

DEVELOPMENT APPLICATION EVALUATION REPORT

Doc No. #A2022/2502

DA No:	10.2021.693.1				
NSW PP	PAN-160839				
Proposal description:	Use of Alterations and Additions to a Shed				
Property description:	LOT: 2 DP: 791508				
	2 Hamiltons Lane BYRON BAY				
Parcel No/s:	119400				
Applicant:	Byron Bay Planning and Property Consultants				
Owner:	Mr D R Stewart				
Zoning:	RU2 Rural Landscape / 1A general Rural zone Byron LEP 1988				
Date received:	5 November 2021				
Integrated / Designated Development:	<input type="checkbox"/> Integrated	<input type="checkbox"/> Designated	<input checked="" type="checkbox"/> Not applicable		
Concurrence required	No				
Public notification or exhibition:	<ul style="list-style-type: none"> – Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications – Exhibition period: 16 November 2021 to 29 November 2021. – Submissions received: 1 – Submissions acknowledged: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A 				
Other approvals	<input checked="" type="checkbox"/> N/R	<input type="checkbox"/> W & S (68)	<input type="checkbox"/> OSMS (68)	<input type="checkbox"/> ST (68)	<input type="checkbox"/> RA (138)
	Other:				
Planning Review Committee:	Not applicable				
Variation request to Development Standards under an EPI (eg clause 4.6)	Clause 64A & Clause 4.6* *A variation to development standards has been identified during the assessment, however no variation request has been submitted for the development which exceeds the 9 metre height limit.				

Delegation to determine	Manager, Sustainable Development
Issues:	Bona fides of the application Height of the structure exceeds 9m.
Summary:	The DA proposes Use of Alterations and Additions to a Shed. The proposed development is not consistent with regard to the Byron Local Environmental Plan 1988 Clause 40, as the structure as built now exceeds 9m in height. No request to vary this development standard was submitted under clause 64A of this plan and consent must not be granted accordingly. Further the bonafides of this application is questionable considering the layout of the supposed shed and its external appearance.
Recommendation:	Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.693.1 for Use of Alterations and Additions to a Shed, be refused for the following reasons:
Determination	<p>Agree with recommendation: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Check for comments at the end of the report: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Further information required: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
BCA Classification required?	<input checked="" type="checkbox"/> Yes - BCA Classification – 10a <input type="checkbox"/> No

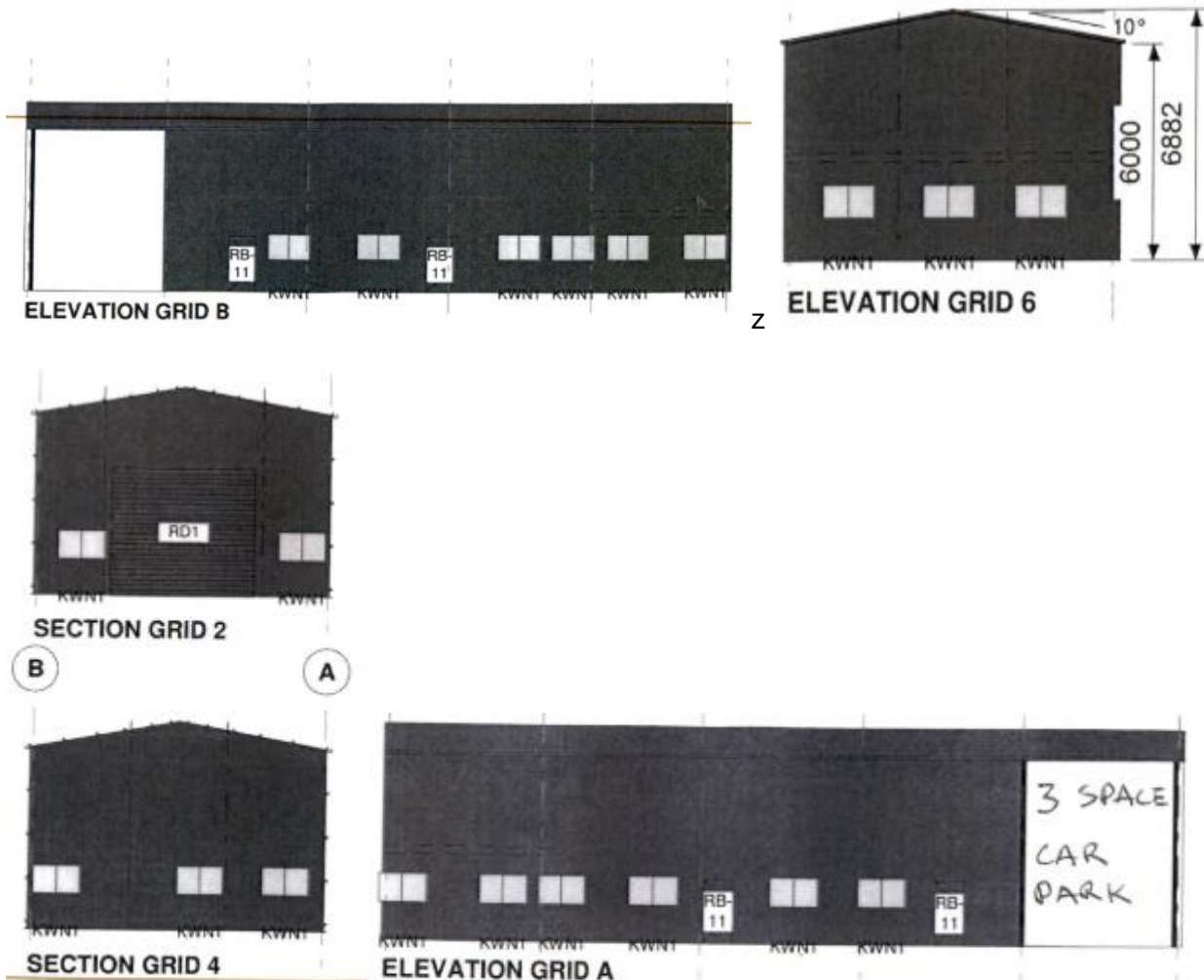
1. INTRODUCTION

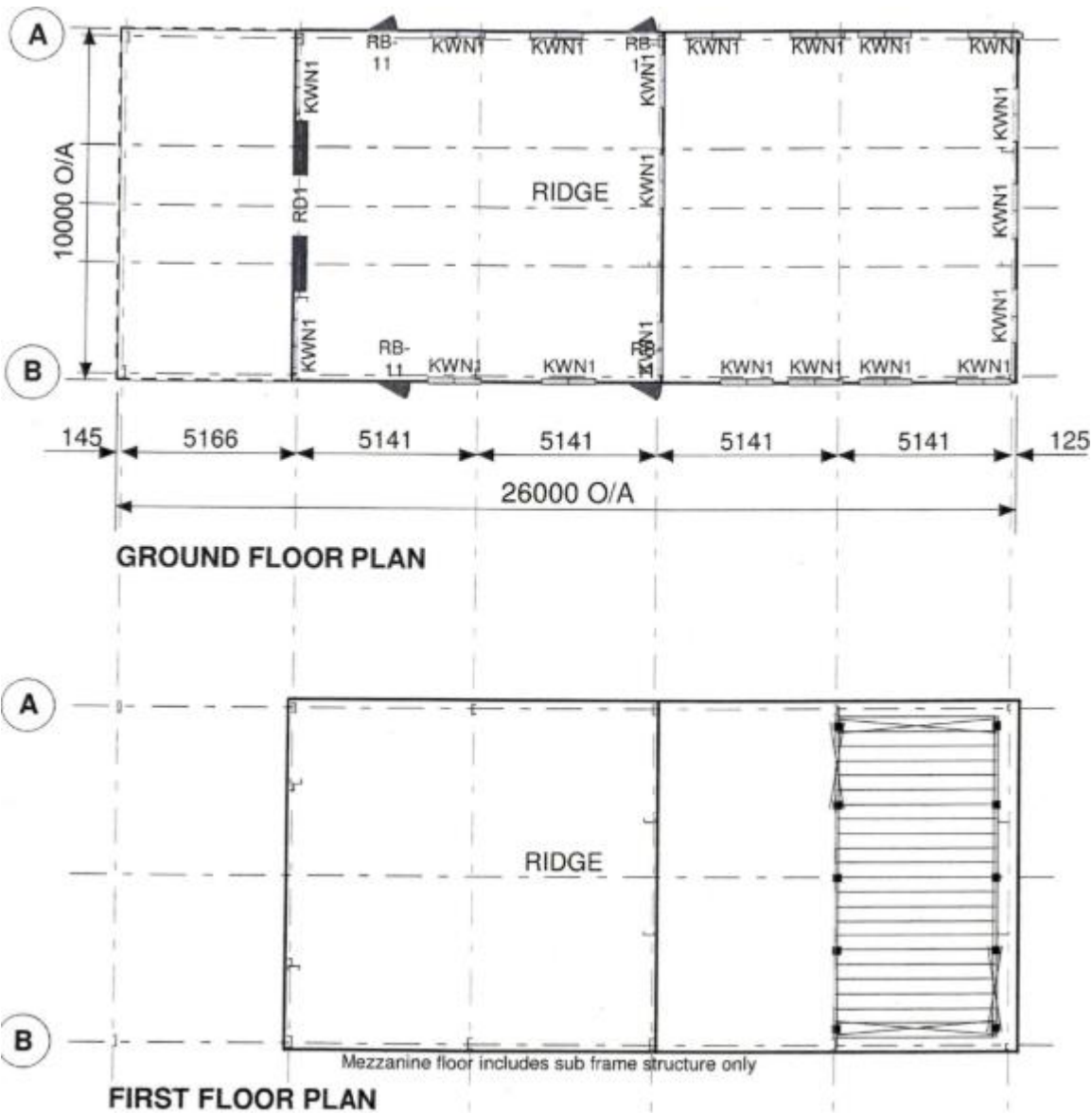
History/Background

<u>Application / Register No</u>	<u>Description</u>	<u>Status</u>	<u>Date</u>
5.1997.476.1 Development Applications	Dwelling- rural - DWELLING	APPD	30/01/1998
6.1997.2726.1 Building Applications	Dwelling	APPD	18/12/1997
10.2016.776.1 Development Application	Shed	APPR	23/01/2017
10.2016.776.2 Development Application	S4.55 for Use of Alterations and Additions to Shed	REFU	28/09/2021
10.2021.693.1 Development Application	Use of Alterations and Additions to a Shed	Pending	
11.2016.776.1 Construction Certificate	Shed	APPR	10/07/2017
30.2021.8082.1 Customer Request Management	See email & photos E2021/120927 - unauthorised additions and alteratio	Pending	

This application was raised by compliance investigation following a complaint about unapproved works. Two notices of proposed orders have been issued in relation to this structure and the unapproved works.

The constructed shed configuration is not in accordance with 10.2016.776.1 and 11.2016.776.1





Further unapproved for earthworks and retaining walls have been undertaken within or underneath the building footprint.

It is also noted that this property is currently for sale.

Description of the proposed development

This application seeks approval for Use of Alterations and Additions to a Shed

The unapproved additions include;

- 103m² of decking constructed on the ground floor.
- 22m² of decking constructed on the first floor mezzanine area
- 45m² of mezzanine extension
- New stairs to access mezzanine area.
- A significant number of windows and doors have been installed of varying sizes
- Changes to the roof pitch and overall height of the structure to 9.042m
- Retaining wall approximately 1.9m in height and varying
- Unapproved earthworks varying in height / depth

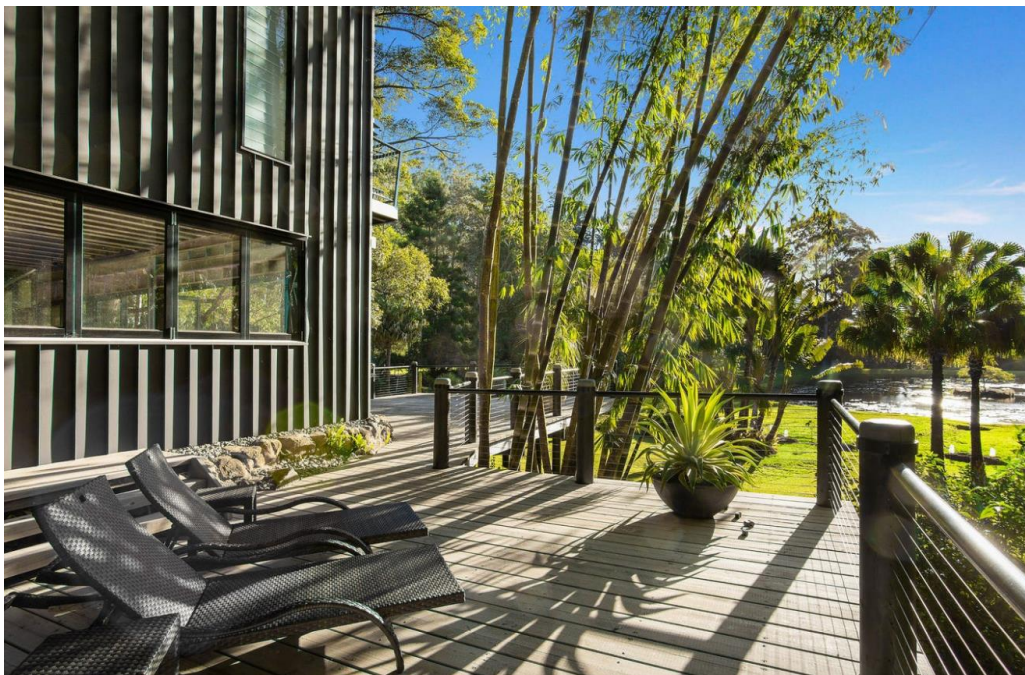
New works proposed under this application include

- Removal of unapproved internal walls within the shed on both floors.

Description of the site



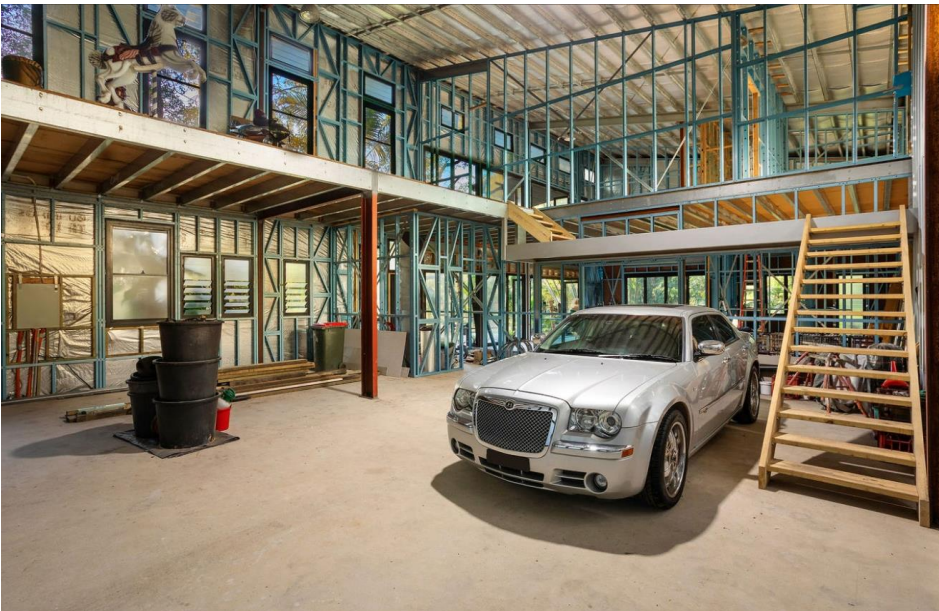
Northwest Elevation



Extensive deck areas on Northwest and Northeast Elevations



Upper floor balcony and deck and lower floor deck on Northwest Elevation



Framing for dividing lower floor into individual rooms



Framing for dividing upper floor into individual rooms

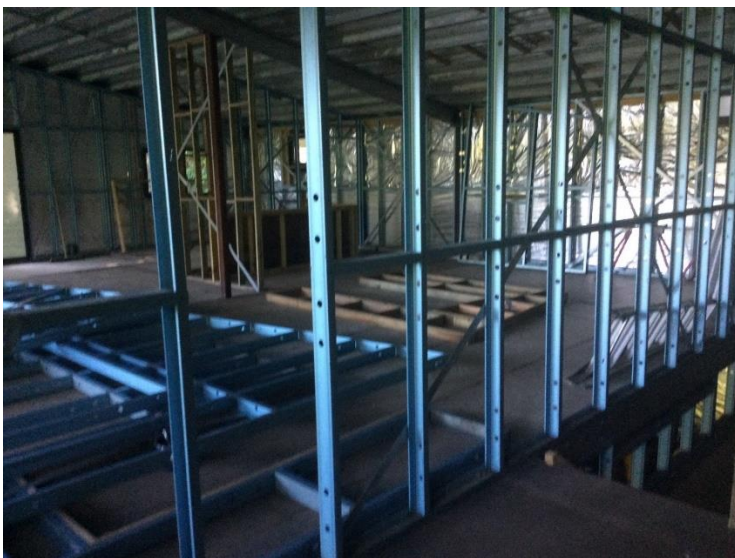
A site inspection was carried out on 23 March 2022



Ground floor area as constructed.



First floor balcony



First floor mezzanine area



First floor mezzanine area and balcony.

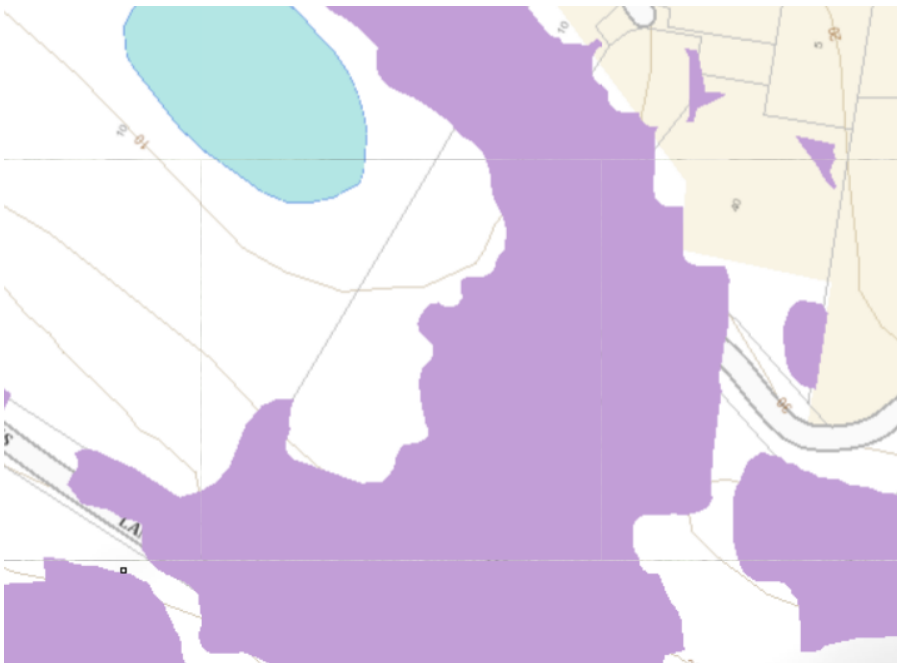


Zoning map of the site, the structure as built is partially located within the RU2 Rural Landscape zoned land with the majority of the building footprint being located within the 1A General rural zoned land.

Land is legally described	LOT: 2 DP: 791508
Property address	2 Hamiltons Lane BYRON BAY
Land is zoned:	RU2 Rural Landscape / 1A general rural Byron LEP 1988

Land area is:	1.102ha	
Property is constrained by:	Bushfire prone land High Environmental Value	
	Is a BDAR required due to the location of the proposed development? *see discussion below	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Are there any easements in favour of Council affecting the site?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

The site is now mapped within the BV mapped land



The site was added to the BV map following gazettal of the Byron CKPoM. These changes to the BV map came into force on the 27/12/21. As the DA was lodged prior to the commencement of this land being included into the map. As indicated on the Biodiversity Values map and Threshold tool user guide, no BDAR is required accordingly.

Areas added to the BV Map in the last 90 days are shown in dark purple. Proposed development does not exceed the Biodiversity Offset Scheme Threshold if an application for a planning approval is submitted before or during the 90-day period. The 90-day expiry date is displayed in the Results Summary table of the evaluation report. The expiry date does not apply to areas shown in light purple or areas with no biodiversity values.

2. SUMMARY OF REFERRALS

Referral	Issue
Building Surveyor	No objections subject to conditions. Refer to Doc # A2021/41675.

* Conditions provided in the above referral are included in the Recommendation of this Report below

Issues:

Bona fides of the application

These works are not consistent with the configuration of a shed. The extensive decks, balconies, additional windows, installation of sliding doors and bifold doors, are consistent with a habitable structure. It is noted that a previous application to modify the shed consent DA 10.2016.776.2 was refused partially on the basis that it did not demonstrate shed was to be a legitimate use, non-residential use.

The excessive size of decks associated with the shed structure have not demonstrated how these structures are consistent with a shed. Reference is given to *Malta-Fell v Byron Shire Council [2020] NSWLEC 1448* regarding works consistent with a shed - [Malta-Fell v Byron Shire Council - NSW Caselaw](#).

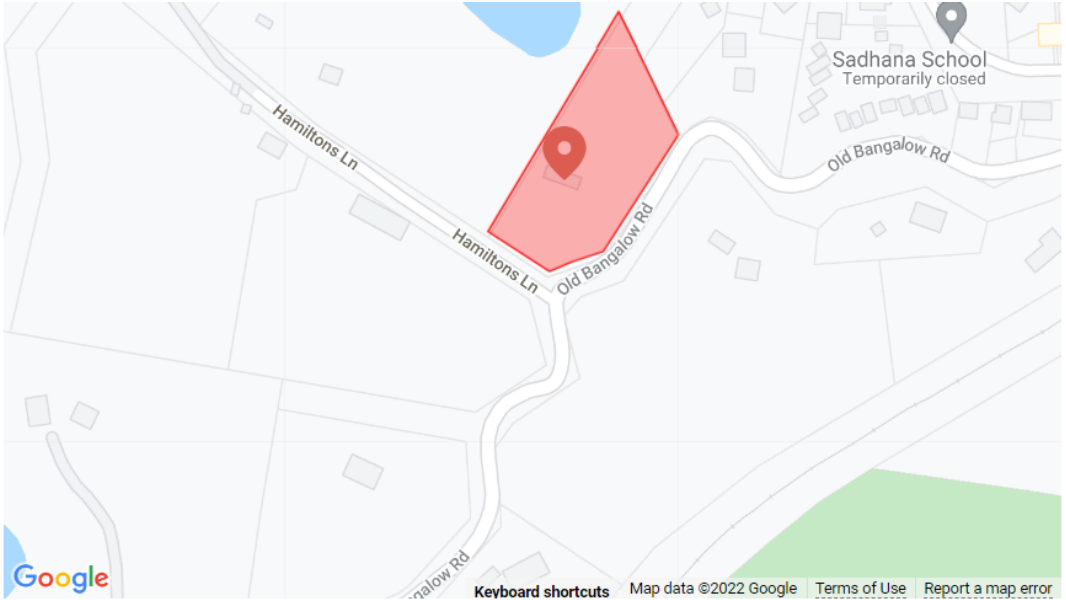
In the above case there a deck addition to a shed was significantly smaller than those consent is sought for under this application, was required to be removed.

In this instance the extent of decking constructed without consent is excessive and inconsistent with the use as a shed.

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.


Effect of 10/50 rule on significant vegetation



Your 10/50 search result

You have conducted a search of the 10/50 online tool for the land identified in the map above. This search result is valid for the date the search was conducted.

Please retain a copy of this search result for your records.

 The parcel of land you have selected is located in a designated 10/50 vegetation entitlement clearing area. However, you cannot use the 10/50 exemption to clear vegetation on this parcel of land. This land is excluded from the operation of the 10/50 Code as it has been identified as being wholly or partially within:


- ▶ specified Koala habitat mapped in Comprehensive Koala Plans of Management and as provided by the Department of Planning and Environment

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.

State Environmental Planning Policies (SEPP)

Considerations	Satisfactory	Unsatisfactory
<p><i>SEPP Biodiversity and Conservation 2021 - Chapter 4 (Koala Habitat Protection) 2021</i></p> <p>Consideration: the site exceeds 1ha in size and is mapped on the Byron CKPoM.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Considerations	Satisfactory	Unsatisfactory
 <p>The structure is an existing, albeit unlawfully erected structure. the shed structure has increased the footprint beyond the previously approved structure, including the 100m² of decking.</p> <p>The site is located within the West Byron – St Helena koala management precinct.</p> <p>The CKPoM states that “potential koala habitat within a Koala management precinct is considered to meet the definition of core koala habitat”. Accordingly the development footprint is located within, and the site contains core koala habitat.</p> <p>As per figure 10 Development assessment flowchart a basic koala habitat assessment report is required. However, the application does not provide this Koala habitat assessment report but provides discussion of the repealed <i>SEPP koala habitat protection 2019</i> instead. Noting that at the time of lodgement the <i>SEPP koala habitat protection 2021</i> applied to this property at the time of lodgement.</p> <p>The CKPoM does not define “minor development” or “large development” however the development is considered to be “minor development as;</p> <ul style="list-style-type: none"> - The use of the structure is non-habitable - The development did not/ does not require the removal of vegetation - The structure does not require the provision of bush fire 		

Considerations	Satisfactory	Unsatisfactory
<p>protection measures, or for these measures to be managed in perpetuity.</p> <p>A consideration of section 12.3 is below.</p> <p>Retention of potential koala habitat</p> <ul style="list-style-type: none"> - No tree removal is proposed, noting that the development footprint is located wholly within the mapped vegetation footprint for core koala habitat. - No exemptions for tree removal exist for this property (e.g. 10/50 code, B2 of BDCP 2014 or the LLS Act section 600), all future tree removal will require either development consent or permit to undertake tree removal. <p>Protection of koalas from disturbance</p> <ul style="list-style-type: none"> - The work has already been undertaken and no further increase to the footprint requiring works is proposed. <p>Bush fire asset protection zones</p> <ul style="list-style-type: none"> - Not required as the structure is not habitable <p>Swimming pools</p> <ul style="list-style-type: none"> - N/a no swimming pool proposed. <p>Fencing</p> <ul style="list-style-type: none"> - N/a no fencing proposed <p>Based on the above it is considered that the development is consistent with the requirements of the CKPoM and the SEPP accordingly</p>		

4.2A Byron Local Environmental Plan 2014 (LEP 2014)

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

Part 1	<input checked="" type="checkbox"/> 1.1 <input checked="" type="checkbox"/> 1.1AA <input checked="" type="checkbox"/> 1.2 <input checked="" type="checkbox"/> 1.3 <input checked="" type="checkbox"/> 1.4 <input checked="" type="checkbox"/> Dictionary <input checked="" type="checkbox"/> 1.5 <input checked="" type="checkbox"/> 1.6 <input checked="" type="checkbox"/> 1.7 <input checked="" type="checkbox"/> 1.8 <input type="checkbox"/> 1.8A <input checked="" type="checkbox"/> 1.9 <input checked="" type="checkbox"/> 1.9A
Part 2	<input checked="" type="checkbox"/> 2.1 <input checked="" type="checkbox"/> 2.2 <input checked="" type="checkbox"/> 2.3 <input checked="" type="checkbox"/> Land Use Table <input type="checkbox"/> 2.4 <input type="checkbox"/> 2.5 <input type="checkbox"/> 2.6 <input type="checkbox"/> 2.7 <input type="checkbox"/> 2.8
Part 3	<input type="checkbox"/> 3.1 <input type="checkbox"/> 3.2 <input type="checkbox"/> 3.3
Part 4	<input type="checkbox"/> 4.1 <input type="checkbox"/> 4.1A <input type="checkbox"/> 4.1AA <input type="checkbox"/> 4.1B <input type="checkbox"/> 4.1C <input type="checkbox"/> 4.1D <input type="checkbox"/> 4.1E <input type="checkbox"/> 4.1F <input type="checkbox"/> 4.2 <input type="checkbox"/> 4.2A <input type="checkbox"/> 4.2B <input type="checkbox"/> 4.2C <input type="checkbox"/> 4.2D <input checked="" type="checkbox"/> 4.3 <input type="checkbox"/> 4.4 <input type="checkbox"/> 4.5 <input type="checkbox"/> 4.6
Part 5	<input type="checkbox"/> 5.1 <input type="checkbox"/> 5.2 <input type="checkbox"/> 5.3 <input checked="" type="checkbox"/> 5.4 <input type="checkbox"/> 5.6 <input type="checkbox"/> 5.7 <input type="checkbox"/> 5.8 <input type="checkbox"/> 5.10 <input type="checkbox"/> 5.11 <input type="checkbox"/> 5.12 <input type="checkbox"/> 5.13 <input type="checkbox"/> 5.14 <input type="checkbox"/> 5.15 <input type="checkbox"/> 5.16 <input type="checkbox"/> 5.17 <input type="checkbox"/> 5.18 <input type="checkbox"/> 5.19

Part 6	<input type="checkbox"/> 6.1 <input checked="" type="checkbox"/> 6.2 <input type="checkbox"/> 6.3 <input type="checkbox"/> 6.4 <input type="checkbox"/> 6.5 <input checked="" type="checkbox"/> 6.6 <input type="checkbox"/> 6.7 <input type="checkbox"/> 6.8 <input type="checkbox"/> 6.9 <input type="checkbox"/> 6.10 <input type="checkbox"/> 6.11
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In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:

- (a) The proposed development is defined in the LEP 2014 Dictionary as Shed ;
- (b) The land is within the RU2 Rural Landscape 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 encourage sustainable primary industry production by maintaining and enhancing the natural resource base. 	The site is of insufficient size to sustain primary industry production.
<ul style="list-style-type: none"> • To maintain the rural landscape character of the land. 	The shed is excessive in height and out of character with the rural landscape
<ul style="list-style-type: none"> • To provide for a range of compatible land uses, including extensive agriculture. 	The shed is proposed as an ancillary structure to the existing dwelling on the site. there is no current agricultural use on the site
<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. 	N/a
<ul style="list-style-type: none"> • To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality. 	<p>the shed as built is not likely to impact on the scenic quality given that the structure is not visible from a public viewpoint.</p> <p>Some degree of visual impact is evident to adjoining properties given the height of the structure however.</p>

The remaining underlined clauses have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development complies with all of these clauses (in some cases subject to conditions and/or to the satisfaction of other assessing officers), except in relation to Clause 4.3 Height of Buildings which is considered further under Clause 40 of the BLEP 1988 as the majority of this structure is located within land zoned under the 1988 LEP.

The requirements of clause 40 and Clause 4.3 are fundamentally the same however and the development is inconsistent with both development standards.

4.2B Byron Local Environmental Plan 1988 (LEP 1988)

Notes:

The site is subject to a Planning proposal to rezone the land currently zoned under this LEP to RU2. The zoning change is not imminent and is not considered further at this point in time.

LEP 1988 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land

and the proposed development. The LEP 1988 clauses that are checked below are of relevance to the proposed development:

Part 1	<input checked="" type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input checked="" type="checkbox"/> 2A <input checked="" type="checkbox"/> 3 <input checked="" type="checkbox"/> 4 <input checked="" type="checkbox"/> 5 <input checked="" type="checkbox"/> LEP 1988 Dictionary <input checked="" type="checkbox"/> 7
Part 2	<input checked="" type="checkbox"/> 8 <input checked="" type="checkbox"/> 9
Part 3	<input type="checkbox"/> 10 <input type="checkbox"/> 11 <input type="checkbox"/> 11A <input type="checkbox"/> 11B <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17 <input type="checkbox"/> 17A <input type="checkbox"/> 17B <input type="checkbox"/> 18 <input type="checkbox"/> 19 <input type="checkbox"/> 20 <input type="checkbox"/> 22 <input type="checkbox"/> 23 <input type="checkbox"/> 24 <input type="checkbox"/> 25 <input type="checkbox"/> 27 <input type="checkbox"/> 29 <input type="checkbox"/> 29AA <input type="checkbox"/> 29A <input type="checkbox"/> 30 <input type="checkbox"/> 31 <input type="checkbox"/> 32 <input type="checkbox"/> 33 <input type="checkbox"/> 34 <input type="checkbox"/> 35 <input type="checkbox"/> 36 <input type="checkbox"/> 37 <input type="checkbox"/> 38 <input type="checkbox"/> 38A <input type="checkbox"/> 38B <input type="checkbox"/> 39 <input type="checkbox"/> 39A <input type="checkbox"/> 39B <input type="checkbox"/> 39C <input checked="" type="checkbox"/> 40 <input type="checkbox"/> 41 <input type="checkbox"/> 42 <input type="checkbox"/> 43 <input type="checkbox"/> 44 <input type="checkbox"/> 45 <input type="checkbox"/> 46 <input type="checkbox"/> 47 <input type="checkbox"/> 47AA <input type="checkbox"/> 47A <input type="checkbox"/> 48 <input type="checkbox"/> 48A <input type="checkbox"/> 49 <input type="checkbox"/> 51 <input type="checkbox"/> 52 <input type="checkbox"/> 53 <input type="checkbox"/> 54 <input type="checkbox"/> 55 <input type="checkbox"/> 56 <input type="checkbox"/> 57 <input type="checkbox"/> 58 <input type="checkbox"/> 59 <input type="checkbox"/> 60 <input type="checkbox"/> 61 <input type="checkbox"/> 62 <input type="checkbox"/> 63 <input type="checkbox"/> 64 <input checked="" type="checkbox"/> 64A <input type="checkbox"/> 64B <input type="checkbox"/> 64C <input type="checkbox"/> 64D

In accordance with LEP 1988 clauses 5, 8 and 9:

- (a) The proposed development is defined in the LEP 1988 Dictionary as shed;
- (b) The land is within the LEP1988 1a General Rural according to the map under LEP 1988;
- (c) The proposed development is permitted with consent; and
- (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

Zone Objective	Consideration
(a) to encourage and permit a range of uses creating a pattern of settlement, at a scale and character that maintains or enhances the natural, economic, cultural, social and scenic amenity of the rural environment of the Shire of Byron,	The shed as constructed will comply with the character, scale that will not have adverse impacts on the existing amenity of the area.
(b) to encourage and permit a pattern of settlement which does not adversely affect the quality of life of residents and visitors and maintains the rural character,	The proposed shed is of a design that maintains the rural character of the locality and will not adversely affect the existing amenity of the area
(c) to ensure development only occurs on land which is suitable for and economically capable of that development and so as not to create conflicting uses,	The proposal is for domestic use only
(d) to allow the use of land within the zone for agricultural purposes and for a range of other appropriate purposes whilst avoiding conflict between other uses and intensive agriculture,	The proposed farm shed will be used in association with the existing use of the land and will not result in any significant land use conflict
(e) to identify lands (shown hatched on the map) which in the opinion of the council possess a limited capability for more intensive uses or development,	The proposal is not located on such lands
(f) to restrict the establishment of inappropriate traffic generating uses along main road frontages other than in road side service areas,	The proposal is for domestic purposes only and will not increase traffic generation to and from the site
(g) to ensure sound management of land which has an extractive or mining industry potential and to ensure that development does not adversely affect the potential of any existing or future extractive industry,	The land does not have any apparent extractive or mining industry potential
(h) to enable the provision of rural tourist accommodation and facilities only where such facilities are compatible with the form and density of	The proposed shed is to be used for domestic purposes only

the nature of the locality, and	
(i) to permit the development of limited light industries which do not pose any adverse environmental impact, (eg software manufacture and film processing), and	The proposed shed is to be used for domestic purposes only
(j) to ensure that the development and use of land shown cross-hatched on the map adjacent to areas of significant vegetation and wildlife habitat do not result in any degradation of that significant vegetation and wildlife habitat, and that any development conserves and protects and enhances the value of the fauna and flora.	The proposal is located within mapped koala habitat in the endorsed CKPoM.

The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development complies with all clauses of LEP 1988 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

Clause 64A Exceptions to Development Standards

A variation to a development standard is outlined below relating to clause 40 Height and no request to vary has been submitted.

Clause 40 Height

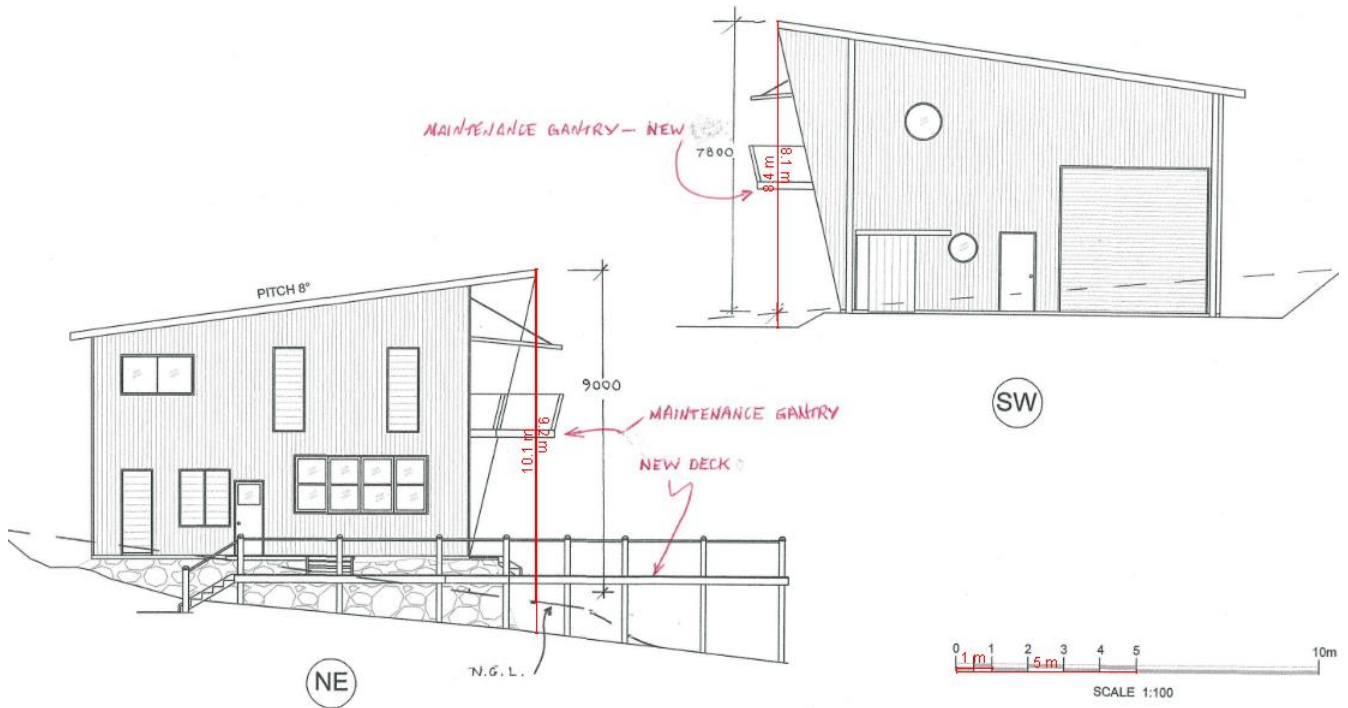
(2) ~~The council must not consent to the erection of any building—~~

~~(b) on land within any other zone, if—~~

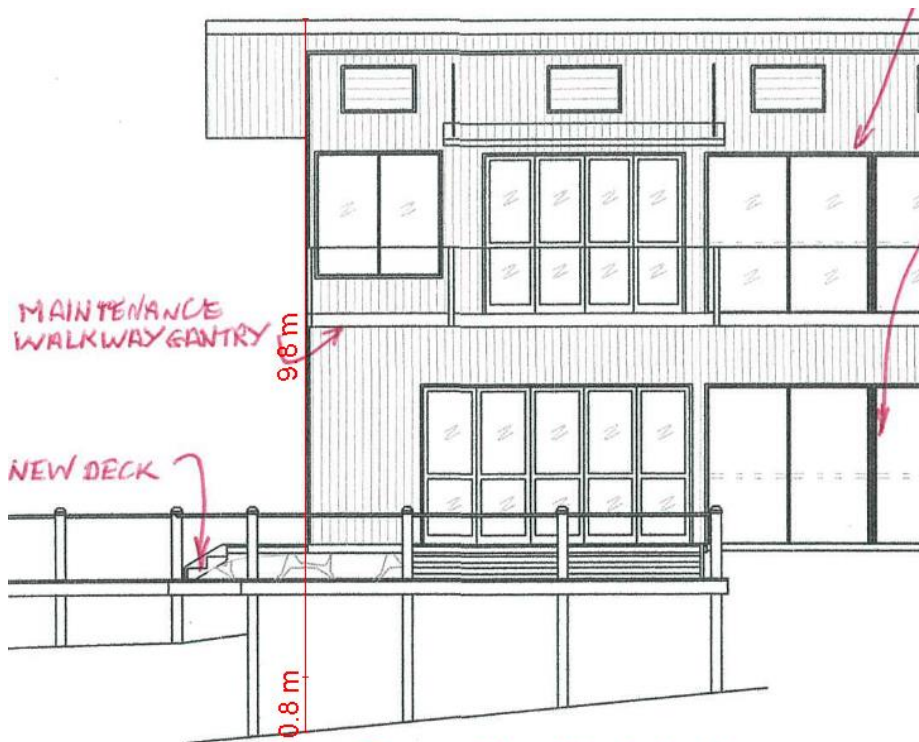
~~(i) the floor of the topmost floor level of the building exceeds 4.5 metres above the existing ground level, or~~

~~(ii) the vertical distance between the topmost part of the building and the existing ground level below exceeds 9 metres.~~

The shed as constructed varies in height, and exceeds the 9m height limit for the site at the NE elevation of the dwelling.



Left (North East elevation)
Right (South West elevation)



Ground level (existing)
measured at +0.8m from
ground level line to show
NGL as per NE elevation

NW elevation

It is unable to be determined the full extent of the non-compliance as the ground level (existing) has not been provided for the other elevation or sections submitted with this application. However based on the plans submitted the maximum height of the shed as constructed is likely between 10.1 and 9.8m at the highest point at the northwestern corner of the development.

Based on this assessment, the variation to this development standard is between **8.8% - 12.2%**.

No request to vary a development standard has been provided with this application. In determining the height of buildings guidance is provided by the LEC is set out below.

It is the pre-development or pre-excavation ground level that is relevant. In *Bettar*, the Court took the existing ground level from the footpath level because the whole site had been developed. O'Neill also observed that existing ground level "...is usually achieved by taking the lowest level of an existing site, as shown on the site survey, directly beneath the highest point of the proposed development". *Bettar v City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney* [2015] NSWLEC 1189 (*Stamford Properties*).

The application is not accompanied by a survey that identifies the lowest level of the existing site directly below the highest point of the development. The plans submitted also do not measure the full height of the structure from ground level (existing), the plans do not appear to even measure to the extent of the natural ground line as shown on the elevation plans. There is no detail provided in the section to determine the ground level.

Based on the original development consent (10.2016.776.1) no consent for earthworks was issued, and no subsequent consent for earthworks has been issued. Based on the plans submitted a significant level of cut and fill has been undertaken, in some instances over 1m in depth / height. Again the plans submitted provide insufficient detail to determine the extent of any earthworks undertaken. The extent of these works appear to have significantly increased the height of the structure.

Large retaining walls have also been constructed underneath the structure and large deck area. These retaining walls vary in height up to 1.8m as measured on the plans submitted.

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

This site is subject to Planning portal stage 3 E zone (26.2020.7.1) this proposal has been adopted by the elected Council see resolution below.

Resolved:

1. That Council in relation to Stage 3 E Zones planning proposal adopts:
 - a) the proposed LEP 2014 map changes for properties identified in Attachment 1; and
 - b) the proposed LEP 2014 zones (environmental and non-environmental) and consequential mapping for the 'not agreed' properties contained in Attachment 2

2. That Council requests that the NSW Department of Planning, Industry and Environment, as the plan-making authority in this instance, make the final LEP for notification on the NSW Government legislation website.

3. That Council notes, post consideration of the submissions and endorsement of the final planning proposal, landowners whose land will be subject to an E zone are to be notified in writing of Council's decision and advised that they have 28 days to notify the Department of Planning and Environment to request a review of the proposed zoning of their property. (Coorey/Lyon)

The motion was put to the vote and declared carried.

The site will be rezoned to RU2 under the BLEP 2014. This resolution has to back through the department of planning and is not imminent to be implemented. The zone change will not materially impact on the permissibility of the shed however.

4.4B Byron Shire Development Control Plan 2010 (DCP 2010)

DCP 2010 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because its purpose is to provide planning strategies and controls for various types of development permissible in accordance with LEP 1988. The DCP 2010 Chapters/Parts that are checked below are of relevance to the proposed development:

Chapter 1 Parts:	<input checked="" type="checkbox"/> A <input type="checkbox"/> B <input checked="" type="checkbox"/> C <input type="checkbox"/> D <input type="checkbox"/> E <input type="checkbox"/> F <input type="checkbox"/> G <input type="checkbox"/> H <input type="checkbox"/> J <input type="checkbox"/> K <input type="checkbox"/> L <input type="checkbox"/> N
Chapters:	<input type="checkbox"/> 4 <input type="checkbox"/> 6 <input type="checkbox"/> 7 <input type="checkbox"/> 8 <input type="checkbox"/> 9 <input type="checkbox"/> 10 <input type="checkbox"/> 11 <input type="checkbox"/> 12 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17 <input type="checkbox"/> 18 <input type="checkbox"/> 19 <input type="checkbox"/> 20 <input type="checkbox"/> 21 <input type="checkbox"/> 22

These checked Chapters/Parts have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act. The proposed development is demonstrated to meet the relevant Objectives of DCP 2010 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

C2.7 extent of earthworks

No consent for earthworks is sought under this application. it is noted otherwise that earthworks that exceed the maximum depth/ height of cut and fill has been undertaken that does not have any valid development consent issued. Notably as the original development consent DA 10.2016.776.1 did not require or show any earthworks required.

4.5 Environmental Planning & Assessment Regulation 2000 Considerations

Clause	This control is	I have considered this	If this control is
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	applicable to the proposal:	control as it relates to the proposal:	applicable, does the proposal comply?
92	Yes	Yes	Yes
93	No	N/a	n/a
94	No	N/a	n/a
94A	No	N/a	n/a

* 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

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	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.

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

Council Policy	Consideration
Building Certificates Policy	A building information certificate will be required.

4.7 The suitability of the site for the development

Site Suitability

4.8 Submissions made in accordance with this Act or the regulations

The development application was not publicly notified

There was 1 submission made on the development application:

Key issue	Comment
The shed as constructed contains internal partitions	This application seeks to remove all internal partitions.
The mezzanine includes plumbing works including a WC and shower	No approval for plumbing works has been sought. The plans provided do not show any plumbing,
The shed includes two large decks The ground floor deck is not consistent with a farm	These works are not consistent with the configuration of a shed. The extensive decks, balconies, additional windows, installation of sliding doors and bifold doors, and the construction

shed use.	of framing for walls to create separate rooms on both the ground floor and upper floor of the building are consistent with a habitable structure. The application is inconsistent with the approved use, and the use identified in this application.
Development does not comply with DCP controls relating to studios	The application seeks consent for use of works to a shed, not a studio.
Real estate ads include the following comments about this shed <ul style="list-style-type: none"> . Second building has all plumbing in place, polished flooring, custom bifolds . Designed to have the master bedroom upstairs to enjoy the exquisite views . Building has pending approval as a detached dual occupancy dwelling 	Noted. There is no approval for the use of this structure as a dwelling
Visual impact and overlooking	The proposal is a clad in a dark black colorbond. As indicated in pictures submitted with the proposal there is significant landscaping that screens the development on the subject site. It also appears that from aerial imagery and images submitted with the application that the objector has undertaken planting within their own property as well. The large decks and significant number of windows may overlook the adjacent property, and unreasonably reduce the privacy of the adjoining property, given the rural-residential nature of the development such impacts. It is noted that the adjoining dwelling is not likely impacted by this structure however.
The shed is constructed for use as a habitable space	The plans submitted identify internal partitions that are to be removed. and no other fixtures are shown that would indicate an otherwise habitable use.
Out of character with the rural-residential nature of the locality	Noted, given the excessive height of the structure it is out of character in the area.
Shed should conform with the original approval	Noted

4.9 Public interest

The bonafides to the proposal as a farm shed is questionable considering the external treatment of the building and internal layout as currently constructed. Having regards to this matter and the height of the building exceeding the 9 metre height limit, it is considered the proposed development is likely to prejudice or compromise the public interest and is recommended for refusal.

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

No Section 64 levies will be required.

5.2 Developer Contributions

No Developer Contributions will be required.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

7. CONCLUSION

The DA proposes Use of Alterations and Additions to a Shed. The proposed development is not consistent with regard to the Byron Local Environmental Plan 1988 Clause 40 and Clause 4.3 of the Byron Local Environmental Plan 2014, as the structure as built now exceeds 9m in height. No request to vary this development standard was submitted under clause 64A of this plan and consent cannot be granted. Further the bonafides of the proposed shed are questionable having regards to the external treatment of the shed and its internal layout. The application is recommended for refusal.

8. RECOMMENDATION

It is recommended that pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.693.1 for Use of Alterations and Additions to a Shed, be refused for the following reasons:

9. REASONS OF REFUSAL

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.

10. ENDORSEMENT

Assessment Officer:	Mr L Wall
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Signature:	
Date:	31/03/2022
Concur with recommendations Chris Larkin	 31/3/22

11. INSTRUMENT OF EXERCISE OF DELEGATED AUTHORITY

The application is determined in accordance with the above recommendation (amendments have been made where necessary) under delegated authority.

Name:	Shannon Burt
Position:	Director - Sustainable Environment and Economy
Signature:	
Determination Date:	31/3/22