



# Request for Rezoning Review

**PP-2024-679 (Byron Shire Council reference PP 26.2023.6.1)**

**Lot 1 DP123302 and Lot 2 DP700806, Broken Head Road, Suffolk Park NSW 2481**

## **Winten Property Group**

On behalf of Darley Pty Ltd atf GWR Trust and Crisjoy Pty Ltd atf The Lighthouse Unit Trust

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## Revision Record

Revision	Date	Prepared By	Checked By	Authorised By
03	19 July 2024	G Moses	S O'Connor	S O'Connor
02	23 July 2024	G Moses	S O'Connor	S O'Connor
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## Basis of Report

This report has been prepared by SLR Consulting Australia (SLR) with all reasonable skill, care and diligence, and taking account of the timescale and resources allocated to it by agreement with Winten Property Group (the Client). Information reported herein is based on the interpretation of data collected, which has been accepted in good faith as being accurate and valid.

This report is for the exclusive use of the Client. No warranties or guarantees are expressed or should be inferred by any third parties. This report may not be relied upon by other parties without written consent from SLR.

SLR disclaims any responsibility to the Client and others in respect of any matters outside the agreed scope of the work.



## Executive Summary

This Rezoning Review Request has been prepared by SLR Consulting Australia Pty Ltd (SLR) on behalf of our client, Winten Property Group who is acting on behalf of the owners of the land namely, Darley Pty Ltd atf GWR Trust & Cris Joy Pty Ltd atf The Lighthouse Unit Trust. This Rezoning Review Request is in support of Planning Proposal Ref. 26.2023.6.1 at Lot 1 DP 123302 and Lot 2 DP 700806, Broken Head Road, Suffolk Park NSW 2481 (the Site).

The Planning Proposal was submitted to Byron Shire Council in March 2023, seeking to rezone part of the former Broken Head Quarry site from a RU1 Primary Production zone to a R2 Low Density Residential zone.

The Rezoning Review Request is submitted to the Department of Planning, Housing and Infrastructure for consideration and referral to the Northern Regional Planning Panel (NRPP) in accordance with the Rezoning Review Requirements found within the NSW Local Environmental Plan Making Guidelines (the Guidelines), dated August 2023. In particular, this Rezoning Review Request is accompanied by the originally submitted Planning Proposal (dated March 2023), Council Correspondence and Public Authority Correspondence relating to the Planning Proposal. **Section 3.1** and **Section 3.2** of this report assesses the Strategic Merit and Site-Specific Merit of the Planning Proposal.

**Section 4** of this report provides a response to Council's concerns against the proposal, as found within the Mike Svikis Assessment Report (dated 7 May 2024), including responses to the strategic and site-specific merit of the Planning Proposal. Several additional assessment reports in response to the criticisms received are appended to this report. These are inclusive of a Site Contamination Report, Geotechnical Report, Archaeological Report, Ecological Assessment of the Shared Pathway Alignment and a Traffic Impact Assessment.

This Rezoning Review Request reaffirms the proposed Planning Proposal's general consistency with the State and Local strategic planning framework, while demonstrating the Strategic Merit and Site-Specific Merit of the Planning Proposal.



## Table of Contents

<b>Basis of Report .....</b>	<b>i</b>
<b>Executive Summary .....</b>	<b>ii</b>
<b>1.0 Introduction .....</b>	<b>1</b>
<b>2.0 Summary of History of Planning Proposal .....</b>	<b>1</b>
2.1 Brief Planning Proposal History .....	2
2.1.1 Timeline of Events .....	4
<b>3.0 Rezoning Review .....</b>	<b>8</b>
3.1 Strategic Merit .....	9
3.1.1 Housing Priority .....	10
3.2 Site Specific Merit.....	12
<b>4.0 Response to Council Resolution.....</b>	<b>14</b>
4.1 Strategic Merit .....	14
4.1.1 North Coast Regional Plan 2041 (December 2022) .....	14
4.1.2 Byron Shire Residential Strategy 2041 .....	19
4.1.3 Byron Shire Local Strategic Planning Statement 2020-2036 .....	21
4.2 Site-Specific Merit .....	21
4.2.1 Ecology and Native Vegetation.....	21
4.2.2 Slopes, Drainages and Geotechnical Information .....	22
4.2.3 Bushfire Hazard.....	23
4.2.4 Land Contamination .....	23
4.2.5 Aboriginal Cultural Heritage.....	24
4.2.6 Existing Uses, Approved Uses and Likely Future Uses of Land in the Vicinity of the Proposal .....	25
4.2.7 Services and infrastructure .....	26
<b>5.0 Significant Benefits of the Proposal .....</b>	<b>29</b>
<b>6.0 Conclusion.....</b>	<b>30</b>

## Tables in Text

Table 1	Timeline of Events .....	4
Table 2	Compliance with Rezoning Review Requirements .....	8



## Figures in Text

Figure 1	Proposed Cycle and Pedestrian Path under the proposed VPA (Source: VPA Letter of Offer, dated 28 <sup>th</sup> March 2023) .....	3
Figure 2	Housing Prices in the Northern Rivers LGAs and NSW (Source: Byron Shire Short – Term Rental Accommodation Planning Proposed p.37) .....	11
Figure 3	One Kilometre Radius from Suffolk Park Neighbourhood Centre .....	15
Figure 4	Proposed Development and Conservation Lands .....	19
Figure 5	Building Approvals in Byron LGA (Source: ABS Data) .....	21
Figure 6	Impact on Vegetation Zones (Source: Preliminary Ecological Assessment prepared by JWA Pty Ltd) .....	28

## Photos in Text

Photo 1	Flower Shop and IGA on Clifford Street, within Suffolk Park Neighbourhood Centre.....	16
Photo 2	Hotel, Coffee Shop and Service Station on Broken Head Road, within Suffolk Park Neighbourhood Centre .....	16

## Appendices

<b>Appendix A</b>	<b>Planning Proposal Submission</b>
<b>Appendix B</b>	<b>Council Correspondence</b>
<b>Appendix C</b>	<b>Public Authority Correspondence</b>
<b>Appendix D</b>	<b>Contamination Report</b>
<b>Appendix E</b>	<b>Geotechnical Report</b>
<b>Appendix F</b>	<b>Archaeological Report</b>
<b>Appendix G</b>	<b>Ecological Assessment of Shared Pathway Alignment</b>
<b>Appendix H</b>	<b>Traffic Impact Assessment</b>



## 1.0 Introduction

This report has been prepared by SLR Consulting Australia Pty Ltd (SLR) on behalf of our client, Winten Property Group (acting on behalf of the owners of the land namely, Darley Pty Ltd atf GWR Trust & Crisjoy Pty Ltd atf The Lighthouse Unit Trust), in support of a Rezoning Review Request for Planning Proposal Ref. PP.2024.679 at Lot 1 DP 123302 and Lot 2 DP 700806, Broken Head Road, Suffolk Park NSW 2481 (the Site). The Planning Proposal (PP) seeks to rezone part of the former Broken Head Quarry site from a RU1 Primary Production zone to a R2 Low Density Residential zone.

This Rezoning Review Request is being submitted following Byron Shire Council's (Council) determination on 13 June 2024, that the PP is not supported.

This report should be read in conjunction with supporting documentation appended to this report, including the following:

- **Appendix A** – Planning Proposal Submission
- **Appendix B** – Council Correspondence
- **Appendix C** – Public Authority Correspondence
- **Appendix D** – Contamination Report
- **Appendix E** – Geotechnical Report
- **Appendix F** – Archaeological Report
- **Appendix G** – Ecological Assessment of Shared Pathway Alignment
- **Appendix H** – Traffic Impact Assessment

## 2.0 Summary of History of Planning Proposal

The PP seeks to rezone part of the former Broken Head Quarry to facilitate the future residential development of the disturbed area of the Site to create residential lifestyle opportunities in a community title subdivision with the Community Association taking on the responsibility for the ongoing maintenance of the balance of the Site which will be managed for conservation purposes in perpetuity consistent with the C2 Environmental Conservation zoning of this portion of the Site. The Site is legally identified as Lot 1 of DP123302 and Lot 2 of DP700806, and comprises an area of approximately 32.78 hectares.

The intended outcomes of the PP (PP.2024.679) are summarised below:

	Existing Provision of Byron LEP 2014	Proposed Provisions of Bryon LEP 2014
<b>Land Use Zoning</b>	RU1: Primary Production	R2: Low Density Residential
<b>Minimum Lot Size</b>	40ha	400sqm
<b>Height of Buildings</b>	9m	9m
<b>Floor Space Ratio</b>	Not Adopted	0.6:1

As explained in the Planning Proposal report dated March 2023 (see **Appendix A**), the Site was identified in 2016 in the Draft Byron Rural Land Use Strategy prepared by Council as a potential area for rural residential development. However, the North Coast Regional Plan



2041 (NCRP), which was introduced in 2022, dictated that all future rural residential rezonings must be confined outside of the coastal strip, which was defined as land to the east of the Pacific Highway, so that land for future development is utilised for urban purposes not low density rural residential purposes in the coastal strip. As the Site is located within the coastal strip, this higher form of residential development is now proposed for the Site.

A summary of the chronology of events and actions since lodgement of the PP on the NSW Planning Portal in March 2023, is provided in Section 2.1.

## 2.1 Brief Planning Proposal History

The PP was uploaded onto the NSW Planning Portal on 24<sup>th</sup> March 2023 (NSW Planning Portal Reference Number: PP-2023-625). Following initial lodgement, the PP was then returned by Council on 30<sup>th</sup> March 2023 for the following reasons:

- *The PP does not satisfy the Settlement Planning Guidelines Assessment requiring 'New greenfield areas to be located adjacent to existing urban settlements to minimise travel and promote sustainability.' The site is located approximately 800m from the nearest growth boundary of Suffolk Park.*
- *The Planning Proposal is not consistent with the objectives and outcomes of the North Coast Regional Plan 2041, and should consider the intent of the 9.1 Direction, State Environmental Planning Policy and Local Growth Management Strategy.*
- *Only minor and contiguous variations to urban growth areas will be considered within the coastal strip due to its environmental sensitivity and the range of land uses competing for this limited area. The site is located approximately 800m from the nearest growth boundary of Suffolk Park and is effectively an isolated new release area.*

A Response to the Reasons for Return was then submitted by SLR to Council on 12 April 2023, providing a detailed response to each of Council's reasons for returning the PP. The response concluded there was an absence of express right for Council to return the PP. This submission was supported by Legal Advice from Winten's inhouse lawyer, confirming the pre-emptive 'return' of the PP is not an action Council can legitimately take. On 18 April 2023, Winten Property Group submitted a request to the Department of Planning and Environment (DPE) seeking assistance in resolving issues surrounding the pre-emptive return of the PP by Council.

Following intervention by DPE, the PP was subsequently resubmitted on the NSW Planning Portal on 12<sup>th</sup> April 2023 (NSW Planning Portal Reference Number: PP-2024-679). The PP was then accepted for assessment by Council, and formally lodged on 23 April 2024. The Council identifying number for the Planning Proposal is 26.2023.6.1.

The PP was submitted with an offer to enter into a Voluntary Planning Agreement (VPA) with Byron Shire Council. The original VPA, dated 23 March 2023, included the offer to '*construct a shared pedestrian/ cycle path along Broken Head Road from the Land to the Suffolk Park neighbourhood centre, as indicated in the Concept Plan below*' (refer to **Figure 1**).

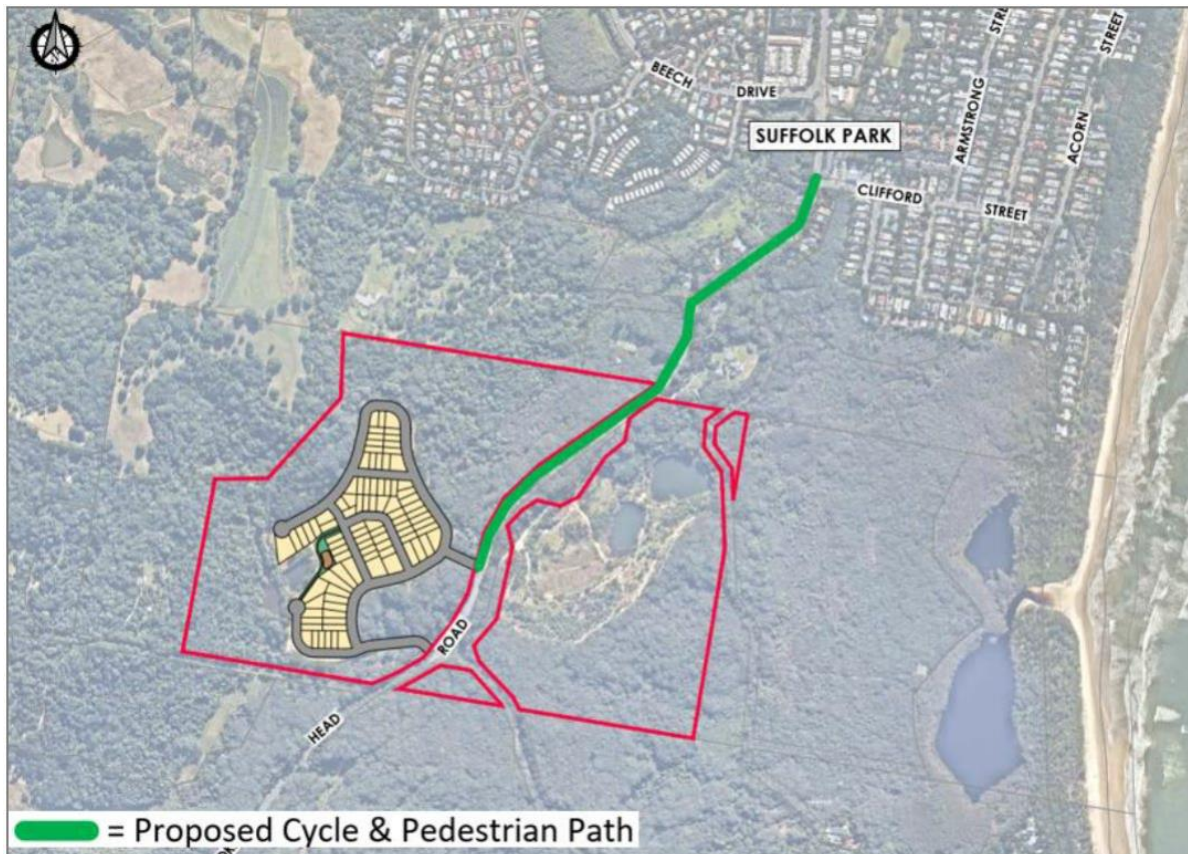
The VPA offer was later updated on 28<sup>th</sup> March 2024 to include the following:

1. *Dedicate 20% of lots to Council to be used for the purpose of Affordable Housing; and*
2. *Construct a shared pedestrian/cycle path along Broken Head Road from the Land to the Suffolk Park neighbourhood centre, as indicated on the below concept plan (refer to **Figure 1**).*





**Figure 1 Proposed Cycle and Pedestrian Path under the proposed VPA (Source: VPA Letter of Offer, dated 28<sup>th</sup> March 2023)**



Pre-lodgement consultation was undertaken by Council with the Biodiversity and Conservation Division (BCD) in August 2023. A response was provided by BCD on 14 August 2023. A summary of the recommendations contained within the pre-lodgement comments are 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 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.*

The reasoning behind the above recommendations were detailed within Attachment 1 of the BCD response. The BCD response is located at **Appendix C**.

In accordance with the feedback provided by BCD, Winten commissioned JWA Pty Ltd to prepare a Biodiversity Development Assessment Report (BDAR). The BDAR was formally submitted to Council for assessment on 28 March 2024 as a formal response to the concerns raised by BCD (refer to **Appendix A**). In association with the submission of the BDAR, a response was prepared by Winten to provide a formal response to each of the concerns and recommendations raised within the BCD response. The response prepared by Winten is located at **Appendix C**.





On 19<sup>th</sup> May 2023, Council referred the PP to the NSW Rural Fire Service (NSW RFS) for comment. Based upon an assessment of the information provided, NSW RFS raised no objection to the PP, provided the future subdivision/ development of the land complies with Planning for Bushfire Protection 2019 requirements. The specific requirements with which the future development must comply, in accordance with NSW RFS comments, are contained within NSW RFS correspondence located at **Appendix C**.

Council commissioned Mike Svikis Planning to prepare an assessment of the PP, with the final assessment report dated 7 May 2024 (see **Appendix B**) and made publicly available on 4 June 2024 with the agenda for the 13 June 2024 Council meeting. The report raised a number of issues that could have been previously addressed by the provision of a further information request, however, this had not been requested.

On 12<sup>th</sup> June, Winten forwarded an initial response to the Mike Svikis Planning assessment of the PP to Council responding to each of the major criticisms raised in the assessment (refer to **Appendix B**). The response requested Council defer its determination of the PP to allow the applicant the opportunity to submit any additional information Council may consider necessary before it makes a decision in relation to the PP. This request was denied by Council.

At the Byron Shire Council Ordinary Council Meeting held on 13<sup>th</sup> June 2024 Council considered a report prepared by Council officers which referred to the Mike Svikis Planning assessment of the PP. The Council report contained the following recommendations:

1. *Council does not support the subject planning proposal (as contained in Attachment 1) seeking to amend Byron LEP 2014 to rezone the former Broken Head Quarry site on the western side of Broken Head Road for residential development; and,*
2. *Both the applicant and the Department of Planning, Housing and Infrastructure be notified of Council's decision to not support the planning proposal.*

On 17<sup>th</sup> June 2023, official notification was received on the NSW Planning Portal confirming Council did not support the PP.

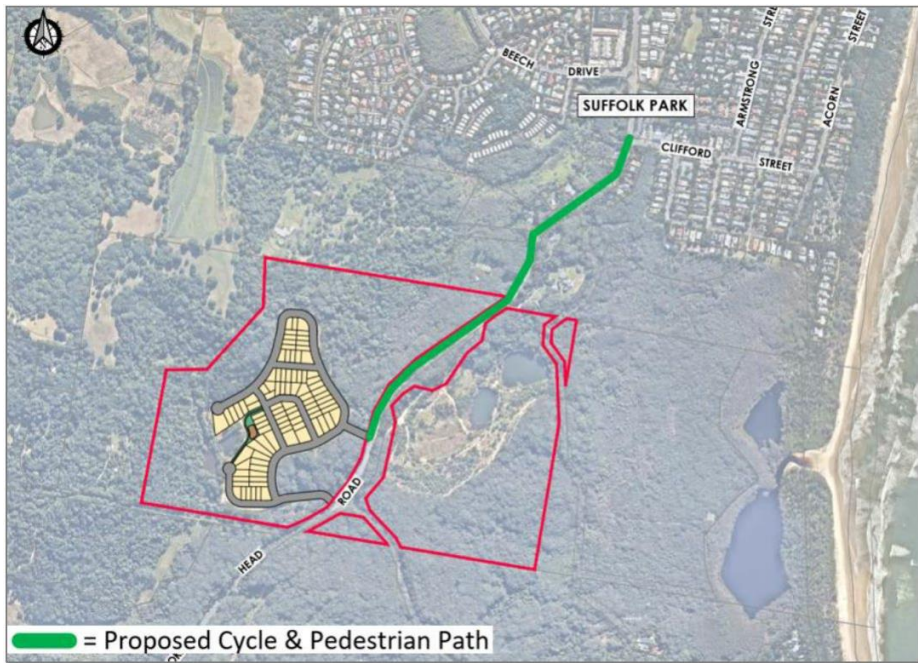
### 2.1.1 Timeline of Events

A detailed timeline of events is provided at **Table 1**.

**Table 1 Timeline of Events**

Date	Event
23 March 2023	<b>Offer to Enter into Voluntary Planning Agreement</b>  The Planning Proposal was submitted with an offer to enter into a VPA in connection with the PP. The offer included in the VPA was to construct a shared pedestrian/ cycle path along Broken Head Road from the Site to the Suffolk Park neighbourhood centre, as indicated on the below concept plan:



Date	Event
	
24 March 2023	<b>Planning Proposal lodged on the NSW Planning Portal.</b>
30 March 2023	<b>Byron Shire Council returned the Planning Proposal application.</b> The reasons for the return of the Planning Proposal are discussed in <b>Section 2.1</b> , and are detailed within the correspondence received from Byron Shire Council located at <b>Appendix B</b> .
12 April 2023	<b>Resubmission of Planning Proposal to Byron Shire Council</b> The resubmitted application was accompanied by a Response Letter prepared by SLR dated 12 April 2023 ( <b>Appendix B</b> ), and Legal Advice prepared by Winten's inhouse lawyer dated 11 April 2023 ( <b>Appendix B</b> ).
18 April 2023	Winten sought assistance from the NSW Department of Planning, Industry and Environment (former NSW Department of Planning and Environment), to advise Council that the PP is required to be accepted and assessed.
23 April 2023	<b>Planning Proposal Accepted for Assessment and Formally Lodged</b> The Planning Proposal was accepted for assessment by Byron Shire Council, and formally lodged. Application fees were paid.
19 May 2023	<b>Byron Shire Council referral request submitted to NSW RFS</b>
20 May 2023	<b>Pre-lodgement consultation was sought from the Biodiversity and Conservation Division (BCD).</b>
16 June 2023	<b>NSW RFS Referral Response Received</b> The commentary received confirmed NSW RFS raised no objections to the PP subject to a requirements that the future subdivision/



Date	Event
	development of the land complies with the relevant requirements within Planning for Bushfire Protection 2019 (see <b>Appendix C</b> ).
14 August 2023	<p><b>BCD Pre-lodgement comments received</b></p> <p>The BCD pre-lodgement comments were received, including concerns related to the PP as detailed in <b>Section 2.1</b> of this report (see <b>Appendix C</b>).</p>
28 March 2024	<p><b>Submission of Biodiversity Development Assessment Report (BDAR)</b></p> <p>A BDAR (prepared by JWA Pty Ltd), and a formal response to the BCD concerns (prepared by Winten) was submitted to Council for assessment (see <b>Appendix A</b>).</p>
	<p><b>Amended Offer to Enter into Voluntary Planning Agreement Offer</b></p> <p>An Amended Offer to Enter into a VPA in conjunction with the PP was submitted to Council. The offer included in the amended VPA was to:</p> <ol style="list-style-type: none"> <li><i>1. Dedicate 20% of lots to Council to be used for the purpose of Affordable Housing; and</i></li> <li><i>2. Construct a shared pedestrian/cycle path along Broken Head Road from the Land to the Suffolk Park neighbourhood centre, as indicated on the below concept plan (refer above).</i></li> </ol>
7 May 2024	<p><b>An Assessment of the PP, prepared by Mike Svikis Planning, was provided to Council for consideration (see Appendix B).</b></p> <p>The report was made publicly available on 4 June 2024 with the agenda for the 13 June 2024 Council meeting.</p>
12 June 2024	<p><b>Correspondence from Winten Property Group to Byron Shire Council, seeking deferral of determination of PP</b></p> <p>An email was sent from Bill Sarkis (Winten Property Group) to Alex Caras (Byron Shire Council), providing a response to the key concerns raised in the Mike Svikis Planning assessment of the PP. It also requested Council defer consideration of the PP until such time as any additional information required is prepared and assessed.</p> <p>Refer to <b>Appendix B</b> for record of this correspondence.</p>
13 June 2024	<p><b>Council's Resolution in relation to the Planning Proposal</b></p> <p>At the Byron Shire Council Ordinary Council Meeting the following decision was made:</p> <ol style="list-style-type: none"> <li><i>1. Council does not support the subject planning proposal (as contained in Appendix 1) seeking to amend Byron LEP 2014 to rezone the former Broken Head Quarry site on the western side of Broken Head Road for residential development.</i></li> <li><i>2. Both the applicant and the Department of Planning, Housing and Infrastructure be notified of Council's decision to not support the planning proposal.</i></li> </ol>



Date	Event
	<i>3. Council writes to the Department of Planning to clarify whether the owner of the site has met their obligations under the 2018 Enforceable Undertaking and receives a further update from staff.</i>
17 June 2024	On 17 June 2023, official notification on the NSW Planning Portal was received confirming that PP (PP.2024.679) is not supported.



### 3.0 Rezoning Review

This report provides a response to the concerns raised within the Mike Svikis Planning assessment (see **Section 4.0**) and an assessment in the following pages of the PP in terms of its Strategic Merit and Site Specific Merit.

The NSW Local Environmental Plan Making Guidelines (the Guidelines), dated August 2023, allow a proponent to request an independent panel evaluate and recommend to the Minister for Planning whether a proposal should progress to Gateway determination.

A Rezoning Review Request must be submitted within 42 calendar days of Council notifying the proponent that it does not support the PP. As detailed within **Table 1**, Council provided notification that it does not support the PP on 17 June 2023 (see **Appendix B**). Accordingly, a rezoning review request must be submitted by 29 July 2024 to meet the 42-day requirement. The Rezoning Review is submitted to the DPHI for consideration and referral to the Northern Regional Planning Panel (NRPP) in accordance with the Guidelines. A response against the relevant Rezoning Review requirements set out in the Guidelines, is detailed in **Table 2**.

**Table 2 Compliance with Rezoning Review Requirements**

Rezoning Review Requirement	Response
A copy of the proponent's latest version of the planning proposal, including all supporting material and information that was submitted to council.	The Planning Proposal (dated March 2023) and all appended documentation is provided at <b>Appendix A</b> .
All correspondence that the proponent has received from the council in relation to the planning proposal request, including (if relevant) any copies of the council's written advice to the proponent and/or the Council resolution not proceed with the proposal.	Correspondence from Council is provided at <b>Appendix B</b> . Correspondence is inclusive of the following: <ul style="list-style-type: none"> <li>- Council's reasons for initial return of the PP.</li> <li>- Payment of PP Fees.</li> </ul> Correspondence from Council confirming the PP is not supported is provided at <b>Appendix B</b> .
All correspondence and written advice from other public authorities and government agencies, if available	Pre-lodgement consultation advice was sought from the: <ul style="list-style-type: none"> <li>- Division of Biodiversity Conservation (DBC); and</li> <li>- Rural Fire Service (RFS)</li> </ul> Correspondence is provided at <b>Appendix C</b> .
The proponent's written justification of the strategic and site-specific merit to confirm why a review is warranted.	The Strategic and Site Specific Merit of this proposal is detailed in <b>Section 3.1</b> and <b>Section 3.2</b> of this report.





Rezoning Review Requirement	Response
Disclosure of reportable political donations under section 10.4 of the EP&A Act, if relevant.	NIL - No reportable political donations.
The rezoning review fee to the Department.	The relevant fee will be provided to the Department upon submission of this Rezoning Review Request.

### 3.1 Strategic Merit

The PP is well aligned with State and Local strategic planning priorities. The strategic merit of the PP can be summarised as follows:

- **North Coast Regional Plan 2041 (NCRP), December 2022:** The PP is generally consistent with the objectives and planning principles of the NCRP. A detailed assessment of the proposal against the objectives of the NCRP is provided within Section 5.2 of the originally submitted Planning Proposal provided at **Appendix A**.

The proposed development will contribute to the supply of residential land in the Byron LGA, in accordance with Objective 1 of the NCRP which aims to provide well located homes to meet housing demand. Specifically, Strategy 1.1 suggests *'new greenfield areas across the North Coast, these should be located adjacent or near to existing urban areas to encourage the efficient use of land and infrastructure.'*

The Site is partly located within a one-kilometre radius of the Suffolk Park Neighbourhood Centre and the proposed shared pathway alignment offered under the proposed VPA in association with the PP aims to provide a direct connection to the Neighbourhood Centre. The northern boundary of the Site is located only 280m from the existing urban area of Suffolk Park. Only one lot (Lot 5 DP258562) separates the Site from the existing urban lots on Corkwood Crescent. It is difficult to see how this would not be considered 'near to' the existing urban area.

The construction of the shared pathway will allow pedestrians to access the 'adjacent' neighbourhood centre in approximately 10-15 minutes, with cyclists gaining access in approximately 5 minutes. The term "adjacent" has been subject to judicial review in the NSW Land and Environment Court (Court). Justice Bignold, a former judge in the Court, considered the meaning of the words "adjacent" and "adjoin" and concluded that the word "adjacent" has a different meaning to the word "adjoin". His Honour found that adjacent land would be *"lying near to, close or neighbouring"* to the other land. It is also noted Strategy 1.1 specifically permits new greenfield areas that are 'near to' existing urban areas. There is no requirement within the NCRP specifying new greenfield areas must directly adjoin existing urban areas.

Objective 2 seeks to provide more affordable and low-cost housing opportunity within the LGA. The VPA offer in association with the PP offers to dedicate 20% of allotments to Council to be used for the purpose of Affordable Housing, which directly aligns with this objective. Objective 3 seeks to protect and enhance important environmental assets, which is capable of being achieved given that according to the BDAR, the proposed development is not considered a significant impact and will be compensated by way of ecosystem credits (refer to the BDAR located at **Appendix A**). In addition, the construction of the shared pathway alignment under the proposed VPA, as detailed above, directly aligns with Objective 16 to provide active transport opportunities.





### Urban Growth Area Identified in the NCRP 2041

The Local Government Narratives within the NCRP details priorities for each LGA within the North Coast region, including future urban growth areas. Significantly more future urban growth areas are likely to be required to meet forecast demand for housing in Byron Bay/Suffolk Park, with only one very small urban investigation area identified in the NCRP in the entire Byron LGA. Although the former Broken Head Quarry site is not identified as an urban growth area, it is important to note the LGA south of Byron Shire, Ballina Shire, has in excess of ten (10) urban growth investigation areas identified in the Urban Growth Area Map at page 83 of the NCRP. Both LGAs are experiencing severe housing supply shortages in part because of the extensive flooding experienced in the Northern Rivers Region several years ago. However, the Byron LGA has just one very small urban investigation area identified in the NCRP and it is located some distance from the coast. Insufficient housing supply in Byron Shire will result in the planning objectives for housing not being met.

While the PP is generally in accordance with the strategies and objectives of the NCRP, it is acknowledged the Site is not identified as a future urban growth area. Notwithstanding this omission, the Site is generally consistent with the Objectives, Strategies and Priorities contained within the NCRP and is compatible with the relevant regional planning policies and goals as demonstrated in the original PP uploaded to the NSW Planning Website in March 2023.

- **Byron Shire Local Strategic Planning Statement 2020-2036 (LSPS):** The Planning Priorities contained within the Liveable Shire theme of the LSPS seeks to *'support housing diversity and affordability with housing growth in the right locations.'* The PP aligns with the LSPS as the future development seeks to address the urgent housing supply demand in the Byron LGA.
- **Byron Shire Community Strategic Plan 2032 (CSP)** – The objectives of the CSP includes *'Ethical Growth'*, and *'managing growth and change responsibly'*. The strategies included in this objective include *'enabling housing diversity and supporting people experiencing housing insecurity.'* The intended outcome of the PP is to take this underutilised site and create opportunities for residential development and in the process ensure that land within the Site that has significant biodiversity values is managed for conservation purposes in perpetuity. The PP seeks to provide the Byron LGA with additional housing supply without significantly impacting the existing environmental values on the Site and its surrounds. The Site's connectivity to existing urban areas will be enhanced with the construction of a shared pathway in Broken Head Road reservation and the proposed development has the ability to be connected to existing water and sewer infrastructure. As such, the PP demonstrates its alignment with the CSP.
- **NSW Government Commitment to the National Housing Accord:** The proposed development will provide well located housing within the Byron LGA, which aligns with the NSW Government commitment to the National Housing Accord, as detailed further within **Section 3.1.1**.

#### 3.1.1 Housing Priority

The NSW government has prioritized housing in response to the Housing Crisis being experienced throughout Australia and overseas. In particular, the NSW Government has focused on increasing the supply of housing as part of its commitment to the National Housing Accord. Under this Accord, NSW has agreed to deliver 377,000 well located homes within a five year period commencing on 1 July 2024. Part of the comprehensive initiatives



underway in NSW includes efforts to prioritise and scrutinize planning proposals that aim to increase housing supply. This Rezoning Review Request presents an opportunity to assist in meeting the NSW target of 377,000 new well-located homes within the five year timeframe established in the Accord.

In order to gain a thorough understanding of the housing crisis in Byron LGA, it is beneficial to refer to the report released by the NSW Independent Planning Commission (IPC) in April 2023 entitled “*Byron Shire Short- Term Rental Accommodation Planning Proposal*”. This report provides a snapshot of the housing crisis as it has been experienced (and continues to be experienced) in the Byron LGA in recent years.

At page 37 of the IPC report a table is provided comparing the median house sales price in 2017 and 2021 in the seven LGAs that make up the Northern Rivers region. This table is reproduced as **Figure 2** and clearly demonstrates that the increase in house prices over this 4-year period was most dramatic in Byron LGA (up 104.8%).

**Figure 2 Housing Prices in the Northern Rivers LGAs and NSW (Source: Byron Shire Short – Term Rental Accommodation Planning Proposed p.37)**

<i>Table 5 – House sales price in the Northern Rivers LGAs and NSW<sup>118</sup></i>			
<b>LGA</b>	<b>Med Value Dec 2017 (\$,000s)</b>	<b>Med Value Dec 2021 (\$,000s)</b>	<b>% Change</b>
<b>Byron Shire</b>	830	1,700	104.8
<b>Tweed Shire</b>	560	870	55.4
<b>Clarence Valley Shire</b>	370	550	48.6
<b>Ballina Shire</b>	594	1,010	69.9
<b>Kyogle Council</b>	300	500	66.7
<b>Richmond Valley Council</b>	320	488	52.5
<b>City of Lismore</b>	379	690	82.1
<b>New South Wales</b>	675	880	30.4

Rental availability is also much worse in Byron LGA than neighbouring LGAs. This fact is evidenced in a study by AHURI that points out;

*The problem of rental availability and rent increases is a national and state problem, but not to the scale seen in Byron Bay. This is vividly illustrated by benchmarking Byron Bay against all regional NSW. While there has been a steady erosion of affordability for regional NSW it has only been from 97 percent affordability to 90 percent for a four-person moderate income household, compared to Byron Bay’s 42 percent down to 11.3 percent; the differential between Byron Bay and regional NSW is now enormous. The processes occurring in Byron Bay are now very different from much of the rest of regional NSW.*

There was evidence regarding the decline in affordability from Byron Shire Council presented to the IPC that included the following;

*“The percentage of households experiencing rental stress in Byron Shire (50.2%) is higher than the NSW average (35.5%) and national average (32.2%);*



*The median per week household income in Byron Shire (\$1,602) is lower than NSW (\$1,829); and*

*The median per week rent in Byron Shire (\$520) is higher than NSW (\$420)."*

Council also provided details to the IPC related to the level of homelessness being experienced in the Byron LGA. Council cited a recent survey that recorded 221 people across the LGA being rough sleepers. This is the second highest in NSW behind the City of Sydney. The 2021 Census revealed 107 people experiencing homelessness in Byron Shire.

In its executive summary (page i) the IPC had this to say about housing supply:

*"On the supply side, new housing stock and land releases planned under a suite of existing local and state- level housing policies have not proceeded at a rate that matches demand and community need."*

At page iv of the executive summary, the IPC goes on to say that:

*"The Commission was persuaded by submissions on the need to intensify efforts from local and state levels of government to increase supply through rezonings and other planning mechanisms...."*

The IPC report demonstrates that there is an acute housing crisis being experienced in the Byron LGA and urges the NSW government and Byron Shire Council to take urgent steps to address the housing crisis. The evidence presented to the IPC shows that the housing crisis is significantly worse in Byron LGA compared to other LGAs in the Northern Rivers region and in NSW.

At present, the Site is currently utilised by rough sleepers in tents, underscoring both the extent of the homelessness problem in the Byron LGA, as well as the Site's proximity to the existing urban area of Suffolk Park.

### **3.2 Site Specific Merit**

The Site-Specific merit of the PP can be summarised as follows:

- The Site is a former quarry site and has been previously disturbed as a result of sand mining. The Site is being rehabilitated and is considered to be underutilised being partly zoned RU1 Primary Production in a unique location within the Byron LGA.
- The supply of additional land for residential purposes will provide community benefit through additional housing supply. In addition, the community benefits of the proposed development include open space and facilities for recreation purposes, and the generation of revenue from Section 7.11 contributions resulting from the proposed development which can be utilised for future community facilities improvement.
- The Site is in close proximity to an existing urban area, namely Suffolk Park, and within 4 kilometres from Bryon Bay, The VPA offer associated with the PP proposes a shared pathway alignment to provide direct connection for cyclists and pedestrians to Suffolk Park Neighbourhood Centre.
- The required infrastructure for the proposed residential development, such as water and sewer, are all available within close proximity to the Site. There are no constraints in providing water and sewerage services to the Site. Approximately 95 allotments could be effectively serviced with reticulated water and sewer without the need for amplification of existing water and sewer infrastructure.



The Site can also be readily serviced with electricity and telecommunications. All necessary community facilities are available within a maximum 15 minutes travel time.

- The proposed development will include road safety improvements that will ensure the proposed development appropriately integrates with the existing road network. This is inclusive of a roundabout at the Broken Head Road (the southern site access intersection) and improvements to the northern intersection on the Broken Head Road (the northern site access intersection). The improvements will provide significant community safety benefits to all road users, as concluded within the Traffic Impact Assessment (**Appendix H**). The cost of all road improvements will be met by the developer.
- The removal of vegetation on and adjoining the Site required for the proposed future development is not considered a significant impact and will be compensated by way of ecosystem credits, in accordance with the findings of the Biodiversity Development Assessment Report (**Appendix A**).
- The proposed shared pathway alignment will not result in significant impact on any threatened species, populations or ecological communities, or their habitats, as concluded within the Preliminary Ecological Assessment (**Appendix G**).
- The risk of bushfire hazard on the Site can be successfully mitigated by way of applying the requirements of the *Planning for Bushfire Protection 2019*, along with additional measures which build in a climate change resilience factor. In addition, the NSW RFS does not raise any objection to the PP subject to future development meeting the requirements within the *Planning for Bushfire Protection 2019*.
- There is minimal risk of disturbance to Aboriginal cultural heritage materials as a result of the proposed development. As concluded within the Archaeological Desktop Report (**Appendix F**), no cultural materials or sites are expected within the proposed rezoning area, as the Site has been previously significantly disturbed by previous sand quarrying activities.



## 4.0 Response to Council Resolution

Byron Shire Council commissioned Mike Svikis Planning to undertake an independent review of the PP. An assessment was prepared by Mike Svikis Planning, dated 7 May 2024, which detailed criticisms of the PP including an assessment against the strategic merit and site-specific merit of the PP.

A detailed response to these criticisms is provided in the following pages.

### 4.1 Strategic Merit

#### 4.1.1 North Coast Regional Plan 2041 (December 2022)

The North Coast Regional Plan 2041 (NCRP) is a 20-year blueprint for the future of the North Coast. The NCRP recognises that the Region's population will grow and that the provision of a wide range of housing typologies is going to be required to accommodate this population growth. The NCRP covers all facets of land use planning, including employment areas, town centres, housing and related infrastructure, the natural environment and hazards.

The Mike Svikis Planning assessment states that the PP is '*not consistent with parts of the North Coast Regional Plan 2041 and the inconsistencies have not been justified.*' The specific strategies critiqued within the assessment are detailed below, along with the relevant justification.

##### Strategy 1.1

*A 10-year supply of zoned and developable residential land is to be provided and maintained in Local Council Plans endorsed by the Department of Planning and Environment.*

*Councils' future local housing strategies are to have a clear road map outlining and demonstrating how to deliver 40% of new dwellings by 2036 in the form of multi dwelling / small lot (less than 400m<sup>2</sup>) housing. Demonstrated movement towards achieving this target will also be essential when seeking to justify any urban growth area boundary variations for new greenfield land supply.*

*When planning for new greenfield areas across the North Coast, these should be located adjacent or near to existing urban areas to encourage the efficient use of land and infrastructure.*

##### **Response:**

There is no requirement under the NCRP for new residential land to be immediately adjoining an existing urban area. The words used in Strategy 1.1 are that new greenfield areas '*...should be located adjacent or near to existing urban areas.*' As detailed in **Section 3.1**, the term "adjacent" has been subject to judicial review in the NSW Land and Environment Court (Court) where Justice Bignold, a former judge in the Court, concluded that the word "adjacent" has a different meaning to the word "adjoin". His Honour found that adjacent land would be "*lying near to, close or neighbouring*" to the other land.

In addition, the Settlement Planning Guidelines, at Appendix A of the NCRP include a principle that "*new greenfield areas should be located adjacent to existing urban settlements to minimise travel and promote sustainability*". Not only is "*should*" not a mandatory requirement, but the objective behind the principle is also explained – it is to minimise travel and promote sustainability. It is possible to achieve this objective, notwithstanding the fact that a greenfield area is not directly adjoining an existing urban settlement.





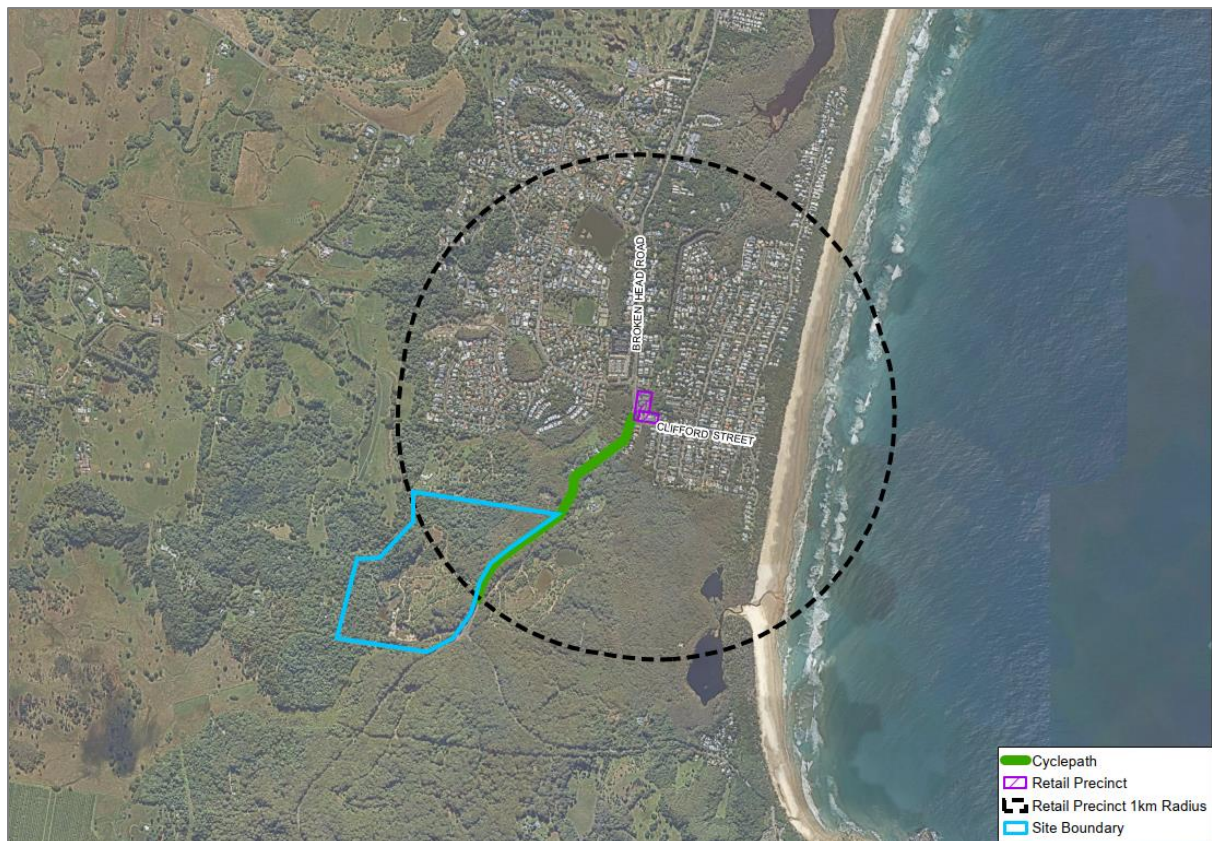
In this case, the northern most part of the development footprint that would be rezoned R2 under the PP is approximately 415m south of the southern portion of the residential zoning in Suffolk Park.

As can be seen in **Figure 3**, approximately half the Site is within a one-kilometre radius of the Suffolk Park neighbourhood centre. The balance of the Site is just outside this radius as is a significant part of the northern portion of the Suffolk Park urban area. A one-kilometre distance is a distance that can be walked in approximately 10-15 minutes. Cyclists can travel this distance in less than half this time. The draft Voluntary Planning Agreement (VPA offer) accompanying the PP contains an offer to construct a combined pathway/ cycleway at no cost to Council, from the proposed residential area within the former Broken Head Quarry to the Suffolk Park neighbourhood centre. This neighbourhood centre contains a variety of shops, a post office, a service station, a hotel and is a vibrant local centre servicing the everyday needs of Suffolk Park residents, passing motorists and visitors to the locality (see Photos 1 and 2).

The construction of the combined pathway/ cycleway would assist in encouraging active transport use which is an important component of any sustainable community.

The Byron Shire 10-year Bike Plan includes a proposed cycle path along Broken Head Road to the Ballina LGA boundary, and a shared path along Broken Head Reserve Road to Broken Head Beach. The proposed shared path would provide the first approximately 1km of this future southern cycle connection to the Ballina LGA and Broken Head Beach.

**Figure 3 One Kilometre Radius from Suffolk Park Neighbourhood Centre**





**Photo 1 Flower Shop and IGA on Clifford Street, within Suffolk Park Neighbourhood Centre**



**Photo 2 Hotel, Coffee Shop and Service Station on Broken Head Road, within Suffolk Park Neighbourhood Centre**



### Strategy 1.2

*Local Council plans are to encourage and facilitate a range of housing options in well located areas.*

### Strategy 1.3

*Undertake infrastructure service planning to establish land can be feasibly serviced prior to rezoning.*

### Strategy 1.4

*Councils in developing their future housing strategies must prioritise new infill development to assist in meeting the region's overall 40% multi-dwelling / small lot housing target and are encouraged to work collaboratively at a subregional level to achieve the target.*

## **Response:**

The PP contains a specialist Infrastructure Capacity Report prepared by Ardill Payne and Partners which investigated the potential to extend reticulated water and sewer infrastructure to the Site. This report concluded that *"Trunk mains for both Byron SC water and sewerage systems traverse the Broken Head Quarry site. These trunk mains provide potential access to the unutilised capacity within these systems."* This report goes on to confirm that there is capacity to service the proposed development with water and sewerage services.

The statement that Council has no plans to provide this type of infrastructure to the land the subject of the PP misses the point that there is capacity to service this land with water and sewerage infrastructure. Clearly the cost of providing this infrastructure will have to be met by a future developer not Council.

### Strategy 3.1

*Strategic planning and local plans must 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*
- *ensuring any impacts from proposed land use intensification on adjoining reserved lands or land that is subject to a conservation agreement are assessed and avoided*
- *encouraging and facilitating biodiversity certification by Councils at the precinct scale for high growth areas and by individual land holders at the site scale, where appropriate*
- *updating existing biodiversity mapping with new mapping in LEPs where appropriate*
- *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.*
- *developing or updating koala habitat maps to strategically conserve koala habitat to help protect, maintain and enhance koala habitat*



- *considering marine environments, water catchment areas and groundwater sources to avoid potential development impacts.*

### Response:

A Biodiversity Development Assessment Report (BDAR) was prepared for the Site in March 2024 by JWA Ecological Consultants Pty Ltd. The BDAR included the results of the detailed assessment of the composition, structure and function of the Site's vegetation utilising the Biodiversity Assessment Method (BAM).

It appears a key reason behind the Site being said to lack strategic merit, and therefore to date being excluded from Council's strategic planning, is the conflation of "Potential High Environmental Value (HEV)" with actual HEV. Council appears to have used the Potential HEV map as a layer on its "constraints sieve" when identifying potential urban growth areas and the BCD comments also appear to equate "Potential HEV" with HEV. The NCRP makes it clear that the Potential HEV map is not suitable for use at the property scale and states that HEV must be assessed at a site-specific level. The BDAR is the site-specific assessment of ecological values and it confirms that vegetation of high environmental value is being largely avoided and mostly retained within the C2 zone.

Section 6.12 of the Biodiversity Conservation Act 2016 (BC Act) requires a development "*sets out measures that the proponent of the proposed development...proposes to take to avoid or minimise the impact of the proposed development.*" Within the BC Act is a '*mitigation hierarchy*', which commences with 'avoidance'. Section 5 of the BDAR assesses areas in which the avoidance measures have been implemented. A summary of the findings are as follows:

- Site Selection
  - The Site was selected for the proposed development based on its former use as a quarry and lack of significant environmental features such as wetlands. Substantial portions of the Site have been historically cleared and have undergone extensive disturbance over time. These disturbed areas contain little native vegetation and generally have limited biodiversity value.
- Location and Design of the Project
  - 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. The proposed development has been situated where there is no significant environmental features, limited biodiversity values, outside of environmental conservation zoned land and where there is limited native vegetation and threatened species habitat is in poor condition.
  - Overall, the proposed development has been located in areas where the development footprint will generally only impact areas of native vegetation that are in the poorest condition.

Further details are provided within Section 5.2 of the BDAR located at **Appendix A**.

The Mike Svikis Planning assessment included the following statement regarding Strategy 3.1:

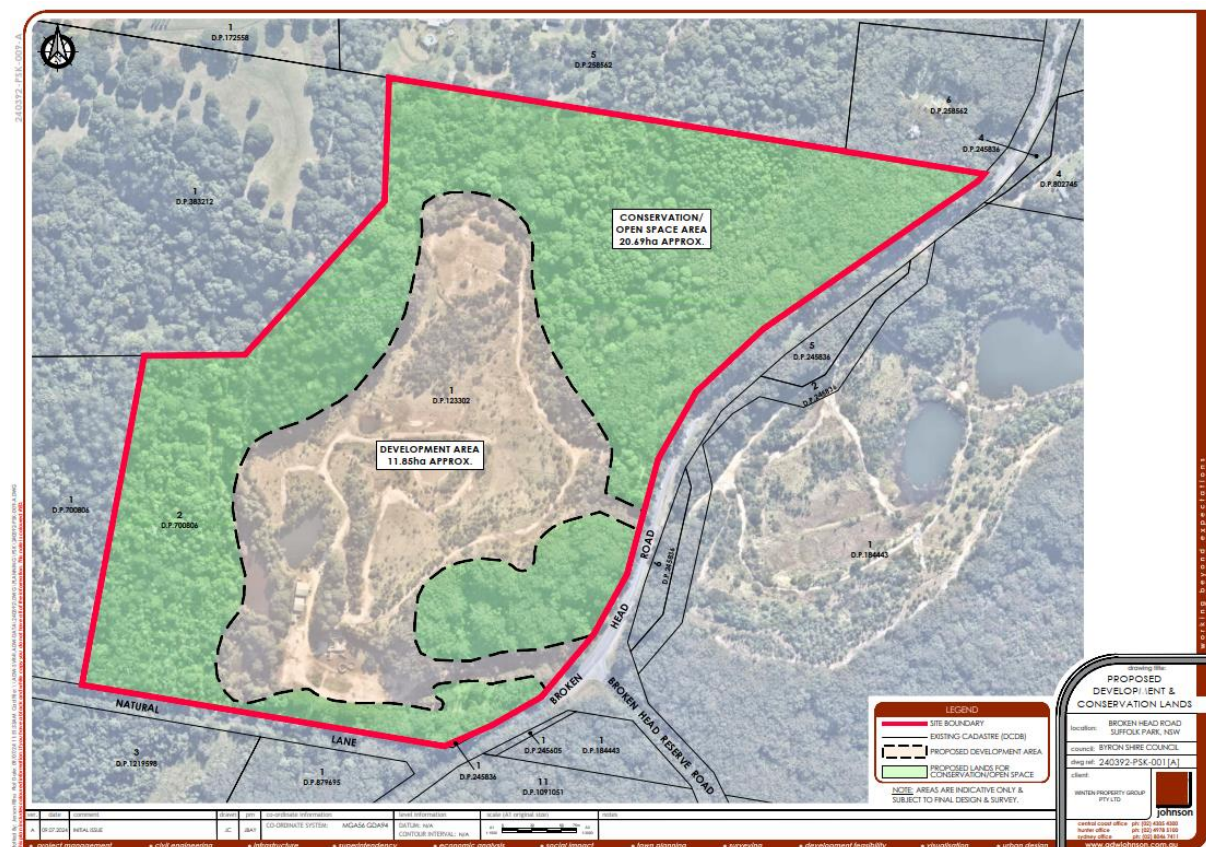
*'Given that the proposed residential zone is approximately 11.8 hectares, the development will impact on native vegetation that occupies 56% of the potential development site.'*





Although 56% of the potential development area does contain some native vegetation, over 4.5 hectares of the 11.8 hectares development footprint is either regrowth vegetation or planted native vegetation. There is only 2.1 hectares of intact native vegetation that will have to be cleared if the proposed residential development proceeds. This represents 18% of the area proposed to be rezoned R2, with only 0.13 hectares of Threatened Ecological Community (TEC) to be cleared. The balance of the Site which is zoned C2 Environmental Conservation will be managed for conservation purposes in perpetuity by the Community Association proposed to be established under Community Title legislation.

### Figure 4 Proposed Development and Conservation Lands



The Byron Shire Residential Strategy 2041 (the 2041 Strategy) provides a long-term approach to the delivery of housing in the Byron Shire. It focuses on the sustainable supply of land for housing in existing and future urban areas, utilising infill, existing vacant urban land and new land release areas. The 2041 Strategy was adopted by Council on 14 March 2024, and replaces the previous Byron Shire Residential Strategy 2020. The previous 2020 Strategy was never endorsed by DPHI and at the time of the preparation of this report the 2041 Strategy has not been endorsed by the DPHI.

The Mike Svikis Planning assessment notes that the '*subject site is not identified for residential purposes in the adopted Byron Shire Residential Strategy 2041*'. While the Site was considered in the draft Residential Strategy, the Site was then removed from the adopted Residential Strategy "*..due to inconsistency with the North Coast Regional Plan Settlement Guidelines and the policies and directions contained in the Byron Shire Draft Residential Strategy.*'

#### **Responses:**

This is understood to be as a result of perceived site constraints including:

1. *The fact that the site does not directly adjoin the existing urban area*

Response: There is no requirement within the Settlement Planning Guidelines that greenfield areas must directly adjoin existing urban areas. There is only one lot separating the northern boundary of the Site from the existing urban area of Suffolk Park, which is only 280m away.

2. *The fact that the land is mapped on the Potential HEV map, and it has therefore been incorrectly deemed to contain HEV assets.*

Response: It is clear from the North Coast Regional Plan that the Potential HEV map is not appropriate for use at the property scale and that actual site investigations are required at the planning proposal stage in order to identify HEV assets. The BDAR is this site specific investigation.

3. *The fact that the site is not already connected to water and sewer infrastructure.*

Response: There is no requirement for a new greenfield area to already be serviced, the Planning Settlement Guidelines merely require that new greenfield areas are **able to be serviced**.

Although a local council strategy that has not been endorsed by the NSW government is not a relevant matter for consideration in the application of the Strategic Merit Test, it needs to be noted that the 2041 Strategy does identify a site (Site 19) which is within Suffolk Park that is nominated for further investigation. Site 19 has extensive native vegetation covering a significant portion of the site, is identified as a bushfire hazard area, is known to be koala habitat and requires biodiversity assessment. It is difficult to understand why this site which has a maximum yield of potentially only 3 allotments, was included in the 2041 Strategy, yet the Site the subject of this PP which has been extensively modified through quarrying over the past 70 years and could yield approximately 95 allotments (over 31 times more allotments than the maximum yield for Site 19) was not included in the 2041 Strategy.

Notwithstanding the above, Part 2 of the 2041 Strategy provides details related to housing demand and the increasing pressures on the housing supply in the Byron LGA, stating that '*pressure on housing supply has increased.*'

Recent Australia Bureau of Statistics (ABS) data from 2024 shows the severity of the housing crisis in NSW, with the number of homes being built in 2023 being 30,000 less homes than required to accommodate the rate of the rising population. A Media Release by the Urban Taskforce Australia, dated 13 June 2024, summarises the findings of the ABS data. In 2023, the population of NSW grew by 85,500 people and in order for housing to meet the required housing target to accommodate the growth, a total of 74,200 new homes would be required to be built. In 2023, the ABS data shows only 46,706 dwellings were completed resulting in a shortfall of 27,494 dwellings.



In Byron Bay in particular, ABS data shows that total dwelling units approvals in 2023 was 184, which is a reduction from 207 dwellings in 2022 and 277 dwellings in 2021 – refer to **Figure 5**.

**Figure 5 Building Approvals in Byron LGA (Source: ABS Data)**

Building approvals - year ended 30 June						
Description	2018	2019	2020	2021	2022	2023
Private sector houses (no.)	----	----	----	192	135	153
Private sector dwellings excluding houses (no.)	----	----	----	85	72	31
Total private sector dwelling units (no.)	----	----	----	277	207	184
Total dwelling units (no.)	----	----	----	277	207	184

In addition, Council's discussion paper '*After the Floods*' identified several targeted urban growth areas in the Byron LGA that are likely to continue to be impacted by flooding. Therefore, the stated dwelling capacity in the residential strategy adopted by Council in 2020 needed to be revised downwards, reducing the LGA's future dwelling capacity. The Site the subject of this Rezoning Review Request is not identified as being situated within flood prone land. Therefore, this PP would deliver a flood free new residential area, increasing the LGA's future dwelling capacity.

Based on the statistics above, the acute housing crisis in Byron LGA needs to be addressed in part by a substantial increase in housing supply. The increased housing supply potential that would be created by the proposed rezoning could assist in alleviating the housing crisis in Byron LGA.

#### 4.1.3 Byron Shire Local Strategic Planning Statement 2020-2036

Council has adopted the Byron Shire Local Strategic Planning Statement 2020-2036 (LSPS) in September 2020. The LSPS is a comprehensive land use strategy to guide the future growth and development of the Byron local government area (LGA).

The Mike Svikis Planning assessment states that the PP is '*not supported by the Byron Shire Local Strategic Planning Statement 2020.*' However, on the topic of land use and future residential growth in Byron Shire, the LSPS defers to the Residential Strategy with a statement as follows:

*Council is also preparing a Byron Shire Residential Strategy to guide the long-term provision of housing in the Shire and will identify land suitable for particular types of residential growth, from new 'greenfield' areas to infill development. The strategy is the result of three years of planning, research and community consultation.*

#### Response:

**Section 4.1.2** discusses the latest residential strategy adopted by Council earlier this year (the Strategy). The PP is in alignment with the Local Strategic Planning Statement as it seeks to address the urgent need to increase housing supply to assist in combating the housing crisis being experienced in the Byron LGA.

## 4.2 Site-Specific Merit

### 4.2.1 Ecology and Native Vegetation

The Mike Svikis Planning assessment does not consider that the biodiversity impacts associated with the proposed residential development have been demonstrated to be acceptable.





The BDAR concludes at page 7 that *“The removal of this vegetation is not considered a significant impact and will be compensated by way of ecosystem credits calculated under the BAM-C.”* The BDAR contains a comprehensive assessment of the biodiversity impacts associated with the proposed development. It concludes that the PP is consistent with the NCRP’s Strategy 3.1 because it has considered opportunities to protect biodiversity values on the Site, it focuses land use intensification away from areas of high environmental value and implements the *“avoid, minimise and offset”* hierarchy which is a fundamental principle of the Biodiversity Conservation Act 2016.

In addition, the Mike Sviki Planning assessment states the following regarding the Shared Pathway Alignment:

*The BDAR also identifies a range of threatened flora and fauna on the subject land that will be affected by future development. It does not address off-site impacts such as the proposed shared path, or infrastructure such as road widening (at intersections), and pipelines and pump stations for water and sewerage.*

**Response:**

No pump stations will be required off site. Existing water and sewer mains run through the northeastern corner of the eastern quarry, on the opposite side of Broken Head Road. This land is not entirely vegetated and has substantial areas of clearing. Multiple pathways for pipelines are available, as are different construction techniques, including underboring, to ensure that biodiversity impacts are avoided or minimised and are acceptable. There is an agreement between the landowners of the eastern and western quarry that would allow such infrastructure work to occur.

Only minor road works are required to provide suitable site access and it is clear from the Concept Design at Appendix C of the TIA (located at **Appendix H**), that only minimal off-site clearing would be required in connection with these works.

A Preliminary Ecological Assessment of the Shared Pathway Alignment was undertaken by JWA Pty Ltd – refer to **Appendix G**. A summary of the findings of this assessment is provided at **Section 4.2.7**.

#### **4.2.2 Slopes, Drainages and Geotechnical Information**

The Mike Sviki Planning assessment states the following in regard to a site-specific slope analysis or geotechnical assessment:

*‘The site has been substantially reshaped as part of the quarry rehabilitation, but there is no indication as to whether this work has made the site sufficiently stable to now be used for residential development.*

*...Given the extent of earthworks undertaken for rehabilitation, it is unclear whether the site is sufficiently stable and in an appropriate landform to now be used for residential development.’*

**Response:**

A Geotechnical Assessment of the Site has been prepared by Martens and Associates Pty Ltd, refer to **Appendix E**. The purpose of the geotechnical assessment is to identify geotechnical constraints/ hazards that may impact the ability of the Site to be developed for residential purposes, as well as assess the risk(s) of the proposed development and provide general geotechnical advice and recommendations. The geotechnical assessment divided the site into six generalised geotechnical zones, ranging from Zones A-F, based on past site



activities and filling. The geotechnical assessment includes findings from field investigations that occurred in July 2024.

The geotechnical assessment concludes the Site is considered suitable for the proposed residential development, following the adoption of the recommendations presented in Section 5.3 of the report. The recommendations cover zone-specific measures as well as recommendations for earthworks, surface drainage, soil erosion control, and any further works.

Recommendations within the geotechnical assessment are not intended to be final and can be further refined through the development and design process of future residential development. Refer to the Geotechnical Assessment located at **Appendix E** for further detail.

#### 4.2.3 Bushfire Hazard

The Mike Svikis Planning assessment states the following in regard to bushfire hazard on the site:

*Bushfire hazard is a significant issue with this site. Although it can be addressed, this essentially requires removal and management of all vegetation within the proposed 11.8-hectare residential zone. Furthermore, it is reliant on a new access to Broken Head Road that may or may not be approved.*

#### Response:

It is acknowledged that bushfire hazard is a significant issue and that is why a Strategic Bushfire Study (SBS) was prepared by Bushfire Planning Australia and submitted with the Planning Proposal. This report concludes at page 50 that “... the hazard identified can be successfully mitigated by applying the requirements of PBP 2019, along with some additional measures which build in a climate change resilience factor.”

The Mike Svikis Planning assessment fails to mention is that the SBS was referred to the NSW Rural Fire Service (RFS) by Council. The RFS responded on 16 June 2023 and did not raise any objections to the proposed rezoning. Page 1 of the RFS correspondence states that “Based upon an assessment of the information provided, NSW RFS raises no objections to the proposal subject to a requirement that the future subdivision/ development of the land complies with Planning for Bush Fire Protection 2019.”

It is important to note that the proposed concept plan reproduced at page 7 of the PP, has incorporated the requirements of PBP 2019. In addition, the western quarry site already has two access points onto Broken Head Road, therefore no new access is required.

As relatively minor earthworks were undertaken as part of the rehabilitation works, this is unlikely to have had any impact on the site contours that were used in the preparation of the SBS.

It is also important to note that the BDAR specifically considers the impact of asset protection zones. Although some retained vegetation will need to be managed for bushfire protection purposes, this is not the same as wholesale clearing of vegetation.

#### 4.2.4 Land Contamination

The Mike Svikis Planning assessment states the following regarding contamination:

*No site-specific contaminated land analysis of the subject land has been provided.*

*Council is required, before land is zoned from a rural zone to a residential zone, to consider whether the land is contaminated; and if the land is contaminated, that the*



*land is suitable in its contaminated state (or will be suitable, after remediation) for all the purposes for which land in the zone concerned is permitted to be used.*

### Response:

A Preliminary and Detailed Site Investigation (PDSI) has been prepared for the Site by Qualtest Laboratory (NSW) Pty Ltd, refer to **Appendix D**. The objectives of the PDSI were to assess former and current site uses or activities, provide an assessment of the location and extent of potential soil contamination, provide recommendations and assess whether the Site is suitable for the proposed rezoning.

The Site history assessment indicated the Site was used for quarrying from the 1920s until 2018 when operations ceased. The quarry was then significantly rehabilitated between 2018 and 2019 via land-forming and the planting of vegetation.

There were eight (8) Areas of Environmental Concern (AEC) identified based on the Site. Sampling and analysis was conducted on the Site, targeting the eight (8) AEC. The PDSI identified fill material in most sample locations. The fill material generally appeared to be re-worked natural soils on the Site or imported quarry products. However, in one located a fragment of Asbestos Containing Material was identified on the surface of the fill.

The laboratory results showed concentrations of contaminants below the adopted criteria (residential land use with accessible soil), with the exception of:

- *TRH contamination exceeding the human and ecological criteria in several soil samples down-gradient from the AST bund and wash-bay; and,*
- *Elevated lead concentrations on the human health criteria, and ACM above the human health criteria in fill in one quarry fill location, TPQ05. Further assessment around TPQ05 was limited during the field investigations due to the presence of vegetation which was not permitted to be destroyed due to rehabilitation requirements of the quarry.*

The PDSI concludes the Site can be made suitable for residential land use if the following recommendations are implemented:

- Preparation and implementation of a Remediation Action Plan. The RAP would include:
  - Outline of the additional assessment required in the area of fill around TPQ05;
  - Outline of additional assessment of the workshop, AST bund and wash-bay footprints after demolition of the buildings/structures; and,
  - The remedial strategy for the identified contamination.
- Preparation of an Unexpected Finds Procedure (UFP) to be implemented during remediation, vegetation clearing, and earthworks for the subdivision.

The report states that the above recommendations could be dealt with as part of any future development application(s).

### 4.2.5 Aboriginal Cultural Heritage

The Mike Svikis Planning assessment states the following regarding the potential presence of Aboriginal Cultural Heritage within the Site:

*No site-specific assessment of the Aboriginal cultural heritage of the subject land has been provided. This would normally accompany a site-specific planning proposal. An AHIMS search was conducted on 3 May 2024 for Lot 1 DP 123302 with a 50-metre buffer (Figure 7). It shows that there is likely to be at least one*



*Aboriginal site located on or near the subject land. There is no evidence of contact with the LALC or any site assessment by a qualified archaeologist.*

**Response:**

An Archaeological Desktop Report has been prepared for the Site by McCardle Cultural Heritage Pty Ltd – refer to **Appendix F**. This assessment was conducted in accordance with *Heritage NSW's Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW*. The objectives of this assessment were as follows:

- *Undertake a search of the Aboriginal Heritage Management System (AHIMS) and other relative registers;*
- *Undertake research into the environmental and archaeological contexts of the Subject Site;*
- *Develop a predictive model of site location for the Subject Site; and,*
- *Provide a report detailing the above findings.*

This desktop Aboriginal Cultural Heritage assessment concluded there was a lack of accessible and reliable fresh water within the Site and its immediate surroundings, which suggests the area was mainly utilised for hunting and gathering rather than large-scale, long-term camping. It is important to highlight the fact that the disturbed areas of the Site have been significantly affected by almost complete land clearing, quarrying and subsequent rehabilitation activities. These activities have significantly disturbed the archaeological record by redistributing and removing cultural materials throughout the Site.

As concluded by the Archaeological Desktop Report 'no sites are expected to remain within the Proposed Rezoning Area, which generally aligns with the previous quarrying areas.' The assessment confirms this conclusion has been reached by four independent archaeologists, all of whom arrived at the same independent findings.

#### **4.2.6 Existing Uses, Approved Uses and Likely Future Uses of Land in the Vicinity of the Proposal**

The Mike Svikis Report states the following regarding the land within the vicinity of the Site:

*No land in the vicinity of the subject land is identified for future urban expansion. The most likely future use of adjacent land is environment protection land and limited areas of horticulture and grazing.*

**Response:**

As discussed in Section 3.1, the Site was not identified as an urban growth area within the North Coast Regional Plan 2041, nor is any land within the vicinity of the Site. Only one very small urban investigation area was identified in the NCRP for the Byron LGA. Given the acuteness of the housing crisis in the Byron LGA, this is considered to be a serious under provision.

It is therefore likely that significantly more greenfield land will be required to meet forecast demand for housing in Byron Bay/Suffolk Park.

It appears that the Site has previously been excluded from consideration based on a misinterpretation of the Settlement Planning Guidelines and the status of the Potential HEV map as discussed in more detail at **Section 4.1.1**.

It is considered that it would be an underutilization of valuable land which has access to all essential services and infrastructure if the Site is not developed for urban purposes.



The land within the Site which remains zoned C2 Environmental Conservation will be managed in perpetuity for conservation purposes by the Community Association that would be created with a future Community Title subdivision. In addition, the active open space areas within the proposed residential estate would be managed and maintained by the Community Association in perpetuity.

#### 4.2.7 Services and infrastructure

##### **Traffic Generation Impacts**

The Mike Svikis Planning assessment states the following regarding traffic generation impacts:

*Road access to the site is currently via a single point on a bend in Broken Head Road. Minimal information is provided regarding traffic generation and impacts from the site, or whether a second access proposed is practical or even possible given site topography and ecological constraints.*

##### **Response:**

This comment is incorrect, as the western quarry has two (2) existing access points which will both be utilised for the proposed residential development. A Traffic Impact Assessment (TIA) has been prepared by EMM Consulting Pty Ltd, to evaluate the potential traffic impacts of the proposed residential development on the surrounding transport network. Refer to **Appendix H**. The TIA assesses the existing site conditions including the existing road network, vehicular access points and traffic volumes, against the proposed impacts following the construction of the proposed residential development.

The proposed residential development incorporates two site access points, being a northern and southern access point via Broken Head Road. The northern access point will be the secondary access point and proposes a left-in/left-out arrangement with no right turn movements permitted. The southern access point will be the primary access point to the Site and proposes the upgrade of the existing give way intersection to a roundabout.

The intersections along Broken Head Road were modelled with the SIDRA Intersection 9.1 software modelling to determine results for baseline traffic volumes, and traffic volumes following the proposed residential development. The results of the modelling are provided within Appendix B of the TIA at **Appendix H**. The conclusion drawn from the results indicates that the additional traffic volumes from the proposed development will only have a minor impact at the existing intersections.

The proposed development will implement the following safety improvements to ensure that it integrates appropriately into the existing road network:

- *A reduction in the speed limit from 80 km/h to 60 km/h in the vicinity of the site.*
- *The installation of a roundabout at the Broken Head Road/Southern Site Access intersection, and the provision of a pedestrian refuge on the northern leg of the intersection.*
- *Enforcing a left-in/left-out arrangement at the Broken Head Road/Northern Site Access intersection, and the removal of vegetation to improve sight distances.*
- *Installation of a separated shared path for pedestrians and cyclists to improve connectivity in the locality.*

In addition, the following infrastructure improvements will be provided:





- *A basic left turn (BAL) or a widened shoulder is necessary to facilitate left turns from Broken Head Road south approach to the Northern Site Access.*
- *A shared path will be installed from the Northern Site Access to connect to the existing shared path on Clifford Street, Suffolk Park.*

The TIA concludes the transport infrastructure proposed as part of the proposed development has ‘*significant community benefits*’ and will integrate into the existing transport network while maintaining efficient traffic flow and enhancing traffic safety.

### **Shared Path Alignment**

The Mike Sviki Planning assessment provides the following commentary in regard to the proposed Shared Path Alignment:

*A shared path proposed to connect the subject land back to Suffolk Park is good for connecting this remote site to schools and neighbourhood shops, etc (Figure 9). However, it is not supported by any assessment of whether it can be achieved. By road reserve, this is a distance of approximately 1,000 metres. Parts of the road reserve in this section are narrow and heavily vegetated with variable topography such as cuttings and drop offs. It is not certain that the shared path can be constructed without considerable cost and ecological impact.*

### **Response:**

A Preliminary Ecological Assessment of the Shared Pathway Alignment (PEA) was undertaken by JWA Pty Ltd – refer to **Appendix G**. The proposed shared path alignment is approximately 950m in length and is to be constructed within the Broken Head Reserve. An inspection of the shared pathway site was carried out by JWA on 7<sup>th</sup> July 2024 to assess the following:

- Assessing the condition and mapping of vegetation communities;
- Searches for any threatened flora species listed within schedules of the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) and/or NSW Biodiversity Conservation Act 2016 (BC Act); and
- A brief fauna survey including searches for any threatened fauna species listed within the EPBC Act and/or BC Act, or evidence of their presence.

The PEA found the two separate Plant Community Types (PCTs), as identified within the BioNet Vegetation Classification System, within and adjoining the proposed works area. This is inclusive of the following:

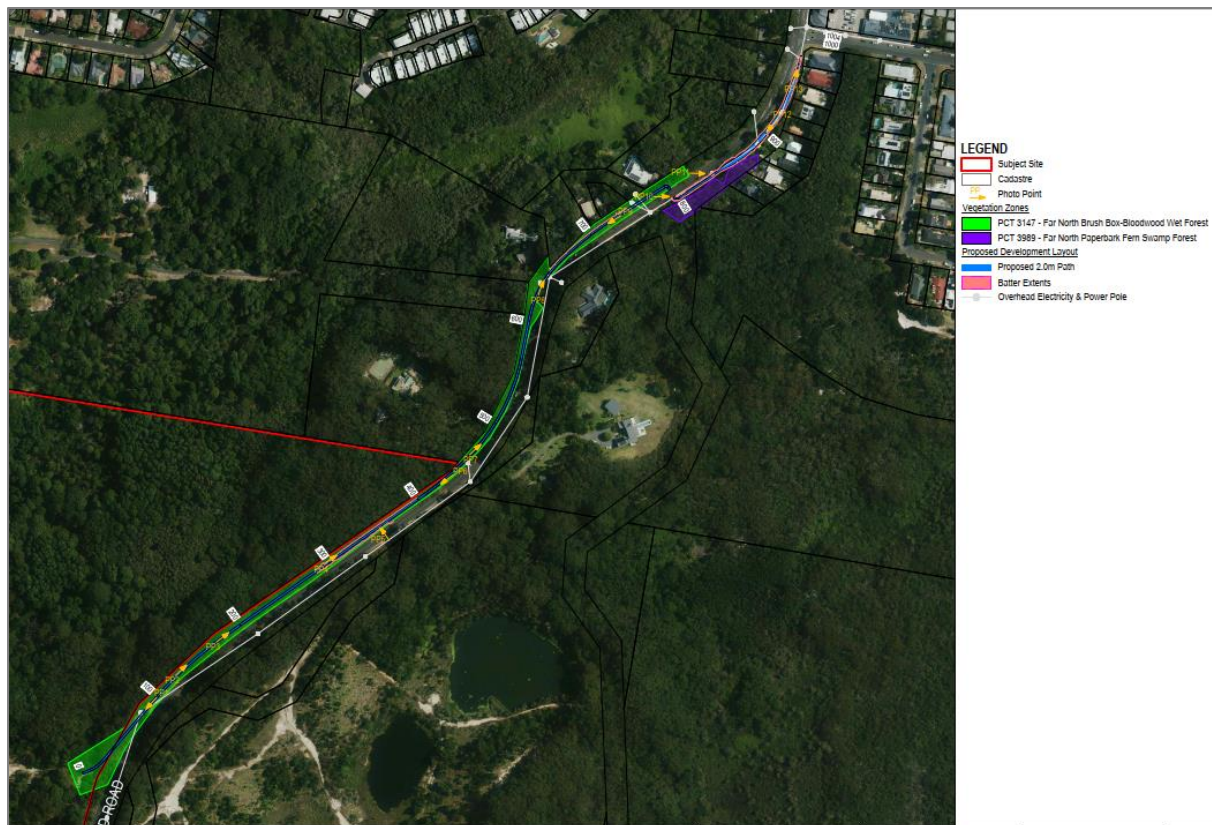
- PCT 3147 - Far North Brush Box-Bloodwood Wet Forest, along the entirety of the works area to the west of Broken Head Road; and
- PCT 3989 - Far North Paperbark Fern Swamp Forest, occurring adjacent to, but not within, the portion of the works area on the eastern side of Broken Head Road.

A depiction of the impact of the proposed shared path alignment is provided at **Figure 6**.





**Figure 6 Impact on Vegetation Zones (Source: Preliminary Ecological Assessment prepared by JWA Pty Ltd)**



The PEA estimates approximately 0.18 hectares of clearing required of PC3147 for the proposed shared pathway, based on the current concept design. The required offset credit obligations for this clearing were calculated using a BAM Calculator, including Ecosystem credit and Species credits. The potential additional offset obligations required as a 'worst case scenario' are contained within Table 1 of the Preliminary Ecological Assessment.

The PEA concludes, due to the linear nature and restricted area of impacts on native vegetation, with consideration of the test of significance outlined in Section 7.3 of the Biodiversity Conservation Act, the construction of the proposed shared pathway is not considered likely to result in a significant impact on any threatened species, populations or ecological communities, or their habitats. It is also likely that the offset obligations identified above could be significantly reduced following targeted surveys.

As included in the PEA, should a future development application (DA) be submitted for the shared pathway, the consent authority (Byron Shire Council) will have discretion over the measures required to avoid and minimise impacts in accordance with Section 7.13(6) of the NSW Biodiversity Conservation Act, and relevant planning framework.

The Preliminary Ecological Assessment confirms the shared pathway area does not contain preferred koala habitat as defined in the Byron Coast Comprehensive Plan of Management (BCCPoM), and the requirements of the BCCPoM do not apply.



## 5.0 Significant Benefits of the Planning Proposal

The PP and subsequent construction of the proposed development will deliver a number of significant benefits to the Suffolk Park locality and Byron Shire LGA. A summary of these significant benefits is provided below.

1. 20% of the proposed allotments will be transferred to Council for affordable housing to be developed by a Community Housing Provider or Council.
2. The majority of the C2 Environmental Management zoned land (approximately 20 Hectares or over 60% of the Site) will be managed in perpetuity by the Community Association for conservation purposes.
3. The Site can be readily serviced with reticulated water, sewer, telecommunication, stormwater drainage, electricity, etc without the need for major infrastructure works and expensive augmentation works, and allows for the efficient use of existing infrastructure
4. The open space/ active recreation areas within the residential community will be maintained in perpetuity by the Community Association (this will include playground equipment, picnic shelter and amenities, BBQ facilities, cycleways and pathways, etc.).
5. The construction works for the proposed subdivision and housing development will provide significant employment opportunities in the short to medium term.
6. The economic activity generated by the proposed development will significantly boost the local economy both during the construction phase and longer term as resident's expenditure occurs locally and regionally.
7. The financial viability of the businesses located within the local centre in Suffolk Park will be enhanced and it may become a more attractive centre as new businesses seek to be located within the centre.
8. An approximately one-kilometre combined cycleway/ pathway will be delivered within the Broken Head Road reservation which will add to the active transport infrastructure available for pedestrians and cyclists within the local community. This is consistent with Council's Bike Strategy for the LGA.
9. The construction of the proposed roundabout will improve traffic safety and extend the lower speed zone further to the south of Suffolk Park local centre.
10. The proposed development will add significantly to the housing supply in the Byron LGA which has been experiencing and continues to experience, a chronic shortage of housing and in particular affordable housing.



## 6.0 Conclusion

This Rezoning Review Request reaffirms the proposed Planning Proposal's general consistency with the State and Local strategic planning framework and demonstrates it meets the relevant statutory and non-statutory requirements. The further investigations summarised throughout this report, and contained within the relevant appendices, further reaffirms the Strategic and Site-Specific Merit of the PP.

The PP generally aligns with the themes, key priorities and objectives of the NCRP, and the Byron Local Strategic Planning Statement. The proposed amendments to the Byron Local Environmental Plan 2014 will enable the reuse of the Site for residential purposes, which will assist in addressing the housing crisis in Byron LGA by providing additional housing supply in a suitable location.

This report has considered the Site's constraints, land use history and potential use, relevant Council strategic planning documents, in addition to providing a direct response to Council's critique of the PP as found within Mike Svikis Planning assessment. The report confirms the Site's suitability for rezoning and redevelopment. While it is acknowledged that the Site contains some constraints, these constraints are recognised, and appropriate mitigation measures will be implemented where required.

The Site presents a realistic opportunity to provide much needed housing supply within the Byron LGA, which is experiencing an acute housing crisis, as evidenced in the IPC report (2023). It is therefore requested this Rezoning Review Report be submitted to the Northern Regional Planning Panel to consider the merits of the PP.





# Appendix A    Planning Proposal Submission

## Request for Rezoning Review

**PP-2024-679 (Byron Shire Council reference PP 26.2023.6.1)  
Lot 1 DP123302 and Lot 2 DP700806, Broken Head Road, Suffolk Park NSW  
2481**

**Winten Property Group**

SLR Project No.: 631.30868.00000

25 July 2024



# Appendix B Council Correspondence

## Request for Rezoning Review

**PP-2024-679 (Byron Shire Council reference PP 26.2023.6.1)  
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25 July 2024



# **Appendix C    Public Authority Correspondence**

## **Request for Rezoning Review**

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**Winten Property Group**

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25 July 2024



# Appendix D Contamination Report

## Request for Rezoning Review

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25 July 2024



# **Appendix E      Geotechnical Report**

## **Request for Rezoning Review**

**PP-2024-679 (Byron Shire Council reference PP 26.2023.6.1)  
Lot 1 DP123302 and Lot 2 DP700806, Broken Head Road, Suffolk Park NSW  
2481**

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25 July 2024



# **Appendix F    Archaeological Report**

## **Request for Rezoning Review**

**PP-2024-679 (Byron Shire Council reference PP 26.2023.6.1)  
Lot 1 DP123302 and Lot 2 DP700806, Broken Head Road, Suffolk Park NSW  
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# **Appendix G   Ecological Assessment of Shared Pathway Alignment**

## **Request for Rezoning Review**

**PP-2024-679 (Byron Shire Council reference PP 26.2023.6.1)  
Lot 1 DP123302 and Lot 2 DP700806, Broken Head Road, Suffolk Park NSW  
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# Appendix H    Traffic Impact Assessment

## Request for Rezoning Review

**PP-2024-679 (Byron Shire Council reference PP 26.2023.6.1)  
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