

Report No. 13.9 PLANNING - Byron Shire Affordable Housing Contribution Scheme 02

Directorate: Sustainable Environment and Economy

5 **Report Author:** Alex Caras, Land Use Planning Coordinator

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Summary:

10 This report seeks Council's authorisation to prepare and submit a planning proposal to introduce a second Byron Shire Affordable Housing Contribution Scheme (AHCS 02) to capture the additional investigation areas identified in the recently adopted Byron Shire Residential Strategy 2041. The following documents have been prepared to support preparation of a planning proposal for AHCS 02, which are discussed in more detail in the report:

- Housing Needs Assessment
- 15 • Viability Assessment Report
- Draft Affordable Housing Contribution Scheme 02

20 Pending positive Gateway determination, the planning proposal will be exhibited in accordance with the determination requirements, followed by a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.

NOTE TO COUNCILLORS:

25 In accordance with the provisions of S375A of the Local Government Act 1993, a Division is to be called whenever a motion for a planning decision is put to the meeting, for the purpose of recording voting on planning matters. Pursuant to clause 2(a) under the heading Matters to be Included in Minutes of Council Meetings of Council's adopted Code of Meeting Practice (as amended) a Division will be deemed to have been called by the mover and seconder of all motions relating to this report.

30 **RECOMMENDATION:**

That Council:

- 35 1. **Authorises staff to prepare and submit a planning proposal to introduce a second Byron Shire Affordable Housing Contribution Scheme (AHCS 02), in accordance with Action 10 of the recently adopted Byron Residential Strategy 2041 (and Attachments 1-4).**

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2. **Pending a positive Gateway determination, exhibits the planning proposal in accordance with the determination requirements.**
3. **Receives a Submissions Report post-exhibition that includes any recommended changes to the planning proposal for final adoption.**

5 **Attachments:**

- 1 Final Draft Byron Shire Housing Needs Study - 22 May 2024, E2024/78446
- 2 Final Draft Byron Shire Viability Assessment Report, E2024/84059
- 3 Final Draft Byron Shire AHCS 02 - 22 July 2024, E2024/83876
- 10 4 Table of Draft Scheme Comments from DPHI and Suggested Response, E2024/83861

Background and Report

The Byron Shire Affordable Housing Contribution Scheme (AHCS) 01 came into effect in January 2023 through the introduction of Clause 6.18 within the Byron LEP 2014. The Scheme provides detail about how, where, and at what rate development contributions can be collected from landowners for affordable housing and currently applies to the areas of Mullumbimby, Bangalow, and Byron Bay.

The Scheme is activated when land is upzoned. Upzoning is a change in planning controls, such as zones or building heights that creates new or increased development potential and therefore increases the value of the land.

A form of contribution will be determined by Council at the time of development and may include:

- Fit for purpose land within the development,
- Monetary contribution, and/or
- Dwellings within the development

It should be noted that an Affordable Housing Contribution Scheme (under SEPP Housing 2021) is primarily targeted at delivering rental housing, rather than owner-occupied housing. Additionally, there is a general expectation that that such housing should be institutional (in the sense that it must be managed by registered housing organisations, rather than traditional ‘mum and dad’ and property investors). Further, land and dwellings provided for affordable housing are to be managed to maintain their continued use for affordable housing in perpetuity.

Residential Strategy 2041

In March 2024, Council approved Byron Shire Residential Strategy 2041 with amendments for submission to the Department of Planning, Housing, and Infrastructure (DPHI) for endorsement. The Strategy provides the long-term approach to guide the delivery of housing in the Shire.

Action 10 of the ‘Implementation Plan’ accompanying the Strategy commits to investigating “expanding or applying new affordable housing contribution mechanisms over all new rezoned areas, and other planning control uplift opportunities, to maximise the capture of affordable housing opportunities over time”. To this end, Scheme 02 will implement this, Action.

The purpose of this report is to seek Council’s support to prepare and submit a planning proposal to introduce a second Byron Shire Affordable Housing Contribution Scheme (AHCS 02) to capture the additional investigation areas identified in the recently adopted Byron Residential Strategy 2041. The following documents have been prepared to support preparation of planning proposal for AHCS 02, which are discussed in more detail below:

- Housing Needs Assessment
- Viability Assessment Report
- Draft Affordable Housing Contribution Scheme 02

Housing Needs Assessment

- 5 The purpose of this report is to support the development of an additional affordable housing program for the AHCS 02, by researching affordable housing needs and documenting these in an evidence base which will satisfy the requirements of section 7.32 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and the State Environmental Planning Policy (SEPP) Housing 2021.
- 10 The report analyses are focussed on demonstrating the need by outlining the constraints in the housing market in Byron Shire, current need for affordable housing and gaps in meeting housing need. As well as providing background to the context and policy settings the analysis is structured around understanding the following fundamental questions:
- 15 1. What are the housing market constraints in Byron Shire?
2. Is there a current need for affordable housing?
3. What are the gaps in meeting housing?

- Overall, the assessment report highlights the extreme housing situation in Byron Shire. All indicators and measures of housing affordability and need show the housing market is
- 20 highly constrained and inaccessible for the majority of low- and moderate-income households.

A copy of the Housing Needs Assessment is contained in Attachment 1.

Viability Assessment Report

- 25 In accordance with the [Guideline for Developing an Affordable Housing Contribution Scheme \(2019\)](#) this report carries out a viability assessment to examine the capacity of development to tolerate affordable housing contributions within the proposed contribution areas in Bangalow, Brunswick Heads and Mullumbimby in Byron Shire. The localities under investigation for the AHCS 02 are shown in Table 1 below and represent new investigation areas identified in the recently adopted Byron Residential Strategy 2041.

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Table 1 – Localities Under Investigation for AHCS 02

Locality/Designation	Description
Bangalow NSW 2479 B2	Site B2 NRRC Draft Resilient Lands Strategy identified site Now included in Residential Strategy 2041 14 Ballina Rd
Brunswick Heads The Saddle Road Brunswick Heads NSW 2483 B1	Site B1 NRRC Draft Resilient Lands Strategy identified site Now included in Residential Strategy 2041
Brunswick Heads NSW 2483	New investigation areas 172 and 166 Tweed St and 66 The Saddle Road (part) 125 Tweed Street, The Saddle Rd wider village 'investigation area'
Mullumbimby NSW 2482	Left Bank Road. Potential urban conversion area.
Mullumbimby NSW 2482	New investigation areas. 1982 Coolamon Scenic Dr 1862 Coolamon Scenic Dr 1897 Coolamon Scenic Dr Azalea St
Suffolk Park (Byron Bay)	64 Corkwood Cr

The report confirms the earlier findings of AHCS 01, namely that the significant uplift between rural to residential land uses provides an opportunity for a significant affordable housing contribution, whilst providing both a traditional profit to the developer as well as a viability buffer that is available to cover any significant risks in the development process.

Although construction costs for land development continue to escalate, the increase in dwelling prices associated with the new migration patterns post-Covid and the limited supply of new housing coming online (due to labour and material shortages) has generated significant increases in land prices that can support affordable housing contributions. From a viability standpoint, the need for the development to make decent returns and cover off any unknown market risks has been factored into the assessment methodology.

In some cases, however, as the detailed engineering studies are undertaken when designing these developments (e.g., Saddle Road 'B1' site and wider investigation area), development costs may exceed the estimates in this report. In these cases, it is important to provide some flexibility in applying the affordable housing charge so as not to discourage or make unviable future land development.

A copy of the Viability Assessment Report is contained in Attachment 2.

Site B1 – Saddle Road/Gulgan Village Investigation Area

Staff have had ongoing discussions with the landowners of the B1 Site as a pre-cursor to lodging a planning proposal. As the more detailed infrastructure studies (e.g., road upgrades) and master planning are still some months away from completion, it is not possible for the viability assessment to apportion future infrastructure contributions to this site. As a result, the Applicant's draft letter of offer to enter into a Planning Agreement (to accompany a planning proposal) should be worded accordingly to provide flexibility for both parties while still achieving the intent and outcomes of AHCS 02:

"... dedication of land, or combination of land and housing, will be in accordance with Council's Affordable Housing Contribution Scheme No. 2 (in preparation) OR based on an alternative contribution rate determined by an independent viability assessment in accordance with Part 4 of Council's Affordable Housing Contribution Policy ...".

Draft Affordable Housing Contribution Scheme 02

The objectives of AHCS 02 are to:

- a) Facilitate the provision of affordable housing options within the Byron Shire Council area to meet the needs of very low, low and moderate income households so as to promote diversity, equity, liveability and sustainability;
- b) Recognise affordable housing as critical infrastructure to support sustainable and diverse communities and economic growth in the Byron Shire;
- c) Contribute to meeting the housing needs of very low to moderate income households who live and work in the LGA;
- d) Set out how, where and at what rate development contributions will be collected by Byron Shire Council to provide fairness, certainty and transparency for the local community, developers and other stakeholders.

This Scheme augments AHCS 01 to provide the background, requirements, and operational detail for development in the contribution areas identified. AHCS 01 continues

to apply to land within the contribution areas identified in that Scheme, as indicated in the Scheme's accompanying maps.

A copy of the draft AHCS 02 is provided in Attachment 3.

What types of development will AHCS 02 apply to?

- 5 The Scheme will apply to all residential development within the AHCS 02 Contribution Areas, including:
- Development of residential accommodation as defined in [Byron LEP 2014](#);
 - Subdivision of land for residential purposes;
 - Creation of Torrens Title lots, community title and strata schemes, cooperative and
- 10 company title of residential property and the like.

The Scheme will not apply where an Affordable Housing Contribution has previously been applied unless the proposal involves an intensification of the development.

Registered Community Housing Providers and Delivery Program

Section 3.4 of the draft AHCS 02 states that:

- 15 "Council may prepare a **Distribution Plan** to provide transparency and clarity about the process for allocation or transfer of contributions, including:
- criteria for selection of one or more community housing providers to receive funding or property;
 - framework for dispersal of funds;
 - 20 - requirements relating to the transfer of assets;
 - performance expectations for community housing providers receiving and using the contributions (including the use of surplus or other funds to support leveraging of finance to deliver more affordable housing);
 - any eligibility criteria to apply to the allocation of affordable housing;
 - 25 - any rent setting requirements for provision of affordable housing;
 - monitoring and reporting on affordable housing outcomes to Council;
 - regular review of arrangements and process for Council changes to the Distribution Plan."

- 30 Staff will be updating Council's register of community housing providers (as endorsed at the [8 December 2022 Planning Meeting](#)) over the coming months via a further expression of interest process. This will strengthen Council's ability to facilitate the future delivery and management of affordable rental housing in line with the Scheme.

Staff will also be preparing a Distribution Plan to guide the allocation or transfer of contributions to various target groups that fall within the household definition. Once

prepared, the Distribution Plan will be workshopped with councillors prior to being reported for endorsement later this year.

Preliminary feedback from Department of Planning, Housing, and Infrastructure

- 5 Council sought feedback from the Department's Housing & Policy Team on the draft AHCS 02 and supporting documents. The Department's comments along with the staff/consultant responses to these are contained in Attachment 4. Staff will discuss any outstanding matters with the Department during the gateway assessment of this planning proposal.

Recommendation and Next steps

- 10 This report seeks Council's authorisation for staff to prepare and submit a planning proposal to introduce a second Byron Shire Affordable Housing Contribution Scheme (AHCS 02), in accordance with Action 10 of the recently adopted Byron Residential Strategy 2041.
- 15 Pending positive Gateway determination, the planning proposal will be exhibited in accordance with the determination requirements, followed by a submissions report post-exhibition that includes any recommended changes to the planning proposal for final adoption.

Strategic Considerations

Community Strategic Plan and Operational Plan

CSP Objective	CSP Strategy	DP Action	Code	OP Activity
4: Ethical Growth We manage growth and change responsibly	4.2: Enable housing diversity and support people experiencing housing insecurity	4.2.2: Partnerships and pilots to address housing needs - Investigate partnerships and pilots that deliver an innovative and affordable housing model for the Shire	4.2.2.1	Consider residential rezoning proposals, as identified within existing North Coast Regional Plan growth boundary and the Affordable Housing Contribution Scheme

Recent Resolutions

- [23-654](#): Housing Options Paper
- [24-080](#): Residential Strategy 2041

Legal/Statutory/Policy Considerations

A Planning Proposal for AHCS 02 will amend clause 6.18 the Byron Shire Local Environmental Plan 2014 to reflect the introduction of a second Scheme.

- 5 This amendment is a legislative requirement of [Section 7.32](#) Environmental Planning and Assessment Act 1979 (EP&A Act) to impose an affordable housing condition on developments specified in both Schemes.

Financial Considerations

- 10 AHCS 02 is granted funded by NSW Reconstruction Authority as part of a partnership with Byron Shire Council, given its contribution and alignment with the shared housing objectives of both organisations.

Consultation and Engagement

Council sought early feedback from the Department's Housing & Policy Team on the draft AHCS 02 and supporting documents. Further consultation will be undertaken in accordance with a Gateway determination for the AHCS 02 Planning Proposal.

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