

16 November 2018

The General Manager  
Byron Shire Council  
PO Box 2019  
Mullumbimby NSW 2482  
Attention: Mr Steve Daniels  
Our Ref: 907

Dear Mr Daniels

**PLANNING PROPOSAL TO AMEND BYRON LOCAL ENVIRONMENTAL PLAN 2014 – LOT 22 MULLUMBIMBY (YOUR REF: #E2018/79091/PP 26.2017.4.1)**

Thank you for the referral of planning proposal to amend Byron Local Environmental Plan 2014 – Lot 22 Mullumbimby from RE1 Public Recreation to R1 General Residential.

The NSW State Emergency Service (NSW SES) supports appropriate development that is 'planned first and foremost on the terms of evacuation capability' taking into account the flood risk to the community, and development. The NSW SES's primary response strategy to combat the effects of flooding on a community is to coordinate the evacuation of that community to an area out of the floodplain that is not exposed to, or surrounded by flood water.

**Planning Proposal**

The Planning Proposal to amend Byron Local Environmental Plan 2014 – Lot 22 Mullumbimby ('Planning Proposal') seeks to amend the existing zoning of Lot 22 under Byron Local Environmental Plan 2014 (BLEP) from RE1 Public Recreation to R1 General Residential to:

- *permit additional residential development (with an emphasis on diverse housing) on the subject site as well as appropriate uses ancillary to the residential use of the site; and*
- *leave the existing public recreation zone over the environmentally sensitive land (in the absence of an "environmental zone"), the Mullumbimby Community Gardens and some land east of the rail way line. (p 9)*

The Planning Proposal defines 'diverse housing'. With respect to residential development this is to:

*'comprise at least 25% one bedroom dwellings and at least 50% two bedroom dwellings with no more than 25% of new residential development being three or more bedrooms.'* (p 9)

**STATE HEADQUARTERS**

93 - 99 Burelli Street, Wollongong 2500  
PO Box 6126, Wollongong NSW 2500  
P (02) 4251 6111  
F (02) 4251 6190  
[www.ses.nsw.gov.au](http://www.ses.nsw.gov.au)  
ABN: 88 712 649 015

The Planning Proposal has investigated Council-owned land in Mullumbimby in order to increase the provision of affordable housing in the Byron Shire. (p 13) Under the R1 General Residential zoning manufactured homes will be permissible (p 26).

The Planning Proposal states there will be somewhere in the vicinity of 100 dwellings on the site (p 16).

### **Flood risk at the site**

The Planning Proposal acknowledges the site is affected by the Probable Maximum Flood (PMF) (p 30). The North Byron Flood Study (adopted by Council in 2016) identifies that the site is impacted in a 1% AEP flood, and the flood depths get progressively deeper on the site with less probable but higher consequence events up to and including the PMF (Attachment 1). In a PMF the majority of the site will have floodwater in excess of 2m in depth (Attachment 1).

In the preferred development option (option 3) presented in Flood Assessment Report produced by BMT WBM (2017) for the Planning Proposal, a fill proposal will create three distinct islands which will be surrounded by flood water in a 1% AEP flood (Attachment 2). In a flood larger than a 1% AEP flood, these fill pads will eventually become inundated and the dwellings will be impacted. If people have not already evacuated before access roads close, they may need to be rescued.

The site would be characterised as a 'low flood island' (Attachment 3), where it will be unsafe for people to remain during a flood as the site will eventually become inundated with floodwater. People located on the site would need to be evacuated to an area outside of the floodplain to avoid being impacted by the floodwater. The NSW SES's preliminary assessment of the North Byron Flood Study suggests that road access from the site will not be available in a flood somewhere between the modelled 1% AEP or 1 in 100 year AEP and 0.2% or 1 in 500 year AEP flood, and may even be compromised in floods below the modelled 1% AEP (Attachment 1). Further information would need to be provided to determine at what point egress is no longer possible from the site.

### **NSW SES concerns/comments**

The NSW SES considers the full range of flood events up to and including the PMF and not just the 1% AEP flood in developing emergency management plans and strategies for at risk communities.

Due to the significant flood and evacuation constraints at the site, the NSW SES considers the current RE1 Public Recreation zoning of the land appropriate and does not support Council's proposal to rezone the land to allow residential development.

If the proposed rezoning is approved, the resulting development will increase the population exposed to unacceptable flood risk and is likely to result in unsustainable social and economic costs to the community as a consequence of flooding (cf *Mercury Resources Pty Ltd v Parramatta City Council [2016] NSWLEC 1094*). It will also result in transferring the risk to the future occupants and the NSW SES to have to potentially conduct rescues where occupants have not evacuated prior to access roads being closed by floodwater. Furthermore, on a side but related note, enabling the provision of affordable housing in high flood risk locations may preclude access to affordable insurance for the future occupants.

Even with the proposed option 3, the site will be surrounded by floodwater and access will eventually be cut off (Attachment 1), although as mentioned above, more information is needed to determine when this occurs. It may be that the flood related controls relating to buildings can be achieved by filling the sites as proposed; however there will be impact to buildings above the 1% AEP flood and there will be significant impact to people who do not evacuate from the site in time in floods more severe than the 1% AEP flood.

This site would be characterised as high hazard in a PMF, and potentially in more probable events such as the 1 in 500 year AEP event; however without further information on depth (in metres) and velocity at the site it is difficult to assess the characteristics for the site in less probable events than the 1% AEP flood. In any case with the evacuation constraints for the site, this would indicate that this site exhibits true high hazard according to the Floodplain Development Manual for the PMF and potentially more probable events.

#### **Consistency with the EP&A Section 9.1 Direction and Byron Local Environment Plan 2014**

The NSW SES does not agree that the inconsistency of the Planning Proposal with Direction 4.3 Flood Prone Land, under Section 9.1 (previously Section 117) of the *Environmental Planning and Assessment Act 1979* is *justifiably inconsistent* (p 30) as it:

- a) Permits a significant increase in the development of land within the flood planning area which is inconsistent with the flood hazard; and
- b) Will increase the burden on and costs to the emergency services including the NSW SES.

Considering the flood hazard of the site combined with the evacuation limitations from the site, it would also be difficult to fulfil the objectives of clause 6.3 of the BLEP, which aims to minimise the flood risk to life and property associated with the use of the land, and which allows development that is compatible with the land's flood hazard. Furthermore, it would be difficult to meet the objectives in clause 6.4 of the BLEP relating to floodplain risk management, which requires evacuation to be enabled from land subject to flooding above the flood planning level, where that land has particular evacuation or emergency response issues such as this site.

Thank you for referring the Planning Proposal to the NSW SES. We hope to have ongoing involvement with Council in guiding development decisions in Byron Shire local government area to minimise the increased flood risk to the community. Please contact Maria Frazer on 0458 737 188 or [maria.frazer1@one.ses.nsw.gov.au](mailto:maria.frazer1@one.ses.nsw.gov.au) or Marcus Morgan on (02) 4251 6665 or [marcus.morgan@ses.nsw.gov.au](mailto:marcus.morgan@ses.nsw.gov.au) if you wish to discuss any of the matters raised in this correspondence.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'George Jeoffreys', is positioned above the printed name.

George Jeoffreys  
**Senior Manager Risk Reduction and Avoidance**  
NSW State Emergency Service

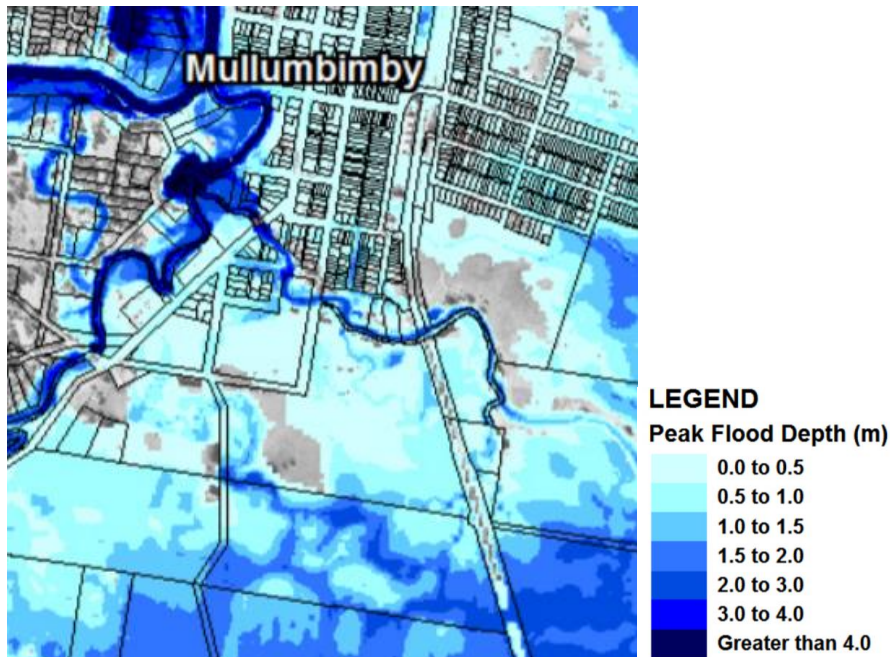
Cc: Senior Manager Risk Reduction and Avoidance; Planning Coordinators.

**Attachments:**

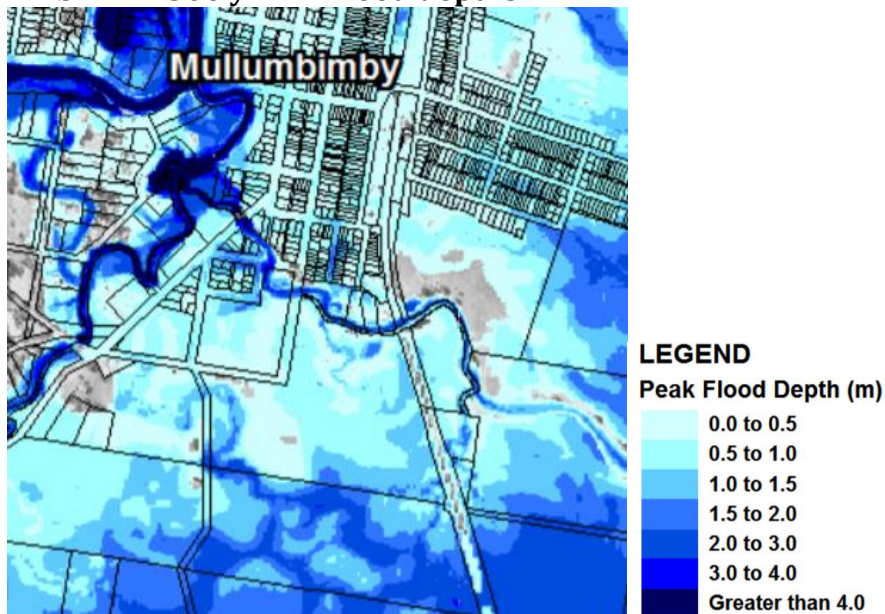
1. Extracts from North Byron Flood Study (BMT WBM, adopted by Council on February 2016).
2. Extracts from the Flood Assessment Report produced by BMT WBM (2017).
3. Flood Emergency Response Classification of Communities: (see: <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Water/Floodplains/floodplain-risk-management-guideline-flood-emergency-response-160732.pdf?la=en&hash=07081CD0D12ABA36C56C7BDBBA4F829FA2D86738>) (DECC, 2007 now OEH 2016/0732).

**Attachment 1: Extracts from North Byron Flood Study (BMT WBM, adopted by Council on February 2016)**

**a. 1 in 100 yr AEP flood depths**

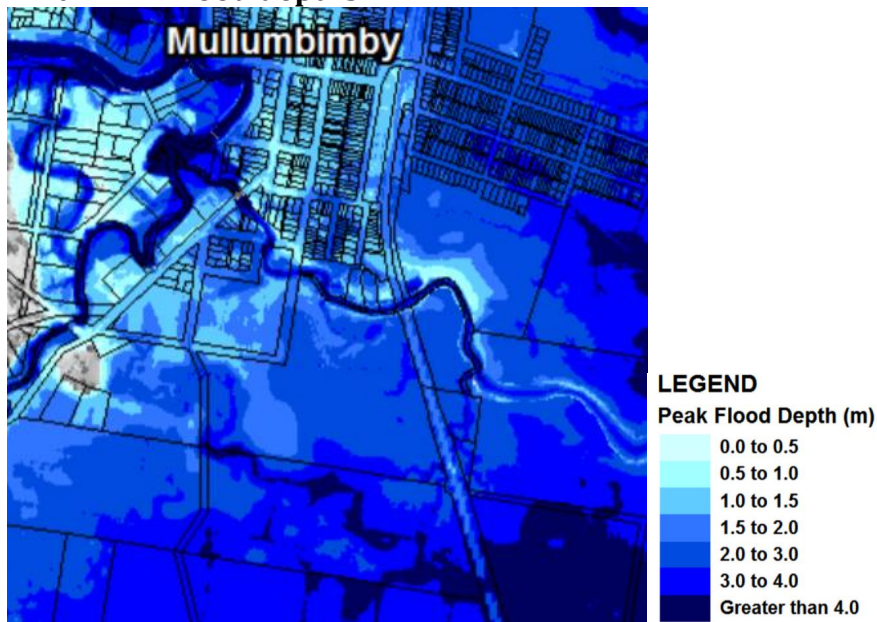


**b. 1 in 500 yr AEP flood depths**





c. PMF flood depths



**Attachment 2: Extracts from the Flood Assessment Report produced by BMT WBM (2017)**

