal. This section reviews the range of instruments and notes their application in terms of the subject development application proposal.

### **DEEMED ENVIRONMENTAL PLANNING INSTRUMENTS**

No deemed environmental planning instruments apply to the subject land.

### **LOCAL ENVIRONMENTAL PLANS**

Name: Byron Local Environmental Plan, 1988 (BLEP88)

*Application in Subject Case:*

#### **Zone:**

Part of Lot 4 DP 1215893 on which it is proposed to provide car parking for the event is zoned 7(b) Coastal Habitat in accordance with the provisions of BLEP88.

#### **Permissibility:**

The proposed development will not be located on this part of the site and will be set back sufficiently to ensure no significant impact on the 7(b) zoned land results from the development.

Name: Byron Local Environmental Plan, 2014 (BLEP14)

*Application in Subject Case:*

#### **Zone:**

Lot 4 DP 243218 on which the North Byron Hotel is located is zoned B4 Mixed Use. Lot 4 DP 1215893 is zoned SP3 in accordance with the provisions of BLEP14.

#### **Permissibility:**

The proposed event is consistent with the existing approval of the North Byron Hotel for the purpose of a hotel and comprises a one-day industry related event. The proposed use of Lot 4 DP 1215893 is consistent with permissible uses in the SP3 Tourist Zone.

#### **Concurrence:**

No requirement for concurrence is triggered by the proposal.

#### **Advertising:**

Advertising of this development is not required under the provisions of BLEP88 or BLEP14.

#### **Special Provisions Applicable:**

The following provisions of BLEP14 are applicable to Council's consideration of the subject proposal.

#### **Zone B4 Mixed Use**

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

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*

**2 Permitted without consent**

*Environmental protection works; Home-based child care; Home occupations*

**3 Permitted with consent**

*Bed and breakfast accommodation; Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Dual occupancies; Dwelling houses; Educational establishments; Entertainment facilities; Function centres; Hostels; Hotel or motel accommodation; Information and education facilities; Light industries; Medical centres; Multi dwelling housing; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Roads; Seniors housing; Serviced apartments; Shop top housing; Any other development not specified in item 2 or 4*

**4 Prohibited**

*Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Biosolids treatment facilities; Boat building and repair facilities; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Cemeteries; Charter and tourism boating facilities; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Helipads; Highway service centres; Home occupations (sex services); Industrial retail outlets; Industrial training facilities; Industries; Jetties; Marinas; Mooring pens; Moorings; Mortuaries; Open cut mining; Recreation facilities (major); Recreation facilities (outdoor); Research stations; Residential accommodation; Rural industries; Sewage treatment plants; Sex services premises; Storage premises; Tourist and visitor accommodation; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Waste or resource management facilities; Water recreation structures; Water recycling facilities; Water supply systems; Wharf or boating facilities; Wholesale supplies*

**Comment:**

The proposed development is consistent with the objectives of the B4 Mixed Use Zone and provides for an event which has been designed to be compatible with other land uses in the zone and surrounding vicinity. The proposed event is associated with the existing approved hotel use of the site.

**Zone SP3 Tourist**

**1 Objectives of zone**

- To provide for a variety of tourist-oriented development and related uses.
- To encourage tourist development in designated areas to reduce impacts on residential amenity in other zones.

**2 Permitted without consent**

*Environmental protection works; Home occupations*

**3 Permitted with consent**

*Amusement centres; Boat launching ramps; Boat sheds; Camping grounds; Caravan parks; Centre-based child care facilities; Community facilities; Eco-tourist facilities; Entertainment facilities; Environmental facilities; Flood mitigation works; Food and drink premises; Function centres; Helipads; Information and education facilities; Kiosks; Recreation areas; Respite day care centres; Roads; Signage; Tourist and visitor accommodation*

**4 Prohibited**

*Any development not specified in item 2 or 3*

**Comment:**

The proposed use of Lot 4 DP 1215893 is consistent with the objectives of the SP3 Tourist Zone which include providing for a variety of tourist-orientated development and related uses. The proposed car parking has been sited to minimise impacts on the residential amenity of the locality.

### **6.3 Flood planning**

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

- (a) *to minimise the flood risk to life and property associated with the use of land,*
- (b) *to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
- (c) *to avoid significant adverse impacts on flood behaviour and the environment.*

(2) *This clause applies to land at or below the flood planning level.*

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

- (a) *is compatible with the flood hazard of the land, and*
- (b) *will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *incorporates appropriate measures to manage risk to life from flood, and*
- (d) *will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

(4) *In determining a development application for development at or below the future flood planning level, the consent authority must, in addition to the matters referred to in subclause (3), also consider the following matters:*

- (a) *the proximity of the development to the current flood planning area,*
- (b) *the intended design life and scale of the development,*
- (c) *the sensitivity of the development in relation to managing the risk to life from any flood,*
- (d) *the potential to modify, relocate or remove the development.*

(5) *A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0) published by the NSW Government in April 2005, unless it is otherwise defined in this clause.*

(6) *In this clause:*

**flood planning area** *means the area of land that is at or below the flood planning level.*

**flood planning level** *means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.*

**future flood planning level** *means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard, plus allowances for projected climate change to the year 2100.*

#### **Comment:**

The proposed temporary use of this land for a single day event is not considered likely to result in adverse impacts in relation to flood planning.

### **6.6 Essential services**

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

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*

(e) suitable vehicular access.

**Comment:**

The proposal is adequately serviced as noted on the Site Plan. Additional toilet facilities will be provided to cater for the event.

**DEVELOPMENT CONTROL PLANS**

**Name: Byron Development Control Plan 2014 (BDCP2014)**

*Application in Subject Case:*

Set out below are the relevant provisions of Council's residential standards contained in BDCP2014. Brief comments in relation to compliance with these development standards are set out below.

**Chapter B4 Traffic Planning, Vehicle Parking Circulation and Access**

It is proposed to provide car parking on Lot 4 DP 1215893 to cater for the North Byron Hotel spaces which will be occupied by tents and stalls, as well as provide car parking for those attending the event. It is considered that the capacity of Lot 4 DP 1215893 is more than adequate to provide for the proposed use.

A Traffic Management Plan has been prepared for the event and accompanies this application at **Appendix D**. In addition to this, extra train services will be operating during the event and for an hour prior to and post the event.

**Chapter E5 Certain Locations in Byron Bay and Ewingsdale**

Section E5.7 contains provisions regarding the North Byron Beach Resort Site. The proposed temporary use of the site for car parking associated with the Sun Bistro event for one day does not raise any issues in relation to BDCP14 provisions.

**STATE ENVIRONMENTAL PLANNING POLICIES**

The following State Environmental Planning Policies (SEPP's) apply to this development:

- SEPP (Biodiversity and Conservation) 2021
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Exempt and Complying Development Codes) 2008
- SEPP (Housing) 2021
- SEPP (Industry and Employment) 2021
- SEPP (Planning Systems) 2021
- SEPP (Primary Production) 2021
- SEPP (Resilience and Hazards) 2021
- SEPP (Resources and Energy) 2021
- SEPP (Transport and Infrastructure) 2021
- SEPP No 65—Design Quality of Residential Apartment Development

Of these SEPPs, the following have particular relevance to the subject application.

**Title:** State Environmental Planning Policy (Resilience and Hazards) 2021

**Published:** 1 March 2022

**Abstract:**

The aim of this policy is to specify specific arrangements for Coastal management; hazardous and offensive development and remediation of land.

Chapter 2 Coastal management

Part 2.2 Development controls for coastal management areas

Division 1 Coastal wetlands and littoral rainforests area

Division 3 Coast environment area

**2.8 Development on land in proximity to coastal wetlands or littoral rainforest**

Note—

The Coastal Wetlands and Littoral Rainforests Area Map identifies certain land that is inside the coastal wetlands and littoral rainforests area as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” or both.

- (1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on—
  - (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
  - (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.
- (2) This section does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map.

**Comment:**


The site is mapped as a proximity area for coastal wetlands. The proposed events will be held within the footprint of the North Byron Hotel. Ancillary parking on the land to the north will be located on a cleared grassed area. Potential impacts are able to be adequately addressed by conditions of consent.

**2.10 Development on land within the coastal environment area**

- (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—
  - (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
  - (b) coastal environmental values and natural coastal processes,
  - (c) the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
  - (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
  - (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,


**Lot 4 DP243218  
Proximity to Coastal Wetlands Map**



**Legend**  Proximity Area for Coastal Wetlands

**Lot 4 DP1215893  
Proximity to Coastal Wetlands Map**



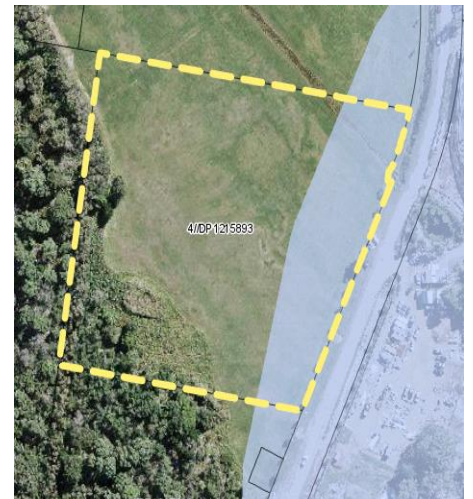
**Legend**  Proximity Area for Coastal Wetlands

- (f) Aboriginal cultural heritage, practices and places,
  - (g) the use of the surf zone.
- (2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—
- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or
  - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
  - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.
- (3) This section does not apply to land within the Foreshores and Waterways Area within the meaning of [Sydney Regional Environmental Plan \(Sydney Harbour Catchment\) 2005](#).

**Comment:**

The proposal does not raise any issues in relation to the provisions of Clause 2.10.

**Lot 4 DP1215893  
Coastal Environment Area Map**



**Legend**  Coastal Environment Area

**THE REGULATIONS**

Clause 92 of the EP&A Act Regulation requires the provisions of the Coastal Policy to be taken into consideration. No issues arise in relation to the provisions of the Regulation.

**INTEGRATED DEVELOPMENT CONSIDERATIONS**

The development is not Integrated Development.

**SECTION 4.15(1)(b) ENVIRONMENTAL IMPACTS**

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Section 4.15(1)(b) requires that the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality, be considered.

**Comment:**

The potential impacts of the proposed event have been carefully considered. The proposed hours of the event are limited to 9pm to ensure that the event does not adversely impact on surrounding residents. The Traffic Management Plan and Event Management Plan have been designed to ensure that potential impacts are mitigated and the limited duration of the event will ensure that the potential impacts are acceptable in the circumstances.

**SECTION 4.15(1)(c) SUITABILITY OF SITE**

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Section 4.15(1)(c) requires that the suitability of the site for the development, be considered.

**Comment:**

The subject site is suitable for the proposed development. The proposed development is associated with the existing hotel use of the site and is an appropriate location for showcasing local food and beverages. The site proposed for car parking use is appropriately located within close proximity and is adequate in terms of area to cater for the anticipated traffic generated by the event.



**SECTION 4.15(1)(d) SUBMISSIONS**

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Section 4.15(1)(d) requires that any submissions made in accordance with this Act or the regulations, be considered.

**Comment:**

The proposed notification to surrounding land owners required in accordance with the provisions of BDCP14 will be undertaken by Council.

**SECTION 4.15(1)(e) PUBLIC INTEREST**

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Section 4.15(1)(e) requires that requires that the public interest be considered.

**Comment:**

The proposed development is considered to be consistent with the public interest.

**CONCLUSION**

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The proposal to provide for events and festivals on the existing hotel site is a product of many factors. These factors include:

- policies of all levels of government to promote the orderly development and use of land which can be demonstrated to be suitable for urban land use; and
- the site planning opportunities presented by the site.

The proposed development is permissible in accordance with the provisions of BLEP14 and is consistent with relevant statutory and policy planning provisions.

In our opinion, the development can be seen to satisfy a legitimate need for appropriately managed and located small events within Byron Shire and is capable of use in a manner which mitigates potential adverse impacts. The approval of the proposed development would be in the public interest within the meaning of Section 4.15(1) (e) of the Act.

Should Council require any additional information, or wish to clarify any matter raised by this proposal or submissions made to same, Council is requested to consult with the writer prior to determination of this application.

Yours faithfully,

**PLANNERS NORTH**



**Kate Singleton MPIA CPP**

PARTNERSHIP PRINCIPAL

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Encl:

Appendix A –Landowner Authority

Appendix B – Plans

Appendix C – Event Management Plan

Appendix D – Traffic Management Plan

**APPENDIX A**

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Landowner Authority

**APPENDIX B**

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Plans

**APPENDIX C**

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Event Management Plan

**APPENDIX D**

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Traffic Management Plan