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SEC 8.2 REVIEW OF DA 10.2021.693.1
STATEMENT OF ENVIRONMENTAL EFFECTS
Amendment of Shed Design
(Previous Consent 10.2016.776.1 dated 24th. Jan. 2017)

Lot 2 D.P.791508
No 2 Hamiltons lane Byron Bay



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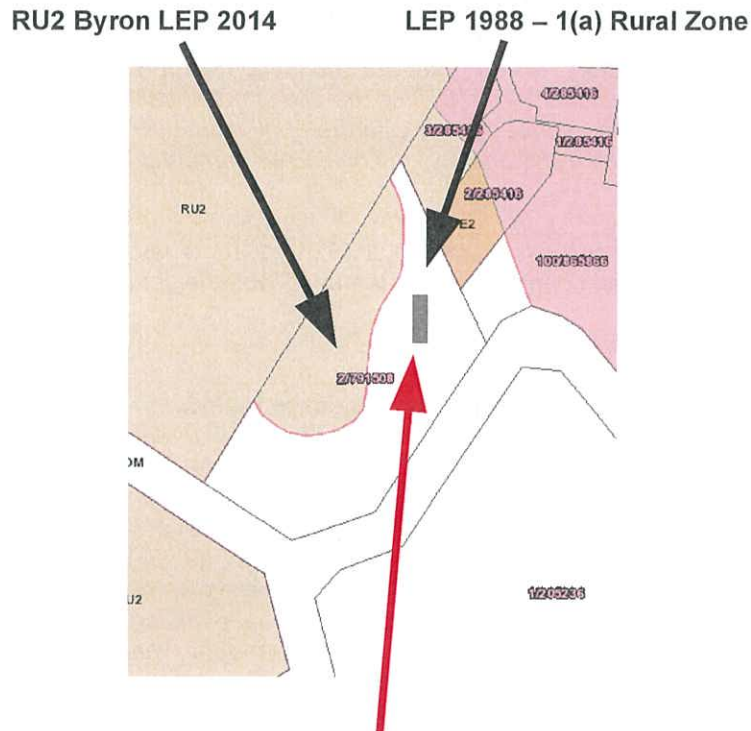
* AMENDED SHED PLANS

* **Byron Bay Surveying Report 20 May 2022 SHOWING NATURAL GROUND TO ROOF HEIGHT LEVELS**



LOCALITY & ZONING PLAN

8.2 Review of Amended Shed Design Lot 2 D.P.791508 No 2 Hamiltons lane Byron Bay



Shed Location

1 INTRODUCTION

This report is to accompany a Section 8.2 Review Application in relation to DA 10.2021.693.1, which sought to regularise the already constructed amend Shed design, constructed under Consent 10.2016.776.1 dated 24th. Jan. 2017 on Lot 2 D.P.791508 No 2 Hamiltons lane Byron Bay. This property has an area of approx. 1.1ha.

This DA 10.2021.693.1 was refused by Council on the 31st. March 2022 on three grounds.

The Shed has been constructed at variance to the original approved design, and a recent attempt to address this via Sec 4.55 Application 10.2016.776.2 was rejected by Council on the 28th. of Sept 2021, on the basis that the building was too different, and that at each level of the building five spaces had been created by internal walls making the structure "*consistent with a habitable structure*".

The constructed shed now contains a larger than previously approved storage mezzanine of 142m², and the roof has been changed from a pitched roof with a gable end, to a skillion roof. Also there were changes to its fenestration, where there has been a removal of previously approved fenestration to the east, and an increase in fenestration at both levels to the west, including sliding doors to access a maintenance balcony at first floor level, and a workspace balcony at ground level.

The shed remains in the same approved location and with the same approved footprint. Walls and Roof are clad in Grey Kliploc.

These minor amendments proposed do not alter the nature of the approval, being a Shed constructed under Consent 10.2016.776.1, however it is agreed that to ensure the intent of the previous Shed approval is maintained, that all internal walls and partitions will be removed. As such its shape, form and character will remain a Shed.



The recent DA 10.2021.693.1, was refused by Council on the 31st. March 2022 on the following three grounds :-

1. *The Application is not satisfactory having regard to Section 4.15(1)(a) (i) of the Environmental Planning and Assessment Act 1979 because the development as built does not comply with Clause 40 Height of the Byron Local Environmental Plan 1988 and Clause 4.3 Height of Buildings of the Byron Local Environmental Plan 2014, with the building exceeding the 9 m height limit.*

2. *The development is not satisfactory having regard to subsection 4.15(1) (c) of the Environmental Planning and Assessment Act 1979 as the site is not suitable for the proposed development as the development does not comply with the applicable development standards in the Byron Local Environmental Plan 1988 and Byron Local Environmental Plan 2014.*

3. *The development is not satisfactory in relation to the Public Interest under subsection 4.15(1) (e) of the Environmental Planning and Assessment Act 1979 having regards to the bonafides of the proposal as a shed and the non compliance with the applicable height controls under Byron LEP 1988 and Byron LEP 2014.*

EPA Act Sec 8.2 Determinations and decisions subject to review

(1) The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division—

(a) the determination of an application for development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),

(b) the determination of an application for the modification of a development consent by a council, by a local planning panel, by a Sydney district or regional planning panel or by any person acting as delegate of the Minister (other than the Independent Planning Commission or the Planning Secretary),

(c) the decision of a council to reject and not determine an application for development consent.

To address the concerns of Council, a detailed survey of the property was conducted to establish natural ground levels before the shed was lawfully commenced under Consent 10.2016.776.1 dated 24th. Jan. 2017 and subsequent CC 11.2016.776.1.
(See Attached Byron Bay Surveying Report 20 May 2022)

This report finds that :-

Upon the part of land surveyed, stands a sheet metal outbuilding roofed with metal which is the subject of this survey only.

The position of the outbuilding and associated structures in relation to the boundaries of the subject land is shown on the attached sketch, drawing BYR117 Ident.

The height of the outbuilding's roof was requested to be determined above natural ground level.

The points located are shown in circled letters on the sketch and their heights are as follows:

- Corner A - 8.9 metres
- Corner B - 4.9 metres
- Corner C - 4.0 metres
- Corner D - 8.2 metres

Natural surface levels have been determined by interpolation between undisturbed surface points remote from disturbed works ground and following contour lines of the general undisturbed topography.

Reason 1

On the basis of this survey report, it is evident that the Structure does not exceed the Statutory 9m maximum building height set for this part of the Byron Shire under the provisions of Clause 40 Height of the Byron Local Environmental Plan 1988 and Clause 4.3 of Byron LEP 2014, and the Maps that accompany the LEP.

On this basis Reason 1 of the Refusal Notice is not a valid reason for refusal, and as such this Sec 8.2 Review should result in a Development Consent being issued for the rural shed on site.



Reason 2

The development is not satisfactory having regard to subsection 4.15(1) (c) of the Environmental Planning and Assessment Act 1979 as the site is not suitable for the proposed development as the development does not comply with the applicable development standards in the Byron Local Environmental Plan 1988 and Byron Local Environmental Plan 2014.

The annexed survey report, shows clearly that the Structure does not exceed the Statutory 9m maximum building height set for this part of the Byron Shire under the provisions of Clause 40 Height of the Byron Local Environmental Plan 1988 and Clause 4.3 of Byron LEP 2014, and the Maps that accompany the LEP.

On this basis, the shed does comply with the Maximum Height Development Standard, and therefore Reason 2 of the Refusal Notice is not a valid reason for refusal, and as such this Sec 8.2 Review should result in a Development Consent being issued for the rural shed on site.

Reason 3

The development is not satisfactory in relation to the Public Interest under subsection 4.15(1) (e) of the Environmental Planning and Assessment Act 1979 having regards to the bonafides of the proposal as a shed and the non compliance with the applicable height controls under Byron LEP 1988 and Byron LEP 2014.

The annexed survey report, shows clearly that the Structure does not exceed the Statutory 9m maximum building height set for this part of the Byron Shire under the provisions of Clause 40 Height of the Byron Local Environmental Plan 1988 and Clause 4.3 of Byron LEP 2014, and the Maps that accompany the LEP.

In relation to its use as a Shed, the plans submitted with the application show the removal of all internal walls.

This meets the requirements of DCP 2014 Part D2.7.2 Farm Buildings, Shed & other structures, point 6 :-

“Sheds should be open, have minimal dividing walls and plumbing and be suitable for machinery and vehicle storage. Plans of decommissioning should be included with Development Applications seeking to change the use of the building from a dwelling to a shed.”

It is to be used in conjunction with the plant raising business on site which supplies stock for the owners Landscaping Business. It will thus house machinery, equipment and ancillary storage relating to these landuse activities.

On this basis Reason 3 of the Refusal Notice is not a valid reason for refusal, and as such this Sec 8.2 Review should result in a Development Consent being issued for the rural shed on site.



2 SECTION 4.15(1) (E.P.A. ACT)

2.1 STATUTORY ZONE

The property is located within two Statutory Zoned being Rural Landscape RU2 Byron LEP 2014 in the west, and Rural 1(a) Byron LEP 1988 in the east.

The amended Shed is located wholly within the **Zone No 1(a) (Rural)** under the provisions of Byron Shire Local Environmental Plan 1988. This site had been deferred from inclusion in the recent Byron LEP 2014.

The proposed amended Shed remains a permissible use with the consent of Council pursuant to the provisions of the 1(a) Landuse Table, Clause 9 Byron Shire Local Environmental Plan 1988.

The site is soon to be totally Zone RU2, and as such the amended shed will remain a permissible landuse into the future.



On this basis, and given the previously detailed rebuttal of Refusal reasons 1, 2 and 3, then the Refusal Notice is not a valid, and as such this Sec 8.2 Review should result in a Development Consent being issued for the rural shed on site.

2.2 - STATUTORY OBJECTIVES - Zone No. 1(a) (Rural)

The proposed amended Shed, satisfies the objectives of the 1(a) Zone as follows :-

a) The proposed amended Shed will not alter the existing natural, economic, cultural, social and scenic amenity of the rural environment as:-

- 1) The property is one to which Clause 15 of the LEP.
- 2) The amended Shed is located within areas of the site previously cleared of trees. It thus meets ESD provisions. This means that environmental disturbance will be nil.



- b) The proposed amended Shed will not change the approved settlement pattern of the area as previously stated.
- c) The amended Shed is in keeping with its potential under the provisions of the EPA Act as detailed in the introduction.
Further to this, the Shed is located clear of the zone of influence of all D.C.P. 2010 buffer zones. (i.e. Horticulture and Piggery Buffers).
As such the proposed development will not conflict with zone objective (c).
- d) No agricultural activities are currently supported by this property.
The amended Shed still promotes zone objective (d).
- e) The site is generally unconstrained other than by Bushfire. The amended Steel Shed poses a low flammability structure which poses no increase in fire threat. No additional earth works or environmental impact results.
The proposed development thus satisfies zone objective (e).
- f) The proposed amended Shed maintains the existing safe vehicular access point off Hamiltons Lane.
- g) The property is not used for an extractive industry, and is spatially and visually removed from the quarry operations.
As such neither use will impact upon the operation of the other.
- h) No Rural Tourist Facility is proposed.
- i) No industrial use of the land is proposed.
- j) Only cleared and already developed areas are used, using an existing access, and existing cleared and already developed land. All habitat areas are located well removed from the existing elevated structures, and as such the development does not impact upon habitat areas.

SUMMARY

The above assessment of the development under the individual Objectives of the Rural 1(a) Zone shows that the proposed amended Shed will not compromise the statutory objectives of the L.E.P., or the provisions of Clause, 9, 15 or 31.

2.3 – D.C.P. 2010

<u>REQUIRED</u>	<u>PROPOSED</u>	<u>COMMENT</u>
Max.Ht. 9M	8.9 m.	Complies
Building Ht. Plane	Within Height Plane	Complies
Setback to road B'ndry 15m	35 metres	
	from Old Bngalow Road.	Complies
Parking	Provides farm equipment & vehicle parking	Complies

2.4 DCP 2010 Clause C2.7 Earthworks.

- The objectives of the 1 m maximum earth works required under this Clause are:
- To minimise Environmental Impact.
- To blend the development into the site.
- To minimise erosion risk.
- To minimise disturbance to the natural landform.
- To encourage designs which blend into the natural landform.

The amended design of the shed results in no additional site works, only the removal of partially constructed internal walls and partitions to achieve an open floor area, commensurate with its approved Shed status.



Only the roof design and fenestration has changed. The building is set against the back drop of the ridge to the east, and as such sits well below the tree line. On this basis it cannot detract from the visual integrity of the area.

It is the avoidance of large visual scars which underlies the objective of Clause C2.7.

The proposed amended Shed therefore meets the Objectives of Clause C2.7, and blends into the natural environment.

Summary : Viewed in total, the approval of the proposed amended Shed will in no way prejudice the proper future planning of the area, or the development of adjoining land, as it accords with Zoning, Zone Objective, and D.C.P. requirements.

2.5 LANDSCAPING – DCP 2010

The existing landscaping is more than adequate to screen and visually soften the proposed Amended Shed, and as such no additional landscaping is deemed necessary.

2.6 State Environmental Planning Policy (Resilience & Hazards) 2021

Not Applicable, as the property sits outside mapped areas.

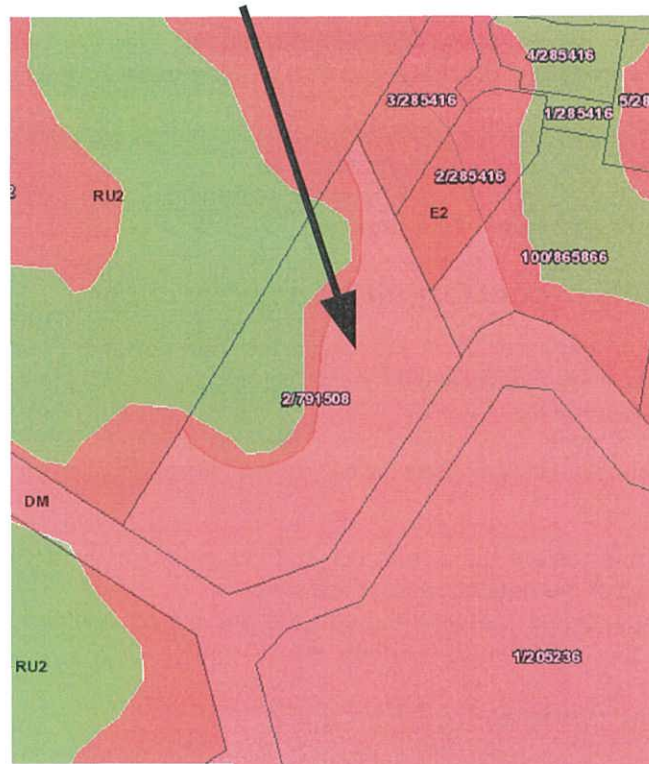




2.7 Planning for Bushfire 2019.

To assist in the assessment of this application by Council under the provisions of Table A1.12.6 of the Planning for Bushfire Protection Regulations, the following assessment is provided for the proposed amended Shed on Lot 2 D.P.791508 No 2 Hamiltons lane Byron Bay, Area 1.1ha. The Shed sits within the zone of the mapped Bushfire threat, despite this, a defensible space is provided about this non residential structure, it is constructed using non combustible materials and is located over 35m from the existing dwelling on site. On this basis the proposal meets all of the requirements of PBP2019 for Shed structures.

Amended Shed - Lot 2 D.P.791508 No 2 Hamiltons lane Byron Bay





3 Sec. 4.15(1)(b) IMPACT ON ENVIRONMENT

The proposed amended Shed relates to the altered design of an already approved and constructed shed, with no additional site works, and only the removal of partially constructed internal walls and partitions to achieve an open floor area, commensurate with its approved Shed status.

It uses existing cleared land, with all existing trees to be retained, thus minimising adverse environmental impact.

The site is located within a well developed small rural lot area, and boundary plantings and established regenerating native and introduced trees, clustered along the eastern boundary of the property are to be retained.

No appreciable change in the character of the site or its surrounding area will therefore result, particularly as the boundary vegetation and the eastern vegetation band of trees are retained.

The flora species specifically targeted in the study of the site found that the development did not impact upon threatened species over this mostly cleared site.

All native species are to be retained, and this will maintain screening, visual softening, and the continued broadening of the habitat base of the area.

3.1 EPA Act Sec 5.5 Duty to consider environmental impact

(1) For the purpose of attaining the objects of this Act relating to the protection and enhancement of the environment, a determining authority in its consideration of an activity shall, notwithstanding any other provisions of this Act or the provisions of any other Act or of any instrument made under this or any other Act, examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity.

As stated above, the native species are to be retained, and this maintains screening, visual softening, and the broadening of the habitat base of the area.

On this basis the proposal results in development meets the Sec 5.5 requirements of the EPA Act in that it results in the “protection and enhancement of the environment”.

3.2 Biodiversity Conservation Regulation 2017

The Biodiversity Conservation Regulation 2017 sets out threshold levels for when the Biodiversity Offsets Scheme will be triggered. The threshold has two elements:

- Whether the amount of native vegetation being cleared exceeds a threshold area, or
- Whether the impacts occur on an area mapped on the Biodiversity Values map published by the Minister for the Environment

If clearing and other impacts exceeds either trigger, the Biodiversity Offset Scheme applies to the proposed development including biodiversity impacts prescribed by clause 6.1 of the Biodiversity Regulation 2017.

If the Biodiversity offsets scheme is not triggered, the test of significance detailed in section 7.3 of the Biodiversity Conservation Act 2016 must be used to determine whether a local development is likely to significantly affect threatened species.

The Biodiversity Conservation Regulation 2017 sets out thresholds for when the Biodiversity Offsets Scheme will be triggered.

The threshold has three triggers:

1. whether the amount of native vegetation being cleared exceeds a threshold area set out in the table below, or
2. whether the area being cleared is mapped as ‘sensitive’ on the Biodiversity Values Map published by the NSW Office of Environment and Heritage, or
3. whether a significant impact is likely according to a ‘test of significance’.



Area Clearing Threshold.

Minimum lot size associated with the property	Threshold for clearing above which the offsets scheme applies
Less than 1 hectare	0.25 hectares or more
1 hectare to less than 40 hectares	0.5 hectares or more
40 hectares to less than 1000 hectares	1 hectare or more
1000 hectares or more	2 hectares or more

As the property has an area of 1.1ha., then the clearing threshold is 0.25ha. In this instance, only existing cleared land is to be used, and as the changes to the Shed require no APZ, then no additional clearing outside the already cleared areas is required to achieve APZs (See Bushfire Report).

As can be seen from the following extract from the Biodiversity Values map, as published by the Minister for the Environment, the proposed development sits outside the areas mapped on the Biodiversity Values map.

Amended Shed - Lot 2 D.P.791508 No 2 Hamiltons lane Byron Bay



3.2.1 Sec 7.3 of the Biodiversity Conservation Act 2016

Sec 7.3 Test for determining whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats

(1) The following is to be taken into account for the purposes of determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats:

(a) in the case of a threatened species, whether the proposed development or activity is



likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,

In these areas of the Shire, the following Endangered or rare species could occur:

Endangered or rare tree species:-

Acianthus amplexicaulis; Acronychia littoralis	(Scented Acronychia)
Amorphospermum whiteii	(Rusty Plum)
Archidendron muellerianum	(Veiny Lace Flower)
Cordyline congesta; Cryptocarya foetida	(Stinking cryptocarya)
Endiandra hayseii	(Velvet Laurel)
Syzygium hodgkinsoniae	(Red Lilli Pilli)
Syzygium moorei	(Durobby)
Thozetia racemosa; Randia moorei	(Spiny Gardenia)

Endangered or rare Bat Species:-

Chalinolobus nigrogriseus	(Whorie Bat)
Miniopterus australis	(Mini Bent Wing Bat)
Nyctophilus bifax	(Small Cave Bat)

Endangered or rare animal Species:-

Phascolarctos cinereus	(Koala)
Potorous tridactylus	(Potoroo)

Threatened species were not identified on this site, and the cleared nature of the development area within the site, and with native species to be retained, maintaining screening, visual softening, and the broadening of the habitat base of the area, then this ensures minimisation of impact.

In general the habitat contained on site is not one conducive to the habitat needs of threatened species, particularly given its small size, disturbed nature, large number of introduced and non endemic species, and its 1(a) Zone location.

(b) in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:

- (i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or**
- (ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,**

As previously indicated, no habitat is to be removed, and the native species retained will effect screening, visual softening, and the broadening of the habitat base of the area.

(c) in relation to the habitat of a threatened species or ecological community:

- (i) the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and**
- (ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and**
- (iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality,**

Due to there being no native trees to be removed, then no habitat areas in the district will become isolated from interconnecting or proximate areas of habitat for a threatened species, population or ecological communities.

The native landscape plantings are retained to effect screening, visual softening, and result in the broadening of the habitat base of the area.

(d) whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly),

As detailed, no critical habitat will be affected.



(e) whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.

The proposed Amended Shed is to take place on the cleared, and grossly disturbed north eastern areas of the site.

The native species are to be retained, and this maintains screening, visual softening, and the broadening of the habitat base of the area.

It is thus considered that the development will not be a threatening development or activity.

(2) The Minister may, by order published in the Gazette with the concurrence of the Minister for Planning, issue guidelines relating to the determination of whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats. Any such guidelines may include consideration of the implementation of strategies under the Biodiversity Conservation Program.

In this instance no Ministerial order has been issued in relation to the proposed development, and to this end the proposal is not considered to be one which will impact on any declared area of outstanding biodiversity value.

3.3 PLANT COMMUNITIES

Two major plant community exists within the site.

COMMUNITY 1 - Grassland.

Structure: Generally close cover of various grass species with occasional Acacia, Rainforest, Fruit and Camphor trees, in an informal park like placement.

Habitat: Generally gently sloping land, previously used for grazing, and currently used by residents as lawn and recreation spaces.

Distribution: A large percentage of the central and northern cleared areas of the site.

Main Species present:

Trees- Single or clumped specimens of Acacia melanoxylon, Lophostemon confertus (Brush Box), Macaranga tanarius (Macaranga), Mallotus philipensis (Red Kamala); Pittosporum undulatum (Sweet Pittosporum), and Camphor Laurel, scattered about the fence lines.

Grasses- Mostly Paspalum dilatatum and Carpet Grass.

COMMUNITY 2 – Eastern road boundary setback.

Structure: Trees up to 20 metres high, continuous to open canopy, with leaf litter and palms, ferns and vines in the understorey.

Habitat: South-eastern road setback.

Distribution: Occupies south eastern area adjacent to Old Bangalow Road.

Main Species present:

Trees - Acacia melanoxyn (Black Wattle)

Acmena brachyanora (Red Apple),

Acmena smithii (Lilly Pilly),

Archontophoenix cunninghamiana (Bangalow Palm)

Alphitonia excelsa (Red Ash),

Camphor Laurel

Castanospermum australe (Black Bean),

Eucalyptus macrorhyncha (Stringy Bark)

Eucalyptus pilularis (Blackbutt)

Guioa semiglauca (Guioa),

Jagera pseudorhus (Foambark)

Lophostemon confertus (Brush Box)

Macaranga tanarius (Macaranga),

Mallotus philipensis (Red Kamala)

Pittosporum undulatum (Sweet Pittosporum),

Understorey- Ferns and Asplenium australasicum (Birds Nest Fern), Lantana, Grasses, and Vines.



3.4 FAUNA

The areas of regrowth in the south east provide areas of local habitat significance. Bird and mammal populations in this area consist of native and introduced species frequenting tree stands and pasture.

Mammal, Reptile, Bird and Bat Species:-

The study area was traversed on foot, with fauna identified by tracks, scats, and visual sighting. The owners properties in the area also provided additional information on species sighted within the area over recent years.

REPTILES

A number of reptiles were and have been sighted, :-

- Skinks:- Lampropholis delicata (Common Garden Skink)
Snakes:- Demansia psamophis (Yellow Faced Whip Snake)
Dewrelapinis punctulatus (Green Tree Snake).
Morelia spilotes (Carpet Snake)
Pseudechis porphyriacus (Red-bellied Black Snake)

AMPHIBIANS

- Litoria caerulea (Green Tree Frog)

BIRDS

Of the numerous birds which could be heard throughout the trees the following were sighted or identified by call:

- Cracticus torquatus (Grey Butcher-Bird)
Decelo gigas (Kookaburra)
Gymnorhina tibicen hypoleuca (Magpie)
Lichmera indistincta (Brown Honeyeater)
Malurus cyaneus (Superb Blue Wren)
Malurus melanocephalus (Red-backed Fairy-Wren)
Rhipidura leucophrys (Willie Wagtail)
Strepera graculina (Pied Currawong)
Trichoglossus moluccanus (Rainbow Lorikeet)

NATIVE MAMMALS

Three Native Mammals have been identified in the area by other local residents:

- Pteropus poliocephalus. (Flying Fox)
Tachyglossus aculeatus (Echidna)
Trichosurus caninus (Brushtail Possum)

The property does support a diversity of common wildlife. The abundance of this wildlife is a function of the sites' boundary vegetation in the east linking the area to local wildlife corridors to the east, all of which are to be retained to ensure a healthy ecological community.

All of the habitat areas within the site are to be retained.

3.5 S.E.P.P. (Biodiversity and Conservation) 2021.

9 Development assessment process—no approved koala plan of management for land

- (1) This clause applies to land to which this Policy applies if the land—
(a) is identified on the *Koala Development Application Map*, and
(b) has an area of at least 1 hectare (including adjoining land within the same ownership), and
(c) does not have an approved koala plan of management applying to the land.
(2) Before a council may grant consent to a development application for consent to carry out development on the land, the council must take into account—
(a) the requirements of the Guideline, or
(b) information, prepared by a suitably qualified and experienced person in accordance with the Guideline, provided by the applicant to the council demonstrating that—
(i) the land does not include any trees belonging to the feed tree species listed in Schedule 2 for the relevant koala management area, or
(ii) the land is not core koala habitat.

The property only has an area of 1.1ha. All trees on site are to be retained.



Schedule 3 Koala Use Trees - North Coast koala management area

Scientific name	Common name(s)
<i>Allocasuarina torulosa</i>	Forest Oak
<i>Angophora floribunda</i>	Rough-barked Apple
<i>Corymbia gummifera</i>	Red Bloodwood
<i>Corymbia henryi</i>	Large-leaved Spotted Gum
<i>Corymbia intermedia</i>	Pink Bloodwood
<i>Corymbia maculata</i>	Spotted Gum
<i>Eucalyptus acmenoides</i>	White Mahogany
<i>Eucalyptus amplifolia</i>	Cabbage Gum
<i>Eucalyptus bancroftii</i>	Orange Gum
<i>Eucalyptus biturbinata</i>	Grey Gum
<i>Eucalyptus campanulata</i>	New England Blackbutt
<i>Eucalyptus canaliculata</i>	Large-fruited Grey Gum
<i>Eucalyptus carnea</i>	Thick-leaved Mahogany
<i>Eucalyptus crebra</i>	Narrow-leaved Ironbark
<i>Eucalyptus eugenoides</i>	Narrow-leaved stringybark
<i>Eucalyptus fibrosa</i>	Broad-leaved Red Ironbark
<i>Eucalyptus glaucina</i>	Slaty Red Gum
<i>Eucalyptus globoidea</i>	White Stringybark
<i>Eucalyptus grandis</i>	Flooded Gum
<i>Eucalyptus laevopinea</i>	Silver-top Stringybark
<i>Eucalyptus largeana</i>	Craven Grey Box
<i>Eucalyptus microcorys</i>	Tallowwood
<i>Eucalyptus moluccana</i>	Grey Box
<i>Eucalyptus nobilis</i>	Forest Ribbon Gum
<i>Eucalyptus pilularis</i>	Blackbutt
<i>Eucalyptus placita</i>	Grey Ironbark
<i>Eucalyptus planchoniana</i>	Bastard Tallowwood
<i>Eucalyptus propinqua</i>	Small-fruited Grey Gum
<i>Eucalyptus psammitica</i>	Bastard White Mahogany
<i>Eucalyptus punctata</i>	Grey Gum
<i>Eucalyptus resinifera</i>	Red Mahogany
<i>Eucalyptus robusta</i>	Swamp Mahogany
<i>Eucalyptus rummeryi</i>	Steel Box
<i>Eucalyptus saligna</i>	Sydney Blue Gum
<i>Eucalyptus scias</i>	Large-fruited Red Mahogany
<i>Eucalyptus seeana</i>	Narrow-leaved Red Gum
<i>Eucalyptus siderophloia</i>	Grey Ironbark



<i>Eucalyptus signata/Eucalyptus racemosa</i>	Scribbly Gum/Narrow-leaved Scribbly Gum
<i>Eucalyptus tereticornis</i>	Forest Red Gum
<i>Eucalyptus tindaliae</i>	Stringybark
<i>Eucalyptus umbra</i>	Bastard White Mahogany
<i>Melaleuca quinquenervia</i>	Broad-leaved Paperbark

Koala Habitat Protection Guideline.

1. Understand and identify koala habitat values including landscape connectivity (such as habitat extent and habitat linking areas).

Core Koala Habitat means—

(a) an area of land where koalas are present, or

(b) an area of land— (i) which has been assessed by a suitably qualified and experienced person in accordance with the Guideline as being highly suitable koala habitat, and (ii) where koalas have been recorded as being present in the previous 18 years

Numerous Koala food trees existing in the east of the site, however none are to be removed, and no Koala visitation to the site is evident on the trees.

The proposed Amended Shed will not require the removal of any koala food trees, and Koala Food trees represent less than 10% of the tree species on this site, which is dominated by Camphor Laurel, Ornamental Exotic Trees and numerous Rainforest trees.

2. Avoid inappropriate land uses or intensifying land uses in koala habitat areas through appropriate landscape planning and site selection.

The proposed Amended Shed is located on a totally cleared section of the site, well removed from the major vegetation areas in the south east of the site.

As stated all existing trees, including Koala Food Trees are to be retained within the site.

3. Encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas.

The spatial isolation of the Amended Shed from Koala Habitat, and the retention of all existing Koala Food, Rainforest, and Ornamental Trees on site, ensures the proper conservation and management of areas of natural vegetation that provide habitat for koalas.

4. Minimise potential impacts to koalas and their habitat through design that avoids fragmentation or direct loss of koala habitat, and maintains the function of the koala habitat.

e.g. Dog Attack; Vehicle Strike, Drowning in Pools, APZ, Impediments to movement.

The spatial isolation of the Amended Shed from Koala Habitat, and the retention of all existing Koala Food, Rainforest, and Ornamental Trees on site, ensures the proposal minimises the potential adverse impacts on koalas and their habitat through a design that avoids fragmentation or direct loss of koala habitat, and maintains the function of the koala habitat.

5. Implement best practice measures to manage identified threats to koalas and their habitat.

The isolated Koala food trees that have been identified on site, are not impacted by the Amendments to the existing approved Shed, in the cleared development areas.

All existing Koala food trees are to be retained by the owners, thus maintaining Koala Food Trees within the property.

6. Use compensatory (i.e., offsetting) measures only where they can be shown to meet the aim of the SEPP.



As stated above, all Koala food trees identified on site are to be retained, thus maintaining Koala Food Trees within the property.

7. Use adaptive management strategies to monitor, evaluate and deliver appropriate planning outcomes for koalas in their local setting.

Current habitat restoration plans include regular weed management activities. These can include the monitoring and evaluation of Koala habitat trees within the site, and within the Habitat Areas retained in the east of the site.

The proposal therefore meets all of the aims and objectives of SEPP 2019 for Koalas.

3.6 S.E.P.P. (Resilience and Hazards) 2021 CONTAMINATED LAND.

Clause 4.6 Contamination and remediation to be considered in determining development application

(1) A consent authority must not consent to the carrying out of any development on land unless— (a) it has considered whether the land is contaminated, and (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

(2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

(3) The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.

(4) The land concerned is— (a) land that is within an investigation area, (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out, (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land— (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and

(ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).

Table 1. Some Activities that may Cause Contamination • acid/alkali plant and formulation • agricultural/horticultural activities • airports • asbestos production and disposal • chemicals manufacture and formulation • defence works • drum re-conditioning works • dry cleaning establishments • electrical manufacturing (transformers) • electroplating and heat treatment premises • engine works • explosives industry • gas works • iron and steel works • landfill sites • metal treatment • mining and extractive industries • oil production and storage • paint formulation and manufacture • pesticide manufacture and formulation • power stations • railway yards • scrap yards • service stations • sheep and cattle dips • smelting and refining • tanning and associated trades • waste storage and treatment • wood preservation

The site is formerly cleared grazing land, has not been used for cropping, and was formally part of a large dairy farm. On this basis, and the fact that the site slopes to the west, thus making previous Banana production unlikely, there is no historic use of this sloping site which would have resulted in contamination from farming. On this basis, and given the Shed nature of the building, no further testing is deemed necessary.



The assessment satisfies Clauses 1(a) and 2 of SEPP (Resilience and Hazards) 2021 CONTAMINATED LAND, as there is no likelyhood of contamination from the types of landuses listed in Table 1, and as such no further detailed assessment is required.

3.7 IMPACT ON THE BUILT ENVIRONMENT

The design of the Amended Shed, using soft earth tone colours, with a Grey Kliploc Roof, and walls.

The amended design of the shed results in no additional site works, only the removal of partially constructed internal walls and partitions to achieve an open floor area, commensurate with its approved Shed status.

It fits in well with the existing and planned characteristics of this rural area, the nature of the site, and the requirements of Councils L.E.P. and D.C.P.s.

Building materials blend into the existing developed character of the existing farm dwelling and this eclectic rural area.

On this basis the proposal, which involves the use of an existing Shed constructed on cleared land, will not detract from the visual amenity of the area, and as such is not at odds with the objectives of the 1(a) Zone that applies to the eastern areas of the site.

This choice of earth tone colours guarantees minimal visual or environmental impact.

The development will not prejudice the future planning in the area.

As well as these considerations, the development reflects the design requirements of D.C.P. 2010, and is not out of character with the development characteristics of the surrounding area.

Given the previously detailed rebuttal of Refusal reasons 1, 2 and 3, then the Refusal Notice is not a valid, and as such this Sec 8.2 Review should result in a Development Consent being issued for the rural shed on site.

3.8 SOCIAL & ECONOMIC IMPACTS IN LOCALITY

This development, which achieves an Amended Shed, will have a multiplier effect for the areas building industry and retail sector.

The developments social and economic effect will be a positive one.

3.9 RELATIONSHIP TO ADJOINING DEVELOPMENT

The proposed Amended Shed, in cleared and already accessed land, compatible with the character of the area, does not obstruct solar access to distant dwellings on adjacent sites as detailed previously.

Further, the blending style of the building, and it existing landscaped surrounds, ensure that it will not be visually disruptive.

The proposed development is thus in keeping with the existing and likely future character of the area.

4 Sec. 4.15(1)(c) SUITABILITY OF THE SITE

The property is located within a rural area characterised by concessional lots, which is densely settled, and all proximate properties support dwellings. The development of the site for a proposed Amended Shed, will not be out of character with the character of the area.

The amended design of the shed results in no additional site works, only the removal of partially constructed internal walls and partitions to achieve an open floor area, commensurate with its approved Shed status.

The property has an area of 1.1ha. and the small scale of the proposal does not prejudice the amenity of the area, or represent an overdevelopment of the site.

Adequate setbacks are achieved to Old Bangalow Road.

The size and shape of the allotment is adequate to ensure that the proposal does not constitute an over development of the site. It also accords with Councils requirements for developments of this type. (See plans)



4.1 GEOLOGY:

The site is characterised by a brown - red, Krazonsem volcanic clay and sediments. The soils are classified as being "Moderately Reactive", and as such are suitable for the minor works undertaken to achieve the proposed Amended Shed.

4.2 SERVICES

Existing services are adequate to cater for the demands made by the development. Minimal increased demand beyond the capacity of existing services is anticipated by the proposed Amended Shed, particularly as it will be independent for water collection.

5 Sec. 4.15(1)(d) SUBMISSIONS MADE ACT OR REGULATIONS

Not applicable.

6 Sec. 4.15(1)(e) PUBLIC INTEREST

Due to the spatial separation of the Amended Shed from surrounding dwellings, Heritage Items and agricultural activities, and the fact that a large vegetative buffer is retained between development areas within the site and adjacent agricultural lands, then it is considered that the public response to the proposal be a positive one.

Given the previously detailed rebuttal of Refusal reasons 1, 2 and 3, then the Refusal Notice is not a valid, and as such this Sec 8.2 Review should result in a Development Consent being issued for the rural shed on site.

7. CONCLUSION

It is considered that this Development Application seeking the retrospective approval of aspects of the previously approved shed design, should be approved as it results in no additional site works, only the removal of partially constructed internal walls and partitions to achieve an open floor area, commensurate with its approved Shed status.

On this basis the approval of these amendments will not be prejudicial to the proper future planning of the area.

The Shed uses existing cleared and already accessed land, and this ensures that the amending proposal meets all of Councils Statutory and DCP provisions for rural development.

Given the previously detailed rebuttal of Refusal reasons 1, 2 and 3, then the Refusal Notice is not a valid, and as such this Sec 8.2 Review should result in a Development Consent being issued for the rural shed on site.

CHRIS LONERGAN. B.A. (Town Planning U.N.E.)
23rd. May 2022.

