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Planning Proposal

For

Dwelling Entitlements

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Planning Proposal

1. Background to Planning Proposal

The intent of this Planning Proposal is to enable the following properties to be included in Schedule 7 of the Byron Shire LEP 1988 as having a Dwelling Entitlement.:

1. Lot 3 and Lot 4 DP 576093, Blackbean Road, Wilsons Creek
2. * Lots 332 & 334, DP 755692, Riverside Crescent, Brunswick Heads
3. Lot 7, DP 586804, Mill Road, Goonengerry
4. Lot 384 DP 727453, Coolamon Scenic Drive, Coorabell.
5. Lot 1, DP 722429, Grays Lane (Pacific Highway), Tyagarah
6. Lot 7, DP 571588, Fraser's Road, Mullumbimby
7. Lot 1, DP 123842, Midginbel Road, Mullumbimby
8. Lot 1, DP 571873, Left Bank Road, Mullumbimby
9. Lot 169, DP 257244, Left Bank Road, Mullumbimby
10. Lot 373, DP 729103 and Lot 158, DP 755695, Skinners Shoot Road, Byron Bay
11. Lot 1, DP 1022843, Dry Creek Road, Upper Main Arm
12. Lot 8, DP 571588, Frasers Road, Mullumbimby
13. Lot 1, DP 123289, Charltons Road, Federal
14. Lot 5, DP 580915, Coral Avenue, Mullumbimby
15. Lot 230 DP 755730, Main Arm road, Main Arm.

* 2: *Lots 332 & 334, DP 755692, Riverside Crescent, Brunswick Heads are not recommended for dwelling entitlements.*

Each of the subject properties has had a detailed investigation in the *Byron Shire Council Local Environmental Study, 2008* (LES2008) prepared by Parsons Brinckerhoff Australia Pty. Ltd. (PB) for and on behalf of Byron Shire Council.

The Council commenced a Shire wide planning process to prepare a new Local Environmental Plan in 2006. In the course of preparation, a number of landowners lodged submissions with Council requesting that their properties be considered for inclusion in the Shire wide LEP as having a dwelling entitlement.

Clause 15 of the Byron Shire LEP 1988 provides Council with the statutory authority to consent to a dwelling-house in rural or environmental protection zones under a number of circumstances. The first, if a property was an *existing holding*, that is, an allotment, lot or portion in existence on the *relevant day*, that was not in the same ownership as any adjoining or adjacent allotment, lot or portion, and that has not been subdivided since that day, is eligible for a dwelling entitlement. Secondly, if each area of land comprised all the adjoining or adjacent allotments, lots or portions that were held in the same ownership on the *relevant day* and that have not been subdivided since that day, also qualify for a dwelling entitlement.

The *relevant day* means:

- a) In the case of land formally subject to Interim Development Order No.1 *Shire of Byron* , 8 November 1968; or
- b) In the case of land formally subject to Interim Development Order No.1 *Municipality of Mullumbimby*, 9 November 1973.

In the *Byron Shire Council Local Environmental Study, 2008* (LES 2008) prepared by Parsons Brinckerhoff Australia Pty Ltd each landowners submission was specifically evaluated and assessed in accordance with Council's geographic information system and Council records. This included:

- Permissibility of a dwelling in the zone.
- How and when the lot was created.
- Whether a lawfully erected dwelling exists on the lot.
- Whether the Council has advised in writing or issued a Section 149 (5) Certificate indicating the lot has a dwelling entitlement or whether a Building Permit for a dwelling has been issued.
- Where possible an assessment was made as to whether the land was suitable for a dwelling and if a dwelling does exist, has it been constructed unlawfully or whether that dwelling existed prior to 1988 and whether there is evidence that the dwelling meets current building requirements.

The following Section identifies each property and provides the findings and recommendation made by Parsons Brinckerhoff Australia Pty Ltd.

1.1 Byron Shire LES 2008

Sites 1 & 2

Lot 3 and Lot 4 DP 576093, Blackbean Road, Wilsons Creek.

Request for a dwelling entitlement by Parsons Brinckerhoff

“Lot 3 (3.7 ha) and Lot 4 (23.01 ha) are part of a natural subdivision that was registered on 8/7/75 and the DP does not have the Shire Clerks signature. It does not meet the dwelling entitlement criteria under clause 15 of LEP 1988.

An aerial photo shows that a dwelling is located on each of the lots. The owners have produced a letter advising of development consent for a dwelling on lot 4 dated July 1979.

In June 1988 the owners advised Council that a Council approved dwelling also existed on Lot 3. Council advised the owners by letter of 8 July 1988 that it acknowledged the dwelling houses existed and considered them to have continuing use rights.

Lot 3 is mostly proposed to be zoned E3 with E2 over the riparian vegetation and Lot 4 is proposed to be zoned partly E2 and partly E3 under the draft Shire-wide LEP.

A dwelling entitlement is warranted in this case for both Lots 3 and 4 because a dwelling has been erected on both lots for an extended period of time (pre 1988 when the current LEP commenced). Council's letter of 8 July 1988 is likely to constitute estoppel should Council wish to pursue any action in relation to the legality of the dwellings.

Wilsons Creek is quite close to the dwelling on Lot 3 so Council's efforts may be better spent in ensuring that any OSMS meets current standards. It is recommended that both lots 3 and 4 DP 576093 Blackbean Road, Wilsons Creek each be included in Schedule 1 for the purpose of a dwelling house.

Assessment

Lots 3 and Lot 4 are both currently zoned 7C (Water Catchment) under BLEP 1988. Both lots contain an existing dwelling house. Both lots have High Conservation Vegetation present comprising moist to dry sclerophyll forest and woodland with the remainder of the vegetation being camphor. Lot 3 contains three known threatened flora while lot 4 has both threatened flora and fauna.

Both lots have a Bushfire Category 1 and Buffer restrictions. Neither lot is rated as prime agricultural land. Lot 4 contains Koala Habitat at the rear (southern) end of the site and a recognised Wildlife Corridor. Lot 3 is almost entirely within the 100 metre buffer to Wilson's creek.

Recommendation

As both lots each contain an existing dwelling that has been acknowledged by Council then it is recommended that two dwelling entitlements be included in Schedule 7 of the Byron LEP 1988 for the purpose of dwelling houses.

Site 3

Lots 332 & 334, DP 755692, Riverside Crescent, Brunswick Heads

Request for a dwelling entitlement by Parsons Brinckerhoff

Lots 332 and 334 have a combined area of approximately 0.145 ha and they are both original Parish Portions. The lots do not meet the dwelling entitlement criteria under clause 15 of LEP 1988. Dwellings are prohibited in the current 7(b) environment protection zone.

There is no record of a dwelling being located on the lot although there is evidence of development approval for a dwelling being issued in November 1978 for Lot 334 and again in August 1984 for Lots 332 and 334 (combined).

The land is flood prone and partly cleared. It is proposed to be zoned mainly E2 and E3 under the draft Shire-wide LEP. There is a case to suggest that one or both of the dwelling approvals were commenced by activities such as filling and connection of services such as electricity and water. However the site is subject to bushfire hazard and reticulated sewerage would be required due to its proximity to the Brunswick River. Access to the site needs to be substantiated and any dwelling would need to be constructed above the flood planning level.

The history of dwelling approvals and the likelihood of commencement being proved makes for a strong case that the lots should be listed as having a single dwelling permissibility (for the two lots combined) subject to the site issues being resolved.

It is recommended that Lot 332 & 334 DP 755692 Riverside Crescent, Brunswick Heads be included in Schedule 1 for the purposes of a dwelling house, subject to conditions requiring lot amalgamation, connection to reticulated sewerage and resolution of access, bushfire hazard and flooding issues.

Assessment

Lots 332 and 334 are both currently zoned 7(b) Coastal Habitat under BLEP 1988. Both lots are vacant and each has an area of 725 m². Crown land adjoins either side of the land and behind.

Both lots contain High Conservation Vegetation; are within a wildlife corridor; are subject to flooding; are acknowledged as “Eco wetlands”; are within 100 metres of the Brunswick river “buffer” and in a Category 2 Bushfire area. The site has neither constructed road frontage nor easy access to services.

Recommendation

Whilst there may have been a past approval for a dwelling on one lot or on the consolidated lots, the site floods and without detailed flood information that

considers sea level rise from Global Warming it is not recommended a dwelling entitlement be acknowledged for either of these Lots.

Site 4

Lot 7 DP 586804 Mill Road, Goonengerry

Request for a dwelling entitlement by Parsons Brinckerhoff

Lot 7 is a 12.44 ha lot that was registered on 10/11/76 as a natural subdivision and the DP does not have the Shire Clerks signature. A Section 149(5) certificate issued in March 2006 indicated that the dwelling entitlement question was not applicable because a dwelling already exists on the lot.

It does not meet the dwelling entitlement criteria under clause 15 of LEP 1988. An air photo shows that a dwelling is located on the lot. The owner has advised that a dwelling was constructed in the early 1980's.

Council's records indicate that a Building permit was issued for Lot 7 in August 1983. Lot 7 is proposed to be zoned mostly E2 and partly E3 under Shire-wide LEP.

A dwelling entitlement is warranted in this case because a dwelling has been erected on the site for an extended period of time (pre 1988 when the current LEP commenced) apparently with Council's permission. It is unlikely Council would be successful with a demolition given its involvement in the dwellings construction.

It is recommended that Lot 7 DP 586804 Mill Road, Goonengerry be included in Schedule 1 for the purpose of a dwelling house.

Assessment

Lot 7 Mill Rd is zoned 1(a) General Rural shown hatched. The site is almost entirely covered in High Conservation Vegetation with two acknowledged sites/ locations of Threatened Flora and Fauna. The site is within a Wildlife Corridor and is in a Category 2 Bushfire Hazard area.

Recommendation

A dwelling permit was issued by Council in August 1993 and the site has a dwelling erected upon it. It is recommended that Lot 7 DP 586804 Mill Road, Goonengerry be included in Schedule 7.

Site 5

Lot 384 DP 727453 Coolamon Scenic Drive, Coorabell.

Request for a dwelling entitlement by Parsons Brinckerhoff

Lot 384 is a 4.5 ha lot that was registered on 20/6/88 as a Crown subdivision and the DP does not have the Shire Clerks signature. Prior to 1988 it was part of a Crown existing holding. It appears that in 1998 the owner of the lot was the Tweed Byron Land Council with the balance of the existing holding being held by the Dept of Education. It is unclear as to whether the realignment of lot boundaries (and splitting of the lots) in 1988 constitutes a subdivision for a public purpose. If it does then this suggests that the existing holding (of which this lot is a part) has a dwelling entitlement under clause 15 of LEP 1988. If it does not, then the lot is part of a broken existing holding and has no dwelling entitlement under clause 15.

A Section 149 (5) certificate issued in 1998 states that the lot has a dwelling entitlement and a later Section 149(5) certificate (Feb 2006) states that there is no dwelling entitlement.

An air photo shows that there is no dwelling on the lot and the balance of the existing holding is either vacant or has the Coorabell school on it. It is proposed to be zoned E3 under Shire-wide LEP and dwellings are a permitted use.

A dwelling entitlement is warranted in this case because Council has issued documentation in the form of Section 149 certificate stating that the lot has an entitlement. No dwelling currently exists on the land or any other part of the original existing holding so the entitlement has not been used elsewhere. However the schedule listing should be conditional on access to the lot not being obtained from Coolamon Scenic Drive. Access is available from Mango Lane.

It is recommended that Lot 384 DP727453 Coolamon Scenic Drive, Coorabell be included in Schedule 1 for the purpose of a dwelling house conditional on access not being obtained from Coolamon Scenic Drive.

Assessment

Lot 384 DP727453 Coolamon Scenic Drive is zoned 7(d) Scenic Escarpment under BLEP 1988. The site does not have a dwelling upon it. The land is not prime agricultural land, contains no Threatened Flora or Fauna, no koala habitat, however the site is entirely within a wildlife corridor.

The site is visually significant and any future development will need to be assessed against the scenic impact and visual amenity of the Shire. Access to the site is to be prohibited from Coolamon Scenic Drive due to public safety issues and will need to be detailed in Schedule 8 of the LEP. A dwelling house is a permissible use in the 7d zone.

Recommendation

It is recommended that Lot 384 DP727453 Coolamon Scenic Drive, Coorabell, be included in Schedule 8 of Byron LEP 1988 for the purpose of a dwelling house conditional on access not being obtained from Coolamon Scenic Drive.

Site 6

Lot 1 DP 722429 Grays Lane, (Pacific Highway), Tyagarah.

Request for a dwelling entitlement by Parsons Brinckerhoff

Lot 1 is a 7.7 ha lot held in the same ownership as Lots 5 and 6 which are 0.0885 ha and 0.0192 ha respectively.

Lots 5 and 6 were registered on 1 August 1979 and are part of a plan of lands to be acquired for the purposes of the Main Roads Act. They were created as part of the Tyagarah highway upgrade and associated road realignments. They are a Crown subdivision and do not have the Shire Clerks signature.

Lot 1 was created as the balance of the subdivision that created DP 258921 but for some reason was not registered until 23/10/86. Importantly, the original existing holding for this location included lots 5 and 6 and lot 1 DP 722429 as well as lot 1 DP 258921 which is located immediately to the south of the other lots. It also included some land across the Pacific Highway which is now owned by the Crown.

*Council records show that in 1986 development consent was granted to a dwelling on Lot 1 DP 722429 (DA 86/0329). However, the paper work for this approval states **incorrectly** that the subject land is lot 1 DP 285291. The plans attached to the DA clearly show that the house was intended to be built on Lot 1 DP 722429. At this time the existing holding status had been broken and it is unclear as to whether a dwelling entitlement existed.*

A Section 149 certificate issued in 2003 indicates that a dwelling already exists on the property.

A Section 149 certificate issued in 2003 for lot 1 DP 258921 indicates that there is no dwelling entitlement for the property. Council has no record of a dwelling being approved on this lot. None of the lots meet the dwelling entitlement criteria under clause 15 of LEP 1988. Even though the initial subdivision was for a public purpose (apparently) being the Pacific Highway, the existing holding was broken when Lot 1 DP 258921 was separated from the balance of the property. An air photo shows that a dwelling is located on Lot 1 DP 722429 and some buildings are located on Lot 1 DP 258921.

The Lots are proposed to be zoned part E2 and part E3 under Shire-wide LEP. It is not necessary to list lots 5 and 6 of DP 258921 and it is not recommended that Council list Lot 1 DP 258921 even though it has been separated from the existing holding for many years.

Given Council's involvement in the approval of the dwelling on Lot 1 DP 722429 Grays Lane (Pacific Highway), Tyagarah and the fact that it no longer meets the dwelling requirements under the draft rural dwelling clause in Shire-wide LEP it is recommended that it be listed in schedule 1 for the purpose of a dwelling house to avoid confusion as to its status.

Assessment

Lot 1 DP 722429 Grays Lane, (Pacific Highway), Tyagarah is zoned 1(a) General Rural under the BLEP 1988. The site contains an existing dwelling and sheds. The land is not prime agricultural land, but it does contain a small area where there is Threatened Fauna habitat with High Conservation Vegetation that includes some trees suitable as koala habitat comprising moist / dry sclerophyll forest and woodlands. The site is entirely within a wildlife corridor.

The dwelling was approved in 1986 and has since been constructed.

Recommendation

It is recommended that Lot 1DP 722429, Grays Lane, Tyagarah, be included in Schedule 7 of Byron LEP 1988 for the purpose of a dwelling house. Council has granted development consent for the dwelling on site.

Site 7

Lot 7 DP 571588 Frasers Road, Mullumbimby.

Request for a dwelling entitlement by Parsons Brinckerhoff

Lot 7 is a 2.48 ha lot that was registered on 26/8/74 as a natural subdivision and the DP does not have the Shire Clerks signature. Section 149(5) certificates issued to the owners indicated that there was a dwelling already in existence on the lot.

Subsequent enquiries by potential purchasers revealed that the lot was a broken existing holding. It does not meet the dwelling entitlement criteria under clause 15 of LEP 1988. An air photo shows that a building is located on the lot and the owner's consultant advises that this is the original dwelling on the original lot and was built in the 1950's. It was approved for extensions by Council in 1991 and received a final inspection in 1997. A building certificate for the dwelling was issued by Council in August 2002.

Lot 7 is a classic broken existing holding with a dwelling on it that has on balance of probabilities has existing use rights. However, the owner has consistently lobbied for inclusion in the dwelling schedule to LEP 1988 because they insist that cautious buyers are not willing to risk the uncertainty generated by existing use rights.

Lot 7 is proposed to be zoned entirely RU2 under Shire-wide LEP.

Council should have considered the status of this lot in 1991 and again in 2002 and at least acknowledged its history before approving extensions and issuing a building certificate. It was a broken existing holding when it was purchased by the current owner and nothing has changed since then except they now have an awareness of what that means.

A dwelling entitlement is warranted in this case because it will finally bring the matter to a close and avoid the future conflicts that may ensue if Council does not schedule the lot.

It is recommended that Lot 7 DP571588 Fraser's Road, Mullumbimby be included in Schedule 1 for the purpose of a dwelling house.

Assessment

Lot 7 DP 571588 Frasers road, Mullumbimby is zoned 1(a) General Rural under the BLEP 1988. The site contains an existing dwelling and sheds. The land is not prime agricultural land. There are environmental constraints for this site.

Recommendation

It is recommended that Lot 7 DP 571588 Frasers road, Mullumbimby, be included in Schedule 7 of Byron LEP 1988 for the purpose of a dwelling house. Council has granted development consent for the dwelling on site.

Site 8

Lot 1 DP 123842 Midginbel Road, Mullumbimby.

Request for a dwelling entitlement by Parsons Brinckerhoff

Lot 1 is a 10.38ha lot that was registered on 29/5/91 as a Crown subdivision and the DP does not have the Shire Clerks signature. It was previously Part lot 1 of DP 171817 and was held in an existing holding with a small adjacent lot.

A Section 149(5) certificate was issued on 18/12/02 and states (incorrectly) that a dwelling entitlement accrues to Lot 1. A later Section 149(5) certificate issued on 5/4/05 answers the question accurately and advises that a dwelling is not permitted on the lot. The reason is that it is a broken existing holding and the dwelling entitlement to that holding was taken up by another lot.

It does not meet the dwelling entitlement criteria under clause 15 of LEP 1988.

An air photo shows that there is no dwelling located on the lot. Lot 1 is proposed to be zoned partly E2 and E3 and partly RU2 under Shire-wide LEP.

A dwelling entitlement is warranted in this case because Council has issued a Section 149 certificate in error.

It is recommended that Lot 1 DP123842 Midginbel Road, Mullumbimby be included in Schedule 1 for the purpose of a dwelling house.

Assessment

Lot 1 DP 123842 Midginbel Road, Mullumbimby is zoned Part 1(a) General Rural and part 7 (d) Scenic / Escarpment zone under the BLEP 1988.

The land is not prime agricultural land. There are a number of environmental constraints for this site, including: The existing 7(d) zoned land is comprised of high conservation vegetation; is recognised as koala habitat and forms part of a larger wildlife corridor and the site is partly within a Dip site buffer.

The 1(a) zoned land is generally cleared of trees and dense vegetation.

The PB recommendation is that Lot 1 DP123842 Midginbel Road, Mullumbimby, be included in Schedule 7 of Byron LEP 1988 for the purpose of a dwelling house due to the incorrect issue of a Section 149 certificate in 2002.

Recommendation

It is recommended that Lot 1 DP123842 Midginbel Road, Mullumbimby, be included in Schedule 7 of Byron LEP 1988 for the purpose of a dwelling house.

Site 9

Lot 1 DP 571873 Left Bank Road, Mullumbimby.

Request for a dwelling entitlement by Parsons Brinckerhoff

Lot 1 is a 0.84 ha lot that was registered on 5/9/74 as a natural subdivision and the DP does not have the Shire Clerks signature. It does not meet the dwelling entitlement criteria under clause 15 of LEP 1988.

An air photo shows that a dwelling is located on the lot. The neighbour has advised that a dwelling was constructed approximately 35 years ago which is about the time that the lot was created. The plumber inspecting the septic tank suggests it was installed in 1977. Council has advised a solicitor that it has no records relating to buildings on this property.

A building assessment report advises that the dwelling is structurally sound and in reasonable condition. It is proposed to be zoned E2 under Shire-wide LEP. A dwelling entitlement is warranted in this case because a structurally sound dwelling has been erected on the site for an extended period of time (pre 1988 when the current LEP commenced). It is unlikely Council would be successful with a demolition order given the time delay since construction.

Mullumbimby Creek is less than 30 m away from the dwelling. Although the OSMS is not failing (septic report provided) Council may need to pursue an upgrade of the OSMS to ensure it meets current standards.

It is recommended that the Lot 1 DP 571873 Left Bank Rd, Mullumbimby be included in Schedule 1 for the purpose of a dwelling house.

Assessment

Lot 1 DP 571873 Left Bank Road, Mullumbimby is zoned 1(a) General Rural under the BLEP 1988. The site has an area of 0.452 ha.

The land contains High Conservation Vegetation. There is no threatened fauna or flora habitat. The site has a boundary to the creek. Council records do not indicate that the site floods.

Recommendation

It is recommended that Lot 1 DP 571873 Left Bank Road, Mullumbimby, be included in Schedule 7 of Byron LEP 1988 for the purpose of a dwelling house as the site contains an existing dwelling.

Site 10

Lot 169 DP 257244 Left Bank Road, Mullumbimby.

Request for a dwelling entitlement by Parsons Brinckerhoff

Lot 169 is a 0.1751 ha lot that was registered on 1/3/79 as a natural subdivision and the DP does not have the Shire Clerks signature. It is hard up against Mullumbimby Creek on one side and Left Bank Rd on the other.

The current owner has supplied a statutory declaration from a neighbour to say that the dwelling was in existence in that location in 1953. Council has no records of its approval. A building certificate was issued in 1988 and again in February 2008.

The dwelling is in good condition according to a recent building inspection report and is structurally sound according to an engineer's report. Council inspection of the OSMS recommends an upgrade due to the disposal area being within 15 metres of Mullumbimby Creek.

This lot does not meet the dwelling entitlement criteria under clause 15 of LEP 1988. It would also not meet the rural dwelling criteria under Shire-wide LEP. It is proposed to be zoned entirely E2 under Shire-wide LEP.

A dwelling entitlement is warranted in this case because the dwelling has been located on the lot for approximately 55 years (pre 1988 when the current LEP commenced) and it is unlikely a demolition order would be successful.

It is recommended that Lot 169 DP 257244 Left Bank Rd, Mullumbimby be included in Schedule 1 for the purpose of a dwelling house.

Assessment

Lot 169 DP 257244 Left Bank Road, Mullumbimby is zoned 1(a) General Rural under the BLEP 1988. The site has an area of 0.148 ha.

The site is not prime agricultural land. There is no threatened fauna or flora habitat. The site has a boundary to the creek. Council records do not indicate that the site floods.

A dwelling has existed on the site since 1953.

Recommendation

It is recommended that Lot 169 DP 257244 Left Bank Road, Mullumbimby, be included in Schedule 7 of Byron LEP 1988 for the purpose of a dwelling house as the site contains an existing dwelling.

Sites 11&12

Lot 373 DP 729103 and Lot 158 DP 755695 Skinners Shoot Road, Byron Bay

Request for a dwelling entitlement by Parsons Brinckerhoff

Lot 373 is a 2.52 ha lot that was registered as a Crown subdivision on 27/4/89 and does not have the Shire Clerks signature.

Lot 158 is an original Portion of 0.52 ha. Lot 373 was originally held as part of an existing holding with Lot 158 DP 755695. Before the subdivision lot 373 was Lot 274 DP 755695. A dwelling was approved on Lot 373 by Council consent 98 / 2319.

According to the air photo the dwelling was constructed. A dwelling was subsequently approved on Lot 158 by Council consent 10.2007.294 (13/8/07) notwithstanding that the lot was a broken existing holding and had no dwelling entitlement.

A Section 149(5) certificate issued on 26/6/07 advised that Lot 158 did not have a dwelling entitlement. The lots are proposed to be zoned E2 under Shire-wide LEP, and dwellings are to be prohibited. They are not likely to get a dwelling entitlement under the rural dwelling provisions of Shire-wide LEP because they are a broken existing holding.

Given Council has approved dwellings on both properties it is recommended that Lot 373 DP 729103 and Lot 158 DP 755695, Skinners Shoot Rd, Byron Bay both be listed separately in Schedule 1 for the purpose of a dwelling house.

Assessment

Lot 373 DP 729103 and Lot 158 DP 755695 Skinners Shoot Road, Byron Bay are both zoned Part 1(a) General Rural and part 7 (d) Scenic / Escarpment Zone under the BLEP 1988.

Neither site contains prime agricultural land. Both sites contain High Conservation Vegetation described as part moist to dry sclerophyll forest to woodland and the land contains koala habitat. Both sites are located within a wildlife corridor. There is no threatened fauna or flora habitat on Lot 373 however there is on Lot 158.

Council has granted development consent for a dwelling on each lot. One has been constructed and the other still holds a valid consent that can be acted upon.

Recommendation

It is recommended that Lot 373 DP 729103 and Lot 158 DP 755695 Skinners Shoot Road, Byron Bay be added to Schedule 7 of Byron LEP 1988 as both sites contain an existing Council approved dwelling.

Site 13

Lot 1 DP 1022843 Dry Creek Road, Upper Main Arm.

Request for a dwelling entitlement by Parsons Brinckerhoff

Lot 1 is a 0.0956 ha lot that was registered as a Crown subdivision on 16/2/01 and does not have the Shire Clerks signature. It was referred to Council for comment at the time of closing the road, but that does not constitute approval.

The lot does not meet the criteria of clause 15 of LEP 1988 and it has no dwelling entitlement. It has a dwelling on it that was allegedly built in 1953.

There are no Council records of any approvals. The house was originally part of a banana plantation on a Crown PO. The lot is proposed to be zoned E2 under Shire-wide LEP, and dwellings are to be prohibited. It is not likely to get a dwelling entitlement under the rural dwelling provisions of Shire-wide LEP because of the unusual way in which the dwelling came to be on a discrete lot.

A dwelling entitlement is warranted in this case because the dwelling has been located on the lot for approximately 55 years (certainly pre 1988 when the current LEP commenced) and it is unlikely a demolition order would be successful.

It is recommended that Lot 1 DP 1022843 Dry Creek Road, Upper Main Arm be included in Schedule 1 for the purpose of a dwelling house.

Assessment

Lot 1 DP 1022843 Dry Creek Road, Upper Main Arm, is zoned 1(a) General Rural under the BLEP 1988. The site has an area of 0.0942 ha.

The site is not prime agricultural land. There is no threatened fauna or flora however the site does contain threatened fauna habitat south of the existing dwelling. The entire site is considered to be within a bushfire Category One area.

A dwelling has existed on the site since 1953.

Recommendation

It is recommended that Lot 1 DP 1022843 Dry Creek Road, Upper Main Arm, be included in Schedule 7 of Byron LEP 1988 as the site contains an existing dwelling.

Site 14

Lot 8 DP 571588, Frasers Road, Mullumbimby.

Request for a dwelling entitlement by Parsons Brinckerhoff

Lot 8 is a 4.55 ha lot that was registered on 26/8/74 as a natural subdivision and the DP does not have the Shire Clerks signature. Enquiries by potential purchasers of the adjacent Lot 7 revealed that both lots were part of a broken existing holding.

Lot 8 does not meet the dwelling entitlement criteria under clause 15 of LEP 1988. An air photo shows that a building is located on the lot and the owner advises that this is a dwelling that has existed on the lot since 1976. A building application was approved in 1976 and extensions were approved by Council in 1979.

Lot 8 is a classic broken existing holding with a dwelling on it that has on balance of probabilities existing use rights. However, the owner has consistently lobbied for inclusion in the dwelling schedule to LEP 1988 because they insist that cautious buyers are not willing to risk the uncertainty generated by existing use rights. Lot 8 is proposed to be zoned mostly RU2 under Shire-wide LEP.

Council should have considered the status of this lot in 1976 and again in 1979 and at least acknowledged its history before approving extensions and issuing a building certificate. It was a broken existing holding when it was purchased by the current owner and nothing has changed since then except they now have an awareness of what that means.

A dwelling entitlement is warranted in this case because it will finally bring the matter to a close and avoid the future conflicts that may ensue if Council does not schedule the lot.

It is recommended that Lot 8 DP571588 Frasers Road, Mullumbimby be included in Schedule 1 for the purpose of a dwelling house.

Assessment

Lot 8 DP571588 Frasers Road, Mullumbimby is zoned 1(a) General Rural under the BLEP 1988. The site has an area of 43,328 m².

The site is not prime agricultural land. There is no threatened fauna or flora.

In 1979 Council approved alterations and additions to an existing dwelling.

Recommendation

It is recommended that Lot 8 DP571588 Frasers Road, Mullumbimby, be included in Schedule 7 of Byron LEP 1988 as the site contains an existing dwelling.

Site 15

Lot 1 DP 123289, Charltons Road, Federal.

Request for a dwelling entitlement by Parsons Brinckerhoff

Lot 1 is a 20.37 ha lot that was registered as part of a Crown subdivision on 24/8/89 and does not have the Shire Clerks signature. A Section 149 (5) certificate issued in 2003 (ref 30727) advised that the lot has no dwelling entitlement because it is part of an existing holding. That existing holding was broken some time before that.

Council records show that consent for a dwelling was approved on 9 August 1993 (DA 93/259). A building permit was issued (93/2472) On 31 August 1993. A solicitor's letter in 2003 advised that the dwelling was commenced but not completed at that time.

Lot 1 is proposed to be zoned mostly E3 and partly E2 under Shire-wide LEP. It would not meet the requirement for a rural dwelling entitlement proposed in Shire-wide LEP.

Council should have considered the status of this lot in 1993 as it would appear that it was a broken existing holding at this time.

A dwelling entitlement is warranted in this case because Council has probably issued a dwelling approval incorrectly and the dwelling likely exists on the property in some form, albeit incomplete.

It is recommended that Lot 1 DP 123289 Charltons Rd, Federal be included in Schedule 1 for the purpose of a dwelling house.

Assessment

Lot 1 DP 123289, Charltons Road, Federal is zoned 1(a) General Rural under the BLEP 1988. The site has an area of 20.65 ha and adjoins a creek.

The site is not prime agricultural land. There is no threatened fauna or flora on site however the creek frontage does have the potential to contain threatened fauna habitat.

In 1993 Council approved the construction of a dwelling on the site.

Recommendation

It is recommended that Lot 1 DP 123289, Charltons Road, Federal, be included in Schedule 7 of Byron LEP 1988 as the site contains an existing dwelling.

Site 16

Lot 5 DP 580915, Coral Avenue, Mullumbimby

Request for a dwelling entitlement by Parsons Brinckerhoff

Lot 5 is a 0.85 ha lot that was registered on 24/5/72 as a natural subdivision and the DP does not have the Shire Clerks signature. A proposed sale allegedly fell through in 2004 because of concern over whether the property has a dwelling entitlement.

The lot is a broken existing holding. It does not meet the dwelling entitlement criteria under clause 15 of LEP 1988. An air photo shows that a building is located on the lot and a survey in 1978 shows a dwelling located on the lot.

Council records show that a building application for a dwelling was approved in that location on 20/3/75. It was allegedly extended without Council approval in 1997.

Lot 5 is a classic broken existing holding with a dwelling on it that has on the balance of probabilities existing use rights. However, it was probably a broken existing holding when the Council approval was issued and it may have been issued in error.

Lot 5 is proposed to be zoned mainly RU1 with some RU2 and E2 (near the Brunswick River) under Shire-wide LEP.

A dwelling entitlement is warranted in this case because Council has probably issued a dwelling approval incorrectly and the dwelling exists on the property. It will finally bring the matter to a close.

It is recommended that Lot 5 DP 580915 Coral Avenue, Mullumbimby be included in Schedule 1 for the purpose of a dwelling house.

Assessment

Lot 5 DP 580915, Coral Avenue, Mullumbimby, is zoned 1(a) General Rural under the BLEP 1988. The site has an area of 10,848 m² and adjoins a creek.

The site is prime agricultural land. There is no threatened fauna or flora on site however the creek frontage does have the potential to contain threatened fauna habitat.

In 1975 Council approved the construction of a dwelling on the site.

Recommendation

It is recommended that Lot 5 DP 580915, Coral Avenue, Mullumbimby be included in Schedule 7 of Byron LEP 1988 as the site contains an existing dwelling.

Site 17

Lot 230 DP 755730 Main Arm Road, Upper Main Arm

Request for a dwelling entitlement by Parsons Brinckerhoff

Lot 230 is approximately 5.86 ha and was an original portion. A search of Council records and through the Dept of Lands failed to identify if the allotment was part of an original existing holding in 1968 or a holding in its own right.

On the 9/9/74 a plan of subdivision was registered with the Lands Title Office for the subdivision of an original portion 227 to create two lots – Lots 1 and 2 DP 571376. The plan is not accompanied with a Council clerks signature however Lot 230 is the same size and configuration as Lot 1.

Further searches of Councils records revealed a Building Application was approved on the subject property (Lot 1 DP 571376) on 3/9/75 for a dwelling house. It is understood the dwelling has been constructed generally in accordance with these plans.

On the 1/3/77, it appears that DP 571376 reverted back to the Portions Plan and Lot 1 reverted back to Portion 230 and Lot 2 to Portion 227. Portion 227 has since been further subdivided into three parcels and the DP is listed in Schedule 7 of Byron LEP 1988.

After exhaustive searches, the exact ownership of Lot 230 and surrounds in inconclusive. Therefore, as there is uncertainty and a dwelling appears to have been approved by Council, to ensure that the allotment has a dwelling entitlement into the future it is recommended that Lot 230 DP 755730 main Arm Road, Upper Main Arm be included in Schedule 1 for the purpose of a dwelling house.

Assessment

Lot 230 DP 755730 Main Arm Road, Upper Main Arm, is zoned 1(a) General Rural under the BLEP 1988. The site has an area of 10,530 m².

The site is not prime agricultural land. There is no threatened fauna or flora on site however the site has potential for threatened fauna habitat where the rear half of the site contains wet to moist sclerophyll forest and woodland.

In 1975 Council approved the construction of a dwelling on the site.

Recommendation

It is recommended that Lot 230 DP755730 Main Arm Road, Upper Main Arm be included in Schedule 7 of Byron LEP 1988 as the site contains an existing approved dwelling.

2.0 Objectives and intended outcomes of Proposed LEP

The intent of this Planning Proposal is to enable the following properties:

1. Lots 3 and 4 DP 576093, Blackbean Road, Wilsons Creek
2. * Lots 332 & 334, DP 755692, Riverside Crescent, Brunswick Heads

3. Lot 7, DP 586804, Mill Road, Goonengerry
4. ** Lot 384, DP 727453, Coolamon Scenic Drive, Coorabell.
5. Lot 1, DP 722429, Grays Lane (Pacific Highway), Tyagarah
6. Lot 7, DP 571588, Fraser's Road, Mullumbimby
7. Lot 1, DP 123842, Midginbel Road, Mullumbimby
8. Lot 1, DP 571873, Left Bank Road, Mullumbimby
9. Lot 169, DP 257244, Left Bank Road, Mullumbimby
10. Lot 373, DP 729103 and Lot 158, DP 755695, Skinners Shoot Road, Byron Bay
11. Lot 1, DP 1022843, Dry Creek Road, Upper Main Arm
12. Lot 8, DP 571588, Frasers Road, Mullumbimby
13. Lot 1, DP 123289, Charltons Road, Federal
14. Lot 5, DP 580915, Coral Avenue, Mullumbimby
15. Lot 230, DP 755730, Main Arm road, Main Arm

be acknowledged by Council as having a dwelling entitlement and to be listed in Schedule 7 of the Byron Local Environmental Plan, 1988.

** 2: Lots 332 & 334, DP 755692, Riverside Crescent, Brunswick Heads are not recommended for dwelling entitlements.*

*** 4: Lot 384, DP 727453 Coolamon Scenic Drive, Coorabell is to be included in Schedule 8 of the Byron Local Environmental Plan 1988 for a dwelling entitlement subject to conditions prohibiting access from Coolamon Scenic Drive.*

3.0 Explanation of Provisions

The objective of the Planning Proposal will be achieved by the inclusion of the *recommended properties* in Schedule 7 of the Byron Shire Local Environmental Plan, 1988 in accordance with Council's resolution 09-814 dated 8 October 2008.

4.0 Justification.

A. Need for the planning proposal

1. Is the Planning proposal a result of any strategic study or report?

The Planning Proposal is the result of the *Byron Shire Council Local Environmental Study, 2008* (LES 2008) prepared by Parsons Brinckerhoff Australia Pty Ltd.

Since Council commenced preparation of the draft Shire-wide Local Environmental Plan in 2006, 25 submissions were received from owners of properties seeking from Council the acknowledgement that their property had a dwelling entitlement. Council requested Parsons Brinckerhoff Australia Pty Ltd assess each submission and after investigation of each property to make a recommendation to accept or reject the individual requests.

Each submission was evaluated by Parsons Brinckerhoff and reported back to Council in the Byron Shire Local Environmental Study 2008. Each submission was examined according to the information supplied and a check was made of Council's records and geographic systems. The examination included:

- The permissibility of a dwelling in the applicable zone;
- How and when was the lot created;
- Whether a lawfully constructed dwelling exists on the lot;
- Whether Council has issued a Section 149 (5) Certificate indicating the land had a dwelling entitlement; or
- Whether development consent for a dwelling had ever been issued.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The Planning Proposal to include the subject sites in Schedule 7 of the Byron Local Environmental Plan is considered to be the best way to acknowledge that certain properties do have a dwelling entitlement.

3. Is there a net community benefit?

The Council has not sought to prepare a Net Community Benefit Test as it was not considered to be required in the circumstances.

B. Relationship to strategic planning framework.

1. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy?

The Planning proposal is not inconsistent with any regional or sub regional strategy.

2. Is the planning proposal consistent with Council's Community Strategic Plan?

The Planning proposal is not inconsistent with Council's Community Strategic Plan

3. Is the planning proposal consistent with the state environmental planning policies?

The Planning Proposal has to be assessed for consistency with the applicable State Environmental Planning Policies (SEPP's) as detailed in Appendix No. 2.

- **State Environmental Planning Policy (Rural Lands) 2008**

The State Environmental Planning Policy (Rural Lands) states Rural Planning Principles are as follows:

- (a) The promotion and protection of opportunities for current and potential productive and sustainable economic activities in rural areas,*
- (b) Recognition of the importance of rural lands and agriculture and the changing nature of agriculture and of trends, demands and issues in agriculture in the area, region or State,*
- (c) Recognition of the significance of rural land uses to the State and rural communities, including the social and economic benefits of rural land use and development,*
- (d) In planning for rural lands, to balance the social, economic and environmental interests of the community,*
- (e) The identification and protection of natural resources, having regard to maintaining biodiversity, the protection of native vegetation, the importance of water resources and avoiding constrained land,*
- (f) The provision of opportunities for rural lifestyle, settlement and housing that contribute to the social and economic welfare of rural communities,*
- (g) The consideration of impacts on services and infrastructure and appropriate location when providing for rural housing, and*
- (h) Ensuring consistency with any applicable regional strategy of the Department of Planning or any applicable local strategy endorsed by the Director-General.*

This planning proposal for acknowledgement of dwelling entitlements on the recommended sites ensures that the current and future land owners enjoy certainty with regard to their individual land title. From assessing each properties situation regarding past planning development approvals and Council issued Section 149 Certificates, the individual owners can continue to enjoy their rural lifestyle without altering the existing settlement pattern and in most cases the housing density. The recognition of a dwelling entitlement will contribute to the social and economic welfare of the local rural community as owners can invest in their properties with either new homes or alterations and additions to the existing homes.

The acknowledgement of dwelling entitlements for the nominated properties will not contribute to any loss of prime agricultural land in the Shire nor will it see any likelihood of land use conflicts due to inadequate buffer separation of rural dwellings and legitimate agricultural pursuits on adjoining or nearby land.

- **The North Coast Regional Environmental Plan 1988**

The objectives of North Coast Regional Environmental Plan 1988 NCRP in relation to agricultural resources are:

- (a) To conserve the productive potential of agricultural land,*
- (b) To provide for new forms of agricultural development and changing patterns of existing agricultural development,*
- (c) To ensure that commercial agriculture is not affected adversely by incompatible uses which impair its long term sustainability, and*
- (d) To ensure that industries and services that support agriculture are not disrupted.*

Division 4 of the NCREP refers to Rural Housing. The objective in relation to rural housing is to ensure that any opportunities for rural housing are available only as part of a planned strategy for rural living areas.

The properties recommended for the acknowledgement of individual dwelling entitlements are not as a result of the Byron Rural Settlement Strategy 1998. The individual details of each allotment and the circumstances that have led to their current situation have been outlined in this planning proposal. The acknowledgement of individual dwelling entitlements does not however carry with it a guarantee that each property is physically capable of supporting rural housing or is physically suitable for septic effluent disposal. Each future application for a dwelling or alterations and additions to an existing dwelling will be dealt with on its own merits.

The future assessment of development applications for rural dwellings will require consideration of any environmental hazard and the likelihood of any detrimental impacts on such matters as wildlife corridors, natural vegetation, scenic quality of the region and the protection of water quality. “*Living and Working in Rural Areas - A Handbook for Managing Land Use Conflict Issues on the NSW North Coast*” provides guidance on buffers and the land use conflict risk assessment process.

This planning proposal is considered satisfactory with regard the provisions of the NCREP.

- **State Environmental Planning Policy No 44—Koala Habitat Protection**

This SEPP aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

Before council may grant consent to an application for consent to carry out development on land to which this Part applies, it must be satisfied whether or not the land is a potential koala habitat or if the land is a core koala habitat.

None of the subject properties have been reported as core koala habitat. Each future dwelling application will be dealt with on its merits and this SEPP will be taken into consideration.

- **SEPP No. 26 - Littoral Rainforests**

The aim of this Policy is to provide a mechanism for the consideration of applications for development that is likely to damage or destroy littoral rainforest areas with a view to the preservation of those areas in their natural state.

A person shall not, without the consent of the Council, on land described in clause 4 (1) (a), erect a building, carry out work, use land for any purpose, or subdivide it, disturb, change or alter any landform or disturb, remove, damage or destroy any native flora or other element of the landscape or dispose of or dump any liquid, gaseous or solid matter.

None of the properties recommended for acknowledgement of individual dwelling entitlements has been identified as within a littoral rainforest. Each future dwelling application will be dealt with on its merits and this SEPP will be taken into consideration.

4. Is the planning proposal consistent with applicable Ministerial Directions (S 117 Directions)?

The Environmental Planning and Assessment Act 1979 includes Section 117 Directions that must be considered with any rezoning application. A complete list of all 117 Directions is included as Appendix No.1.

The relevant Section 117 Directions are as follows:

Direction 1.2: Rural Zones

“This direction applies when a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural zone”

The subject properties are not to be rezoned as a result of this planning proposal. The planning proposal seeks only to recognise the existence of a dwelling entitlement.

“The planning proposal must not rezone land from a rural zone to a residential, business, industrial, village or tourist zone”.

The planning proposal does not seek to rezone the subject properties.

“The planning proposal must not contain provisions that will increase the permissible density of land with a rural zone”

The planning proposal will retain the existing zones and seeks only to include the subject properties in Schedule 7 of the Byron Local Environmental Plan 1988 to acknowledge the existence of a dwelling entitlement.

Direction 1.5: Rural Lands.

The objectives of this direction are to:

- a. protect the agricultural production value of rural land,*
- b. facilitate the orderly and economic development of rural lands for rural and related purposes.*

The planning proposal does not seek to alter the agricultural production value of rural land. The planning proposal will facilitate the orderly and economic development of the subject properties by recognising each properties dwelling entitlement in Schedule 7 of the Byron LEP.

This direction applies when:

- (a) a relevant planning authority prepares a planning proposal that will affect land within an existing or proposed rural or environment protection zone (including the alteration of any existing rural or environment protection zone boundary) or*
- (b) a relevant planning authority prepares a planning proposal that changes the existing minimum lot size on land within a rural or environment protection zone.*

The planning proposal will not alter the existing rural or environmental protection zones of each of the subject properties.

Direction 2.1: Environment Protection Zones

The objective of this direction is to protect and conserve environmentally sensitive areas.

A planning proposal must include provisions that facilitate the protection and conservation of environmentally sensitive areas.

A planning proposal that applies to land within an environment protection zone or land otherwise identified for environment protection purposes in a LEP must not reduce the environmental protection standards that apply to the land.

The planning proposal does not seek to alter the existing zones that are to protect and conserve environmentally sensitive areas. The planning proposal will not alter the provisions of the Bryon LEP 1988 that facilitate the protection and conservation of environmentally sensitive areas.

The planning proposal will not alter the environment protection standards of the Bryon LEP 1988 that apply to the subject properties.

Direction 2.2: Coastal Protection

The objective of this direction is to implement the principles in the NSW Coastal Policy.

This direction applies when a relevant planning authority prepares a planning proposal that applies to land in the coastal zone.

A planning proposal must include provisions that give effect to and are consistent with:

- (a) the *NSW Coastal Policy: A Sustainable Future for the New South Wales Coast 1997*, and
- (b) the *Coastal Design Guidelines 2003*, and
- (c) the manual relating to the management of the coastline for the purposes of section 733 of the *Local Government Act 1993* (the *NSW Coastline Management Manual 1990*).

This planning proposal is not inconsistent with this direction.

Direction 4.1: Acid Sulfate Soils

The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.

This planning proposal is not inconsistent with this direction.

Direction 4.3: Flood Prone Land

The objectives of this direction are:

- *to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and*
- *to ensure that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.*

This planning proposal is not inconsistent with this direction.

Direction 4.4: Planning for Bushfire Protection

The objectives of this direction are:

- *to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire*

prone areas, and

- *to encourage sound management of bush fire prone areas.*

Those subject properties identified as bushfire prone land will be required to obtain a Bushfire hazard Assessment to be undertaken upon receipt of the Gateway determination in order that any new dwelling or alteration and additions to an existing dwelling is referred to the Rural Fire Service for comment.

Direction 5.1: Implementation of Regional Strategies

The objective of this direction is:

To give legal effect to the vision, land use strategy, policies, outcomes and actions contained in regional strategies.

This direction applies to the Far North Coast Regional Strategy.

Planning proposals must be consistent with a regional strategy released by the Minister for Planning.

The FNCRES applies to each of the subject properties. This planning proposal is not explicitly inconsistent with the outcomes and actions of the FNCRES. The planning proposal is recognition of a dwelling entitlement only and does not guarantee a dwelling can be built on each of the subject properties. Council will require the lodgement of a future development application that has regard to a number of matters including: siting; orientation; relationship with adjoining and adjacent development / land use; the natural environment; visual impact; building materials; bushfire risk and on site sewerage management.

Direction 5.3: Farmland of State and Regional Significance on the NSW Far North Coast

The objectives of this direction are:

- *to ensure that the best agricultural land will be available for current and future generations to grow food and fibre,*
- *to provide more certainty on the status of the best agricultural land, thereby assisting councils with their local strategic settlement planning, and*
- *to reduce land use conflict arising between agricultural use and non-agricultural use of farmland as caused by urban encroachment into farming areas.*

This planning proposal seeks to include each of the recommended properties into Schedule 7 and one into Schedule 8 of the Byron LEP 1988 as having a dwelling entitlement. All prime agricultural land will not be altered. Any future dwelling will need to satisfy Council regarding potential land use conflicts and appropriate buffers.

Direction 6.1: Approval and Referral Requirements

The objective of this direction is to ensure that LEP provisions encourage the efficient and appropriate assessment of development.

A planning proposal must:

- *minimise the inclusion of provisions that require the concurrence, consultation or referral of development applications to a Minister or public authority, and*
- *not contain provisions requiring concurrence, consultation or referral of a Minister or public authority unless the relevant planning authority has obtained the approval of the appropriate Minister or public authority, and the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General).*

The planning proposal seeks to include each of the subject properties into Schedule 7 and one into Schedule 8 of the Byron LEP 1988.

Direction 6.3: Site Specific Provisions

The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.

A planning proposal that will amend another environmental planning instrument in order to allow a particular development proposal to be carried out must either:

- *allow that land use to be carried out in the zone the land is situated on, or*
- *rezone the site to an existing zone already applying in the environmental planning instrument that allows that land use without imposing any development standards or requirements in addition to those already contained in that zone, or*
- *allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.*

- *must not contain or refer to drawings that show details of the development proposal.*

The planning proposal seeks to include each of the subject properties into Schedule 7 and one into Schedule 8 of the Byron LEP 1988.

No development standards or requirements in addition to those contained in the Byron LEP 1988 are to be imposed. The planning proposal does not contain or refer to drawings / concept plans that show details of any subsequent dwellings for any of the subject properties.

C. Environmental, social and economic impact.

1. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be affected as a result of the proposal?

If the land affected by this planning proposal contains habitat of any sort, it will be necessary to carry out an assessment of significance in accordance with section 5A of the EP&A Act and the “Threatened Species Assessment Guidelines” issued by the Department of Environment and Climate Change. The assessment of significance will determine whether there is any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal.

Notwithstanding the significance of the impact, any adverse impact will trigger the requirement under section 34A of the EP&A Act for the relevant planning authority to consult on the planning proposal with the Director General of the Department of Environment and Climate Change (or the Director General of the Department of Primary Industries, in the case of fish or marine vegetation). Such consultation if required does not take place until after the issuing of the initial gateway determination.

2. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Those subject properties identified as bushfire prone land will be required to obtain a Bushfire hazard Assessment to be undertaken upon receipt of the Gateway determination in order that any new dwelling or alteration and additions to an existing dwelling is referred to the Rural Fire Service for comment.

The planning proposal is recognition of a dwelling entitlement only and does not guarantee a dwelling can be built on each of the subject properties. Council will require the lodgement of a future development application that has regard to a number of matters including: siting; orientation; relationship with adjoining and adjacent development / land use; the natural environment; visual impact; building materials; bushfire risk and on site sewerage management.

3. How has the planning proposal adequately addressed any social and economic effects?

The planning proposal will allow each of the current owners and subsequent future owners of each of the subject properties the certainty that there exists a dwelling entitlement and that subject to a detailed environmental investigation and assessment, that a future dwelling or alterations and additions to an existing dwelling may be possible. This will lessen the emotional impact and financial uncertainties to those owners who presently do not have a dwelling entitlement.

D. State and Commonwealth Interests.

1. Is there adequate public infrastructure for the planning proposal?

A number of the subject properties have had dwellings approved and erected upon them whilst others have the expectation that a future dwelling may be possible given advice contained in Section 149 (5) Certificates issued by Council that confirmed rightly or wrongly that the site had a dwelling entitlement.

Note: it is not Council's intention to ensure that each of the subject sites will have vehicle access or the provision of services and infrastructure associated with rural dwellings. Each future application for a dwelling will be considered on its merits and this assessment will include any additional demands for public infrastructure.

2. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Planning Proposals are an evolving process with information to be added upon advice of the Minister through the Gateway determination.

This section will be added to following consultation with State and Commonwealth authorities identified in the gateway determination.

E. Community Consultation.

The proposal is considered to be a medium impact proposal.

Council will put the application on public display for 28 days and call for submissions from interested persons. Community consultation will be in accordance with the Department of Planning's "*A Guide to preparing an LEP*" and any requirements of the Gateway process.

Paul De Fina

B.App.Sc (Environmental Planning)

MPIA

NSW Local Government Town & Country Planner No. 474

Appendix No. 1: Section 117 Direction Checklist

DIRECTION	COMPLIANCE	COMMENTS
1. EMPLOYMENT AND RESOURCES		
1.1 Business and Industrial Zones	Complies.	The planning proposal is consistent with this direction
1.2 Rural Zones	Not applicable	
1.3 Mining, Petroleum Production and Extractive industries	Not applicable.	
1.3 Oyster Aquaculture	Not applicable.	
1.5 Rural Lands	Not applicable	
2. ENVIRONMENT AND HERITAGE		
2.1 Environmental protection Zones	Not applicable.	
2.2 Coastal protection to	Complies	No controls related the coastal zone are changed by the planning proposal.
2.3 Heritage Conservation	Not applicable.	
2.4 Recreation Vehicle Areas	Not applicable.	
3. HOUSING, INFRASTRUCTURE AND URBAN DEVELOPMENT		
3.1 Residential Zones	Complies.	
3.2 Caravan Parks and Manufactured Home Estates	Not applicable.	
3.3 Home Occupations	Not applicable.	
3.4 Integrated Land Use and Transport	Not applicable.	
3.5 Development Near Licensed Aerodromes	Not applicable.	
4. HAZARD AND RISK		
4.1 Acid Sulphate Soils	Complies.	The subject land is affected by acid sulfate soils. LEP controls related to acid sulfate soils still apply
4.2 Mine Subsidence and Unstable land	not applicable.	

4.3 Flood Prone Land	Complies	The majority of the subject land is not flood prone. Existing controls relating to flood impacts are not altered by the planning proposal.
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4.4 Planning for Bushfire Protection	Not applicable	
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5. REGIONAL PLANNING

5.1 Implementation of Regional Strategies	Complies	The planning proposal is general consistent with the Far North Coast Regional Strategy.
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5.2 Sydney Drinking Water Catchments	Not applicable.	
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5.3 Farmland of State and Regional Significance on the NSW Far North Coast	Not applicable.	
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5.4 Commercial and Retail Development along the Pacific Highway	Not applicable	
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5.5 Development in the Vicinity of Ellalong, Paxton and Millfield	Not applicable.	
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5.6 Sydney to Canberra Corridor	Not applicable.	
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5.7 Central Coast	Not applicable.	
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5.8 Second Sydney Airport: Badgerys Creek	Not applicable.	
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6. LOCAL PLAN MAKING

6.1 Approval and Referral Requirements	Not applicable.	
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6.2 Reserving Land for Public Purposes	Not applicable.	
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6.3 Site Specific Provisions	Not applicable.	
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Appendix No. 2 - State Environmental Planning Policy Checklist

Direction 1.1 – issued 1 July 2009

STATE ENVIRONMENTAL PLANNING POLICY	COMPLIANCE	COMMENTS
SEPP 1 Development Standards.	Not applicable.	
SEPP 2 Minimum Standards for Residential Flat Buildings. Repealed by SEPP 20.	Repealed.	
SEPP 3 Castlereagh Liquid Waste Depot. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 4 Development Without Consent and Miscellaneous Complying and Exempt Development.	Not applicable.	
SEPP 5 Housing for Older People with a Disability. Repealed by Seniors Living SEPP.	Repealed.	
SEPP 6 Number of Storeys in a Building	Not applicable.	
SEPP 7 Port Kembla Coal Loader. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 8 Surplus Public Land. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 9 Group Homes. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 10 Retention of Low Cost Rental Accommodation.	Not applicable.	
SEPP 11 Traffic Generating Developments. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 12 Public Housing (dwelling houses). Repealed by SEPP 53	Repealed.	
SEPP 13 Sydney Heliport. Repealed by Sydney REP 26.	Repealed.	
SEPP 14 Coastal Wetlands.	Not applicable	
SEPP 15 Multiple Occupancy of Rural Land.	Repealed by SEPP 42.	
SEPP 15 Rural Land-Sharing Communities.	Not applicable	
SEPP 16 Tertiary Institutions. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 17 Design of Buildings In Certain Business Centres.	Did not proceed	

SEPP 18 Public Housing.	Did not proceed
SEPP 19 Bushland in Urban Areas.	Not applicable.
SEPP 20 Minimum Standards for Residential Flat Buildings. Repealed by SEPP 53.	Repealed.
SEPP 21 Caravan Parks.	Not applicable.
SEPP 22 Shops and Commercial Premises.	Not applicable.
SEPP 23	Not allocated.
SEPP 24 State Roads.	Did not proceed
SEPP 25 Residential Allotment Sizes. Repealed by SEPP 53.	Repealed.
SEPP 26 Littoral Rainforests.	Not applicable
SEPP 27 Prison Sites. Repealed by Infrastructure SEPP.	Repealed.
SEPP 28 Town Houses & Villa Houses. Repealed by SEPP 25 Amendment 4.	Repealed.
SEPP 29 Western Sydney Recreation Area.	Not applicable
SEPP 30 Intensive Agriculture	Not applicable
SEPP 31 Sydney (Kingsford Smith) Airport. Repealed by Infrastructure SEPP.	Repealed.
SEPP 32 Urban Consolidation (Redevelopment of Urban Land).	Not applicable.
SEPP 33 Hazardous & Offensive Development.	Not applicable.
SEPP 34 Major Employment Generating Industrial Development. Repealed by Major projects SEPP.	Repealed.
SEPP 35 Maintenance Dredging of Tidal Waterways. Repealed by Infrastructure SEPP.	Repealed/
SEPP 36 Manufactured Home Estates.	Not applicable.
SEPP 37 Continued Mines & Extractive Industries Repealed by Mining, Petroleum Production and Extractive Industries SEPP.	Repealed.
SEPP 38 Olympic games & Related Projects. Repealed by Major Projects SEPP.	Repealed.
SEPP 39 Split Island Bird Habitat. SEPP 40 Sewerage Works.	Not Applicable Did not proceed.

SEPP 41 Casino/Entertainment Complex.	Not Applicable	
SEPP 42 Multiple Occupancy & Rural Land. .	Repealed by SEPP 15	
SEPP 43 New Southern Railway. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 44 Koala Habitat Protection.	Not applicable	
SEPP 45 Permissibility of Mining.	Repealed by Mining, Petroleum Production and Extractive Industries SEPP.	
SEPP 46 Protection & Management of Native Vegetation. Repealed by Native Vegetation Conservation Act 1997.	Repealed.	
SEPP 47 Moore Park Showground.	Not Applicable	
SEPP 48 Major Putrescible Landfill Sites. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 49 Tourism Accommodation in Private Homes.	Draft only.	
SEPP 50 Canal Estate Development.	Not applicable.	
SEPP 51 Eastern Distributor. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 52 Farm Dams & Other Works in Land & Water Management Plan Areas.	Not Applicable	
SEPP 53 Metropolitan Residential Development	Not Applicable	
SEPP 54 Northside Storage Tunnel. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 55 Remediation of Land.	Complies	Soil testing for contaminants should be carried out at DA Stage
SEPP 56 Sydney Harbour Foreshores & Tributaries. Repealed by Major Projects SEPP Amendment.	Repealed.	
SEPP 57	Not allocated.	
SEPP 58 Protecting Sydney's Water Supply. Repealed by Drinking Water Catchments REP No 1.	Repealed	
SEPP 59 Central Western Sydney Economic & Employment Area.	Not Applicable	

SEPP 60 Exempt & Complying Development.	Not Applicable	
SEPP 61 Exempt & Complying Development for White Bay & Glebe Island Ports. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 62 Sustainable Aquaculture.	Not applicable.	
SEPP 63 Major Transport Projects. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 64 Advertising & Signage.	Not applicable.	
SEPP 65 Design Quality of Residential Flat Buildings.	Not applicable.	
SEPP 66 Integration of Land Use & Transport. Draft.	Not applicable.	
SEPP 67 Macquarie Generation Industrial Development Strategy. Repealed by Infrastructure SEPP.	Repealed	
SEPP 68	Not allocated.	
SEPP 69 Major Electricity Supply Projects. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 70 Affordable Housing (Revised Schemes).	Not Applicable	
SEPP 71 Coastal Protection	Complies	The majority of the subject land is within the coastal zone. The planning proposal does not impact on foreshore areas
SEPP 72 Linear Telecommunications Development - Broadband. Repealed by Infrastructure SEPP.	Repealed.	
SEPP 73 Kosciuszko Ski Resorts Repealed by SEPP Kosciuszko National Park – Alpine Resorts.	Repealed.	
SEPP 74 Newcastle Port & Employment Lands Repealed by Major Projects SEPP.	Repealed.	
SEPP (Housing for Seniors or People with a Disability) 2004	Not applicable.	
SEPP Building Sustainability Index: BASIX 2004	Not applicable.	
SEPP (ARTC Rail Infrastructure) 2004 Repealed by Infrastructure SEPP.	Repealed.	

SEPP (Sydney Metropolitan Water Supply) 2004 Repealed by Infrastructure SEPP.	Repealed.	
SEPP (Development on Kurnell Peninsula) 2005	Not applicable	
SEPP (Major Projects) 2005	Not applicable.	
SEPP (Sydney Regional Growth Centres) 2006	Not applicable	
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Not applicable.	
SEPP (Temporary Structures) 2007	Not applicable.	
SEPP (Infrastructure) 2007	Not applicable.	
SEPP (Kosciuszko National Park – Alpine Resorts) 2007	Not applicable.	
SEPP (Rural Lands) 2008	Not applicable	
SEPP (Exempt and Complying Development Codes) 2008	Not applicable.	
SEPP (Western Sydney Parklands) 2009	Not applicable	
SEPP (Affordable Rental Housing) 2009	Not applicable.	
SEPP (Western Sydney Employment Area) 2009	Not applicable	
SEPP – North Coast Regional Environmental	Applicable	This document now has the status of a SEPP Plan 1988 (NCREP)