

28 March 2024

General Manager
Byron Shire Council
PO Box 219
Mullumbimby NSW 2482



Attention: Alex Caras

Dear Mr Arnold,

**RE: Broken Head Quarry Planning Proposal (PP-2023-625)
Submission of Biodiversity Development Assessment Report
Lot 1 DP 123302, Broken Head Road, Suffolk Park**

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I refer to the email correspondence between our planning consultant, Steve O'Connor, and Byron Shire Council's (BSC) Land Use Planning Coordinator, Alex Caras, in September 2023 regarding pre-consultation feedback provided by the Biodiversity Conservation Division (BCD) in relation to the abovementioned Planning Proposal (dated 14 August 2023). As advised by Steve, Winten Pty Ltd (**Winten**) commissioned JWA Pty Ltd to prepare a Biodiversity Development Assessment Report (BDAR) in response to BCD comments. A copy of this correspondence is provided at **Attachment A**.

We wish to formally thank Council for the patience it has shown since the abovementioned email correspondence, which has enabled the necessary time for the BDAR to be prepared, and we are now pleased to submit the BDAR to Council for assessment (see **Attachment B**).

The BDAR has been prepared by Adam McArthur (Director, JWA Pty Ltd), who is an accredited assessor at applying the Biodiversity Assessment Methodology (**BAM**), in accordance with the NSW *Biodiversity Conservation Regulation 2017* (Certification No BAAS18069).

In addition to the provision of the BDAR, we would like to take the opportunity to respond to BCD comments in the feedback they provided to Council dated 14 August 2023.

We are pleased to note that BCD does not raise any concerns regarding National Parks and Wildlife Service (NPWS) estate, flooding and coastal processes and associated hazards. However, we acknowledge that BCD did raise several biodiversity concerns. These concerns primarily related to the necessity to remove vegetation from the site as part of any residential development on the land, if the proposed rezoning was allowed to proceed. A summary of the BCD recommendations as follows:

1. *Areas of High Environmental Value (HEV) land zoned RU1 Primary Production be rezoned to C2 Environmental Conservation.*
2. *The balance of the planning area that does not contain HEV land be retained in the RU1 zone.*
3. *The parts of the planning area, which were required to be revegetated and rehabilitated in accordance with the former quarry development consent, be rezoned to C2 Environmental Conservation.*

BCDs reasoning was further explained in Attachment 1 to its letter. To assist in Council's assessment, we have responded to each BCD issue and associated recommendation below.

1. The Planning Proposal does not protect areas of High Environmental Value (HEV) land

BCD Recommendation: Areas of High Environmental Value (HEV) land zoned RU1 Primary Production be rezoned to C2 Environmental Conservation.

BCD raised concern that the Planning Proposal had not included any mechanism to protect HEV land within the planning area, noting that parts of the planning area are confirmed as HEV land by virtue of its inclusion on the Biodiversity Values Map (**BV Map**).

The BCD assertion that all land contained on the BV Map is confirmed HEV is clearly incorrect, as the North Coast Regional Plan 2041 (**NCRP**) makes it clear that this mapping is not appropriate at the property-scale and that ground truthing is required to determine actual HEV on a site as part of a planning proposal.

BCD also refers to Strategy 3.1 of the NCRP, and outlines its requirement for strategic planning to consider opportunities to protect biodiversity values by:

- focusing land use intensification away from HEV assets and implementing the ‘avoid, minimise and offset’ hierarchy in strategic plans, LEPs and Planning Proposals.
- identifying HEV assets within the planning area at Planning Proposal stage through site investigations.
- applying appropriate mechanisms such as conservation zones and Biodiversity Stewardship Agreements to protect HEV land within a planning area and considering climate change risks to HEV assets.

We note that the NCRP introduces the concept of ‘Potential HEV Assets’ which include, amongst other things, native vegetation of high conservation value, key habitat of threatened species and important wetlands estuaries and lakes. Potential HEV Assets are shown at the regional scale on the Potential HEV map; however, it is critical to note that discussion in the NCRP around HEV assets (including Strategy 3.1) states that:

- *This mapping is not appropriate for use at a property scale; and*
- *Strategic planning and local plans must consider opportunities to protect biodiversity values by ... identifying HEV assets within the planning area at planning proposal stage through site investigations. (refer to Strategy 3.1)*

Although the Potential HEV Assets mapping provides a high-level starting point for assessment, it is clear that the intention of the NCRP was for planning proposals to be informed by site-specific investigations to identify whether HEV land is in fact present on a site, rather than relying upon regional scale HEV mapping.

The NCRP does not provide any specific guidance or criteria for identifying HEV assets at the property scale. BCD appears to have adopted its own criteria, which is not contained in any publicly available policy and does not appear to have any particular standing or force under the NCRP. One questionable criterion noted in this BCD document is that all land within the 100m buffer to Coastal Wetlands and Littoral Rainforest areas is to be treated as “native vegetation of high conservation value” – regardless of whether this land actually contains any native vegetation at all, let alone native vegetation of high conservation value. Obviously, the fact that land may be within the proximity area for a Coastal Wetland or Littoral Rainforest does not mean that the land itself is of high conservation value – under chapter 2 of *SEPP (Resilience and Hazards)* (formerly *SEPP Coastal Management*) development of land within the proximity area is permitted, provided it will not have a significant impact on the nearby wetland or rainforest.

The BCD comments in relation to HEV assets are therefore inaccurate and misleading. The BDAR process is considered the most appropriate means of identifying the biodiversity values of the land at the property level, and we note that there is no inconsistency between the BDAR process and the NCRP’s objectives in relation to HEV assets.

The attached BDAR has been prepared to provide a site specific and comprehensive assessment of the biodiversity values of the site, in accordance with the requirements of the NCRP. Specific discussion around the application of the NCRP in relation to biodiversity values is provided in Section 1.1 of the BDAR.

The proposed development footprint has been carefully designed to be contained entirely within the RU1 zoning, as this is where the previous quarrying activities have significantly disturbed the native vegetation on the site. Outside the RU1 zoning, the native vegetation remains intact and is now protected by the C2 Environmental

Conservation zoning which we are not seeking to alter in any way. In fact, the C2 zoned land is proposed to be managed for conservation purposes in perpetuity through a Community Title arrangement proposed as part of this Planning Proposal, whereby vegetation management measures required to be undertaken for the land will be funded and managed by the proposed Community Association.

In relation to biodiversity impacts, detailed ecological assessment of the proposed development footprint is provided within the BDAR, which notes the following:

- *The proposed development has been situated and designed where possible to be restricted to the RU1 zoned land and areas of the site that were historically disturbed as part of the former quarry operations where native vegetation that are in the poorest condition (p5);*
- *The proposed development has also been located and designed to avoid direct impacts on all threatened flora specimens. Overall the proposed development will result in unavoidable impacts on 2.10 ha of intact native vegetation, 0.94 ha of regrowth vegetation and 3.62 ha of planted native vegetation (p5); and*
- *The removal of this vegetation is not considered to represent a significant impact and will be compensated by way of ecosystem or species credits calculated under the BAM-C (p7).*

The Planning Proposal is consistent with the NCRP's Strategy 3.1 as it has considered opportunities to protect biodiversity values and it focuses land use intensification away from HEV assets and implements the "avoid, minimise and offset" hierarchy which is a fundamental principle of the *Biodiversity Conservation Act 2017*, as well as the NCRP.

The removal of native vegetation will be appropriately compensated for through the NSW Biodiversity Offsets Scheme, with a calculated total of 72 ecosystem credits and 369 species credits to compensate the unavoidable loss of site vegetation, as described in Section 6.7 of the BDAR.

Having the benefit of a site-specific investigations and BDAR, it is considered that the Planning Proposal will protect areas of HEV and there is no need to rezone the relatively small areas of vegetation within the RU1 zoning as C2 Environmental Conservation.

2. The Planning Proposal does not satisfy the NCRP 2041 urban growth area variation principles.

BCD recommendation: The balance of the planning area that does not contain HEV land be retained in the RU1 zone.

BCD comments are made on the basis that the planning area is not within an urban growth area (UGA) under the NCRP, and would therefore need to satisfy the UGA variation principles contained in the Plan. BCD express an opinion that the Planning Proposal would not satisfy the UGA variation principles on the basis the site is located in 'the Coastal Strip and would not be minor and contiguous to an identified UGA.'

The Planning Proposal has considered NCRP 2041 in detail. We are aware that the site is not mapped as an UGA, and therefore undertook a thorough assessment of the proposed rezoning against the UGA Variation Principles, as set out in Appendix B of the NCRP. This assessment is provided within Table 6 of the Planning Proposal (p22).

Also of relevance, the Planning Proposal provides an assessment of the Settlement Planning Guidelines, as set out in Appendix A of the NCRP. This assessment is provided within Table 5 of the Planning Proposal (p18).

The Planning Proposal establishes that the proposed rezoning aligns with the objectives and planning principles of the NCRP 2041 and generally meets the requirements of the Regional Plan. In this regard, sufficient information has been provided to enable Council, in its capacity as the Planning Proposal Authority (PPA), to demonstrate its consistency with the NCRP 2041.

3. The Planning Proposal does not fulfil the commitments and development consent conditions to mitigate the impacts of former quarry operations in the planning area

Recommendation: The parts of the planning area, which were required to be revegetated and rehabilitated in accordance with the former quarry development consent, be rezoned to C2 Environmental Conservation.

The development consent that permitted the quarry to be expanded issued by the Minister for Urban Affairs and Planning on 7 May 1999, had some 22 conditions attached to the consent that related to matters including traffic management, financial contributions, dispute resolution, environmental management, etc. Condition No 1 is reproduced below and specifically calls up the Environmental Impact Statement (EIS) and Species Impact Statement (SIS) that were prepared as part of the development application documentation.

Condition No 1

The development is to be carried out in accordance with the Environmental Impact Statement dated 1997 prepared by RW Corkery and Co Pty Ltd, and Species Impact Statement dated October 1997 prepared by Greenloaning Biostudies Pty Ltd except as varied by the conditions imposed by this consent.

A copy of this consent is enclosed with this letter for reference.

The EIS referred to above had commentary under the heading Final Land Use which is reproduced below (refer to section 3.13.3.2 in Volume 1 of the EIS):

"No definite land use is proposed for the former quarry areas at this stage and similarly Council has no long term strategic goal for the Project Site at this stage. It is proposed however to leave a stable well-drained landform which provides alternatives for future land uses. Any future land use for the quarry areas would be a matter for determination by the landowners, Council and other relevant authorities at the time."

The SIS has a similar statement in section 2.11.13.2 entitled Final Land Use at page 16 of the SIS which is reproduced below:

"It is proposed however to leave a stable well-drained landform which provides alternatives for future land uses."

As both the EIS and SIS make it clear that future land uses were likely to be contemplated once quarrying had ceased, it is clear that the required revegetation and rehabilitation was not necessarily going to eventually lead to a conservation outcome for this site. To this end, both these documents referred to in Condition 1 of the 1999 development consent, proposed that a stable well drained landform was intended to be constructed after quarrying had ceased as this was seen as the most appropriate landform to create given that the future use of the site was unknown back in the 1990s.

Therefore, there is no substance to the implication in the BCD correspondence that the site was to be a future conservation area and no justification that the area that had been quarried needed to be zoned C2 Environmental Conservation. The relevant condition of the 1999 development consent (Condition 1) references the EIS and SIS as authoritative documents to be relied upon unless they conflict with the conditions of consent. As there is no conflict with the conditions of development consent, these statements in the EIS and SIS provide unambiguous and complementary answer to the question about what the future land use of the quarried area might be. That is, it was unknown at the time the development consent was issued in 1999; however, a well-

drained landform would be provided for whatever future land use may eventually be determined as appropriate on this section of the site.

CONCLUSION

We trust that the information contained in the BDAR provides Council officers with the data they need to complete their assessment of the Planning Proposal we have submitted, enabling it to be reported to Council at the earliest possible Council meeting.

We firmly believe that the Planning Proposal, together with the BDAR, provides compelling justification to support the residential rezoning over part of the former Broken Head Quarry site. Given the desperate need for affordable housing accommodation within the Byron Local Government Area, we look forward to Council's balanced consideration of the environmental, social and economic benefits, and ultimate support for, this Planning Proposal.

Please do not hesitate to contact me should you wish to discuss the attached BDAR or the Planning Proposal.

Kind Regards,



William Sarkis

Development Director

Attachment A – Email Correspondence (September 2023)

Attachment B – BDAR Broken Head Quarry (JWA Pty Ltd, 14 March 2024)

Attachment C – Development Consent DA/97/0465