

Table 5 Appendix A – Settlement Planning Guidelines Assessment

- e. New greenfield areas should be located **adjacent to existing urban settlements** to minimise travel and promote sustainability.

Comment - Site is approx 800m from the nearest urban residential growth boundary of Suffolk Park and therefore does not satisfy this principle

Table 6 Appendix B – Urban Growth Variation Principles Assessment

- The variation needs to be consistent with the objectives and outcomes in the North Coast Regional Plan 2041 and should consider the intent of any applicable Section 9.1 Direction, State Environmental Planning Policy and **local growth management strategy**.

Comment – the site is not identified in an endorsed LGMS or LSPS.

- 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.

Comment – Site is approx 800m from the nearest urban residential growth boundary of Suffolk Park and is effectively an isolated new release area; hence does not satisfy this principle

Under the ‘Strategic Merit Test’ proposals will be assessed to determine if they:

- ✚ give effect to the **relevant regional plan outside of the Greater Sydney Region**, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment; or

Comment: PP does not satisfy the Settlement Planning Guidelines or Urban Growth Variation Principles (see above comments).

- ✚ demonstrate **consistency with the relevant local strategic planning statement or strategy** that has been endorsed by the Department or required as part of a regional or district plan or local strategic planning statement; or

Comment: the site is not identified in an endorsed LGMS or LSPS.

- ✚ respond to a change in circumstances that has not been recognised by the existing strategic planning framework.

Not Applicable – housing availability/affordability is a state-wide issue that is recognised within the current planning framework

<p>CONCLUSION: This Planning Proposal pre-empted the outcomes of Council’s RS review, is not identified in an endorsed LGMS or LSPS and is inconsistent with NCRP matters above. Therefore it has been returned on the Planning Portal.</p>
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20 April 2023

The Secretariat
Northern Regional Planning Panel

Winten Property Group
Level 20, 100 Arthur Street
North Sydney NSW 2060
PO Box 55
Cammeray NSW 2062
T +61 2 9929 5000
www.winten.com.au

ABN 99 001 113 015

RE: Return of Planning Proposal (PP- 2023- 625) by Byron Shire Council to Rezone Part of the Broken Head Quarry Site to Facilitate Residential Development

Please find attached the submission prepared by SLR Consulting Australia Pty Ltd (SLR), dated 12 April 2023, on behalf of the Winten Property Group Pty Ltd (Winten) providing relevant background information in response to Byron Shire Council returning the Planning Proposal (PP – 2023 – 625) which SLR uploaded to the NSW Planning Portal on Winten's behalf on 24 March 2023.

Winten is acting on behalf of the owners of the rehabilitated former Broken Head Quarry site, Crisjoy Pty Ltd, who have authorized the submission of this Planning Proposal and the offer to enter into a voluntary planning agreement (VPA) with Council to provide infrastructure to support this proposed rezoning.

Byron Council decided to return the Planning Proposal just six days later, on 30 March 2023. Council indicated that it could not support the Planning Proposal and provided correspondence (reproduced in the attached SLR submission), stating the reasons why Council was not in favour of what was sought to be achieved in the Planning Proposal.

Accompanying the Planning Proposal was an offer from Winten to enter into a Voluntary Planning Agreement (VPA) with Council to construct a combined pedestrian and cycle pathway from the subject land to the neighbourhood shopping centre at nearby Suffolk Park. As far as we can ascertain this offer was never considered by Council.

The legal advice attached to the SLR submission makes it very clear that the action taken by Council has no legal basis. A Council does not have the power to subvert the Planning Proposal process and in the process avoid the potential for a rezoning review by simply returning the Planning Proposal. Natural justice has been denied as Winten is left without the opportunity to have this Planning Proposal and the associated VPA formally considered by Council.

The Planning Proposal documentation highlights the crisis in land supply which is being experienced in the Byron Local Government Area (LGA) and in neighbouring LGAs following the devastating floods which impacted on the North Coast Region.

It also provides compelling evidence to support the residential rezoning of part of the Broken Head Quarry site and notes that the site can 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.

As the quarrying activities conducted on the land since the 1920s have resulted in the removal of areas of native vegetation, the quarried areas present a tremendous opportunity to develop much needed residential accommodation without the loss of important ecological values and boost the supply of residential land in close proximity to Byron Bay township.

Considering the above, Winten would be grateful if you would accept this application for a rezoning review and assist with the Lodgement of this submission in the Planning Portal to commence the formal process.

Please do not hesitate to contact me if you require any further information or clarification.

Kind Regards



William Sarkis
Development Director

Attached.

- 1) Response to Council reasons to return the PP by SLR dated 12 April 2023
- 2) Planning Proposal uploaded into the planning Portal on 24 March 2023

11 April 2023

Secretariat
Northern Regional Planning Panel

Winten Property Group
Level 20, 100 Arthur Street
North Sydney NSW 2060
PO Box 55
Camberay NSW 2062
T +61 2 9929 5000
www.winten.com.au

ABN 99 001 113 015

RE: REZONING REVIEW PP-2023-625 BROKEN HEAD ROAD, SUFFOLK PARK

We provide below an explanation as to why Byron Shire Council's purported attempt to "return" the above planning proposal should not be accepted as legitimate and should instead be taken to be written notification that it does not support the planning proposal, triggering a right of rezoning review, notwithstanding the fact that no fee has been paid (because no fee was requested by the Council).

We undertake to pay the applicable pre-gateway lodgement fee to Council promptly following receipt of an invoice for this fee.

Although current industry practice, and DPE policy, accepts the reality of developer-led planning proposals, the planning legislation itself does not establish a process for this.

Under the *Environmental Planning and Assessment Act 1979 (the Act)*, developers are not the proponent of planning proposals – the most they can do is "request" the planning proposal authority to exercise its plan making power, and section 3.32(3) of the Act provides that the planning proposal authority can require the developer to carry out studies and pay its costs. The Regulation then provides that if a council refuses such a request, it must, as soon as practicable, give the person written notice of the refusal.

The legislation is silent on how such a request is made. This is notably different to development applications, where the legislation is very prescriptive about the process. The legislation specifies that a development application must be lodged through the planning portal and provides that it will not be "lodged" until the application fee has been paid. The legislation also allows for the rejection of a development application on certain grounds and, where that occurs, provides an express right to seek a review of the decision to reject.

In contrast to the detailed process prescribed in the legislation for development applications, it is only DPE guidelines, planning circulars, and policies, that establish a process for developer-led planning proposals.

The LEP Making Guideline sets out the process for a rezoning review. It provides that the timeframe for making a rezoning review request begins "from the day the planning proposal is lodged with council on the Planning Portal and fees are paid". The Guideline does not provide

councils with the ability to “return” a planning proposal either before it is formally lodged by payment of a fee, or afterwards, as is permitted with the rejection of a development application.

Given the absence of any express right to “return” a planning proposal, and a corresponding right of review, the pre-emptive “return” of a planning proposal is not something that a Council can legitimately do. A Council cannot subvert the whole process and avoid a rezoning review by simply not requesting payment of a fee and purporting to not accept the lodgement of the request (as opposed to accepting its lodgement and then indicating its non-support for the proposal).

For these reasons, the Panel should accept lodgement of this rezoning review application.

Yours sincerely



Christina Renner
Legal Counsel
Accredited Specialist Planning and Environment

12 April 2023

631.30868.00000-L01-v0.1-20230412.docx

Byron Shire Council
PO Box 219
Mullumbimby NSW 2482

Dear Sir/Madam

Response to Byron Council Returning PP-2023-625

1 Introduction

This letter has been prepared by SLR Consulting Australia in response to Byron Shire Council (Council) returning the Planning Proposal Application (PP-2023-625), in relation to the proposed rezoning of part of the former Broken Head Quarry (BHQ), located on Broken Head Road Suffolk Park.

The Planning Proposal application was submitted through the New South Wales (NSW) Planning Portal on 24th March 2023. The application sought to rezone part of the former Broken Head Quarry site to facilitate the future residential development of the disturbed area of the site to create residential lifestyle living opportunities, close to the Byron town centre. The intended outcomes of the Planning Proposal are summarised below in **Table 1**.

Table 1 Intended Outcomes of PP-2023-625

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

Council returned the application via the Planning Portal on 30th March 2023. Council, in returning the application outlined the reasons for taking this action in an attached letter. A response to these reasons set out in the attached letter is provide below.

2 Response to Council's Contentions

Appendix A – Settlement Planning Guidelines Assessment

- *New greenfield areas should be located adjacent to existing urban settlements to minimise travel and promote sustainability*

Council Comment: *Site is approx. 800m from the nearest urban residential growth boundary of Suffolk Park and therefore does not satisfy this principle*

Response: It is understood that the intent of this principle is to have new greenfield developments strategically located close to existing urban areas to achieve multiple objectives including reducing the travel time for new residents to utilise the existing urban area's facilities and services and to take advantage of the cost savings in providing the necessary infrastructure (including water and sewer infrastructure) to service the new development. While it is acknowledged that the most northern lot boundary of the site is located approximately 350 metres (m) from the southern boundary of the Suffolk Park residential zoning, the objectives of encouraging new residential areas adjacent to existing urban settlements can still be achieved in this instance. To assist in creating a great place to live that supports and encourages an active, connected community the Planning Proposal is accompanied by an offer to enter into a draft Voluntary Planning Agreement (VPA) which would facilitate the construction of a shared bicycle and pedestrian path from the site through to Suffolk Park urban area along Broken Head Road. This VPA would assist in encouraging active transport use which would aid in promoting sustainable communities. As such, it is considered that the Planning Proposal is aligned with this principle.

Appendix B – Urban Growth Variation Principles Assessment:

- *The variation needs to be consistent with the objectives and outcomes in the North Coast Regional Plan 2041 and should consider the intent of any applicable Section 9.1 Direction, State Environmental Planning Policy and local growth management strategy.*

Council Comment – *the site is not identified in an endorsed LGMS or LSPS.*

Response: Although the site is not currently identified within the North Coast Regional Plan 2041 (Regional Plan) or the Byron Shire Residential Strategy (BSRS), Council released a discussion paper titled 'After the Floods', which outlined that the identified targeted urban growth areas within the BSRS are likely to continue to be impacted by flooding. As such, the stated dwelling capacity within the BSRS is likely to be revised downward, therefore, reducing the LGA's future dwelling capacity. The site is a rehabilitated former quarry which is situated outside of flood prone land and has ready access to existing services to meet the demands of a future residential population. Although not endorsed in the BSRS or the Byron Local Strategic Planning Statement (LSPS), this site is a key candidate for future urban growth.

- *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.*

Council Comment – *Site is approx 800m from the nearest urban residential growth boundary of Suffolk Park and is effectively an isolated new release area; hence does not satisfy this principle*

Response: The coastal strip is defined in the Regional Plan as any land to the east of the Pacific Highway. It is therefore agreed that the site is within the coastal strip. The above referenced principle uses the word “contiguous” to describe any proposed variation to urban growth area boundaries. The word “contiguous” means adjacent to or near. The land proposed to be rezoned for residential use is near the Suffolk Park urban area boundary. The above referred to principle also uses the word “minor”. The addition of less than 100 dwellings to the Suffolk Park urban area would be considered a minor addition given the current size of Suffolk Park. Due to the close proximity of the site to Suffolk Park, it is considered that it can function as a logical extension of this urban area. Furthermore, the proposed residential area is proposed on the part of the rehabilitated BHQ which holds minimal environmental values and significance as it has been heavily disturbed by quarrying.

Under the ‘Strategic Merit Test’ proposals will be assessed to determine if they:

- *give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment; or*

Council Comment: *PP does not satisfy the Settlement Planning Guidelines or Urban Growth Variation Principles (see above comments).*

Response: As discussed above and within the Planning Proposal Report, we believe that the Planning Proposal does satisfy the Settlement Planning Guidelines and Urban growth Variation Principles.

- *demonstrate consistency with the relevant local strategic planning statement or strategy that has been endorsed by the Department or required as part of a regional or district plan or local strategic planning statement; or*

Council Comment: *the site is not identified in an endorsed LGMS or LSPS.*

Response: As discussed above, although not identified within the BSRS of LSPS, the site is considered a key candidate for future urban residential growth, due to its proximity to existing services and facilities, reduced environmental impact, location outside of flood prone land and promotion of connected and active communities through the proposed pedestrian and bicycle path.

- *respond to a change in circumstances that has not been recognised by the existing strategic planning framework.*

Not Applicable – housing availability/affordability is a state-wide issue that is recognised within the current planning framework

Response: As acknowledged by Council, housing availability and affordability is a state-wide issue. However, based on Council’s conclusion in their discussion paper ‘After the Floods’ it is considered that Council’s BSRS is outdated as endorsed growth areas are now in need of revision as some of these growth areas are located in flood prone areas. The Planning Proposal provides a viable way forward to assist in the short term in meeting the ever increasing demand for future housing in the LGA.

3 Returning of the Planning Proposal Application

Notwithstanding Council contentions, which have been addressed above, Council's ability to 'return' the application is questioned. The NSW LEP Making Guidelines set out the process for a planning proposal and a rezoning review. The Guidelines do not provide Councils with the ability to "return" a planning proposal either before it is formally lodged by payment of a fee, or afterwards. Therefore, there is an absence of any express right for Council to return a Planning Proposal Application. The pre-emptive return of a Planning Proposal is not something that a Council can legitimately do.

Yours sincerely



STEPHEN O'CONNOR
Technical Director - Planning

Checked/ SO Authorised by: SO



Transaction ID: F305119166674

Description: Byron Shire

Status: Processed

Type: BPAY

Processing date: 11/05/2023

Total amount: \$10,000.00

1 debit, 1 credit

Date

Status History

11/05/2023 09:22:50 AM

Confirmed - Deanna Jurcevic

11/05/2023 09:28:04 AM

Authorised - ANNE HOLMES

11/05/2023 09:28:05 AM

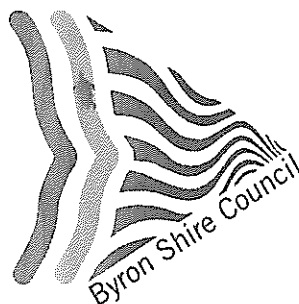
Processed

From account

BSB	Account Number	Account Name	Lodgement Reference	Amount
062000	200016472631	WOORONG PARK PTY LIMITED	Byron Shire Council	\$10,000.00

To biller

Biller Name	Biller Code	Customer Ref No.	Amount
BYRON SHIRE COUNCIL	747121	00000000010477016	\$10,000.00



Costs and Expenses Agreement for Stage 1 Pre-lodgement (PP-2023-625)

Byron Shire Council
&
Winten Property Group ✓

LOT 1 DP123302, BROKEN HEAD ROAD, SUFFOLK PARK

Date of Issue for Stage 1: 8 May 2023

Stage 1: Pre-Lodgement Meeting & Report (Payable prior to Council commencing work)	\$Payment	\$Cost (incl GST)⁽¹⁾
<ul style="list-style-type: none"> Review of proponent's Planning Proposal (preliminary) Agency consultation/referral Pre-Lodgement meeting with the proponent Preparation of Pre-Lodgement Report Any specialist advice and or pre-lodgement review of supporting studies (at additional cost) 		\$10,000 (Fixed Fee – non refundable)
SUBTOTAL		\$10,000
Less: payments received		—
TOTAL outstanding for Stage 1		\$10,000
<ul style="list-style-type: none"> The costs quoted are valid for a period of 21 days from date of issue: 17 May 2022 		

Stage 2: Pre-Gateway Assessment (Payable prior to Council acceptance of the Planning proposal on NSW Planning Portal)	\$Payment	\$Cost (incl GST)⁽¹⁾
<ul style="list-style-type: none"> Administrative Functions (internal) Planning proposal assessment Specialist review of supporting studies (at additional cost) + any further information requests Councillor workshop Preparation of report to Council Any required changes to the Planning Proposal pre-/post-Council's consideration (if applicable) Repackage planning proposal into Council template (BSC Gateway Version) Planning Portal assessment and Gateway request to DPE 		\$35,000.00 (Fixed Fee)
Additional costs & expenses incurred by Council in undertaking studies, peer reviews, referral to panels and other like matters. This may include, but is not limited to:		TBA ⁽²⁾

Stage 2: Pre-Gateway Assessment (Payable prior to Council acceptance of the Planning proposal on NSW Planning Portal)	\$Payment	\$Cost (incl GST)⁽¹⁾
<ul style="list-style-type: none"> Internal specialist review of stormwater strategy, ecological assessment and other supporting planning proposal documents. External reviews of supporting planning proposal documents and associated staff time — namely TIA & RSA, preliminary contamination and OSS assessment reports. Assistance with letter of offer to enter into a Voluntary Planning Agreement (VPA) and draft VPA review <p><i>Note: Staff Hourly Rate - \$180.00 per hour</i></p>		
SUBTOTAL		TBA
Less: payments received		\$ —
TOTAL outstanding for Stage 1		\$ —
<ul style="list-style-type: none"> <i>The costs quoted are valid for a period of 21 days from date of issue</i> <i>Amount shown is payable prior to Council acceptance of the Planning Proposal on the NSW Planning Portal</i> 		

Stage 3: Post- Gateway Determination (Payable post receipt of Gateway and prior to public exhibition)	\$Payment	\$Cost (incl GST)⁽¹⁾
<ul style="list-style-type: none"> Satisfaction of Gateway requirements (eg. additional studies, agency engagement, etc) Public exhibition Assessment of submissions and report to Council, plus any required changes pre-/post-Council's consideration Finalisation of the planning proposal following Council resolution. This may include, but is not limited to: <ul style="list-style-type: none"> - Liaising with Parliamentary Counsel's Office (PCO) – drafting of instrument - Liaising with Dept. Planning, Industry & Environment for making of the plan - Preparation of LEP Maps 		\$20,000.00 (Fixed Fee)
Additional costs & expenses incurred by Council in undertaking any further studies, peer reviews, referral to panels and/or other like actions arising from Council report in Stage 3.		TBA ⁽²⁾
SUBTOTAL Stage 2		\$ —
Less: payments received and/or unused balance carried over from stage 1		\$ —
TOTAL outstanding for Stage 2		\$ —

Acceptance of Costs and Expenses Agreement

Signature: 

Date: 8/5/23.

- (1) As per Council's 2022/23 Fees and Charges
- (2) Costs quoted are estimates only and subject to change depending on actual work undertaken.
Should the quoted figures change, Council will refund or charge the difference.

From: Caras, Alex <acaras@byron.nsw.gov.au>

Sent: Monday, June 17, 2024 2:13 PM

To: 'Bill Sarkis' <bsarkis@winten.com.au>; Stephen O'Connor <soconnor@slrconsulting.com>

Cc: Christina Renner <crenner@winten.com.au>; Burt, Shannon <sburt@byron.nsw.gov.au>

Subject: Planning meeting 13 June 2024 - Report 13.5 26.2023.6.1 Planning Proposal for Lot 1 DP123302, Broken Head Road, SUFFOLK PARK

Hi Bill / Stephen,

I refer to the attached letter which was communicated to councillors prior to consideration of the above [Planning Report](#). Following consideration of this planning proposal, Council resolved as follows ([Res 24-271](#)):

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 13.5 **26.2023.6.1 Planning Proposal for Lot 1 DP123302, Broken Head Road, SUFFOLK PARK**

File No: I2024/761

24-271 Resolved that:

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.
2. Both the applicant and the Department of Planning, Housing and Infrastructure be notified of Council's decision to not support the planning proposal.
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. (Westheimer/Dey)

The Planning Portal has been updated to reflect the above resolution of Council. I trust this information is of assistance.

Regards,
Alex

Alex Caras | Land Use Planning Coordinator | BYRON SHIRE COUNCIL

P: [+61 2 6626 7097](tel:+61266267097) | E: acaras@byron.nsw.gov.au

Bundjalung Country, PO Box 219, Mullumbimby NSW 2482 | www.byron.nsw.gov.au

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Byron Shire Council acknowledges the Traditional Owners of this land, the Arakwal people, the Minjungbal people and the Widjabul people of the Bundjalung Nation, and pays our respects to Elders past and present.

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From: Bill Sarkis <bsarkis@winten.com.au>
Sent: Wednesday, June 12, 2024 5:31 PM
To: Caras, Alex <acaras@byron.nsw.gov.au>
Cc: Scott, Noreen <NScott@byron.nsw.gov.au>; 'soconnor@slrconsulting.com' <soconnor@slrconsulting.com>; Christina Renner <crenner@winten.com.au>
Subject: CM: RE: Planning meeting 13 June 2024 - Report 13.5 26.2023.6.1 Planning Proposal for Lot 1 DP123302, Broken Head Road, SUFFOLK PARK

Hi Alex,

To assist with Council's determination of our submitted Planning Proposal for the Broken Head Quarry residential Rezoning, we now submit our response to the criticism raised in the merit assessment for further consideration.

2

Please refer to the attachment for our detailed response.

Based on this response it is requested that Council defer its determination until we provide the additional information that Council considers necessary.

Council's favourable response will be appreciated.

Regards

Bill Sarkis | Winten Property Group



T: 02 9929 5000 | www.winten.com.au
Level 20, 100 Arthur Street | North Sydney NSW 2060
PO Box 55 | Cammeray NSW 2062

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From: Scott, Noreen <NScott@byron.nsw.gov.au>

Sent: Tuesday, June 4, 2024 5:03 PM

To: 'soconnor@slrconsulting.com' <soconnor@slrconsulting.com>; Bill Sarkis <bsarkis@winten.com.au>

Subject: Planning meeting 13 June 2024 - Report 13.5 26.2023.6.1 Planning Proposal for Lot 1 DP123302, Broken Head Road, SUFFOLK PARK

Importance: High

Attention Bill Sarkis – Winton Property Group

Attention Stephen O’Conner SLR Consulting Australia

Report 13.5 26.2023.6.1 Planning Proposal for Lot 1 DP123302, Broken Head Road, SUFFOLK PARK,

A report has been prepared for the Council at the Planning meeting on Thursday 13 June 2024. The meeting is scheduled to begin at 11.00am.

You can read the report on Council’s website at [Agenda of Ordinary \(Planning\) Meeting - Thursday, 13 June 2024 \(infocouncil.biz\)](https://www.byron.nsw.gov.au/infocouncil/biz)

You or a representative can address the Councillors during public access. To do this register on Council’s website at <https://www.byron.nsw.gov.au/public-access>. If you need to make further arrangements phone 02 6626 7171 or email councillor.support@byron.nsw.gov.au. All requests need to be made by 12noon on the day before the meeting.

If you can’t be at the meeting, you can participate in public access via Council's webinar platform or by providing a speech in advance in written or video format. The platform includes an option for participants to phone in from a mobile or landline where their internet connection is limited. Your speech will be presented to the meeting during the public access session.

Additionally, Council meetings are livestreamed on our website. This is a great way to participate in the meeting without having to be there in person. Simply visit <https://www.byron.nsw.gov.au/livestream> at the time of the meeting to watch.

Kind regards

Noreen Scott

**Noreen Scott | Executive Assistant Sustainable Environment and Economy Director |
BYRON SHIRE COUNCIL**

P: [+61 2 6626 7062](tel:+61266267062) | E: NScott@byron.nsw.gov.au

Bundjalung Country, PO Box 219, Mullumbimby NSW 2482 | www.byron.nsw.gov.au

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Byron Shire Council acknowledges the Traditional Owners of this land, the Arakwal people, the Minjungbal people and the Widjabul people of the Bundjalung Nation, and pays our respects to Elders past and present.

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12 June 2024

Winten Property Group
PO Box 55
North Sydney NSW 2060

Attention Mr Bill Sarkis

Dear Bill,

Response to Criticisms raised in Merit Assessment of Planning Proposal for Broken Head Quarry Residential Rezoning

1 Introduction

This letter has been prepared by SLR Consulting Australia (SLR) in response to the criticisms raised in the independent report prepared by Mike Svikis Planning which was commissioned by Byron Shire Council (Council) in relation to the Planning Proposal (PP-2023-625) which proposes rezoning of part of the former Broken Head Quarry (BHQ), located on Broken Head Road Suffolk Park, to accommodate future residential development.

The Planning Proposal was submitted through the New South Wales (NSW) Planning Portal on 24th March 2023. The Planning Proposal seeks to rezone part of the former Broken Head Quarry site to facilitate the future residential development of the disturbed area of the site to create residential lifestyle living 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 consistent with the C2 Environmental Conservation zoning of this land. The intended outcomes of the Planning Proposal are summarised in **Table 1**.

It is important to emphasize that the original intention was to develop the site for rural residential development. As explained in the Planning Proposal, the site was identified in 2016 in the Draft Byron Rural Land Use Strategy as a potential site 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.

Table 1 Intended Outcomes of PP-2023-625

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

A response to each of the major criticisms raised in the Mike Svikis Planning report is provided in the following section.

2 Response to Criticisms

- *Page 5 “Council has no plans to provide infrastructure and services to the subject land which is currently not connected to reticulated water and sewerage.”*

Response: The Planning Proposal 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 the subject of the Planning Proposal. 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 Planning Proposal 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.

- *Page 5 “It is also not located adjacent to the southern boundary of the Suffolk Park urban area. The proposed site entrance is approximately 750 metres from the nearest residential zone.”*

Response: There is no strict requirement under the North Coast Regional Plan 2041 (NCRP) for new residential land to be adjacent to an existing urban area. 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 mandatory language, but the objective behind the principle is also explained – it is *to minimise travel and promote sustainability*. It is easy to imagine circumstances where the objective is achieved, notwithstanding the fact that the greenfield area is not directly adjacent to existing urban land.

This is consistent with the text on page 17 of the NCRP which states that *“new greenfield areas...should be located adjacent or near to existing urban areas to encourage efficient use of land and infrastructure”*.

In this case, the northern most part of the development footprint that would be rezoned R2 under the Planning Proposal is approximately 400m south of the southern portion of the residential zoning in Suffolk Park.

As can be seen in **Figure 1**, approximately half the site the subject of this Planning Proposal is within a one kilometre radius of the Suffolk Park neighbourhood centre. The balance of the site is just outside this radius as is much of the northern portion of the Suffolk Park urban area. A one kilometre distance is a distance that can be walked in approximately 15 minutes. Cyclists can travel this distance in much less time than 15 minutes. The draft Voluntary Planning Agreement (VPA) accompanying the Planning Proposal 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.

Figure 1 One Kilometre Radius from Suffolk Park Neighbourhood Centre

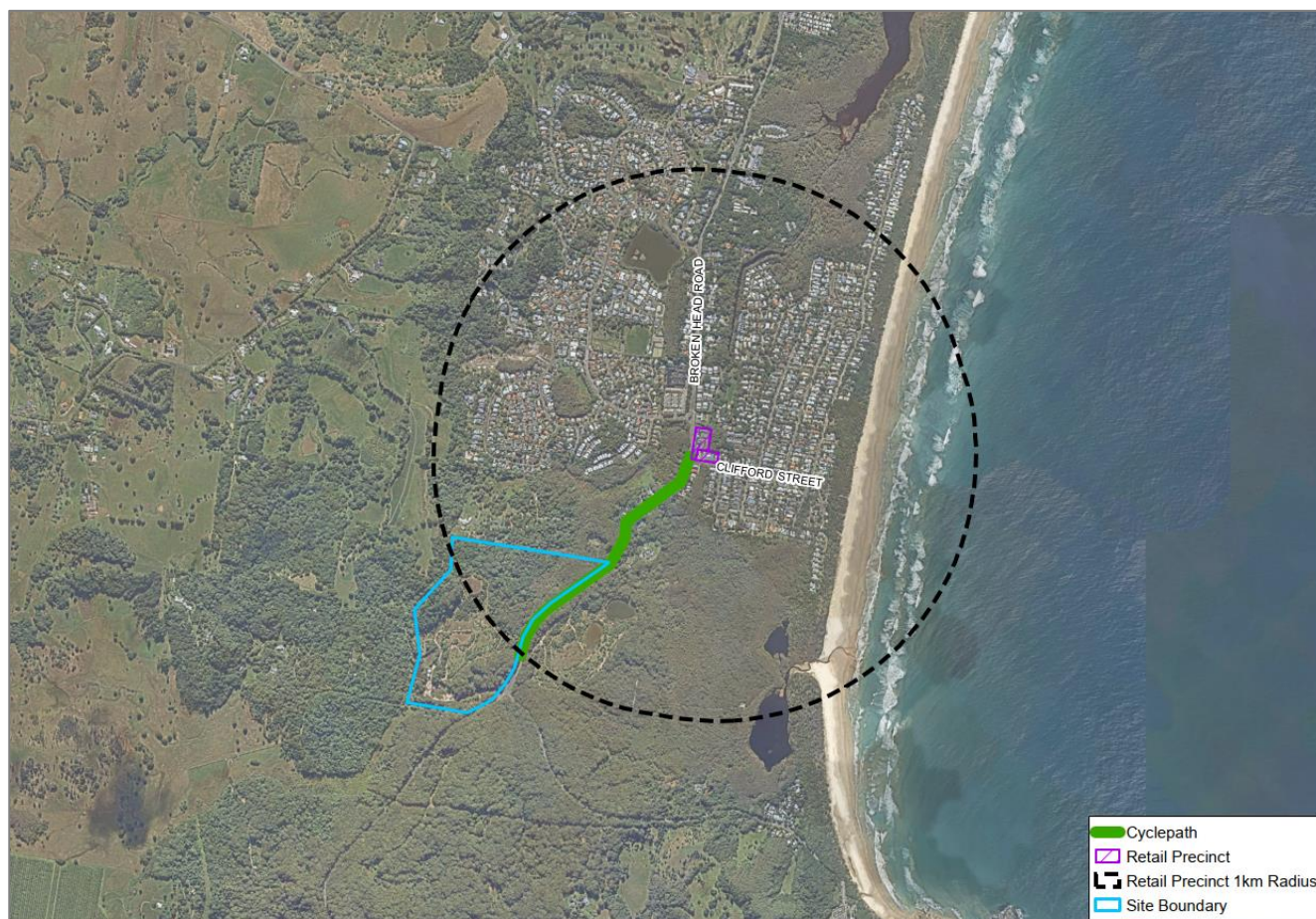


Photo 1 Flower Shop and IGA on Clifford Street Suffolk Park Neighbourhood Centre



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



- *Page 7 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."*

Response: Although 56% of the potential development site does contain 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 a mere 18% of the area proposed to be rezoned R2. 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.

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 Planning Proposal 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 2017.

- *Page 14 "Given the extent of earthworks undertaken for rehabilitation, it is unclear if the site is suitably stable and in an appropriate landform to be used for residential development."*

Response: Only minor earth works were undertaken in isolated areas of the site, essentially to manage stormwater and batter stability to support the successful planting program. Extensive earthworks were not undertaken.

The area proposed to be rezoned to for residential development is relatively flat and has a sand base. The former sand quarry is an ideal site for residential development as it does not contain steep slopes and potentially unstable or reactive soils. A geotechnical report would be provided as part of any future development application, however if Council has concerns about the stability of the site, such a report could be prepared in a relatively short timeframe. This information could be made available to Council prior to seeking a gateway determination.

- *Page 15 "Bushfire hazard is a significant issue for this site. Although it can be addressed, this essentially removal and management of all vegetation in the 11.8 ha proposed residential zone."*

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."

What the Mike Sviki Planning Report does not 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 Planning Proposal, has incorporated the requirements of PBP 2019.

As noted above, only very minor earthworks were undertaken as part of the rehabilitation works, and 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 purposes, this is not the same as wholesale clearing of vegetation.

- *Page 16 "Council has no information to determine if this land is contaminated or not. This is a significant constraint to residential rezoning that would need to be before any rezoning could proceed."*

Response: The disturbed areas of the site are in the process of being extensively rehabilitated. As is the case with the geotechnical information referred to above, a preliminary site contamination report could be prepared and provided to Council prior to the Planning Proposal being sent to gateway.

- Page 17 “No site- specific assessment of the Aboriginal cultural heritage of the land has been provided.”

Response: As almost the entire 11.8 hectare portion of the site that is proposed to be rezoned R2 has been cleared and quarried for sand since the 1920s, any Aboriginal sites would have been destroyed during the quarrying process. This is the reason that a site- specific Aboriginal Cultural Heritage report was not submitted with the Planning Proposal.

3 Major Omissions in the Mike Svikis Planning Report

In addition to failing to mention a number of important matters such as the response received from the RFS and the conclusions reached in the BDAR as outlined in the preceding section, there is one major omission in the Mike Svikis Planning report that Councillors need to be made aware of. When considering whether a Planning Proposal has Strategic Merit one of the key criteria to be assessed is whether the Planning Proposal responds to a change in circumstances that is not recognised by the existing Planning Framework. This criteria is addressed at page 8 of the Mike Svikis Planning report in the following terms.

“Key government priorities are outlined in documents such as the NCRP and other government publications. It is acknowledged that there is a shortfall of affordable housing and land for housing generally in Byron Shire. This is a key matter that is addressed in the Byron Shire Residential Strategy 2041.”

Firstly, it needs to be stressed that the Byron Shire Residential Strategy 2041 has not, as yet, been endorsed by the NSW government. As Council is well aware a previous version of this Strategy, which was adopted by Council in 2020, was not endorsed by the NSW government. 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.

Secondly, there is no mention of the National Housing Accord which documents the agreement reached between the Commonwealth government and all States and Territories that some 1.2 million well located homes across Australia must be delivered in the five years between June 2024 to June 2029. The NSW share of these new homes is 377,000 well located homes.

Since the Mike Svikis Planning report was finalised, the NSW government has announced a raft of measures to help deliver the homes required in NSW over the next 5 years including ambitious targets for 43 Councils in Greater Sydney, the Illawarra and Hunter Region. Regional NSW has been allocated 55,000 new homes which aligns with the expected demand and growth for new homes in places like Byron Shire.

The National Accord includes a target for 10,000 affordable homes across the nation by June 2029. NSW has a target of at least 3,100 new affordable homes and the NSW government is encouraging Councils to take measures to deliver affordable homes in their respective local government areas.

The VPA offer associated with the Planning Proposal is entirely consistent with this focus on the delivery of affordable housing and housing in general in the Byron Shire to help deliver the thousands of new well located homes need in regional NSW.

4 Positive Aspects of the Planning Proposal

There is little in the way of recognition in the Mike Svikis Planning report of the public benefit of the provision of land within the proposed residential area being set aside for affordable housing as part of the VPA offer. It is widely acknowledged that there is a chronic shortage of affordable housing in the Byron Shire local government area. Some 20% of the allotments within the proposed residential estate would be transferred to Council for affordable housing under the VPA offer.

There is no acknowledgement in the Mike Sviki Planning report of the benefit to Council and the community of the land within the site which is zoned C2 Environmental Conservation being managed in perpetuity for conservation purposes by the Community Association that would be created with a future Community Title subdivision. Nor is there any reference in the report to the benefit to Council of not having to maintain the active open space areas within the estate as these would be maintained by the Community Association.

The Council officers report, which largely relies on the Mike Sviki Planning report, does acknowledge that the Planning Proposal has been prepared in accordance with the LEP Plan Making Guidelines (2023).

As the Council officers report relies so heavily on the Mike Sviki Planning report, Councillors need to be made aware of the various matters raised above in order to have a fuller understanding of the Planning Proposal. As the Local Plan Making Authority, Council can defer further consideration of the Planning Proposal until any additional information Council requires is made available. This could include a geotechnical report, a preliminary site contamination report, or any other information Council deems necessary prior to sending the Planning Proposal for gateway determination.

5 The Strategic Merit Test

The Planning Proposal is generally consistent with the NCRP, particularly the general objective for housing. There is an acute housing crisis in the region and delivering housing supply is a priority issue for NSW across all levels of Government.

The provision of additional housing in this location has strategic merit. The provision of affordable housing has strategic merit and is in the public benefit.

6 The Site-Specific Merit Test

To the extent that there are any unresolved concerns about the site specific merits of the Planning Proposal, I believe that these can be addressed by the provision of further information.

As stated above the Planning Proposal is generally consistent with the NCRP and State government policy imperatives. The unendorsed Byron Shire Residential Strategy 2041 appears to have excluded the land based on perceived site-specific constraints, I strongly recommend that additional information be provided to allay concerns about site specific issues.

Yours sincerely



STEPHEN O'CONNOR
Technical Director - Planning

Checked/ SO
Authorised by: SO



Merit Assessment of Planning Proposal for Former Broken Head Quarry, Broken Head Road

Prepared for Byron Shire Council
by MikeSvikisPlanning
7 May 2024

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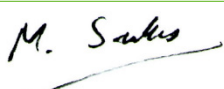
ABN 84638645183

3 Gibingbell Close Ocean Shores 2483

Mob: 0447 805 871

Ph: (02) 6680 1003

E: mikesvikisplanning@bigpond.com

Rev No	Author	Approved for issue	
		Signature	Date
A	Mike Svikis		7 May 2024

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1 Background

In March 2023, Byron Shire Council received a planning proposal requesting that it rezone land on the western side of Broken Head Road to permit residential development (Appendix A). After early consultation with Council and the NSW Biodiversity Conservation Division, the applicant opted to prepare a Biodiversity Development Assessment Report. This report was submitted to Council on 28 March 2024, with a request that the planning proposal be reported to Council.

Council then engaged Mike Svikis Planning to undertake an independent review of the merit of this application (and supporting information). This merit assessment can then be reported to Council so that it may make a decision as to whether the planning proposal is supported.

The structure of this assessment report is consistent with the Strategic Merit Test and Site-specific Merit Test as outlined in the Department of Planning and Environment *Local Environmental Plan Making Guideline* (August 2023). The Department defines strategic and site-specific merit as follows:

Strategic merit *A proposal's demonstrated alignment with the NSW strategic planning framework or current government priority. When an LEP is made or amended through the planning proposal, it must demonstrate strategic merit having regard to the criteria in Section 2 of [the Local Environmental Plan Making Guideline].*

Site-specific merit *A proposal's demonstrated environmental, social and economic impact on the site and surrounds and ability to be accommodated within the capacity of the current and/or future infrastructure and services. When an LEP is made or amended through the planning proposal, it must demonstrate site-specific merit by having regard to the criteria in Section 2 of [the Local Environmental Plan Making Guideline].*

1.1 Objective of this Report

The objective of this report is to determine if the planning proposal passes the strategic merit test and the site-specific merit test.

1.1.1 Strategic Merit Test

- Is the planning proposal consistent with the relevant regional or subregional strategy? This would include the *North Coast Regional Plan 2041*;
- Is the planning proposal consistent with a relevant local council strategy, endorsed by the Department? This would include Byron LSPS and the *Byron Shire Residential Strategy 2041* (adopted 14 March 2024, but not yet endorsed) or previous residential strategies;
- Does the planning proposal respond to a change in circumstances that has not been recognised by the existing planning framework? Such as:
 - Key infrastructure investment;
 - Key government priorities;
 - Changes to population and demographic trends such as housing and jobs.

Passing the strategic merit test is fundamental to supporting the planning proposal. Where a planning proposal fails to adequately demonstrate strategic merit, the relevant planning authority is unlikely to progress the proposal, despite any site-specific merit it may have.

1.1.2 Site-specific Merit Test

This requires an assessment of site-specific merit and compatibility with surrounding land uses, having regard to:

- the natural environment (including known significant environmental areas, resources or hazards);
- the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal;
- the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.

1.2 Subject Land

The subject land is described as the old Broken Head Quarry site on the western side of Broken Head Road. The old quarry on the eastern side is not part of this planning proposal. The subject land is described as Lot 1 DP 123302 and Lot 2 DP 700806, Broken Head Road. The combined area of these two lots is approximately 32.7 hectares.

Figure 1: Aerial photograph of the subject land with cadastre



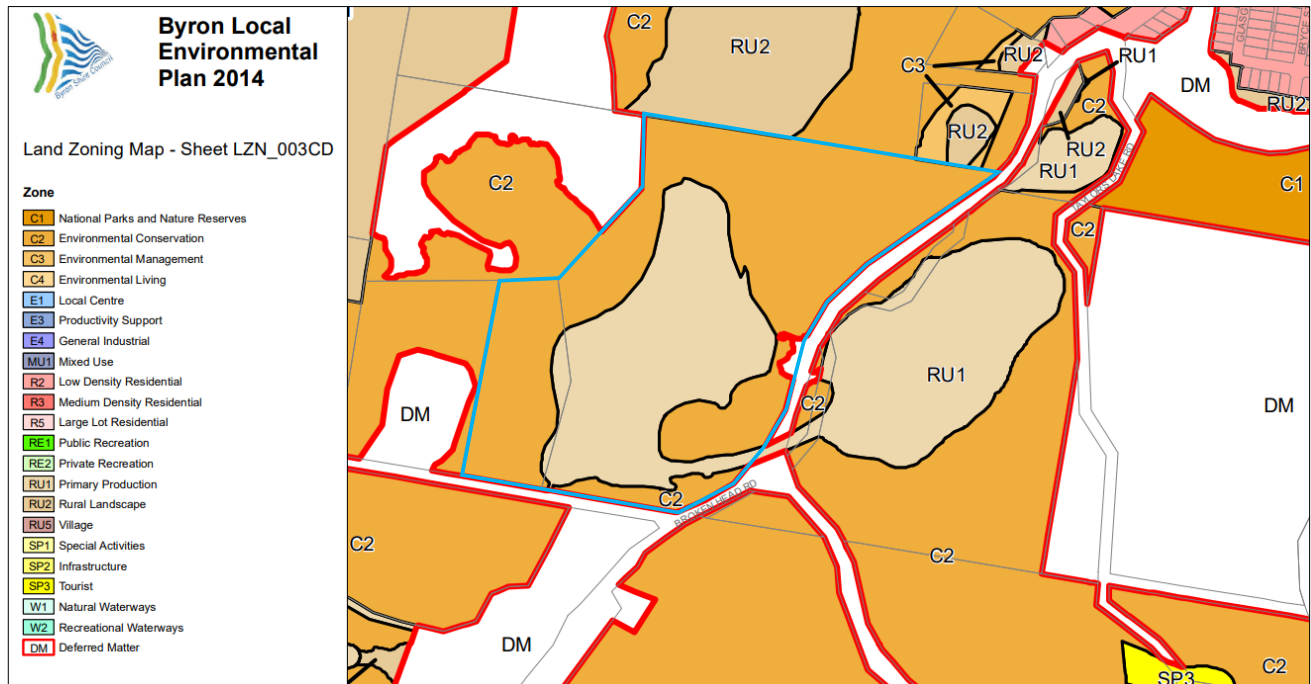
Source: Byron GIS

1.3 Existing Planning Controls

The subject land is zoned partly RU1 Primary Production, partly C2 Environmental Conservation and partly Deferred Matter under *Byron Local Environmental Plan 2014* (BLEP 2014) (Figure 2). It has a 40-hectare Minimum Lot Size and a maximum Building Height of 8.5 metres. No FSR applies to the land. The small Deferred Matter area is zoned Rural 7(d) Scenic Escarpment zone under *Byron Local Environmental Plan 1988* (BLEP 1988).

Adjoining land is variously zoned C2 Environmental Conservation and RU2 Rural Landscape (BLEP 2014) and Deferred Matter (BLEP 1988).

Figure 2: Existing zones under BLEP 2014



2 Planning Proposal

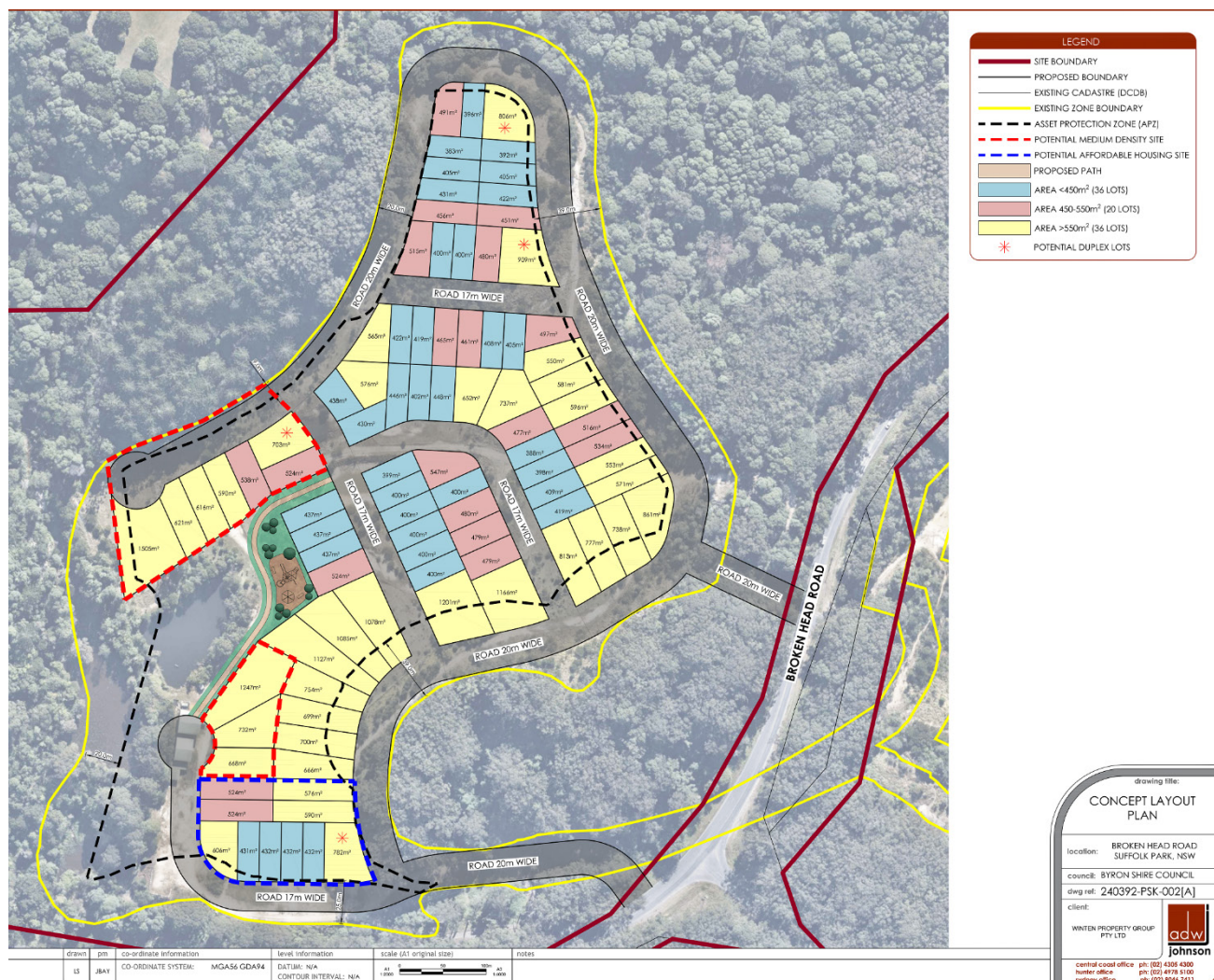
The primary objective of this planning proposal (PP) is to amend Byron LEP 2014 to rezone the RU1 Primary Production portion of the site to R2 Low Density Residential. This affects an area approximately 11.8 hectares in size. It will also change the Minimum Lot Size from 40 hectares to 400 m², and apply a maximum Floor Space Ratio of 0.6:1. The PP is provided as Appendix A.

The applicant has also offered a voluntary planning agreement (VPA) that includes the construction of a shared pedestrian and cycle path linking the site to Suffolk Park, plus an offer to dedicate 20% of lots to Council to be used for the purpose of affordable housing.

Technical reports supplied with the PP include an infrastructure capacity report (water and sewer), a strategic bushfire study and a biodiversity development assessment report (BDAR).

A preliminary concept plan indicates possible road and intersection locations, and a lot layout indicating approximately 92 residential lots of various sizes between 383 m² and 1,505 m² (Figure 3). This concept is not approved and is indicative of what might occur on the site if it were rezoned.

Figure 3: Concept layout for future residential use of the subject land



3 Strategic Merit

The following assessment is a strategic merit test based on the Department of Planning and Environment *Local Environmental Plan Making Guideline* (August 2023).

3.1 Is the planning proposal consistent with the relevant regional or subregional strategy?

No. The *North Coast Regional Plan 2041* (NCRP) was released in December 2022, and remains the current regional strategy for Byron Shire (and surrounding LGAs). The NCRP states (on page 17) in relation to housing:

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.

Council has prepared a residential strategy to address the supply of residential land in its LEP. It is currently being considered for endorsement by the Department. Once endorsed, LEP amendments may be expected to follow. It is not expected that LEP amendments would precede the strategy process.

The supporting NCRP text (on page 17) states:

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 400m²) 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.

The NCRP further states (on page 18):

Strategy 1.2

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

Strategy 1.3

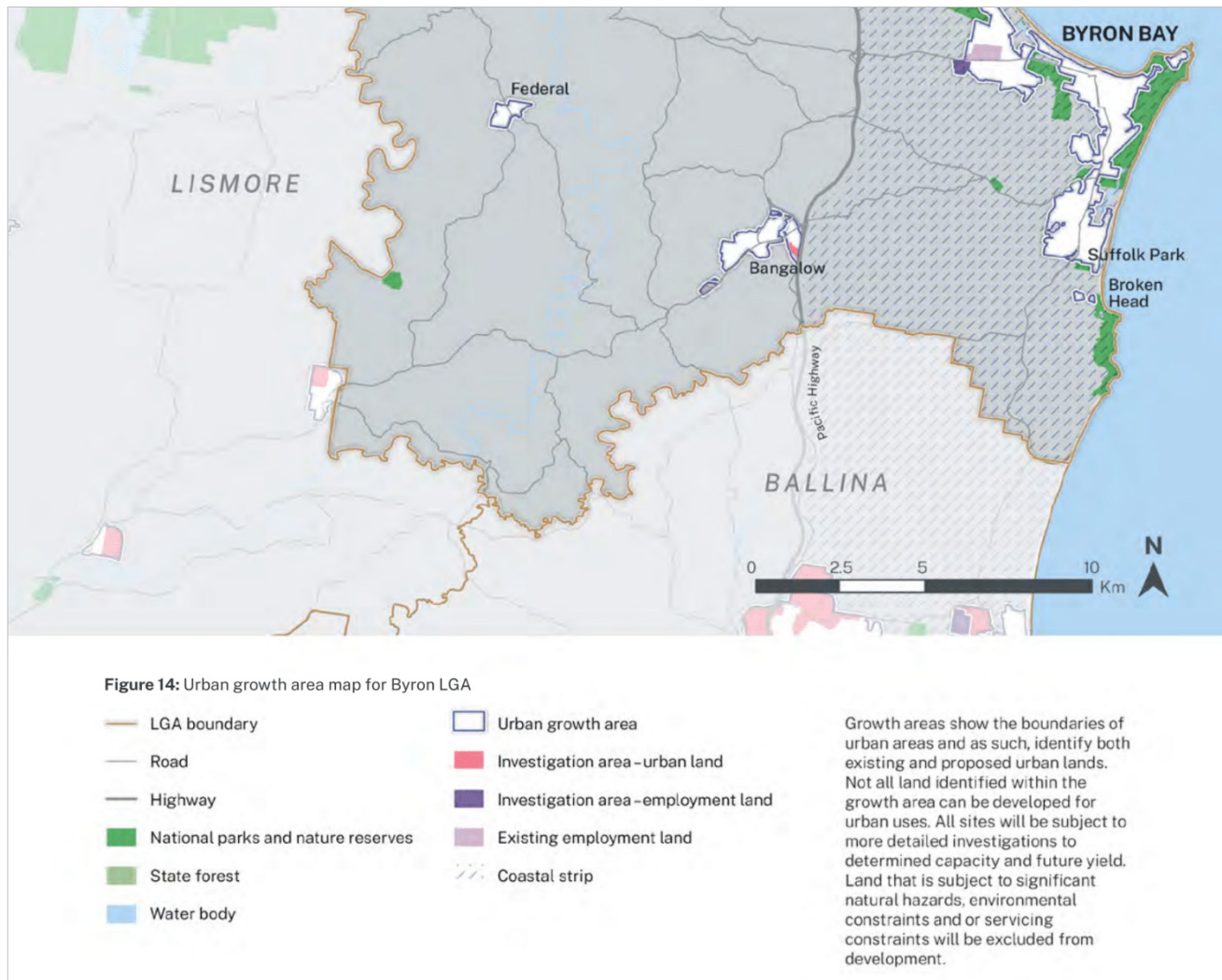
Undertake infrastructure service planning to establish land can be feasibly serviced prior to rezoning.

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.

The NCRP includes a map (on page 89) that shows the existing urban growth area and urban land investigation areas. The subject land is not included in either of these areas. It is also not located adjacent to the southern boundary of the Suffolk Park urban area. The proposed site entrance is approximately 750 metres from the nearest residential zone. Council has no plans to provide infrastructure and services to the subject land, which is currently not connected to reticulated water or sewerage.

Figure 4: Urban growth area map



Source: NCRP

The NCRP states (on page 23) in relation to biodiversity:

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.*

A BDAR has been undertaken and it concludes that the proposed residential development will result in unavoidable impacts on 2.10 hectares of intact native vegetation, 0.94 hectares of regrowth vegetation and 3.62 hectares of planted native vegetation. 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.

The development would assist Council to meet its zoned land for housing target in its LEP. If 20% of it is dedicated to Council for affordable housing, this would be a positive outcome.

However, the subject land is not an urban growth area or urban land investigation area. It is not adjacent or contiguous with an existing urban area. It is not a minor matter. It is not proposed by Council to be serviced with reticulated water and sewerage. It will affect native vegetation across a large part of the site, and will result in a new urban community entirely surrounded by substantial areas of high biodiversity native vegetation.

The PP is not consistent with parts of the *North Coast Regional Plan 2041* and the inconsistencies have not been justified.

It is also notable that the land owners made representations to the (then) Department of Planning and Environment in 2017, and were specifically advised that “*the Department wishes to advise Leadshine Pty Ltd that the North Coast Regional Plan 2036 does not identify the quarry as a future urban growth area*” (Appendix B).

3.2 Is the planning proposal consistent with a relevant local council strategy?

No. In this case, there are a number of relevant local strategies and the subject land is not identified for residential development in any of them.

3.2.1 Byron Shire Residential Strategy 2041

This strategy was prepared, exhibited and then adopted by Council in December 2020; however, it was not endorsed by the State government. A peer review was undertaken and a Housing Options Paper was prepared and exhibited. A revised residential strategy was prepared and adopted by Council on 14 March 2024.

The subject land was considered for inclusion in the draft strategy but ruled out by Council decision on 20 June 2020 (Res 20-276) “due to inconsistency with the North Coast Regional Plan Settlement Guidelines and the policies and directions contained in the Byron Shire Draft Residential Strategy.” In particular, the report noted that the site was affected by a range of primary constraints, is isolated from existing urban areas, and is not connected to water and sewer infrastructure.

The strategy includes a wide range of infill and greenfield investigation areas across all parts of Byron Shire.

The subject land is not identified for residential purposes in the adopted *Byron Shire Residential Strategy 2041*.

It should be noted that the subject land was not included in the *Byron Bay and Suffolk Park Settlement Strategy 2002* and was also not included in the *Byron Residential Development Strategy 1993* (that preceded the 2002 version).

3.2.2 Byron Shire Local Strategic Planning Statement 2020–2036

The Local Strategic Planning Statement (adopted and approved in 2020) plans for the Byron community's economic, social, environmental and leadership needs from a strategic land use planning perspective in the 16-year period to 2036. In relation to land use and accommodating future residential growth, the LSPS states (on page 36):

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' area to infill development. The strategy is the result of three years of planning, research and community consultation

In relation to land use and accommodating future residential growth, the LSPS defers to the Byron Shire Residential Strategy.

The PP is not supported by the *Byron Shire Local Strategic Planning Statement 2020*.

3.3 Does the planning proposal respond to a change in circumstances that has not been recognised by the existing planning framework?

In this case, there is no new infrastructure that is relevant to residential development on the subject land.

Key government priorities are outlined in documents such as the NCRP and other government publications. It is acknowledged that there is a shortage of affordable housing and land for housing generally in Byron Shire. This is a key matter that is addressed in the *Byron Shire Residential Strategy 2041*, which has only just been finalised.

Population and demographic trends are also addressed in the *Byron Shire Residential Strategy 2041*.

The PP is not in response to a change in circumstances, not recognised by the existing planning framework.

4 Site-specific Merit

This requires an assessment of site-specific merit and compatibility with surrounding land uses, having regard to the following matters. Note that the site-specific merit assessment would normally only be undertaken for a planning proposal that passed the strategic merit test. This PP has not passed the strategic merit test. It has been undertaken in this case to ensure the PP is considered to the fullest extent based on available information.

The following assessment is a site-specific merit test based on the Department of Planning and Environment *Local Environmental Plan Making Guideline* (August 2023).

4.1 The natural environment (including known significant environmental values, resources or hazards)

4.1.1 Ecology and Native Vegetation

Technical reports supplied with the PP include a biodiversity development assessment report (BDAR). This report states (on page 7) "The strategic placement of the proposed development in cleared and degraded areas of the subject site ensure that there are negligible impacts to the value of a mapped wildlife corridor and minor waterways." This statement ignores that the site was the subject of a rehabilitation order, which became an enforceable undertaking in 2018, with most of the rehabilitation work taking place in 2019. This order was to undertake rehabilitation of the quarry site in accordance with its consent conditions, which included a Flora and Fauna Management Plan that states the goal is "To leave all land disturbed by quarrying and related activities as a safe, stable and well drained landform with a vegetative cover developing over the medium to long term towards an appropriate array of communities naturally occurring in the area."

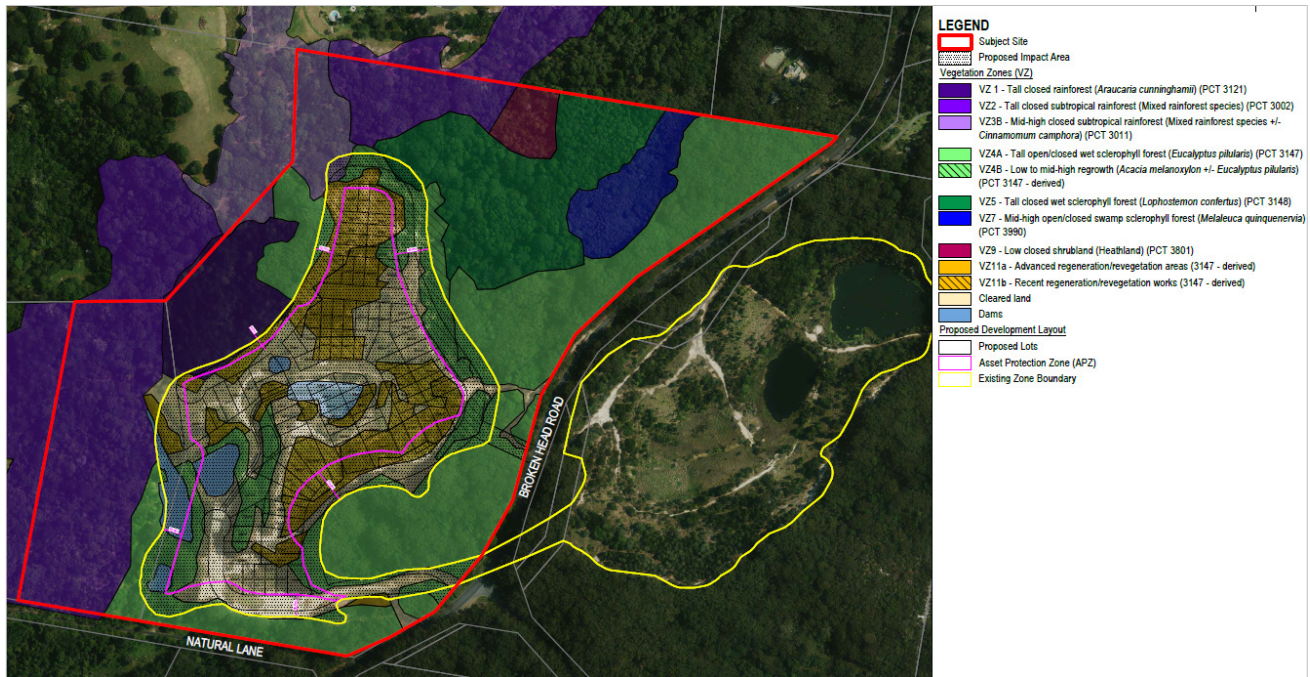
Clearly, the area described in the BDAR as "3.62 ha of planted native vegetation" is an area required to be rehabilitated as a result of the conditions of the quarry consent and the enforceable undertaking. A lot of this land contains advanced native vegetation plantings (Plate 1).

Plate 1: Advanced native rehabilitation is located in multiple locations proposed for residential development



It is also noted that the area proposed to be zoned R2 Low Density Residential is larger than the area subject to the draft concept layout assessed in the BDAR. The BDAR shows that native vegetation areas are proposed to be zoned R2 Low Density Residential (Figure 5).

Figure 5: Vegetation impact map



Source: BDAR

The BDAR also concludes that 6.65 hectares of native vegetation will be cleared for the proposed concept layout prepared by the applicant (Figure 6). The proposed R2 zone occupies approximately 11.8 hectares. Therefore, the likely clearing of native vegetation within the proposed R2 zone is 56%.

Figure 6: Impacts on vegetation zones

DIRECT IMPACTS ON VEGETATION ZONES			
Vegetation Zone	PCT	TEC	Direct Impacts# (%)
VZ1: Tall closed rainforest (<i>Araucaria cunninghamii</i>)	3121 - Broken Head Lowland Rainforest (Good condition)	TEC Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions listed within schedules of the BC Act, and potentially representative of the TEC Lowland Rainforest of Subtropical Australia listed within schedules of the EPBC Act	0.07 ha (5%)
VZ3b: Mid-high closed subtropical rainforest (Mixed rainforest species +/- <i>Cinnamomum camphora</i>)	3011 - Far North Lowland Subtropical Rainforest (Good condition)	TEC Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions listed within schedules of the BC Act, and potentially representative of the TEC Lowland Rainforest of Subtropical Australia listed within schedules of the EPBC Act	0.06 ha (6%)
VZ4a: Tall open/closed wet sclerophyll forest (<i>Eucalyptus pilularis</i>)	3147 - Far North Brush Box-Bloodwood Wet Forest (Good condition)	n/a	1.90 ha (20%)
VZ4b: Low to mid-high regrowth (<i>Acacia melanoxylon</i> +/- <i>Eucalyptus pilularis</i>)	3147 - Far North Brush Box-Bloodwood Wet Forest (Regrowth)	n/a	0.94 ha (81%)
VZ5: Tall closed wet sclerophyll forest (<i>Lophostemon confertus</i>)	3148 - Far North Brush Box-Walnut Wet Forest (Good condition)	n/a	0.07 ha (2%)
VZ11a: Advanced regeneration/revegetation areas	3147 - Far North Brush Box-Bloodwood Wet Forest (Derived)	n/a	1.93 ha (96%)
VZ11b: Recent regeneration/revegetation works	3147 - Far North Brush Box-Bloodwood Wet Forest (Derived)	n/a	1.68 ha (100%)

Source: BDAR

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.

I do not agree that the proposed R2 zone will be confined to cleared and degraded land with negligible impacts. The extent of ecosystem credits and species credits required to offset are considerable, and indicate that this site has ecological values that are significant now and likely to increase as rehabilitation areas mature.

4.1.2 Slopes, Drainage and Geotechnical Information

No current site-specific slope analysis or geotechnical assessment of the subject land has been provided. This would normally accompany a site-specific planning proposal. 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. There is no information on areas that have been filled and no consideration of the proposed use of existing water bodies or filled land for future residential lots. It is noted that extensive drainage and surface water storage work has been undertaken to control the major erosion issues that the site showed in 2017. Some evidence of recent active erosion is still present on the site (Plate 2). Some parts of the site are still very steep (Plate 3).

Plate 2: Erosion gully on proposed residential land at top of site



Plate 3: Some parts of the proposed residential land are still very steep



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.

4.1.3 Bushfire Hazard

The strategic bushfire hazard analysis of the subject land was undertaken in 2020, based on 2018 bushfire mapping. BSC adopted revised shire-wide hazard mapping in 2022. However, the site remains substantially either in a bushfire hazard category or a buffer. As the rehabilitation areas mature, this may change further. It is noted that the bushfire hazard analysis is reliant on a slope analysis. It appears that the LiDAR slope analysis was based on a surface analysis undertaken in 2010, before the site was reshaped for rehabilitation. This would need to be revised if it is to be relied upon.

Notwithstanding the outdated information, the report states (on page 41):

The landscape, vegetation and topographic studies show that this site is subject to a high bushfire threat which can be mitigated through compliance with PBP 2019 and additional measures.

Following the NSW RFS BFRMP Guidelines, the proposed development receives a 'Medium' risk rating. This risk rating is dependent upon access and egress to the site being provided in accordance with PBP 2019, ensuring safe movement into and away from the site by residents and emergency services during a bush fire event. This is significant because if adequate access and safe movement cannot be achieved, the risk rating would jump to 'Very High' and the development would require action to mitigate this risk into the future.

Other recommendations (on page 50) include:

The entire site shall be managed as an Inner Protection Area (IPA) as outlined within Appendix 4 of PBP 2019 and the RFS document Standards for asset protection zones;

An additional static water supply of 5,000L per residential lot is to be provided with appropriate equipment and connections complying with section 5.3.3 of PBP 2019;

Consideration should be given to landscaping and fuel loads on site to decrease potential fire hazards on site;

All future landowners should prepare a Bushfire Survival Plan in accordance with the RFS guide to preparing a Bushfire Survival Plan.

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.

4.1.4 Land Contamination

No site-specific contaminated land analysis of the subject land has been provided. This would normally accompany a site-specific planning proposal.

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. If the land requires remediation to be made suitable for any purpose for which land in that zone is permitted to be used, the planning proposal authority must be satisfied that the land will be so remediated before the land is used for that purpose.

The history of land use on this site is a quarry and the processing of quarry materials. The list of land use activities that may cause contamination (as identified in Table 1 of the Planning Guidelines) includes “mining and extractive industries”. It is noted that the proposed residential zone would cover all parts of the old quarry and processing site, and the potential to be contaminated is unknown (Plate 4). This is a major constraint to urban expansion that would need to be addressed before any rezoning could proceed. The land owner’s recent efforts to rehabilitate the site have not been based on any assessment of contamination and are not subject to a remediation action plan. Council has no information to determine whether this land is contaminated or not. This is a significant constraint to residential rezoning that would need to be addressed before any rezoning could proceed.

Plate 4: Parts of the site proposed for residential development have a past use that may have caused land contamination



4.1.5 Aboriginal Cultural Heritage

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.

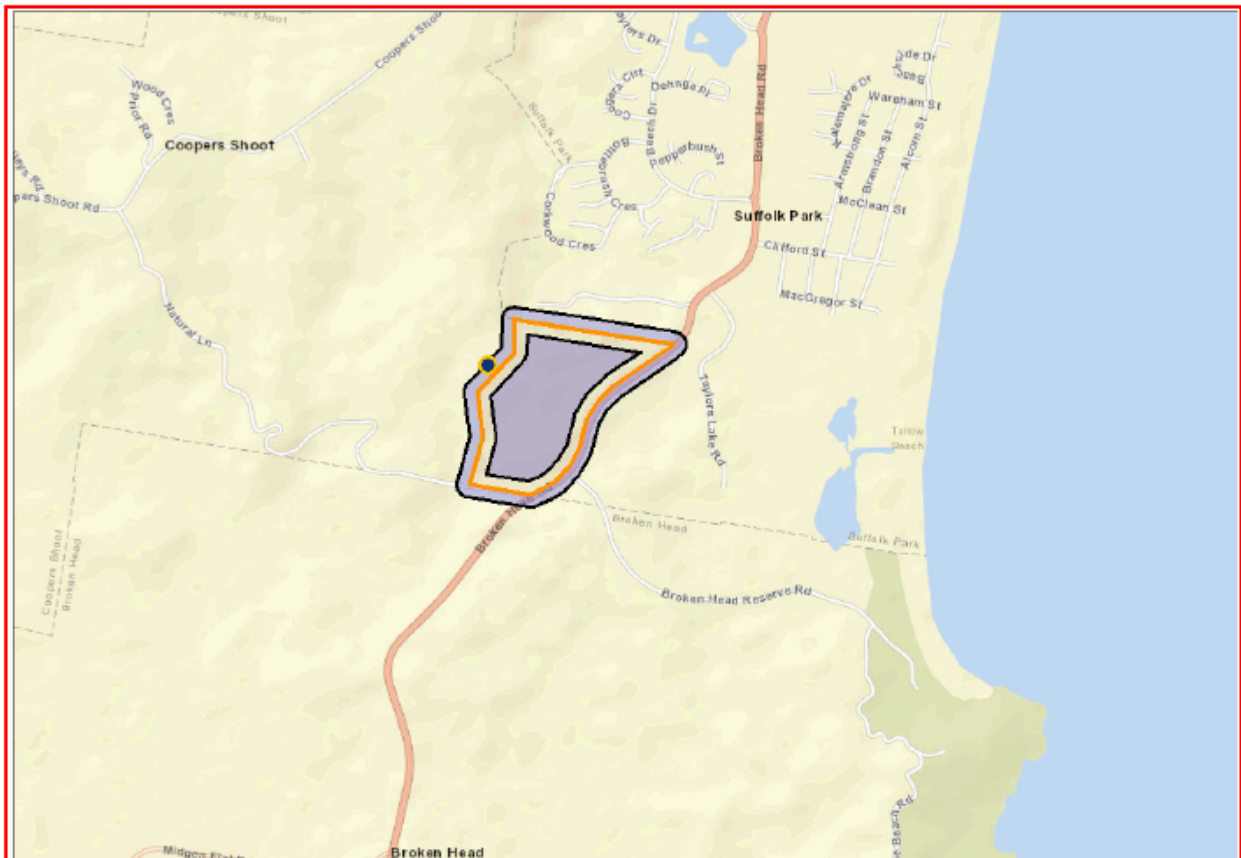
This is a significant constraint to urban rezoning that would need to be addressed before any rezoning could proceed.

Figure 7: AHIMS search result for Lot 1 DP 123302 with a 50-metre buffer

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot : 1, DP:DP123302, Section : - with a Buffer of 50 meters, conducted by Mike Svikis on 03 May 2024.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of Heritage NSW AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

1	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *

4.2 The existing uses, approved uses and likely future uses of land in the vicinity of the proposal

The subject land is approximately 750 metres from the edge of the Suffolk Park urban area. The land immediately adjoining the site is heavily vegetated. There are rural dwellings on some neighbouring lots. Some land nearby is used for cattle grazing and some land is being used for horticulture. The other part of the original Broken Head Quarry is located east of Broken Head Road.

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.

4.3 The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision

The applicant has provided a site-specific services and infrastructure assessment of the subject land that looks at water and sewer capacity in the locality.

In relation to sewer capacity, the report concludes (on page 6):

Nominally these show that if served by a single pumping station the available 10.7 L/s of sewer capacity could service 114 lots. However, the topography of the site dictates that, in lieu of a tunnel, at least two pumping stations are required reducing the lot yield to 93 lots.

In relation to water capacity, the report concludes (on page 7):

Advice from BSC is that the Suffolk Park water supply has plenty of capacity but there is a limitation to the elevation that can be supplied and meet the required levels of service. Pumped pressure zones exist in the area for this reason eg Corkwood.

It is understood that in excess of 20 L/s can be supplied at Connection Point 2 without impacting either the Suffolk Park or Broken Head supplies levels of service. This equates to the peak instantaneous demand (PID) for 133 lots or the fire requirement for a hydrant flow of 10 L/s at 95th percentile PID for 100 lots.

It is notable that the applicant has not addressed the practicality and environmental impacts of connecting the subject land to trunk water and sewer mains, which are located hundreds of metres away to the east of Broken Head Road (Figure 8). There is no assessment of the cost of off-site pipelines and connections, and the cost of building and running pump stations (potentially two for sewage and one for water). The BDAR notes the ecological significance of intact native vegetation surrounding the subject land. It should not be assumed that the narrow and heavily vegetated Broken Head Road reserve can accommodate multiple pipelines.

Figure 8: Water and sewer main locations east of Broken Head Road



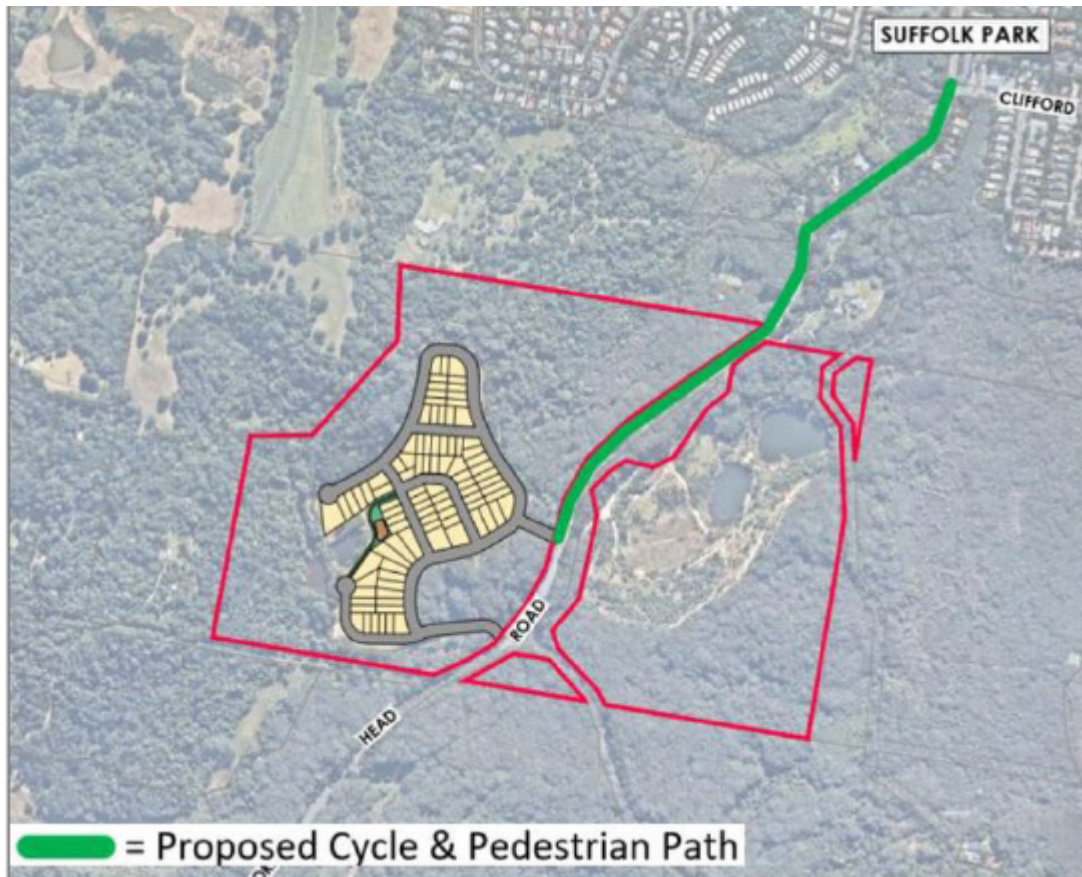
Source: AP Infrastructure report

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.

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.

No information is supplied on the practicality of upgrading and connecting electricity to the subject land. NBN connections are not currently available in this locality.

Figure 9: Site access and proposed shared path



There is not enough information to conclude that the site will be able to be serviced, and no indication of the environmental impacts or financial impacts of this on Council or any other service providers.

5 Conclusion

5.1 Strategic Merit

The PP is not consistent with the *North Coast Regional Plan 2041*. It is also not consistent with the *Byron Shire Residential Strategy 2041* and the *Byron Shire Local Strategic Planning Statement*. It is not consistent with any previous residential strategies.

Council is actively addressing the need to ensure an adequate supply of residential zoned land, both in greenfield areas and infill development opportunities. This land has been considered on a number of occasions and has not been supported. Council monitors land development and is aware of supply and demand trends. There is no evidence of changed circumstances that would warrant rezoning the subject land from rural to residential.

This PP cannot be supported based on an assessment of strategic merit.

5.2 Site-specific Merit

The PP is not adequately supported by reports or assessments of the subject land that address environmental, hazards, infrastructure and other issues. It is not the intention of this report to recommend that such reports or assessments be undertaken. The site-specific merit assessment would normally only be undertaken for a planning proposal that passed the strategic merit test. This PP has not passed the strategic merit test. The site-specific merit assessment has been undertaken in this case to ensure the PP is considered to the fullest extent based on available information.

A specific study of the biodiversity on this site has been undertaken. It concluded that impacts on threatened species and threatened ecological communities cannot be avoided despite confining most of the development to areas disturbed in the past. The development will impact on native vegetation that occupies 56% of the development site. The report 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. On balance, the report concludes that areas of native vegetation of various quality will be cleared by future residential development (based on the concept design) and offsets will be required. There is no indication of how practical or costly this may be. It is also not clear if future bushfire hazard clearing to protect dwellings and infrastructure will also impact native vegetation on and beyond the subject land.

The site has been substantially reshaped as part of the quarry rehabilitation work, but there is no indication as to whether this work has made the site sufficiently stable to now be used for residential development. There is no information on areas that have been filled and no consideration of existing water bodies proposed for residential use. It is noted that extensive drainage and surface water storage work has been undertaken to control the major erosion issues that the site exhibited in 2017, yet parts of the site are still actively eroding and parts are quite steep.

The supplied strategic bushfire hazard analysis of the subject land was undertaken in 2020, based on 2018 bushfire mapping. BSC adopted revised shire-wide hazard mapping in 2022. However, the site remains substantially either in a bushfire hazard category or a buffer. As the rehabilitation areas mature, this may change further. It is noted that the bushfire hazard analysis is reliant on a slope analysis. It appears that the LiDAR slope analysis was based on a surface analysis undertaken in 2010, before the site was reshaped for rehabilitation. 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.

No site-specific contaminated land analysis of the subject land has been provided, yet the history of land use on this site is defined by the State as a potentially contaminating land use. The level of contamination (if any) is unknown. The rehabilitation work that has been undertaken has not addressed this issue. This is a major constraint to urban expansion that would need to be addressed before any rezoning could proceed.

No site-specific assessment of the Aboriginal cultural heritage of the subject land has been provided. An AHIMS search with a 50-metre buffer 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 relevant LALC or any site assessment by a qualified archaeologist. This is a significant constraint to urban expansion that would need to be addressed before any rezoning could proceed.

It is notable that the applicant has not addressed the practicality and environmental impacts of connecting the subject land to trunk water and sewer mains, which are located hundreds of metres away to the east of Broken Head Road. There is no assessment of the cost of off-site pipelines and connections, and the cost of building and running pump stations (potentially two for sewage and one for water). The BDAR notes the ecological significance of intact native vegetation surrounding the subject land. It should not be assumed that the narrow and heavily vegetated Broken Head Road reserve can accommodate multiple pipelines.

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

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. 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.

No information is supplied on the practicality of upgrading and connecting electricity to the subject land. NBN connections are not currently available in this locality.

This PP cannot be supported based on an assessment of site-specific merit.

Appendices

Appendix A: Planning proposal submitted by applicant (under separate cover)

Appendix B: Letter from the Department of Planning and Environment to the land owner in 2017

APPENDIX A

Planning proposal submitted by applicant

APPENDIX B

Letter from the Department of Planning and Environment
to the land owner in 2017



Contact: Stewart McLachlan
Phone: 02 6575 3405
Email: stewart.mclachlan@planning.nsw.gov.au
Date: 11 August 2017

Leadshine Pty Ltd
5 Punch Street
BALMAIN NSW 2041

Attention: Stuart Dixon-Smith, Director

Dear Mr Dixon-Smith,

ORDER NO 15

Batson Sand and Gravel Quarry (Broken Head Quarry) – DA97_0465

I refer to the Department of Planning and Environment's (The Department) letter dated 30 June 2017 notifying you that the Minister for Planning (Minister), by his delegate, Kirsty Ruddock, Director – Compliance and Investigations, intends to give you, as the person entitled to act on Development Consent DA97_0465 (Consent) in respect to Batson Sand and Gravel Quarry (Broken Head Quarry), an Order No. 15 under section 121B of the *Environmental Planning and Assessment Act 1979* (the Act), as proposed in the draft order at **Attachment 1** (Proposed Order).

On 3 August 2017, the Department received representations from you, on behalf of Leadshine Pty Ltd in relation to the proposed Order. The Department has carefully consider these representations and has made the following change to the Proposed Order:

- Extended the period for compliance for the Order by approximately 1 month to allow further time to plan and undertake the required rehabilitation.

The Department has now finalised the Proposed Order. A final version of the Order is attached as **Attachment 1**. Please note, this Order prescribes the bare minimum required by Leadshine Pty Ltd to achieve compliance with the Consent in relation to rehabilitation. This Order does not relinquish other requirements that Leadshine Pty Ltd may have under their Consent, Environmental Protection Licence or associated other site approvals.

To provide Leadshine Pty Ltd with further clarity in response to your representations, the Department wishes to advise Leadshine Pty Ltd that the North Coast Regional Plan 2036 does not identify the quarry as a future urban growth area.

Lastly, should you wish to discuss the matter further, Department representatives are available to meet in person on Friday 18 August 2017 at 11.00am in its Pitt Street offices, Sydney.

Yours sincerely,

Kirsty Ruddock
Director - Compliance and Investigations
As delegate of the Minister for Planning

Attachment 1: Order



MikeSvikisPlanning

ABN 84638645183

3 Gibingbell Close Ocean Shores 2483

Mob: 0447 805 871

Ph: (02) 6680 1003

E: mikesvikisplanning@bigpond.com