



16 August 2019

Planners North  
Attn: Steve Connelly  
6 Porter Street  
BYRON BAY NSW 2481

Email: [steve@plannersnorth.com.au](mailto:steve@plannersnorth.com.au)

Dear Mr Connelly,

**DEVELOPMENT ADVISORY PANEL – 15 August 2019**

**Property: PT: 1 DP: 1031848, 951 Broken Head Road BROKEN HEAD**

This letter comments on the Development Advisory Panel meeting on the above date which comprised of Council staff representing the disciplines of planning, engineering, ecology and environmental health.

The aim of this Panel is to provide preliminary information and assistance to intending applicants in respect of Council's statutory and policy requirements. The matters raised at the meeting are not exhaustive. It is the responsibility of the Applicant to prepare a comprehensive development application (DA) addressing all relevant site constraints, the requirements of relevant legislation including the Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 2000, applicable environmental planning instruments and development control plans.

It is possible that proposals that appear to be consistent with Council's statutory and policy requirements may be found not to be consistent upon detailed examination of any development application lodged. Any indications or information from the Development Advisory Panel in no way prejudice the assessment and determination of any DA or related application.

**Present:** Brandon Saul (Proponent), Steve Connelly (Town Planner), Hayley Pryor (Architect)  
*Council Staff:* Greg Smith (Senior Town Planner), Renan Solatan (Senior Development Engineer), Emma Holt (Environmental Health Officer), Karen Love (Ecologist) and Rachael Trinder (Development Support Officer)

**Owner:** BHCF Pty Ltd

**Commenced:** 10:00am **Concluded:** 11:00am

**Fee Paid:** \$477.00, Receipt No.2011372 , Date paid: 25.7.19

**Proposal:**

The application describes the proposal as:

- Existing Facilities (Education accommodation units 3-16) to continue as private education;
- Existing built education accommodation units 1-4 to be used for eco-tourist facilities;
- Further facilities to be used as eco-tourist facilities, including: 4 new "C" buildings, 14 new treehouse cabin "D" buildings, 14 new "A" buildings and 1 new treehouse retreat "D" building;

- Bush fire refuge building, ancillary buildings, enhance poolside facilities and minor additions to the existing centre.

The Applicant advised that the proposal would result in the same number of bedrooms as the number previously approved, and that there would be no change required to the Community Title Subdivision of the site. The Applicant confirmed that the proposal would be predominantly an eco-tourist facility and associated facilities, providing accommodation for tourists and visitors, to be booked by paying guests (not just used by the owners), would continue to be gated so as not be open to passing members of the public, and would not include permanent dwellings.

### **Property Description:**

The property is described as PT: 1 DP: 1031848, 951 Broken Head Road BROKEN HEAD 2481.

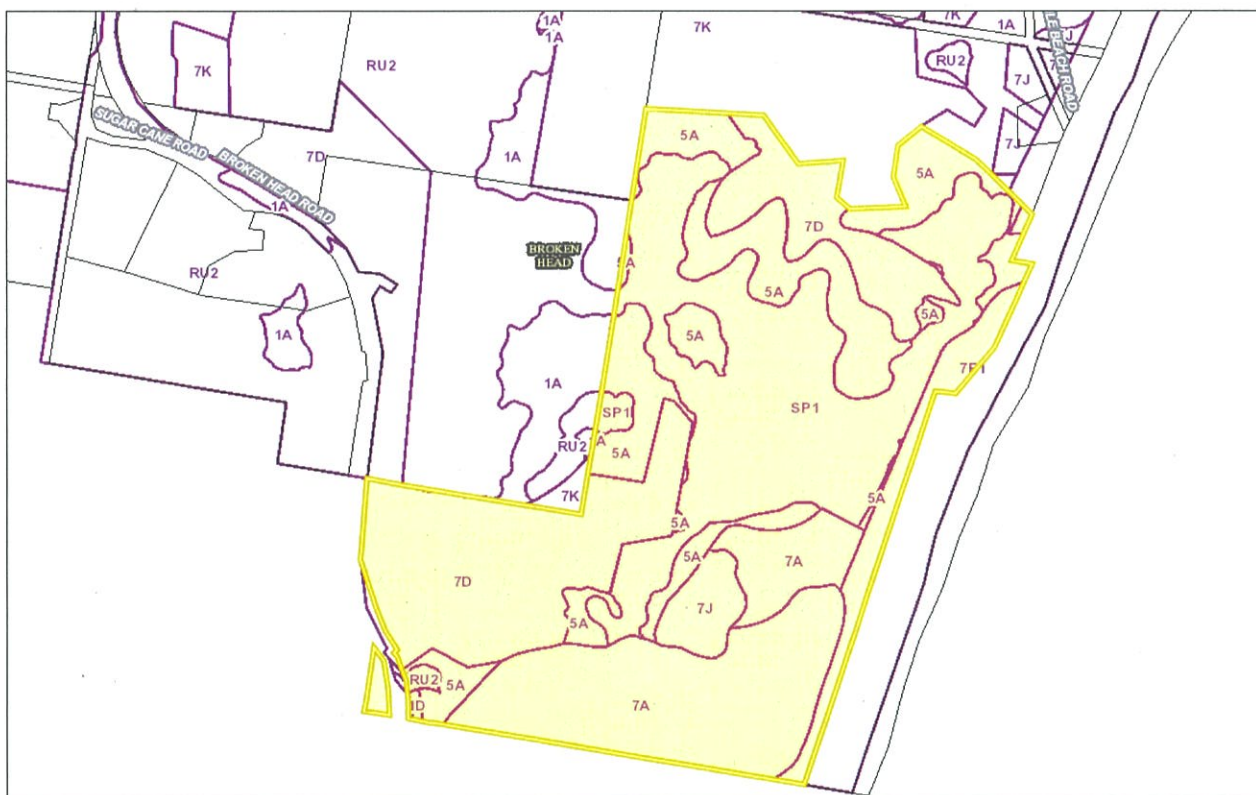
It has an area of 110.7 hectares.

The location of the proposed development appears to be affected by a number of zones, for example: LEP 1988: 5(a) – Private (Education), 7(a) (Wetlands), 7(f1) (Coastal Lands Zone), 7(d) (Scenic/Escarpment) and LEP 2014: SP1 Special Activities (Mixed Use Development).

Council's Geographic Information Systems identifies that the land is affected by the following physical constraints for example:

- Acid Sulfate Soils Classes 2, 3, 4, 5
- Coastal Erosion
- Bush Fire Prone Land
- Cattle Dip Buffer
- High Environmental Value Vegetation
- Littoral Rainforest
- Coastal Wetlands
- Acquisition of Lands BLEP 1988

### **Zoning Map**





## **Issues and Advice:**

### **General Advice**

The proposal requires the submission of a development application (DA) and plans. The proposal is designated development and would need to be accompanied by an Environmental Impact Statement (EIS). A [DA form is available to download](#) on Council's website. Further information on the requirements for lodgement can be found on the form.

Owners consent to lodge the DA should be obtained prior to the application being submitted to Council.

The plans that accompany the application must be drawn to a scale of 1:100 or 1:200. At a minimum there should be a site survey plan, site development plan, floor and elevation plans, cross section plan and a concept landscaping and stormwater plan.

### **Applicant Questions**

#### **Item 1: What Reports are required to support a Development Application**

The Applicant confirmed that the DA would need to be accompanied by an Environmental Impact Statement (EIS), and that the Secretary's Environmental Assessment Requirements (SEARs) have been received by the Applicant from the Department of Planning, Industry and Environment (DPIE). The Applicant advised that the SEARs are brief, being less than a full page long, and a copy of the SEARs were not tabled at the meeting.

The EIS should provide a comprehensive assessment of the history of the site, and of all relevant provisions of the Environmental Planning and Assessment Act 1979, Regulation 2000, SEPPs, LEP 1988, LEP 2014, DCP 2010 and DCP 2014, eg:

- SEPP (Coastal Management) 2018: the site contains areas of coastal wetlands and buffer, littoral rainforest and buffer, coastal environment area, coastal use area. The Applicant acknowledges that the proposal is designated development owing to the littoral rainforest provisions of the Coastal Management SEPP.
- SEPP 44 – Koala Habitat Protection.
- SEPP 55 – Remediation of Land.
- SEPP (Primary Production and Rural Development) 2019.
- SEPP (Infrastructure) 2007.
- LEP 2014 and LEP 1988.

The DA would need to show what zones apply to the proposal. There is currently a series of complex zonings under LEP 1988 and LEP 2014 applying to the affected area by the proposed development. The DA should include a site plan which provides an overlay of the applicable zones in the location of the components of the proposed development to ascertain permissibility. The development would not be able to encroach into areas where it is prohibited.

The Applicant advised that the land is currently in the process of being rezoned (eg. to SP1 and E2) under Stage 1 of the E Zone Review, and that all proposed components of the development would be completely within the SP1 Zone. The Applicant confirmed that the DA would not be lodged until such time as the site is zoned under LEP 2014 such that the components of the development are permissible with consent in the zone where located.

When lodged, the DA must identify the correct land use type/s any applicable LEP, and demonstrate permissibility of the proposed components of the development within each applicable zone. In the meantime and for completeness, the Zones which appear to be currently applicable to the location of the components of the proposed development (including a comment as to whether or not the proposal is possibly permitted or prohibited) are:

LEP 1988: 5(a) – Private (Education) – uncertain as to permissibility of the development and would need to be demonstrated by the DA, 7(a) (Wetlands) – prohibited, 7(f1) (Coastal Lands Zone) – prohibited, 7(d) (Scenic/Escarpment) – prohibited.

LEP 2014: SP1 Special Activities (Mixed Use Development) – *mixed use development* is permitted with consent, including any development that is ordinarily incidental or ancillary to mixed use development, and means “a building or place comprising 2 or more different land uses”.

The Applicant defined the development as being primarily “eco-tourist facility” under LEP 2014. The Applicant was advised that mixed use development comprises 2 or more different land uses, and permissibility would need to be demonstrated with reference to what those 2 or more distinct land uses are. The proposed development couldn’t be just an eco-tourist facility (including any development that is ordinarily incidental or ancillary) because such a single use would be prohibited in the Zone.

If applicable the DA would need to demonstrate compliance with the definition of eco-tourist facility, including that it:

- (a) provides temporary or short-term accommodation to visitors on a commercial basis, and
- (b) is located in or adjacent to an area with special ecological or cultural features, and
- (c) is sensitively designed and located so as to minimise bulk, scale and overall physical footprint and any ecological or visual impact.

It may include facilities that are used to provide information or education to visitors and to exhibit or display items.

The DA should demonstrate compliance with all of the requirements of clause 5.13 of LEP 2014, otherwise Council must not grant consent.

The DA should have regard to the applicable zone objectives.

Other applicable requirements of LEP 2014 include subclause 5.10(7) & (8) Archaeological Sites & Aboriginal Places of Heritage Significance, and clauses 4.3 Height of Buildings, 6.1 Acid Sulfate Soils, 6.2 Earthworks and 6.6 Essential Services:

If applicable, the DA should demonstrate that the development is consistent with the relevant zone objectives, and address any relevant requirements of LEP 1988 for example clauses 30 Zone 7(d), 33 Zone 7(f1) and coastal erosion, and 36 Wetlands.

- The DA should address the relevant provisions of DCP 2014 (eg. Part B, Chapters C3 and importantly D3).
- The DA should address any relevant provisions of DCP 2010 (eg. Chapter 1: Parts A, C, G, H, J, N).

The Applicant confirmed that a BDAR (biodiversity development assessment report) under the Biodiversity Conservation Act 2016 is required to be submitted with the DA.

The site contains areas of high environmental value vegetation, koala habitat and threatened fauna habitat.

The DA should address any relevant provisions of the Marine Estate Management Act 2014 for example sections 55 and/or 56.

The site is bush fire prone land and the proposal is likely to be a special fire protection purpose requiring a bush fire safety authority. On this basis, the application should be applied for as integrated development.

The DA should nominate all applicable types of integrated development (section 4.46 of the Act) and any required concurrences.

Depending on the nature, design and layout of the proposal, the DA should be accompanied by a BASIX Certificate. As discussed, refer for example to the Land and Environment Court judgment in *SHMH Properties Australia Pty Ltd v City of Sydney Council* [2018] NSWLEC 66.

## **Item 2: Any issues that may arise due to it being a designated development in Coastal Management SEPP**

The Applicant confirms that the SEARs have been received from DPIE to inform preparation of the EIS.

The DA will need to comply with relevant requirements of the Environmental Planning and Assessment Act 1979, Regulation 2000 and any applicable DPIE Circulars in relation to the preparation and lodgement of the DA and EIS.

It is recommended that the following bodies be consulted during the preparation of the DA and EIS to determine any relevant requirements, matters, integrated approvals, concurrences, etc:

- DPIE
- Roads & Maritime Services
- Rural Fire Service (bush fire safety authority, integrated development)
- Natural Resources Access Regulator (NRAR)
- WaterNSW
- Office of Environment & Heritage
- Department of Primary Industries – Fisheries
- Department of Primary Industries – Cape Byron Marine Park
- Jali Local Aboriginal Land Council
- Bundjalung People of Byron Bay (Arakwal)
- Essential Energy
- Surrounding land owners and occupiers

### **Additional Advice**

#### Ecological Planner

- As noted, Coastal SEPP and SEPP 44 will need to be addressed as there are Coastal Wetlands, Littoral Rf and Koala habitat on-site – avoidance of impacts on these ecological areas is suggested.
- The site has Biodiversity Values mapped and any vegetation removal within these areas will require entry into the Biodiversity Offset Scheme and a BDAR. It is suggested that avoidance of these mapped areas is possible and that offsets for any other vegetation removal can be on-going restoration on the property.
- Proximity to inundation/high tide/storm events should be demonstrated as the proposed is within the Coastal Use Area, mapped Littoral Rf and Coastal Wetlands.
- RFS requirements clearly illustrated and demonstrated (APZ's on all buildings/access) with no vegetation removal
- A restriction of No Cats and Dogs on the property as it is mapped Koala habitat – signage and speed humps may be appropriate.
- Illustration of any services required – water/sewer lines/OSMS

#### Information from the Applicant:

A designated development - Will require an Environmental Impact Statement.

Electricity proposed will be carbon neutral and be solar – off grid

Onsite evacuation facility for bushfire is being proposed.



## Development Engineer

The proposed development would be required to be undertaken in accordance with the requirements of the Byron Shire Council DCP 2014.

### *Erosion Precinct*

The site is located inside Precinct No 2 in Council's Coastal Erosion Mapping



The Development Application would be required to provide details to demonstrate compliance to section E1.2.9 of Council's DCP.

### *Road, Access, Parking & Traffic*

The site is adjacent to an RMS Controlled Road (MR545). Any works within the road will require concurrence from RMS and may also require a WAD (Works Authorisation Deed). A WAD is an agreement with **RMS** for works to be carried out on roads managed by **RMS**.

A traffic Impact assessment (TIA) must be prepared by a suitably qualified traffic engineer to assess the impact of the development into the surrounding road network in accordance with Council's DCP, AUSTRROADS, RMS Guide to Traffic Generating Development and NRLG Guidelines.

The assessment must also include the safety and efficiency requirements of the internal roads, parking and manoeuvring areas in accordance with Council's DCP and AS2890. Applicable parking rate for the proposed use is 1 parking space per unit plus 1 space per 2 employees (on-site at any one time) plus 1 space for on-site manager. It is noted that no additional parking requirements for the proposed restaurant as this is considered ancillary to the proposed use and is not open to public.

The site is within the Bushfire Prone Lands in Council's Bushfire Mapping, the development application shall provide details to demonstrate the external & internal accesses, alternative access (if required) and turnaround areas complies with NSW Planning for Bushfire Protection.

### *Stormwater*

The development application must be supported with a Stormwater Management Plan showing the method of draining the site in accordance with Section B3.2.3 of Council's DCP, NRLG Guidelines and Council's stormwater comprehensive guidelines. Further an effective Erosions & Sediment Control Plan must be developed for the internal roads for construction and operational purposes generally in accordance with 'NSW Managing Urban Stormwater - Soils and Construction (Blue Book)'.



## Environmental Health Officer

### *State Environmental Planning Policy 55 (SEPP55) Remediation of Land*

To satisfy requirements under State Environmental Planning Policy 55 (SEPP55) - Remediation of Land an evaluation of past land use is required. Consideration should be given to the types of activities have been conducted on the land and neighbouring land to determine whether the site is likely to be contaminated from historical land use.

The evaluation must be verifiable and specific to the subject property, and include any supporting documentation. Reference to aerial photographs, topographic maps, communication with previous owners and people that lived in the area may assist in identifying activities that occurred. In the event that an activity is identified as potentially contaminating soil testing may be required.

Reference should be made to the *NSW EPA Guidelines for Consultants Reporting on Contaminated Sites (1998)* with regards to preliminary investigations, reporting methodology and information sources for obtaining land use history.

**Note:** SEPP55 Reports previously prepared for the subject land may be of assistance to the applicant. Council's GIS Mapping System indicates that the proposed development site is not constrained cattle dip or dip buffer.

### *Provision of Services (Cl 6.6 Byron LEP 2014) OSMS*

To satisfy requirements under Cl 6.6 Byron LEP 2014 the development application must demonstrate how the proposal provides for adequate provision of services. As the site is unable to connect to Council infrastructure, a detailed report prepared by a suitable qualified profession detailing on-site sewage management arrangements needs to accompany the application.

### *Acid Sulfate Soils (Cl 6.1 Byron LEP 2014)*

Council's GIS Mapping System indicates that the proposed development site contains land mapped as acid sulfate soils. Whilst it appears that the proposal is unlikely to disturb acid sulfate soils the applicant should address Clause 6.1 of Council's LEP 2014.

### *Australian Standards – Wastewater Loadings*

Wastewater loadings should be based on applicable Australian Standards AS/NZS 1547:2012 for numbers of persons and include restaurant, patrons, staff, etc. Numbers should be based on 100% occupancy rates.

### *Potable Water Supply / Water Quality Assurance*

The application must demonstrate arrangements for potable water supply for all components of the proposed development – including food preparation areas, amenities, etc. For further information: [http://www0.health.nsw.gov.au/publichealth/environment/water/private\\_supplies.asp](http://www0.health.nsw.gov.au/publichealth/environment/water/private_supplies.asp)

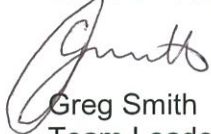
### *Hours of operation*

The application should nominate the proposed hours of operation for proposed restaurant.

Please be advised that failure to provide all of the required information upon lodgement of the Development Application will result in delays in the processing of your Application.

Should you require further clarification on any of the issues raised above please contact Council on (02) 6626 7025 or email [dso@byron.nsw.gov.au](mailto:dso@byron.nsw.gov.au)

Yours sincerely



Greg Smith

Team Leader Planning Services

**Sustainable Environment & Economy**