

COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	<b>PPSNTH-102 - Byron</b>
<b>DA Number</b>	<b>10.2021.364.1</b>
<b>LGA</b>	<b>Byron Shire</b>
<b>Proposed Development</b>	<b>Proposed Bioenergy Facility (BEF)</b> that can receive and process up to 28,000 tonnes of organic wastes from local communities and biosolids from the Byron Bay Sewage Treatment Plant (BBSTP). During operation, the BEF will capture biogas and generate energy for use at the BBSTP and the BEF itself. It will also produce various soil amendments suitable for use in landscaping and agricultural production.
<b>Street Address</b>	<b>Lot 2 DP 706286 (No. 45) Wallum Place, Byron Bay</b>
<b>Applicant/Owner</b>	Byron Shire Council
<b>Date of DA lodgement</b>	6 July 2021
<b>Total number of Submissions Number of Unique Objections</b>	70 submissions. Of these 69 are objections and one (1) in support of the proposal. Unique objections - 38
<b>Recommendation</b>	Approval subject to recommended conditions of consent.
<b>Regional Development Criteria (Part 2.4 and Schedule 6 of the SEPP (Planning Systems) 2021</b>	<p><b>Schedule 6 Clauses 3 (a), 3(b) and 3(c).</b></p> <p><b>3 Council related development over \$5 million</b> Development that has a capital investment value of more than \$5 million if—</p> <p>(a) a council for the area in which the development is to be carried out is the applicant for development consent, or</p> <p>(b) the council is the owner of any land on which the development is to be carried out, or</p> <p>(c) the development is to be carried out by the council, or</p> <p>(d) the council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Act or for the purposes of the payment of contributions by a person other than the council).</p> <p>The proposal has a capital investment value of \$16,572,909</p>
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Byron Local Environmental Plan 2014</li> <li>• Byron Local Environmental Plan 1988</li> <li>• Byron Development Control Plan 2014</li> <li>• Byron Development Control Plan 2010</li> <li>• SEPP (Biodiversity and Conservation) 2021</li> <li>• SEPP (Resilience and Hazards) 2021</li> <li>• SEPP (Primary Production) 2021</li> <li>• SEPP (Transport &amp; Infrastructure) 2021</li> <li>• Environmental Planning and Assessment Regulation 2000</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ol style="list-style-type: none"> <li>1. Plans (Architectural, landscape concept and civil plans for earthworks, roadworks and stormwater drainage)</li> <li>2. Response to Submissions Report (Jackson Environment and Planning, January 2022) incorporating: <ul style="list-style-type: none"> <li>• Appendix A – Site Layout Plans (As Submitted with the EIS and Development Application)</li> <li>• Appendix B – Revised Site Layout Plans (Updated)</li> </ul> </li> </ol>

	<ul style="list-style-type: none"> <li>• Appendix C – Site Layout Plans Evolution (since 2019)</li> <li>• Appendix D – Biodiversity Development Assessment Report (Updated)</li> <li>• Appendix E – Standard Koala Habitat Assessment Report</li> <li>• Appendix F – Updated Soil and Water Plans (MPC)</li> <li>• Appendix G – Updated Acid Sulfate Soil Management Plan</li> <li>• Appendix H – Public Submissions Analysis Matrix</li> </ul> <ol style="list-style-type: none"> <li>3. Plans – Elevations showing 9 m height limit</li> <li>4. Response to EPA request for additional information (Jackson Environment and Planning, 13 October 2021).</li> <li>5. Table – Assessment of Submissions</li> </ol>
<b>Clause 4.6 requests</b>	A clause 4.6 exception request has been received with respect to the height of the building development standard prescribed by Clause 4.3 of Byron LEP 2014.
<b>Summary of key submissions</b>	No submissions received.
<b>Report prepared by</b>	<b>Kellie Shapland – Consultant Planner</b> BUrbRegPlan(Hons) RPIA
<b>Report date</b>	9 May 2022

#### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

**Yes**

#### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

**Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

#### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

**Yes**

#### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

**Not applicable**

#### Conditions

Have draft conditions been provided to the applicant for comment?

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

**Yes**

## DEVELOPMENT APPLICATION EVALUATION REPORT

Doc No. #A2022/664

### EXECUTIVE SUMMARY

#### Proposed Development

Byron Shire Council is in receipt of a development application for a resource recovery facility (anaerobic digestion and composting) and associated electricity generation works at Lot 2 DP 706286 (No. 45) Wallum Place, Byron Bay. The proposal is described as a 'Bioenergy Facility'. The site contains the Byron Bay Sewage Treatment Plant.

The application was received on 6 July 2021. Byron Shire Council is the owner of the land and the applicant for the proposal.

The proposal is for 'designated development' and the application is accompanied by an Environmental Impact Statement (EIS).

The EIS describes the proposal as a best practice Bioenergy Facility (BEF). The proposed BEF will receive and process up to 28,000 tonnes per annum of organic waste from local communities and biosolids from the Byron Bay Sewage Treatment Plant (STP).

During operation, the BEF will capture biogas (the result of organic waste processing) and generate energy for use at the STP and the BEF itself. Surplus electricity generated is anticipated to be sold.

Key features of the development include:

- A Receival Hall;
- Four Anaerobic Digestion Tunnels with biogas storage;
- Three Aerobic Composting Tunnels;
- A Biofilter;
- A Percolate Storage Tank with sand filter;
- A Combined Heat and Power (CHP) unit with biogas treatment and flare;
- Office and education facilities; and
- A car park to assist in traffic flow on the site.

The BEF is proposed to be located adjacent to the existing infrastructure of the STP, which is owned and operated by Byron Shire Council (BSC).

Following public exhibition of the development application, the applicant modified the proposal from that which was originally lodged with respect to access arrangements to the proposed facility. The original application proposed the construction of a new internal access road between the STP, and constructed wetlands located to the east of the STP. The application now proposes to access the facility by upgrading the existing internal STP roads. There are no changes proposed to the design of the buildings or other operational characteristics of the facility.

The proposed development constitutes 'regional development', requiring referral to the Northern Regional Planning Panel (NRPP) for determination as the proposal is Council related development with a capital investment value exceeding \$5 million (estimated cost at the time of application lodgement \$16.573M).

## **The Site**

The proposed BEF will be located on a small portion of a large parcel of land. Throughout this report the entire property will be described as the 'subject site', and the portion of land within the subject site where the BEF is proposed to be constructed will be described as the 'development envelope'.

The subject site is described as Lot 2 DP 706286 (No. 45) Wallum Place, Byron Bay and has an area of 103.7 hectares. It is an irregular shape parcel of land that contains the STP, a solar array and supporting infrastructure (owned and operated by BSC) and a herb nursery, operated by Byron Bay Herb Nursery which is a not-for-profit disability service charity. The site contains significant ecological areas adjacent to the STP which includes constructed wetlands which form part of the Byron Bay Integrated Water Management Reserve.

The subject site is bound by a property containing a mixed-use development (commercial/retail/residential) development to the east (known as 'Habitat'), a rail line and nature reserve to the north, privately owned rural properties to the west and wetlands and playing fields to the south. These playing fields are part of the Cavanbah Sport and Recreation Centre.

The development envelope is immediately to the south and west of existing infrastructure within the STP. The main BEF site comprises a 100 m by 60 m portion of the land which has previously been cleared and currently forms part of the landscaped grounds of the STP.

The development envelope comprises maintained grassland but is adjacent to areas with ecological values. There are trees in the vicinity of the development envelope which are proposed to be protected during construction and operation. Some pruning is required.

The development envelope contains the following mapping constraints:

- Class 3 acid sulfate soils
- Bushfire prone land (buffer) along part of the internal access road, but not on the building envelope.
- Proximity to coastal wetlands

The development envelope is not mapped as being affected by flooding or heritage constraints.

## **Zoning & Permissibility**

The subject site is zoned (RU2) Rural Landscape and (DM) Deferred Matter under the Byron LEP 2014. For DM zoned areas Byron LEP 1988 applies. The DM land is zoned part (5a) Special Uses, part 7(a) Wetlands and part 79B) Coastal Habitat zone. The development envelope is primarily in the RU2 Rural Landscape Zone, with a small encroachment into the DM 5(a) zoned area.

Byron LEP 2014 does not specifically permit use of the land for the proposed Byron BEF. However, SEPP (Transport and Infrastructure) 2021 permits the development. Therefore, as the SEPP prevails, the proposal is permitted with consent.

## **Integrated Development**

The application is nominated as 'Integrated development' under Section 4.46 and 4.47 of the Environmental Planning and Assessment Act 1979 requiring a licence from the NSW EPA under Schedule 1 of the Protection of the Environment Operations Act 1997.

## Assessment

There are a number of environmental planning instruments applicable to the site which the consent authority must consider. A detailed assessment against the relevant parts of each instrument is included in the body of this report.

A summary of the applicable provisions where the consent authority must be satisfied of particular matters is noted below:

- Section 4.8 of SEPP (Biodiversity and Conservation) 2021

Section 4.8 applies to land to which an approved Koala Plan of Management applies. The site is within the Koala Planning Area of the Byron Coast Comprehensive Koala Plan of Management (CKPoM). It requires that the Councils determination of the development application must be consistent with the approved koala plan of management.

Pursuant to Part 12 of the CKPoM, a Standard Koala Habitat Assessment Report was provided. No evidence of koalas was recorded on the site.

- Section 2.7 to 2.13 of SEPP (Resilience and Hazards) 2021

Section 2.7 (4) specifies that a consent authority must not grant consent for development on land identified in the SEPP as “coastal wetlands” or “littoral rainforest”, unless it is satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland or littoral rainforest.

Part of the subject land is identified as coastal wetlands on mapping associated with this SEPP, however the development envelope is not mapped. Measures are proposed to protect the coastal wetland.

Section 2.8 (1) specifies that development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” unless the consent authority is satisfied that the proposed development will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Part of the proposed development envelope is mapped as being a proximity area for a coastal wetland. The application has been assessed by Councils Natural Resource Planner, Engineer and Environmental Health Officer (EHO), as well as the Environment Protection Authority (EPA). As a result of their assessment, it is considered that with the implementation of mitigation measures, activities will not significantly impact on the biophysical, hydrological or ecological integrity of the adjacent coastal wetland, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland. This is discussed further in the body of this report.

Section 2.9 relates to development on land within the coastal vulnerability area. There is presently no coastal vulnerability map. Therefore, this clause is not applicable.

Section 2.10 relates to development on land within the coastal environment area. The site is not mapped as being within the coastal environment area. Therefore, this clause is not applicable.

Section 2.11 relates to development on land within the coastal use area. The site is not mapped as being within the coastal use area. Therefore, this clause is not applicable.

Section 2.12 relates to development in coastal zone generally and requires that the consent authority must be satisfied that development will not increase risk of coastal hazards. The location of the site is sufficiently distant from the active coastal zone.

- Section 3.12 of SEPP (Resilience and Hazards) 2021

Part 3 of the SEPP relates to ‘potentially hazardous or potentially offensive development’. Section 3.12 sets out the matters that the consent authority must consider in determining a development application to which this Part applies. A risk screening analysis has been undertaken in accordance with *Hazardous and Offensive Development Application Guidelines - Applying SEPP 33*, which concludes that on the basis of this screening, the proposed development is not considered a potentially hazardous or offensive development.

- Section 4.6 of Clause 7 of SEPP (Resilience and Hazards) 2021

Section 4.6 requires the consent authority consider whether the land is contaminated. A Preliminary Site Investigation for Contamination Report was provided to support the application.

It concludes that the site proposes a low risk of contamination and is therefore suitable for commercial/industrial purposes. Councils Environmental Health Officer has reviewed the report and has recommended a condition requiring the preparation of a Contaminated Soil and Groundwater Management Plan which includes additional sampling and the preparation of an Unexpected Finds Protocol.

- Section 2.121 of SEPP (Transport and Infrastructure) 2021

This section requires the consent authority to refer the proposal to Transport for NSW, take into consideration any submission that is made by that Authority and also consider accessibility of the site as well as traffic / transport impacts associated with the development. Council officers are satisfied that the proposed development meets the provisions of Section 2.121

- Clause 2.3 Byron Local Environmental Plan 2014 – Zone objectives and land use table

Clause 2.3 requires the consent authority to have regard for the relevant zone objectives when determining a development application. The proposal is permissible with consent pursuant to the provisions of SEPP (Transport and Infrastructure) 2021 and will not compromise the relevant zone objectives.

- Clause 4.6 Byron Local Environmental Plan 2014 – Exceptions to development standards

The applicant is seeking an exception to the 9-metre building height standard prescribed by Clause 4.3 of Byron LEP 2014.

Clause 4.6(4) provides that development consent must not be granted for development that contravenes a development standard unless—

*(a) the consent authority is satisfied that—*

*(i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

*(b) the concurrence of the Planning Secretary has been obtained.*

The applicant has provided a written request that adequately addresses the required matters. An assessment of the submission concludes that the variation is justified.

The Northern Regional Planning Panel may assume the Concurrence of the Planning Secretary.

- Clause 6.1 Byron Local Environmental Plan 2014 - Acid sulfate soils

This clause requires that, where applicable, development consent must not be granted for the carrying out of works unless an acid sulfate soils management plan (ASSMP) has been prepared in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

Acid sulfate soil investigations have been undertaken and a management plan prepared. Council officers are satisfied with the plan subject to conditions.

- Clause 6.2 Byron Local Environmental Plan 2014 – Earthworks

Clause 6.2(3) requires the consent authority to consider effects and potential impacts on the site and surrounding locality as a result of the proposed earthworks. Subject to conditions of consent, Council officers and the assessing planner are satisfied that the proposed development meets the provisions of clause 6.2(3) of the Byron LEP 2014.

- Clause 6.6 Byron Local Environmental Plan 2014 – Essential Services

The clause requires that, prior to granting consent to development, the consent authority must be satisfied that the nominated essential services are available or that adequate arrangements have been made to make them available.

Assessing officers are satisfied that the site is fully serviced and meets the requirements of clause 6.6.

- Clause 36 Byron Local Environmental Plan 1988 – Development adjoining wetland

This clause requires applies to land adjoining or contiguous to land within Zone No 7 (a) Wetlands Zone. It requires the consent authority to take into consideration the likely effects of the development on flora and fauna in the wetland, likely effects on the water table and the effects on the wetland generally.

An engineering, ecological and environmental health assessment of the application included consideration of these matters and it is concluded that the proposal is satisfactory subject to conditions.

### **Other Statutory Matters**

#### *Biodiversity Conservation Act 2016*

A Biodiversity Development Assessment Report (BDAR) was prepared for the project. Following a request for additional information from council staff and exhibition of the application, the BDAR was updated in January 2022. The updated BDAR addresses the relocation of the access road away from the wetland habitat areas.

The proposed development will require clearing of a maximum of 0.36 hectares of non-native vegetation comprised of weed- dominated pastures, and 0.52 hectares of plant community type (PCT) 1064: *Paperbark swamp forest of the coastal lowlands of the NSW North Coast Bioregion and Sydney Basin Bioregion.*

The total extent of PCT 1064 on the development site is limited to derived, maintained grassland (lawn) which is dominated by common, native grasses. No remnant or regrowth area of PCT 1064 will be cleared to facilitate the development. No trees will be cleared to facilitate the development.

#### *Environment Protection and Biodiversity Conservation Act 1999*

A Commonwealth referral under the EPBC Act 1999 was made in relation to the Mitchells Rainforest Snail. This species has been sighted along the southern and western borders of the development envelope. The delegate for the Minister for the Environment decided that the proposed action is not a controlled action provided it is undertaken in accordance with the decision document.

#### **Public Exhibition and Authority referrals**

The development application was advertised from 14 July 2021 to 25 August 2021. Including late submissions, there was a total of 70 submissions received (69 objections and one in support)

The application was referred to:

- NSW EPA -General Terms of Approval have been issued
- NSW Rural Fire Service – Recommended conditions of consent have been provided.
- Fire and Rescue NSW – no response received.
- Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) - no response received.
- Transport for NSW – Recommend that Council be satisfied that the proposal complies with access, traffic and parking design standards. Council should be satisfied that appropriate road infrastructure will be available to accommodate the increase in demand arising from the proposed development. TfNSW will continue to work with Council towards planning for future improvements to classified roads in the subject area.
- NSW Planning, Industry and Environment (DPIE) (Biodiversity and Conservation Division) – It appears as though the impacts of the development are unlikely to significantly affect threatened species, ecological communities or their habitats. That is, the biodiversity impacts of the development do not appear to trigger entry into the Biodiversity Offsets Scheme (BOS).
- DPIE (Crown Lands Division) – Crown Lands has no comment other than to highlight that a formed section of Wallum Place is a Crown Public Road. This appears suitable for transfer to Council’s control (Note: since this submission was received, the affected area has been transferred to Council’s control).

#### **Conclusion**

In summary, the proposed development is considered satisfactory, subject to the imposition of suitable conditions of consent to address and mitigate key issues relating to potential impacts arising from the proposed development. The application has been assessed in detail against the relevant matters for consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979 and is considered satisfactory.

As such, it is recommended that the proposed development be approved, subject to conditions documented in the recommendation at the end of this report.

# 1 INTRODUCTION

## 1.1 History/Background

The following is a history of development applications from Councils records, that have been submitted over the subject site since 1999.

Application Number	Description	Determination Date	Decision
10.1999.468.1	Storage Shed	20/08/1999	Approved
10.2000.602.1	Animal Establishment	13/03/2001	Approved
10.2000.602.2	Section 96 to amend D2000.602.1 - Minor Adjustments to Plans	16/10/2001	Approved
10.2000.602.3	Section 96 Modification – Reduce size to reduce construction costs	14/05/2002	Approved
10.2000.602.4	Section 96 Modification – Change BCA Classification from 9A to 10A for approved Dog Pound	26/08/2002	Approved
10.2007.65.1	Telemast Installation for West Byron STP	24/05/2007	Approved
10.2007.177.1	Environmental Enhancement Work	19/12/2007	Approved
10.2019.216.1	Electricity Generating Works – 150kW Solar Farm	28/08/2019	Approved

Development Application 10.2021.364.1 was lodged with Council on 6 July 2021. Following public exhibition of the proposal and a request for additional information, the applicant submitted a response on 13 January 2022 which included amended plans altering the access arrangements to the proposed facility.

The plans of the proposal are provided in **Attachment 1**.

The response to the request for additional information, which includes the applicant's response to submissions, is provided in **Attachment 2**. This response includes:

- Appendix A – Site Layout Plans (As Submitted with the EIS and Development Application)
- Appendix B – Revised Site Layout Plans (Updated)
- Appendix C – Site Layout Plans Evolution (since 2019)
- Appendix D – Biodiversity Development Assessment Report (Updated)
- Appendix E – Standard Koala Habitat Assessment Report
- Appendix F – Updated Soil and Water Plans (MPC)
- Appendix G – Updated Acid Sulfate Soil Management Plan
- Appendix H – Public Submissions Analysis Matrix

The additional information and the amended plans have been assessed by relevant internal Council staff, NSW Environmental Protection Authority (EPA) and the NSW Rural Fire Service.

## 1.2 Description of the proposed development

### Overview

This application seeks development consent for a Bioenergy Facility which is a resource recovery facility (anaerobic digestion and composting), and associated electricity generation works.

The proposed Bioenergy Facility will receive and process up to 28,000 tonnes per year of organic waste from local communities and biosolids from the STP. During operation, the BEF will capture biogas (the result of organic waste processing) and generate sustainable energy for use at the STP and the BEF itself. Surplus electricity is expected to be sold.

Key features of the development include the construction of and installation of the following:

- A Receival Hall;
- Four Anaerobic Digestion Tunnels with biogas storage;
- Three Aerobic Composting Tunnels;
- A Biofilter;
- A Percolate Storage Tank with sand filter;
- A Combined Heat and Power (CHP) unit with biogas treatment and flare;
- Office and education facilities; and
- A car park to assist in traffic flow on the site.

Construction work is estimated to take approximately 10 months.

An aerial image of the site is provided on **Figure 1** and a zoomed view of the sewage treatment plant on **Figure 2**. The proposed site layout is on **Figure 3**.

**Figures 4 to 7** are photographs of the site showing the site access, part of the internal road proposed to be upgraded and views of the proposed development envelope.



**Figure 1** – Subject Site



**Figure 2 – Aerial Photograph – Byron Bay Sewage Treatment Plant**



**Figure 3 – Proposed Site Plan with Aerial View Overlay**



**Figure 4 – Photograph - Entrance to STP site from Wallum Place**



**Figure 5- Photograph – Existing Internal Road – upgrading required to access the proposed BEF**



**Figure 6** – Site Photograph – View over central and eastern part of the building envelope



**Figure 7** – Site Photograph – View over western part of building envelope

## Waste Material

The input materials proposed to be used as part of the BEF composting process include:

- Garden organics including:
  - Garden waste and untreated wood waste which would be sourced from public drop-off at local government operated Resource Recovery Centres which would be shredded and transported to the site in bulk.
  - Coppice crops – agricultural production from farms (not a waste)
- Food organics/garden organics (FOGO) including:
  - Food and garden waste sourced from Municipal kerbside collections in Byron Bay and neighbouring Shires. This would be delivered to the site by side lift vehicles.
  - Food waste from source separated collection services.
- Grease trap waste – fats, oils and grease (FOG) sourced from a commercial dewatering facility located near Ballina. This would be filter pressed and transported in bulk.
- Biosolids from the Byron Bay STP, Brunswick Valley STP, Bangalow STP and Ocean Shores STP.

## Buildings and Associated Infrastructure

There are two (2) buildings proposed. These include the main processing building (and associated infrastructure) and an administration building. These have a combined floor area of 3572m<sup>2</sup>.

The main processing building would have a maximum height of 13.57m above existing ground level. It contains the following components:

- Receiving Hall – The receiving hall would have a gross floor area of 1450m<sup>2</sup>. It is a galvanised steel portal frame construction with metal roof and wall cladding, including some translucent roof sheeting for natural light. Two (2) high speed roller doors would be provided for truck access. The floor would be sealed and bunded concrete.

The building is designed for internal input and output loading for a 19m semi-trailer (reverse in access) and requires 9.5m clear height for a tipper truck. It contains bays to accommodate the input and output material (loading stockpile, material decontamination, fogo and food waste, garden organics and biosolids, screening stockpile and product and screening storage areas).

- Anaerobic Digestion Tunnels – Four (4) tunnels are proposed which occupy approximately 629m<sup>2</sup> of the main building. These are located adjacent to the Receiving Hall and this part of the building would be constructed with concrete walls and roof with floor and wall heating pipes, hinges sealed access doors and roof mounted biogas storage. It would be a sealed air and watertight structure.
- Aerobic Composting Tunnels – Three (3) tunnels are proposed which occupy approximately 754m<sup>2</sup> of the main building. These are located adjacent to the Receiving Hall and this part of the building would be constructed with concrete walls and roof with floor and wall heating pipes, sliding sealed access doors and an underfloor air and drainage system, humidification system and ducted air supply and exhaust system. It would also be a sealed air and watertight structure.

- Percolate Storage Tank and Sand Filter – This occupies an area of 131m<sup>2</sup> and is constructed of reinforced concrete for percolate liquid. The proposed sand filter is in a separate compartment.

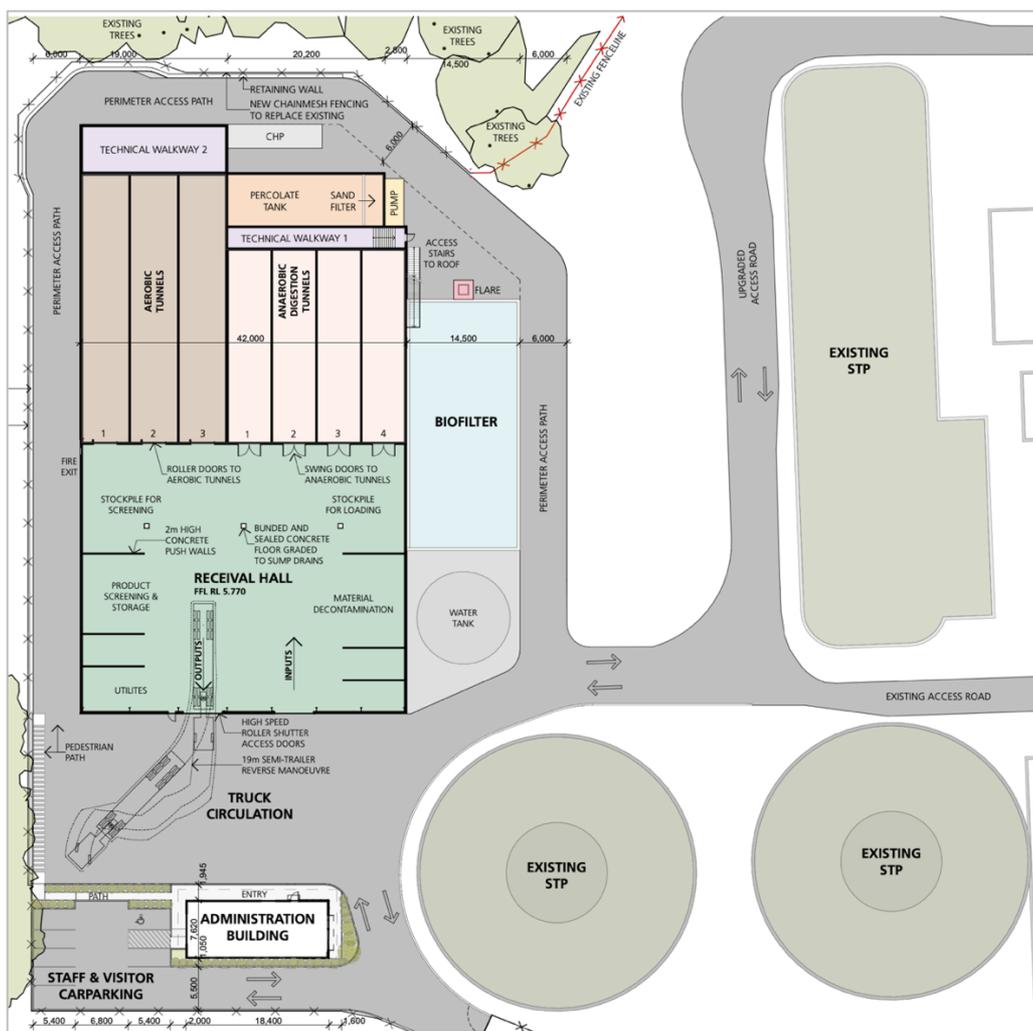
Adjacent to the main building it is proposed to install the following infrastructure:

- Biofilter – The biofilter occupies an area of 440m<sup>2</sup>. It filters air from the receive hall and tunnels. It has a concrete base with 2m high concrete walls and plastic grates with biofilter media cover.
- Combined Heat and Power Unit – This is a proprietary system by BEKON which utilises biogas energy to provide heating and power to the facility. It occupies an approximate area of 38m<sup>2</sup>.
- Flare – A 10m high flare is proposed for burning off excess biogas.

Administration Building – A 130m<sup>2</sup> office is proposed which incorporates office space, staff room, education room, amenities and a small lab. The education room would be used by a community groups or small class of school children (approximately 20).

The location of the proposed buildings and associated infrastructure are illustrated on **Figure 8**.

Building elevation, sections and perspectives are provided in the accompanying plan set (**Attachment 1**).



**Figure 8** – Site Plan Extract – Location of Proposed buildings

### Vehicular Access and Parking

Access to the proposed bioenergy facility is via an existing internal road that accesses the Byron Bay STP from Wallum Place. This internal road would be upgraded and extended to access the facility (refer **Figure 4** and **5**).

A wheel wash and rumble grid are proposed to be constructed along the upgraded internal access road. The plans indicate a weighbridge along Wallum Place, near the site entrance, however this will be required to be relocated to within the STP operational land.

A staff and visitor car park for 7 vehicles is proposed adjacent to the proposed administration building. This includes one (1) accessible space.

The proposal will allow for bulk deliveries of organic wastes and bulk dispatch of product, however no public drop-off or pick-up will be permitted.

Loading/servicing for the proposed development is expected to be undertaken by a variety of commercial vehicles including small, medium and large rigid trucks up to and including 19m long articulated semi-trailers. The Bioenergy Facility will have its own enclosed loading bays, capable of accommodating 2 x semi-trailers.

The projected traffic generation is estimated to be:

- in the order of 8 truck movements per day, with a maximum of 2 trucks on-site at any given time
- a potential nett increase in the traffic generation of approximately 7 vph (inclusive of the 2 x truck movements) during the AM and PM commuter peak periods

Whilst there is an increase of movements generated from the development proposal, the sludge deliveries of the existing Byron STP of approximately 45 truckloads per cycle (equating to 390 truckloads per year) would remain on-site to complement the BEF instead of being trucked off the site as a 'separated waste' product.

The anticipated construction traffic is expected to generate in the order of 6-8 truck movements per day, with a peak of 20 per day during concrete pour of pavements.

### Hours of Operation & Staff Numbers

It is proposed that the anaerobic digestion tunnels and the composting tunnels including associated plant (fans and pumps) will be functioning 24 hours per day and 7 days per week.

The facility is proposed to be staffed 6 days per week between the hours of 7am to 5pm Monday through Friday and 8am to 1pm on Saturday.

A maximum of five (5) full-time equivalent staff will be required to operate the facility (when operating at capacity) during these times. Activities during this timeframe will include waste receipt and dispatch, unloading and loading of the tunnels, decontamination, screening and related activities.

### Public Access

It is proposed that access to the facility during operational staff hours will be through a secure gate. The facility will include a securely fenced perimeter with no access for the general public.

No unplanned drop-off of materials will be accepted from the general public. Any pre-arranged access to the facility by the public will be controlled by facility staff through the secure gate.

Part of the administration building includes an education area that would be used by community groups or school workshops. The use of this facility for education purposes would be planned in advance.

#### Earthworks and drainage

The development envelope is outside of flood planning areas and does not fall into any areas of mapped by Byron Shire Council as a 1 in 100-year flood affected area.

The development envelope consists of undulating land. There are several mounds on the site which are identified as overgrown soil stockpiles.

Cut and fill earthworks are proposed for drainage, to create level building platforms and to provide suitable levels for internal access construction. Calculations indicate that there will be an excess of 640m<sup>3</sup> of material that will need to be exported from the site to an approved location. An earthworks cut to fill plan is provided in the plan set in Attachment 1.

A stacked stone retaining wall is proposed to be constructed along part of the southern boundary, and along the western boundary of the proposed development envelope.

All discharged water is to meet Council's Stormwater Quality requirements.

#### Vegetation removal

The proposed development will require clearing of a maximum of 0.36 hectares of non-native vegetation comprised of weed- dominated pastures, and 0.52 hectares of plant community type (PCT) 1064: *Paperbark swamp forest of the coastal lowlands of the NSW North Coast Bioregion and Sydney Basin Bioregion*.

The total extent of PCT 1064 on the development site is limited to derived, maintained grassland (lawn) which is dominated by common, native grasses. No remnant or regrowth area of PCT 1064 will be cleared to facilitate the development. No trees will be cleared to facilitate the development.

### **1.3 Process Description**

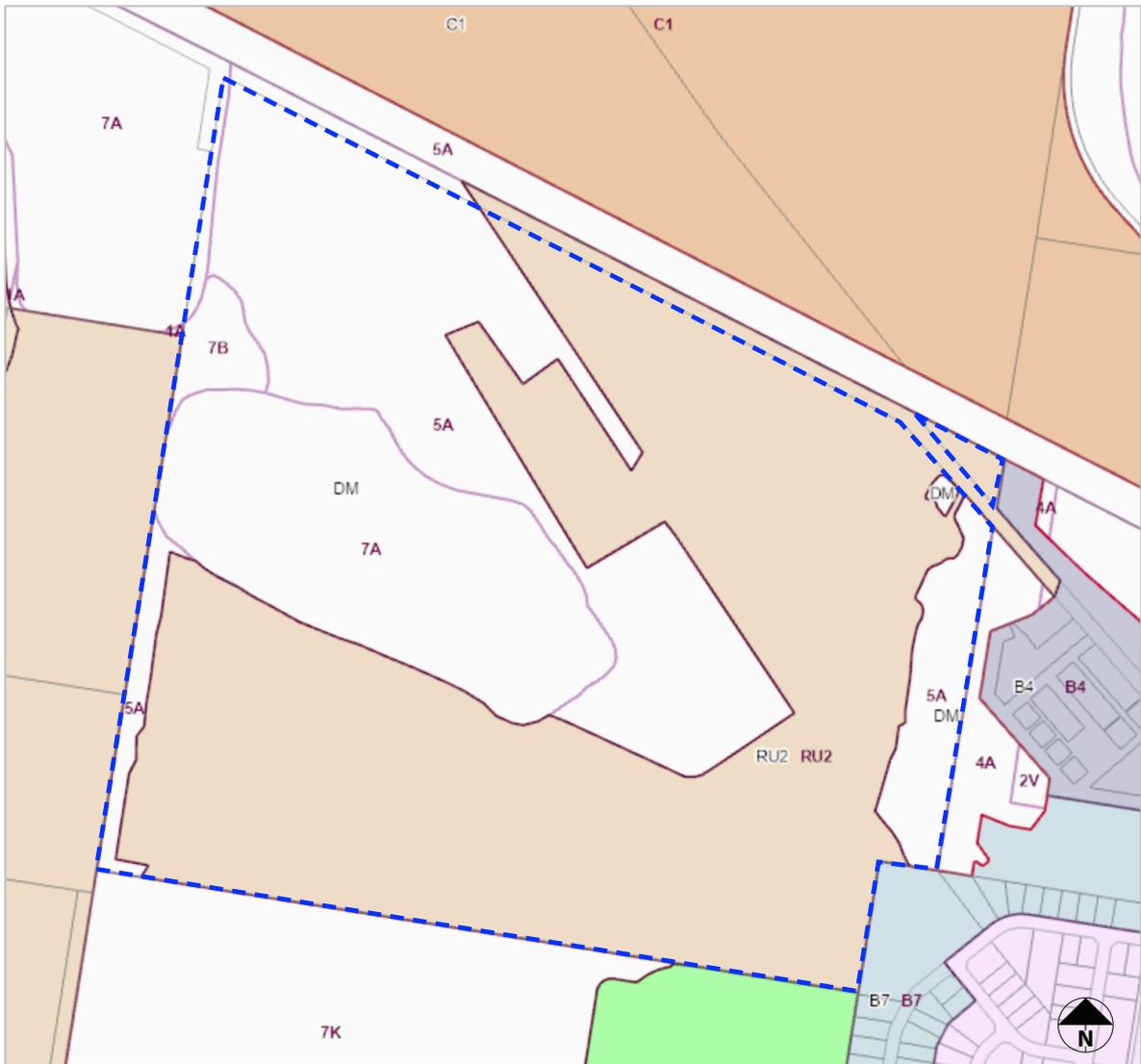
The process for the operation of the Receiving Area is outlined on the following process flow chart (**Figure 9**) that was included in the exhibited EIS. The only alteration to this process from that exhibited is that the location of the access from Wallum Place and the location of the weighbridge has altered.



**Figure 9** - Process flow chart for the operation of the Receiving Area (source: Jackson Environment and Planning : Bioenergy Facility EIS)

## 1.4 Description of the site

Land is legally described	LOT: 2 DP: 706286	
Property address	45 Wallum Place BYRON BAY	
Land is zoned:	<p>Part RU2 Rural Landscape under BLEP 2014 and part DM Deferred Matter under Byron LEP 1988. The deferred matter is zoned part 5A (Special Uses Zone), part 7A (Wetlands) Zone and part 7B (Coastal Habitat Zone) under Byron LEP 1988 (refer <b>Figure 10</b>).</p> <p>The development envelope is primarily within the RU2 zone with a small encroachment into the DM – 5A (Special Uses Zone) area (<b>Figure 11</b>).</p>	
Land area is:	103.7 hectares	
Property is constrained by:	<p>Flood Liable Land (outside of the proposed building envelope)</p> <p>Bushfire prone land (outside of the proposed building envelope, mapped buffer along internal access road)</p> <p>Acid Sulfate Soils Class 3 (within the building envelope)</p> <p>High Conservation Value High Environmental Value (outside of the proposed building envelope)</p> <p>Biodiversity Mapping (outside of the proposed building envelope)</p> <p>Coastal Wetlands (outside of the proposed building envelope)</p> <p>Proximity to Coastal Wetlands (on part of the building envelope)</p>	
	<p>Is a BDAR required due to the location of the proposed development?</p> <p>The applicant has prepared a BDAR – see additional comments in Section 2 relating to comments made by NSW Planning, Industry and Environment (Biodiversity and Conservation).</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>Are there any easements in favour of Council affecting the site?</p> <p>A copy of the Deposited Plan for the site is provided in <b>Figure 12</b>. There are no easements affecting the development envelope.</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
	<p>Is there a Vegetation Management Plan which might affect the proposal?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
	<p>Is there a Voluntary Planning Agreement which might affect the proposal?</p>	<p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>



**Figure 10** – Zoning (Byron LEP 2014 and BLEP 1988 combined) – the development envelope is on the north-eastern/north-central portion of the property and is zoned RU2 Rural Landscape (BLEP 2014). The Deferred Matter (DM) is shown white and is zoned part 5A (Special Uses Zone), part 7A (Wetlands) Zone and part 7B (Coastal Habitat Zone) under Byron LEP 1988.



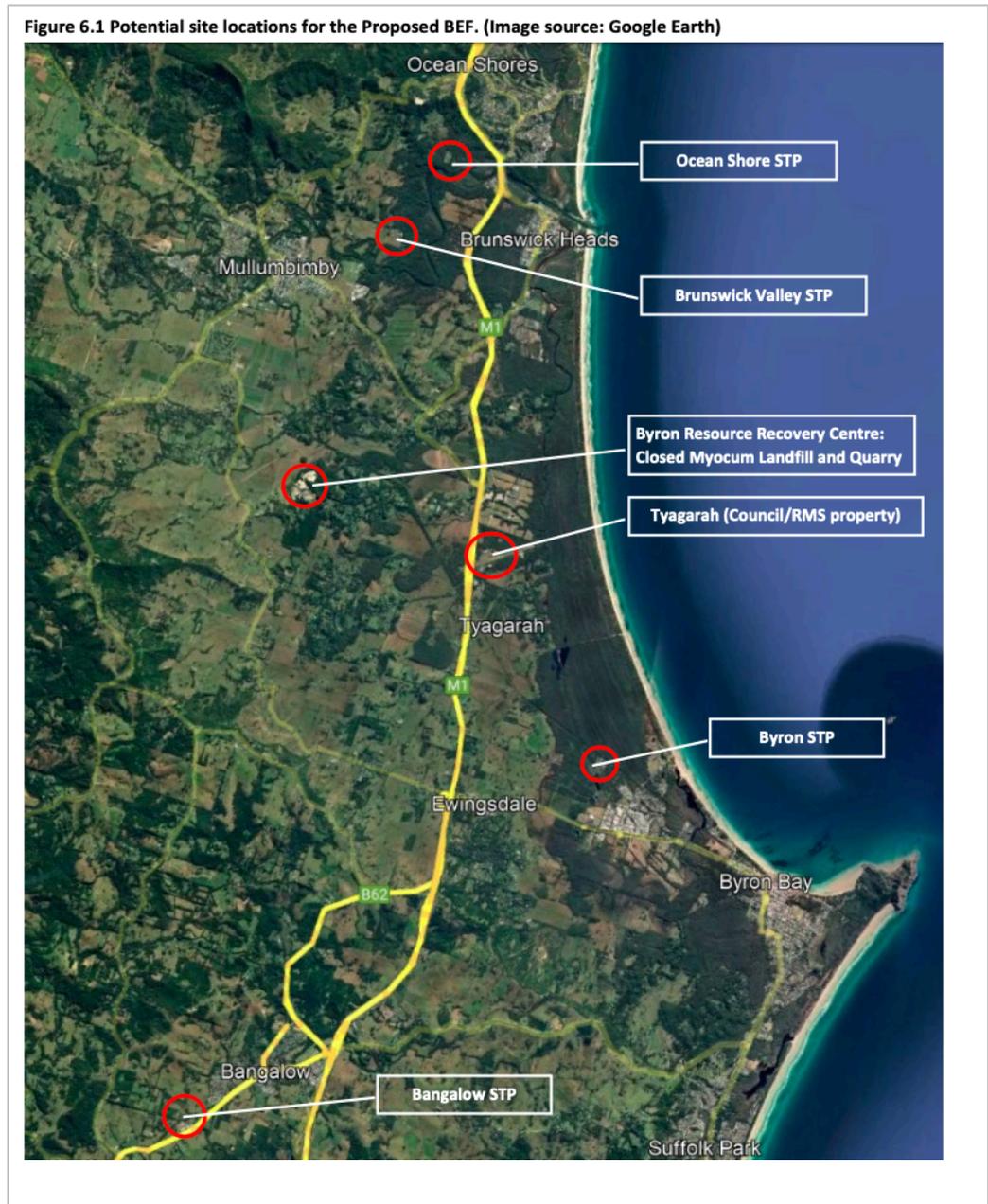
energy use, thus making a significant contribution towards local and state government net zero emissions targets.

BSC operates a composting facility located at the Byron Resource Recovery Centre that, under its Environmental Protection Licence (EPL), is restricted to processing green waste. There are no alternative solutions for the processing of putrescible organic wastes, including food wastes, in the Byron Shire, resulting in this waste being transported long distances to neighbouring shires and interstate for resource recovery or being landfilled.

The EIS indicates that a comprehensive site and technology selection process occurred over the last eight years to carefully consider the opportunity for local bioenergy production from organic waste in Byron Shire.

The Byron Bay STP was identified as the preferred site.

The applicant has provided the following Figure and Table which outlines the alternatives considered and their acceptability.



**Table 6.1. Comparison made between potential sites for the proposed BEF. Green is best, yellow is possible, red is not feasible.**

Factors for Consideration	Bangalow STP	Brunswick Valley STP	Byron Bay STP	Myocum Quarry and Closed Landfill	Ocean Shores	Tyagarah Airstrip
Access via public roads	Must pass through Bangalow town centre	No safe access off Coolamon Scenic Drive; Vallances Road requires considerable safety upgrades	Yes	Myocum Road from Mullumbimby or M1 Ewingsdale Road Interchange	Brunswick Valley Way M1 Interchange	Gulgan Road/Gray's Lane M1 interchange
Available land located outside 100-y. flood plain?	Yes	No / Low	Yes	Not flood plain, but poor prospects for available land for development	Floodplain has ecological values; poor geotech; requires filling	Requires filling, possible closing of airstrip, or land purchase from Crown
Electrical grid tie-in status	Poor	Good	Good	Poor	Poor	Poor
On-site electrical demand	Low	Moderate	High	Very low	Low	Very low
Central to feedstock supplies	Moderate	Poor	Good	Moderate	Moderate	Moderate
On-site feedstocks e.g. biosolids	Insignificant (Biosolids)	~10% of feed (Biosolids)	~20% of feed (Biosolids)	~10% of feed (Garden Organics)	Insignificant (Biosolids)	None
Acceptable?	No	No	Yes	No	No	No
Summary	<ul style="list-style-type: none"> <li>- Expensive electrical grid tie-in upgrades</li> <li>- Low on-site energy demand</li> <li>- Low fraction of feedstocks on-site</li> </ul>	<ul style="list-style-type: none"> <li>- Unsafe access</li> <li>- Very little flat land available outside 100-yr flood plain</li> <li>- Not central to feedstocks</li> <li>- Less on-site energy demand</li> </ul>	<ul style="list-style-type: none"> <li>- Public roads</li> <li>- Not in flood plain</li> <li>- Electrical grid tie-in available</li> <li>- Largest Council electrical demand</li> <li>- Central to feedstocks</li> <li>- Approx. 20% of facility feed located on-site</li> </ul>	<ul style="list-style-type: none"> <li>- Poor access</li> <li>- Poor prospects for land availability</li> <li>- Poor grid tie-in conditions</li> <li>- Low energy demand</li> <li>- Not central to feedstocks, except GO</li> </ul>	<ul style="list-style-type: none"> <li>- Operating site for foreseeable future</li> <li>- Poor land conditions in flood plain</li> <li>- Poor grid tie-in conditions</li> <li>- Very low energy demand on-site</li> <li>- Not central to feedstocks</li> </ul>	<ul style="list-style-type: none"> <li>- Operating airstrip on-site</li> <li>- Poor land conditions in flood plain</li> <li>- Poor grid tie-in conditions</li> <li>- Very low/no energy demand on-site</li> <li>- No feedstocks generated on-site</li> </ul>

This Table demonstrates that the subject site is the only feasible option for the proposed BEF.

## 2 SUMMARY OF REFERRALS

Referral	Issue/Summary of Comments
Environmental Health Officer*	No objections subject to conditions. Refer to Doc #A2021/24700. Also refer to discussion following this Table.
Development Engineer*	No objections subject to conditions. Refer to Doc #A2021/24702. Also refer to discussion following this Table.
S7.11 / Contributions Officer	No objections. Refer to Doc #A2021/24704. No contributions required.
Natural Resource Planner*	No objections subject to conditions. Refer to Doc #A2021/24705. Also refer to discussion following this Table
Rural Fire Service (100B/4.14)	No objections subject to conditions. Refer to letter dated 13 March 2022.
Department of Planning, Industry & Environment (Biodiversity & Conservation)	No specific objections or conditions. Refer to comments following this Table.
Department of Planning, Industry & Environment (Crown Lands)	Crown Lands has no comment other than to highlight that a formed section of Wallum Place is a Crown Public Road. This appears suitable for transfer to Council's control (note: since

Referral	Issue/Summary of Comments
	this submission was received, the affected area has been transferred to Council's control).
Transport for NSW	Advice provided with respect to matters that the consent authority should be satisfied of. Refer to comments following this Table.
Environment Protection Authority	<p>No objections subject to conditions. Refer to General Terms of Approval issued on 12 November 2021.</p> <p>The revised proposal was also referred to the EPA. The EPA advised by email dated 16 March 2022 that they have no objections to the revised access and there is no requirement to amend the GTA's.</p>
Fire & Rescue NSW	No response received. However, it is noted that Fire and Rescue NSW, in the SEAR's response, requested an opportunity to review and provide comment once approvals have been granted. Consultation is requested with respect to the proposed fire and life safety systems and their configuration at the projects preliminary and final design phases. Any consent could be conditioned accordingly.
Bundjalung (Arakwal)	No response received.

*\* Conditions provided in the above internal referral are included in the Recommendation of this Report below.*

#### **ISSUES:**

##### **Environmental Health Officer**

Council's Environmental Health Officer (EHO) raised no specific objections to the proposal subject to the imposition of conditions. The issues addressed are summarised below:

- Acid sulfate soils: Following a request for further information, a revised Acid Sulfate Soil Management plan was submitted. Compliance with this Plan will be required as a condition of any consent. It is also noted that screw piling will be utilised to minimise excavations. A condition is proposed that all excess excavated soils are to be treated as per the ASS management plan and either utilised within the compound or exported from the larger site (the whole 104 Ha site that includes the wetlands and biodiversity areas).
- Contaminated land: No concerns raised in this regard.  
This issue is further addressed in relation to SEPP (Resilience & Hazards) 2021.
- Waste Management: A satisfactory plan is provided that cross references groundwater, contaminated land and ASS assessment construction and operation phases.
- Land Use Conflicts: Initial concerns raised regarding potential conflict from impacts on wildlife at the locality (subject to BSC Natural Resource Planner assessment) and traffic impacts (construction and operation phases) on roads within the industrial estate

particularly Wallum Place and Bayshore Drive. Following the submission of the revised layout and response to traffic concerns, no objections are raised subject to conditions.

- Hazardous and Offensive Development: Chapter 9 of the EIS includes a hazard and risk assessment that concludes:

*“The proposed development is not considered a potentially hazardous development as per Figure 11 of SEPP33, so no further Preliminary Hazard Analysis or Multi-Level Risk Assessment has been performed.”*

Councils EHO advises that an operational environmental and emergency response management plan must be developed and submitted for approval prior to occupation.

- Noise impacts: a satisfactory report is included in the list of plans & standard conditions.
- Other impacts: A satisfactory air quality report is included that assesses primarily odours and concludes that the mitigation measures included in the design will manage odours generated by the proposal.

A construction environmental management plan is included as a condition to be submitted prior to CC.

An operational environmental and emergency response management plan must be developed and submitted for approval prior to occupation.

Light: no night-time lighting except motion detected for security.

Water: all wastewater to be collected and transported to a licensed facility.

#### Planning assessment comments:

All conditions recommended by Councils EHO will be included in any consent.

#### **Development Engineering**

Councils Development Engineer has assessed the proposal and raised no objections subject to conditions. The assessment is summarised as follows:

##### **1. External Access**

Access is proposed from Wallum Place utilising the existing STP entry. The access will require widening to cater for an articulated vehicle. The proposal meets the requirements of Byron DCP 2014.

The plans indicate the proposed weighbridge is to be located in the Wallum Place road reserve. This is not supported, and a condition should be placed on any consent requiring the weighbridge to be relocated to inside the operational land. Plans are to be annotated accordingly.

The proposed haulage routes have been examined with respect to critical intersections and turning movements. Upgrading works are required at the intersection of Wallum Place and Bayshore Drive which can be addressed by way of a condition of any consent.

##### **2. Parking**

It is proposed to provide 7 car parking spaces.

There is no standard car parking rate specified in Byron DCP Chapter B4 Traffic Planning, Vehicle Parking, Circulation and Access and RMS Guide to Traffic Generating Development for a bioenergy facility. The applicant has based the car parking calculations on the rate for a warehouse or distribution centre which requires 5 car parking spaces. Seven (7) spaces are proposed, including one (1) accessible space.

Using first principles, based on the number of staff driving cars at any given time (5 staff assumed), the number of parking spaces proposed is satisfactory.

### **3. Internal Access Arrangements**

The layout of the parking area for the proposed bioenergy facility is satisfactory.

There are 6 car parking spaces dedicated for the STP located along the internal access area which are near the proposed wheel wash area. These will be compromised by the manoeuvring movement of articulated vehicles. There is sufficient space to accommodate a 1.1m widening of the aisle width to meet the design requirements of AS2890.2004. Any consent will be conditioned accordingly.

There is ample space to manoeuvre the largest vehicle into the loading bay area, however the proposed entry and exit doors will restrict the manoeuvring movements.

The middle section of the building separating the doors/shutters into the Receiving Hall must be removed or widened.

Outcome: The proposal meets the DCP requirement with minor amendments. This can be conditioned accordingly.

### **4. Traffic Impact**

The traffic generated by the development will produce a low impact onto the road network.

### **5. Stormwater management**

Flows from the hardstand areas and the main building are proposed to be directed into a gross pollutant trap prior to entering the on-site stormwater detention system (OSD). The outflow of the OSD discharges into a sand filter before entering the point of discharge.

The surface flows of the gravel hardstand must be captured by way of a concrete swale located in front of the retaining wall and connected into an internal stormwater line (line 5).

The untreated hardstand directly connecting stormwater line 5 and the untreated gravel hardstand surrounding the main building also connecting into stormwater line 5 must be provided with a GPT with nutrient removal efficiencies to meet Council's Stormwater Quality requirements specified in the DCP.

Overall, there are no objections subject to conditions.

#### **Planning assessment comments:**

All conditions recommended by Council's Development Engineer will be included in any consent.

## Natural Resource Planner

Councils Natural Resource Planner has reviewed the revised proposal which included an updated BDAR and Koala Habitat Assessment Report (refer **Attachment 2**) and has raised no objections to the proposal subject to conditions. A summary of comments is provided below:

- The retention cells associated with the STP, as well as the naturally occurring wetlands on the site, form highly important habitat for native and migratory birds.
- The subject site (approx. 104ha) includes land identified on the Biodiversity Values Map (BV Map), coastal wetlands mapped under the Resilience and Hazards SEPP, core koala habitat mapped under the Byron Coast Comprehensive Koala Plan of Management (CKPoM), and threatened ecological communities (TECs). The majority of the site contains high conservation value native vegetation communities which form important habitat for local native fauna including threatened species.
- The proposed development footprint does not overlap with any land identified on the BV Map.
- In response to a request for further information, the proposal was redesigned and the supporting documentation amended to reflect the new design. With regard to biodiversity impacts, the most significant change to the proposal is the relocation of the access to the existing entrance north of the STP and upgrading of the existing internal STP access roads. This will increase the distance of the additional vehicle movements from the retention cells, reducing impacts on their habitat value for avifauna.
- It is considered that the amended design adequately demonstrates that sufficient steps have been taken to avoid and minimise biodiversity impacts.
- The most concerning outstanding issue is the potential impacts of the proposal on habitat of the Mitchell's rainforest snail (*T. mitchellae*). As the area within and immediately surrounding the proposed development area largely comprises a derived native grassland, it is considered to represent marginal habitat or the edge of a habitat area for the species. Nevertheless, the species was confirmed within and adjacent to the proposed development footprint, and is listed as Critically Endangered and an SAI entity under the BC Act. It is therefore important that the construction of the development include impact mitigation measures. Conservation management actions for the species will be recommended to be included in a broader Biodiversity Conservation Management Plan as a condition.
- It is not considered that the proposal qualifies as Serious and Irreversible Impacts (SAII) under the current version of the BAM (2020).
- No evidence of koalas was recorded on the site. It is considered that the assessment was generally in accordance with the requirements of the CKPoM.
- The proposal requires a variation to the prescriptive measures of Section B1.2.1 of Chapter B1 of the DCP. Specifically, the proposed development footprint is within the required 30m setback area to TECs (Swamp sclerophyll forest) and the 50m setback area to important wetlands on the site. The application acknowledged this and discussed impact mitigation measures and proposed the following biodiversity conservation actions to compensate for the variation:

- The installation of artificial nesting structures to encourage breeding by threatened avifauna
- Sourcing local provenance bird attracting flora for installation of a 'living fence' near the proposed development footprint
- Given the likely impacts of the proposal on an SAI entity, it is considered that these proposed measures should be expanded to include a broader BCMP for the proximate areas. This will be recommended as a condition.

*Planning assessment comments:*

All conditions recommended by Councils Natural Resource Planner will be included in any consent.

**External Referrals**

**Department of Planning, Industry & Environment (Biodiversity & Conservation)**

The DPIE (Biodiversity and Conservation) reviewed the BDAR originally lodged with the DA, which was prepared by an Accredited Assessor, and advised that it appears as though the impacts of the proposed development are unlikely to significantly affect threatened species, ecological communities, or their habitats. The biodiversity impacts of the proposed development do not appear to trigger entry into the Biodiversity Offset Scheme (BOS).

Despite this, the information provided in the BDAR indicates that the applicant has elected to opt into the BOS. However, there is no option available for local development under Part 4 of the EP & A Act to formally opt into a BOS where biodiversity impacts are unlikely to significantly affect threatened species, ecological communities, or their habitats. However, a proponent can voluntarily lodge a BDAR to assist with the evaluation of a DA, however, this does not give Council power to impose a credit retirement obligation as a condition of consent.

*Planning assessment comments:*

The updated BDAR was not referred to DPIE (Biodiversity and Conservation).

It should be noted that instead of entering into the BOS, the revised BDAR identifies that Council has made a decision to directly fund several conservation actions to enhance biodiversity conservation in proximity to the proposed development.

**Transport for NSW**

TfNSW recommends that the site access, internal manoeuvring, parking and servicing areas are designed and constructed in accordance with AS.2890 and to Council's specifications. Council should be satisfied that relevant design vehicles can travel along the identified transport route, enter and leave the site in a forward direction.

The TIA demonstrates that the road network has capacity to accommodate the proposed increase in traffic demands during construction and at commencement of operations. However, the assessment identifies that forecast future traffic demand is likely to exceed the capacity of the Ewingsdale Road and Bayshore Drive roundabout within 10 years of the proposed development being operational.

The TIA refers to investigations informing future planning for upgrades on Ewingsdale Road. Council should be satisfied that appropriate road infrastructure will be available to accommodate the increase in demand arising from the proposed development.

TfNSW will continue to work with Council towards planning for future improvements to classified roads in the subject area.

Planning assessment comments:

Traffic matters have been discussed in relation to Councils Engineering Assessment of the application.

### **3 SECTION 4.14 – BUSH FIRE PRONE LAND**

Under section 4.14(1) of the Act, the consent authority must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document Planning for Bush Fire Protection 2019.

Section 4.14 (1A) provides that if the consent authority is satisfied that the development does not conform to the relevant specifications and requirements, the consent authority may, despite subsection (1), grant consent to the carrying out of the development but only if it has consulted with the Commissioner of the NSW Rural Fire Service concerning measures to be taken with respect to the development to protect persons, property and the environment from danger that may arise from a bush fire.

The subject site is mapped as Bushfire Prone Land, however the approximate building area appears to be just outside the mapped area (refer **Figure 13**). The proposed access to the facility would require crossing the mapped area.

A Bushfire Risk Assessment was prepared and lodged with the development application. At that time the entire site was mapped as bush fire prone land. However, the mapping has since been amended and parts of the site containing the areas of the sewage treatment plant and land to the east and south-east have been removed from this mapping

The Bushfire Risk Assessment identified that the proposed administration building has a BAL 19 rating and the bioenergy facility buildings a BAL-FZ rating. It indicates that with proposal satisfies the aims and objectives of Planning for Bush Fire Protection 2019, with performance solutions.

The application was referred to the NSW Rural Fire Service who requested further information with respect to building location, the standard of construction and how the aims and objectives of Planning for Bush Fire Protection 2019 are met.

Following the provision of additional information, NSW Rural Fire Service provided recommended conditions of consent. This includes a recommendation that to ensure on-going compliance with the recommended bush fire prevention measures and that the consent authority should require an annual bush fire prevention audit from the site operator. The audit will ensure the site has suitable on-going bush fire protection measures.



**Figure 13** – Bush fire prone land (source: [www.bsc.nsw.gov.au](http://www.bsc.nsw.gov.au) - on-line mapping). The approximate location of the building area is shown in red.

**4 SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES**

Having regard to the matters for consideration detailed in Section 4.15(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act), the following is a summary of the evaluation of the issues.

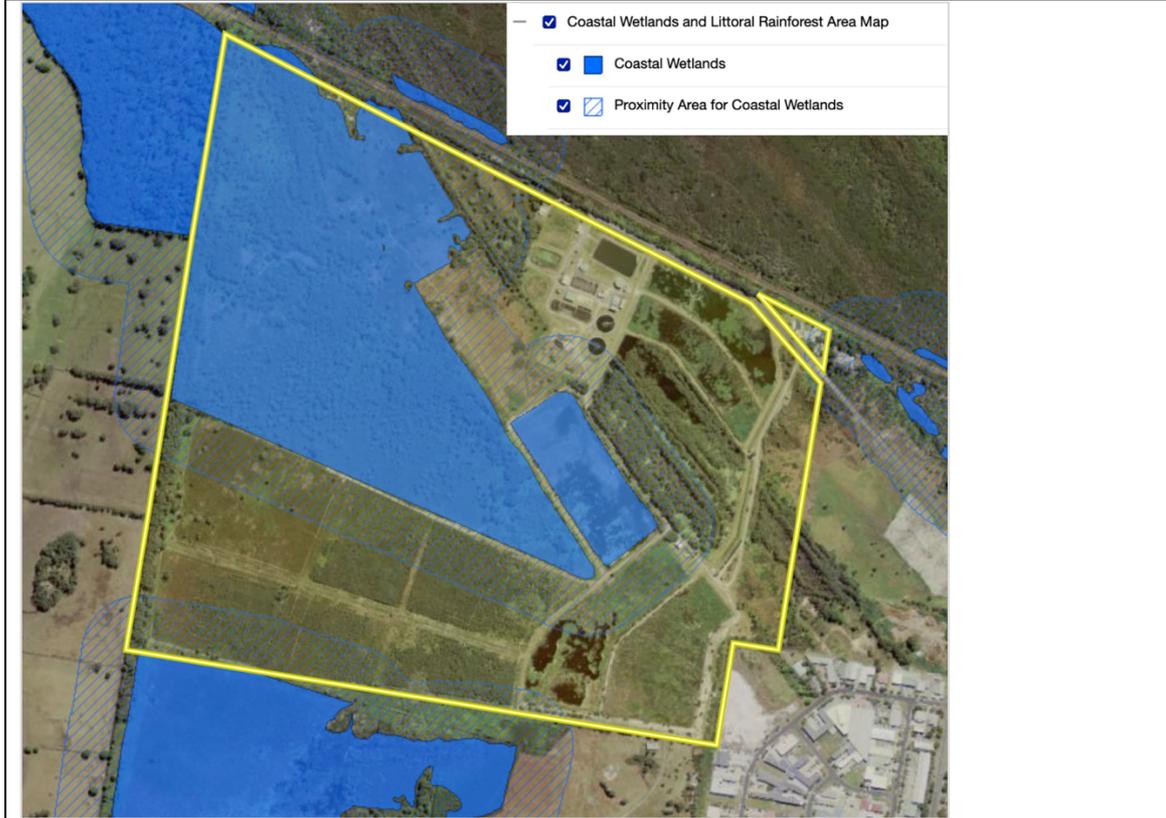
**4.1 State Environmental Planning Policies (SEPP)**

The Table below addresses the relevant SEPPs applying to the site and proposal. These are consolidated SEPP’s that came into effect on 1 March 2022. The SEPP’s that were in effect prior to 1 March 2022, and were addressed as part of the development application documentation, have been transferred into the new SEPP’s. No policy changes were made by transferring the former SEPPs into the consolidated SEPP’s.

State Environmental Planning Policy (SEPP)	Satisfactory	Unsatisfactory
<p><b>SEPP (Biodiversity and Conservation) 2021</b></p> <p>Relevant former SEPPs were:</p> <ul style="list-style-type: none"> <li>SEPP (Koala Habitat Protection) 2021</li> </ul>	<input checked="" type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory

State Environmental Planning Policy (SEPP)	Satisfactory	Unsatisfactory
<p><b>Chapter 4 – Koala habitat protection 2021</b></p> <p><i>Consideration:</i> The site is within an area to which the Byron Coast Comprehensive Koala Plan of Management (CKPoM) applies. Pursuant to Section 4.8 of the SEPP, the determination of the application must be consistent with the approved koala plan of management that applies to the land. As discussed, pursuant to Part 4 of the CKPoM, a Standard Koala Habitat Assessment Report was provided with no evidence of koalas being recorded on the site.</p>		
<p><b>SEPP (Resilience and Hazards) 2021</b></p> <p>Relevant former SEPPs were:</p> <ul style="list-style-type: none"> <li>• SEPP (Coastal Management) 2018</li> <li>• SEPP 33 – Hazardous and Offensive Development</li> <li>• SEPP 55 – Remediation of Land</li> </ul>	<input checked="" type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
<p><b>SEPP (Resilience and Hazards) 2021 - Chapter 2 Coastal management</b></p> <p><i>Consideration:</i> This chapter applies to land within the coastal zone. Coastal management areas comprise:</p> <ul style="list-style-type: none"> <li>• <i>the coastal wetlands and littoral rainforests area</i> – part of the subject site is mapped as being affected by coastal wetlands. This does not extend to the development envelope however, part of the development envelope is within the ‘proximity area for coastal wetlands’. The extent of this mapping is illustrated on <b>Figure 14</b>. The site does not include littoral rainforest mapping or proximity area for littoral rainforests.</li> <li>• <i>the coastal vulnerability area</i> – no areas mapped at this time</li> <li>• <i>the coastal environment area</i> – the subject site is not within the coastal environment area</li> <li>• <i>the coastal use area</i> – the subject site is not within the coastal use area.</li> </ul>		

State Environmental Planning Policy (SEPP)	Satisfactory	Unsatisfactory
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**Figure 14** – Coastal Wetlands and Proximity Area for Coastal Wetlands

Part 2.2, Division 1 Sections 2.7 and 2.8 contains controls for development in coastal wetlands and littoral rainforest areas and proximity areas.

Section 2.7 (1) relates to development on certain land within the coastal wetlands and littoral rainforests area. There are no physical works proposed in the mapped coastal wetland area on the site.

Section 2.8 Development on land in proximity to coastal wetlands or littoral rainforests provides:

- (1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the *Coastal Wetlands and Littoral Rainforests Area Map* unless the consent authority is satisfied that the proposed development will not significantly impact on—
  - (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
  - (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.
- (2) This section does not apply to land that is identified as “coastal wetlands” or “littoral rainforest” on the *Coastal Wetlands and Littoral Rainforests Area Map*.

The application has been assessed by Council Natural Resource Planner, Engineer and Environmental Health Officer and it is considered that subject to the implementation of mitigation measures, activities will not significantly impact on the biophysical, hydrological or

State Environmental Planning Policy (SEPP)	Satisfactory	Unsatisfactory
<p>ecological integrity of the adjacent coastal wetland, or the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland. This is discussed further in the body of this report.</p> <p>Chapter 2, Part 2.2 Division 5 relates to development in coastal zone generally and requires that the consent authority must be satisfied that development will not increase risk of coastal hazards and any certified coastal management programs that apply to the land.</p> <p>The location of the site is sufficiently distant from the active coastal zone and there are no coastal management programs applying to the land.</p> <p>Conditions are proposed to be placed on the consent to ensure that the proposed development will not result in significant impacts on the adjacent wetland.</p> <p><b>SEPP (Resilience and Hazards) 2021 - Chapter 3 Hazardous and offensive development</b></p> <p>Part 3 relates to ‘potentially hazardous or potentially offensive development’. A potentially hazardous industry is defined as:</p> <p><i>potentially hazardous industry means a development for the purposes of any industry which, if the development were to operate without employing any measures (including, for example, isolation from existing or likely future development on other land) to reduce or minimise its impact in the locality or on the existing or likely future development on other land, would pose a significant risk in relation to the locality—</i></p> <p><i>(a) to human health, life or property, or</i></p> <p><i>(b) to the biophysical environment,</i></p> <p><i>and includes a hazardous industry and a hazardous storage establishment.</i></p> <p>A hazard analysis has been prepared to address the requirements of (the then) SEPP 33. The EIS indicates that the hazard analysis and Environmental Risk Assessment has been performed according to AS/NZS ISO 31000: 2009 Risk Management – Principles and Guidelines and the Preliminary Hazardous Analysis has been informed by the <i>Hazardous and Offensive Development Application Guidelines - Applying SEPP 33</i>. Consideration has also been given to the following guidelines published by the NSW Department of Planning in 2011:</p> <ul style="list-style-type: none"> <li>• <i>Hazardous Industry Planning Advisory Paper No 2 - Fire Safety Study Guidelines</i><sup>16</sup></li> <li>• <i>Hazardous Industry Planning Advisory Paper No 3 - Risk Assessment</i><sup>17</sup></li> <li>• <i>Hazardous Industry Planning Advisory Paper No 4 - Risk Criteria for Land Use Safety Planning</i><sup>18</sup></li> <li>• <i>Hazardous Industry Planning Advisory Paper No 6 - Hazard Analysis.</i></li> </ul> <p>The EIS indicates that: <i>The objective of the assessment was to identify the risks posed to people, property and the environment. The assessment also considers off-site risks to people, property and the environment (in the presence of controls) arising from atypical and abnormal hazardous events and conditions (i.e. equipment failure, operator error and external events).</i></p> <p>The hazard treatment measures that have been proposed assist in producing a ‘low’ to ‘moderate’ level of risk in accordance with the risk acceptance criteria.</p>		

State Environmental Planning Policy (SEPP)	Satisfactory	Unsatisfactory
<p>The 'medium' risks relate to the potential failure of control system/software/energy supply or operator error leading to biogas leakage and storage and harvesting of biogas from the anaerobic digestors (potential explosion risk). Prevention, treatment and detection protection measures are proposed including the preparation of:</p> <ul style="list-style-type: none"> <li>• An emergency management/response management plan</li> <li>• Environmental Management plan</li> <li>• Work health and safety plan</li> <li>• Pollution incident response management plan</li> <li>• Hazardous material management plan</li> </ul> <p>A risk screening analysis has been prepared in accordance with <i>Hazardous and Offensive Development Application Guidelines - Applying SEPP 33</i>. This screening takes into consideration the quantity of certain classes of material stored on site and distances to site boundaries.</p> <p>In summary, the risk screening undertaken as part of the SEPP 33 guidelines indicates that:</p> <ul style="list-style-type: none"> <li>• Biogas - the biogas storage amount and location are below the Class 2.1 thresholds set forth in <i>Figure 6: Class 2.1 Flammable Gases Pressurised (Excluding LPG)</i> in the <i>Hazardous and Offensive SEPP</i>.</li> <li>• Compost - A maximum of two weeks product storage (up to 600 tonnes or 1,000m<sup>3</sup>) will be stored at the receival hall at any one time. In addition, a maximum of 600 tonnes (or 1,000m<sup>3</sup>) will be stored at the STP product storage area (former biosolids storage area) at any one time. This is not classed as a dangerous good but is flammable given the quantities held on site.</li> </ul> <p>The <i>Environmental Guidelines: Composting and Related Organics Processing Facilities</i> recommendations for fire safety and stockpile management will be followed to reduce the risks of potential fire in the any on-site stockpiles of product. This will include development of a fire management strategy prior to construction and operation of the BEF.</p> <p>On the basis of this screening, it was concluded that: <i>The proposed development is not considered a potentially hazardous development as per Figure 11 of SEPP33, so no further Preliminary Hazard Analysis or Multi-Level Risk Assessment has been performed.</i></p> <p>Section 3.12 of the SEPP requires:</p> <p><i>3.12 Matters for consideration by consent authorities</i></p> <p><i>In determining an application to carry out development to which this Part applies, the consent authority must consider (in addition to any other matters specified in the Act or in an environmental planning instrument applying to the development)—</i></p> <p><i>(a) current circulars or guidelines published by the Department of Planning relating to hazardous or offensive development, and</i></p>		

State Environmental Planning Policy (SEPP)	Satisfactory	Unsatisfactory
<p><i>(b) whether any public authority should be consulted concerning any environmental and land use safety requirements with which the development should comply, and</i></p> <p><i>(c) in the case of development for the purpose of a potentially hazardous industry—a preliminary hazard analysis prepared by or on behalf of the applicant, and</i></p> <p><i>(d) any feasible alternatives to the carrying out of the development and the reasons for choosing the development the subject of the application (including any feasible alternatives for the location of the development and the reasons for choosing the location the subject of the application), and</i></p> <p><i>(e) any likely future use of the land surrounding the development.</i></p>		
<p>In relation to these matters it is commented that:</p>		
<ul style="list-style-type: none"> <li>• the hazard analysis was prepared in accordance with the relevant guidelines.</li> <li>• The EPA and NSW Rural Fire Service were consulted, and general terms of approval and recommended conditions will be placed on any consent. The applicant will need to consult with Fire and Rescue NSW after any consent is issued as part of the detailed design phase.</li> <li>• The risk screening indicated that the proposal is not a potentially hazardous industry however an initial preliminary hazard analysis was prepared.</li> <li>• Feasible alternatives to the carrying out of the development and to the location of the development were addressed in the EIS and the response to further information request. The proposal is considered satisfactory in this regard.</li> <li>• The land surrounding the development envelope is owned by Byron Shire Council and contains high ecological values. The nature of the surrounding land use is unlikely to change. To be considered ‘potentially hazardous’ sensitive development would need to be within 40 metres of the biogas storage area. Further expansion of the ‘Habitat’ development has been approved and this is approximately 490 metres from the proposed biogas storage area.</li> </ul>		
<p><b>SEPP (Resilience and Hazards) 2021 – Chapter 4 – Remediation of Land</b></p>		
<p>A Preliminary Site Investigation for Contamination has been prepared by Douglas Partners (DP). The report concludes:</p>		
<p><i>Based on the results of the investigation, the following conclusions are made:</i></p>		
<ul style="list-style-type: none"> <li>• <i>Prior to its development as a STP, the site was predominantly vegetated, or utilised for grazing;</i></li> <li>• <i>The preliminary soil results indicated that the majority of analytes did not exceed the adopted SAC, with the exception of the nickel for the background EIL;</i></li> <li>• <i>There were some exceedances of the groundwater criteria, for arsenic, copper, nickel and lead, however this was considered typical for groundwater in urban areas; and</i></li> <li>• <i>DP considers that the site poses a low risk of contamination and therefore is suitable for commercial/ industrial purposes.</i></li> </ul>		

State Environmental Planning Policy (SEPP)	Satisfactory	Unsatisfactory
<p>However, DP recommends that additional sampling is undertaken to meet the recommended sampling density to characterise a 0.9 ha site in accordance with the NSW EPA (1995). If any excess soil is created during works, off-site removal of the soil will require stockpiling and additional analysis, to ensure proper disposal and management of the soil. Furthermore, if during works, groundwater is extracted, treatment and additional analysis will be required before disposal into local waterways. Compliance with State requirements, Federal regulations, and/or local Council regulations must be achieved.</p> <p>Notwithstanding the above conclusions, some potential may exist for isolated pockets of contamination being present in other parts of the site not investigated. Therefore, an Unexpected Finds Protocol (UFP) should be prepared and included in early works/bulk earthworks environmental management plans at the site.”</p> <p>Councils Environmental Health Officer has reviewed the report and has recommended a condition requiring the preparation of a Contaminated Soil and Groundwater Management Plan which includes additional sampling and the preparation of an Unexpected Finds Proptocol.</p>		
<p><b>SEPP (Planning Systems) 2021</b></p> <p>Relevant former SEPPs were:</p> <ul style="list-style-type: none"> <li>SEPP (State and Regional Development) 2011</li> </ul>	<input checked="" type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
<p>Comments</p> <p><b>Chapter 2 State and regional development</b></p> <p>Pursuant to Part 2.4 and Schedule 6, the proposal is Regionally Significant Development as it involves Council related development with a capital investment value over \$5 million.</p>		
<p><b>SEPP (Primary Production) 2021</b></p> <p>The relevant former SEPP is:</p> <ul style="list-style-type: none"> <li>SEPP (Primary Production and Rural Development) 2019</li> </ul>	<input checked="" type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
<p>Comments: The proposed BEF does not require subdivision of land or development of agricultural land.</p>		
<p><b>SEPP (Transport &amp; Infrastructure) 2021</b></p> <p>The relevant former SEPP is:</p> <ul style="list-style-type: none"> <li>SEPP (Infrastructure) 2007</li> </ul>	<input checked="" type="checkbox"/> Satisfactory	<input type="checkbox"/> Unsatisfactory
<p>Comments:</p> <p>Part 2.3 Division 23 of the SEPP relates to ‘Waste or resource management facilities’.</p> <p>Pursuant to Section 2.151, <b>resource recovery facility, waste disposal facility, waste or resource management facility</b> and <b>waste or resource transfer station</b> have the same meanings as in the Standard Instrument.</p> <p>Relevant definitions are:</p>		

State Environmental Planning Policy (SEPP)	Satisfactory	Unsatisfactory
<p><i>'resource recovery facility means a building or place used for the recovery of resources from waste, including works or activities such as separating and sorting, processing or treating the waste, composting, temporary storage, transfer or sale of recovered resources, energy generation from gases and water treatment, but not including re-manufacture or disposal of the material by landfill or incineration.'</i></p> <p><i>'Resource recovery facilities' are defined as a type of 'waste or resource management facility'.</i></p> <p>Section 2.151 defines a Prescribed Zone as including RU2 Rural Landscape and SP2 Infrastructure zoning or a land use zone that is equivalent to them. The subject land is zoned partly RU2 Rural Landscape and partly Deferred Matter under Byron LEP 2014. The deferred matter is land is zoned 5(a) Special Uses (Sewage Treatment Works) under Byron LEP 1988. The 5(a) zone is equivalent to the SP2 Infrastructure zone.</p> <p>Under Section 2.152 of the Policy, the following activities are permitted with consent:</p> <p><i>(1) Development for the purpose of waste or resource management facilities, other than development referred to in subclause (2), may be carried out by any person with consent on land in a prescribed zone.</i></p> <p>The proposal is therefore permitted with development consent.</p> <p>Section 2.121 relates to Traffic-generating development. This section applies to any waste or resource management facility.</p> <p>It provides for certain matters relating to traffic generating development that the consent authority must consider and be satisfied with prior to determining the proposed development. In particular, sub-clause (4) requires:</p> <p><i>(4) Before determining a development application for development to which this section applies, the consent authority must—</i></p> <p><i>(a) give written notice of the application to TfNSW within 7 days after the application is made, and</i></p> <p><i>(b) take into consideration—</i></p> <p><i>(i) any submission that RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, TfNSW advises that it will not be making a submission), and</i></p> <p><i>(ii) the accessibility of the site concerned, including—</i></p> <p><i>(A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and</i></p> <p><i>(B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and</i></p> <p><i>(iii) any potential traffic safety, road congestion or parking implications of the development.</i></p> <p>The application was referred to TfNSW and their comments have been outlined in the 'Referral' section of this report.</p>		

State Environmental Planning Policy (SEPP)	Satisfactory	Unsatisfactory
The traffic, access and parking issues associated with the proposal have been assessed by Council's Development Engineer and deemed to be satisfactory, or satisfactory subject to conditions.		

#### 4.2 Byron Local Environmental Plan 2014 (LEP 2014)

LEP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. The LEP 2014 clauses that are checked below are of relevance to the proposed development:

Part 1	<input checked="" type="checkbox"/> 1.1   <input checked="" type="checkbox"/> 1.1AA   <input checked="" type="checkbox"/> 1.2   <input checked="" type="checkbox"/> 1.3   <input checked="" type="checkbox"/> 1.4   <input checked="" type="checkbox"/> Dictionary   <input checked="" type="checkbox"/> 1.5   <input checked="" type="checkbox"/> 1.6   <input checked="" type="checkbox"/> 1.7   <input checked="" type="checkbox"/> 1.8   <input type="checkbox"/> 1.8A   <input checked="" type="checkbox"/> 1.9   <input type="checkbox"/> 1.9A
Part 2	<input checked="" type="checkbox"/> 2.1   <input checked="" type="checkbox"/> 2.2   <input checked="" type="checkbox"/> 2.3   <input checked="" type="checkbox"/> Land Use Table   <input type="checkbox"/> 2.4   <input type="checkbox"/> 2.5   <input type="checkbox"/> 2.6   <input type="checkbox"/> 2.7   <input type="checkbox"/> 2.8
Part 3	<input type="checkbox"/> 3.1   <input type="checkbox"/> 3.2   <input type="checkbox"/> 3.3
Part 4	<input type="checkbox"/> 4.1   <input type="checkbox"/> 4.1A   <input type="checkbox"/> 4.1AA   <input type="checkbox"/> 4.1B   <input type="checkbox"/> 4.1C   <input type="checkbox"/> 4.1D   <input type="checkbox"/> 4.1E   <input type="checkbox"/> 4.1F   <input type="checkbox"/> 4.2   <input type="checkbox"/> 4.2A   <input type="checkbox"/> 4.2B   <input type="checkbox"/> 4.2C   <input type="checkbox"/> 4.2D   <input checked="" type="checkbox"/> 4.3   <input type="checkbox"/> 4.3A   <input type="checkbox"/> 4.4   <input type="checkbox"/> 4.5   <input checked="" type="checkbox"/> 4.6
Part 5	<input type="checkbox"/> 5.1   <input type="checkbox"/> 5.2   <input type="checkbox"/> 5.3   <input type="checkbox"/> 5.4   <input type="checkbox"/> 5.6   <input type="checkbox"/> 5.7   <input type="checkbox"/> 5.8   <input checked="" type="checkbox"/> 5.10   <input type="checkbox"/> 5.11   <input checked="" type="checkbox"/> 5.12   <input type="checkbox"/> 5.13   <input type="checkbox"/> 5.14   <input type="checkbox"/> 5.15   <input type="checkbox"/> 5.16   <input type="checkbox"/> 5.17   <input type="checkbox"/> 5.18   <input type="checkbox"/> 5.19   <input type="checkbox"/> 5.20   <input checked="" type="checkbox"/> 5.21   <input type="checkbox"/> 5.22
Part 6	<input checked="" type="checkbox"/> 6.1   <input checked="" type="checkbox"/> 6.2   <input type="checkbox"/> 6.4   <input type="checkbox"/> 6.5   <input checked="" type="checkbox"/> 6.6   <input type="checkbox"/> 6.7   <input type="checkbox"/> 6.8   <input type="checkbox"/> 6.9   <input type="checkbox"/> 6.11   <input type="checkbox"/> 6.12   <input type="checkbox"/> 6.13   <input type="checkbox"/> 6.14   <input type="checkbox"/> 6.15

In accordance with LEP 2014 clauses 1.4 and 2.1 – 2.3:

- (a) The proposed development is defined in the LEP 2014 Dictionary as 'resource recovery facility' which is: **resource recovery facility** means a building or place used for the recovery of resources from waste, including works or activities such as separating and sorting, processing or treating the waste, composting, temporary storage, transfer or sale of recovered resources, energy generation from gases and water treatment, but not including re-manufacture or disposal of the material by landfill or incineration.

*Note— Resource recovery facilities are a type of **waste or resource management facility**.*

- (b) The land is zoned part RU2 Rural Landscape zone and part DM Deferred Matter according to the Land Zoning Map. The Deferred Matter is land affected by Byron LEP 1988 and is zoned part 5A (Special Uses Zone), part 7A (Wetlands) Zone and part 7B (Coastal Habitat Zone) under Byron LEP 1988.

The development envelope is partly within the RU2 zone (Byron LEP 2014) and partly within the 5A Special Uses Zone (Byron LEP 1988).

- (c) The proposed development is prohibited in the RU2 zone but is permissible with consent pursuant to SEPP (Transport and Infrastructure) 2021. When there is an inconsistency between the provisions in a Local Environmental Plan and SEPP (Transport and Infrastructure) 2021, under Section 2.7 of the SEPP, the SEPP takes precedence and overrides the provisions of the LEP.
- (d) Regard is had for the Zone Objectives as follows:

<b>Zone Objective</b>	<b>Consideration</b>
To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.	The proposal is adjacent to the Byron Bay STP and surrounding wetlands. The proposal is unlikely to impact on primary industry production.
To maintain the rural landscape character of the land.	Given the proximity of the proposal to the adjacent STP infrastructure, the landscape character of the wider locality will be maintained.
To provide for a range of compatible land uses, including extensive agriculture.	The proposal is compatible with the STP and with the implementation of appropriate management measures will be satisfactory with respect to compatibility with the adjacent natural land and constructed wetlands. Extensive agriculture is not proposed.
To enable the provision of tourist accommodation, facilities and other small-scale rural tourism uses associated with primary production and environmental conservation consistent with the rural character of the locality.	Not applicable. The proposal is not for tourist uses.
To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.	The site contains the STP. The proposed BEF is located at a lower level on the site. It is not identified as a significant scenic landscape. The visual impacts of the proposal are considered satisfactory due to the topography of the site and the surrounding vegetation. This issue is discussed later in this report.

It is considered that the zone objectives will not be compromised by the proposed development.

#### Clause 4.3 Height of Buildings

The Height of Buildings Map specifies a height limit of 9 metres over the RU2 zoned land. The proposed building has a maximum building height of 13.57 m (measured from the existing ground level), which is 4.57 m above the maximum building height permitted for the site by the BLEP2014. Accordingly, the applicant has submitted a request for an exception to this standard under clause 4.6 of the Byron LEP 2014.

Plan elevations showing the extent of the encroachment is provided in **Attachment 3**.

The objectives of clause 4.3 are;

- (a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,*
- (b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,*
- (c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*

#### Clause 4.6 Exceptions to Development Standards

As mentioned, the application seeks an exception to the 9m high development standard prescribed by clause 4.3 for the proposed building which has a maximum height of 13.57m.

Clause 4.6 (1) to (5) provides:

#### **4.6 Exceptions to development standards**

*(1) The objectives of this clause are as follows—*

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless—*

- (a) the consent authority is satisfied that—*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Planning Secretary has been obtained.*

*(5) In deciding whether to grant concurrence, the Planning Secretary must consider—*

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

The written request for an exemption to the development standard addresses the requirements of clause 4.6(3). In summary, the applicant submits that:

The height of the proposed structures is determined by:

- The need to prepare the site for construction while minimising excavation and the disturbance of acid sulphate soil by cutting and filling to 5.77m AHD (1.77 metres above the lowest point on the site);
- The need to receive waste in a controlled environment shed to mitigate impacts on air quality;
- Clearance and safety requirements for front end loaders, trucks (tipping), and other equipment required to operate in the Receiving Hall (9 metres clearance required);
- The need for structural support of the roof and sufficient slope for runoff of rainwater to gutters (2.8 metres to peak of roof);
- Clearances to allow for safe loading and optimal operation of the tunnels to produce biogas and compost;
- The need to provide sufficient capacity in the Gas Storage Facility to minimise flaring and manage fluctuations in electricity (and therefore gas) demand;
- The need to minimise the development footprint and related clearing of vegetation by placing gas storage on top of the tunnels rather than on the ground.

As a result of these requirements, the maximum height of all structures is 13.57 metres (17.57m AHD), with the combined tunnel and gas storage facility height at 13.27 metres (17.27m AHD). Ground level for the Project is 2.5m lower than the current Byron STP ground level. The proposed structure is set in a depression in the landscape and is surrounded by dense and mature canopy approximately 20-25m high.

It is noted that buildings within the existing BBSTP are up to 15.5m AHD. The highest point of the proposal is therefore approximately 1.77m higher than the highest point of existing STP infrastructure. The applicant submits that the proposed BEF buildings will be compatible with the character of the water and waste treatment infrastructure already located on the lot.

Figure 15 shows the height of the proposed BEF in relation to the STP infrastructure.

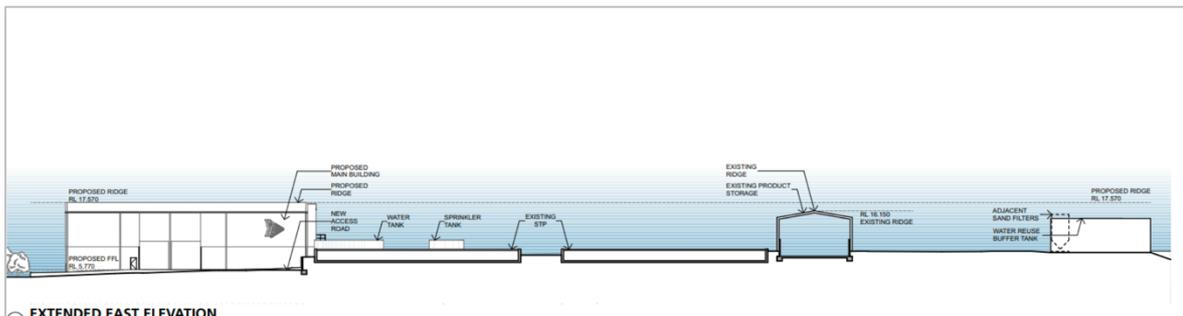


Figure 15 – Extended east elevation

The application is accompanied by a comprehensive Visual Impact Assessment (VIA) which assesses the proposal from 11 viewpoints. The visual effect of the proposal varies from Nil to Low.

The VIA indicates that although the proposed structure has a maximum height of 13.57m, it is set in a depression and is surrounded by dense and mature canopy that is about 20-25m high. Topography and existing vegetation character help screen the project from all visual receptors.

The applicant addresses the objectives of the development standard as follows:

*a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,*

Response: No alternative design solution will allow the BEF to operate successfully without exceeding 9m in height from the existing ground level. Clause 4.6 allows for an exception to the Clause 4.3 development standard where appropriately justified.

*b) to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located,*

Response: The proposed BEF is set back over 200 metres from Wallum Place, behind the BBSTP, and 2.5 metres below the BBSTP ground level. The proposed BEF buildings will be compatible with the character of the water and waste treatment infrastructure already located on the lot. The closest other development is approximately 485 metres (along Wallum Place) from the facility entrance, and the surrounding wetland vegetation screen the BEF from that development. BSC owns the land containing the screening vegetation and uses most of it as a final stage of (wetland) treatment for wastewater. This land is very unlikely to be developed for any other purpose.

*c) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*

Response: Topography and existing vegetation character screen the BEF from all visual receptors. This conclusion is further supported a Visual Impact Assessment of the proposed BEF (Appendix L of the EIS). The assessment concluded that the height of the proposed BEF will have either a NIL or LOW potential visual impact on the assessed viewpoints. Neighbouring development is all more than 480m from the development, and BSC owns the intervening land. Therefore, there is no current or potential impact on the solar access, privacy or views of neighbouring developments.

It is considered that the clause 4.6 submission addresses the relevant statutory requirements and demonstrates that that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered that the variation to the 9m height control is justified, and the Clause 4.6 exception should be supported.

It is noted that the Northern Regional Planning Panel has delegated authority to assume the Secretary's concurrence.

#### Clause 5.10 Heritage conservation

*Non-indigenous heritage:* The site does not contain any listed heritage items, is not located adjacent to any listed heritage items, and is not within a heritage conservation area.

*Indigenous heritage:* An Aboriginal Cultural Heritage Assessment report was prepared for the proposal. As a result of the field inspections and consultation with representatives from Bundjalung of Byron Bay Aboriginal Corporation, the assessment indicates that it is possible to proceed with the ACHAR on the basis of the following:

- The ground surface is considered to be significantly disturbed from the removal of native vegetation and deposition of waste material from the STP.
- Aboriginal midden and ceremonial sites are known to occur in the Belongil area. However, the accuracy of these site records is questionable and it is possible that some of the sites recorded refer to anecdotal sources which have not been verified. In addition to vegetation growth, mapping inaccuracies make relocation of sites difficult.
- While the site inspection was significantly covered by grass it is not considered that the location has an elevated potential to contain Aboriginal sites or places of intangible cultural value.

Having consideration for the outcomes of the survey it is reasonable to conclude that the Proposal will not impact on Aboriginal objects.

Recommendations are provided which will be included in any conditions of consent.

#### Clause 5.12 Infrastructure development and use of existing buildings of the Crown

This clause indicates that this Plan does not restrict or prohibit, or enable the restriction or prohibition of, the carrying out of any development, by or on behalf of a public authority, that is permitted to be carried out with or without development consent, or that is exempt development, under State Environmental Planning Policy (Infrastructure) 2007 (now SEPP (Transport & Infrastructure) 2021).

#### Clause 5.21 Flood planning

The development envelope and access to Wallum Place is above the 1:100 year flood level. It is also above the mapped 'future flood level' and 'probable maximum flood'.

#### Clause 6.1 Acid sulfate soils

The proposed development envelope is located on land identified as Class 3 on the Acid Sulfate Soil Map. Where there is work more than 1 metre below natural ground level, subclause (3) provides that development consent must not be granted under this clause unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

Acid sulfate soil investigations have been undertaken and a management plan prepared. The assessment indicates that all excavations in the soils on this site are to be considered as disturbance of PASS and are to be managed accordingly. The report indicates that it is expected that greater than 1000 t of PASS will be disturbed. Management measures are proposed which include the application of lime at a specified rate and using a specified method and the incorporation of validation testing. Screw piling will be used to minimise excavations.

The Acid Sulfate Soil Management Plan has been assessed by Councils Environmental Health Officer and no objections raised subject to a condition requiring all excess excavated soils are to be treated

as per the ASS management plan and either utilised within the compound or exported from the larger site (the whole 104 Ha site that includes the wetlands and biodiversity areas).

#### Clause 6.2 Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. Subclause 3 requires that:

In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) the effect of the development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Earthworks (cut and fill) are required to create a suitably level building platform and suitable levels for internal traffic circulation. Calculations indicate that there will be an excess of 640m<sup>3</sup> of material that will need to be exported from the site to an approved location.

With respect to the specific clause 6.2 considerations, Councils engineers have assessed preliminary civil works plans, soil and water management plan and geotechnical report and raised no objections to the earthworks proposed. It is concluded that suitable conditions can be placed on any consent to ensure that there will be no unacceptable impacts on drainage patterns, surrounding properties, or adjacent wetlands.

If relics are uncovered, work must immediately stop and the relevant authorities notified.

#### Clause 6.6 Essential services

The clause requires that, prior to granting consent to development, the consent authority must be satisfied that the nominated services are available or that adequate arrangements have been made to make them available.

The site is adjacent to an existing STP where all required services are available or can be made available.

Access will be via an existing internal access road through the STP site which has been assessed as being satisfactory subject to conditions.

The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development complies with relevant clauses of LEP 2014 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

### 4.3 Byron Local Environmental Plan 1988 (LEP 1988)

In addition to Byron LEP 2014, LEP 1988 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposed development. The LEP 1988 clauses that are checked below are of relevance to the proposed development:

Part 1	<input checked="" type="checkbox"/> 1   <input checked="" type="checkbox"/> 2   <input checked="" type="checkbox"/> 2A   <input checked="" type="checkbox"/> 3   <input checked="" type="checkbox"/> 4   <input checked="" type="checkbox"/> 5   <input checked="" type="checkbox"/> LEP 1988 Dictionary   <input checked="" type="checkbox"/> 7
Part 2	<input checked="" type="checkbox"/> 8   <input checked="" type="checkbox"/> 9
Part 3	<input type="checkbox"/> 10   <input type="checkbox"/> 11   <input type="checkbox"/> 11A   <input type="checkbox"/> 11B   <input type="checkbox"/> 12   <input type="checkbox"/> 13   <input type="checkbox"/> 14   <input type="checkbox"/> 15   <input type="checkbox"/> 16   <input type="checkbox"/> 17   <input type="checkbox"/> 17A   <input type="checkbox"/> 17B   <input type="checkbox"/> 18   <input type="checkbox"/> 19   <input type="checkbox"/> 20   <input type="checkbox"/> 22   <input type="checkbox"/> 23   <input type="checkbox"/> 24   <input type="checkbox"/> 25   <input type="checkbox"/> 27   <input type="checkbox"/> 29   <input type="checkbox"/> 29AA   <input type="checkbox"/> 29A   <input type="checkbox"/> 30   <input type="checkbox"/> 31   <input type="checkbox"/> 32   <input type="checkbox"/> 33   <input type="checkbox"/> 34   <input type="checkbox"/> 35   <input type="checkbox"/> 36   <input type="checkbox"/> 37   <input type="checkbox"/> 38   <input type="checkbox"/> 38A   <input type="checkbox"/> 38B   <input type="checkbox"/> 39   <input type="checkbox"/> 39A   <input type="checkbox"/> 39B   <input type="checkbox"/> 39C   <input type="checkbox"/> 40   <input type="checkbox"/> 41   <input type="checkbox"/> 42   <input type="checkbox"/> 43   <input type="checkbox"/> 44   <input type="checkbox"/> 45   <input type="checkbox"/> 46   <input type="checkbox"/> 47   <input type="checkbox"/> 47AA   <input type="checkbox"/> 47A   <input type="checkbox"/> 48   <input type="checkbox"/> 48A   <input type="checkbox"/> 49   <input type="checkbox"/> 51   <input type="checkbox"/> 52   <input type="checkbox"/> 53   <input type="checkbox"/> 54   <input type="checkbox"/> 55   <input type="checkbox"/> 56   <input type="checkbox"/> 57   <input type="checkbox"/> 58   <input type="checkbox"/> 59   <input type="checkbox"/> 60   <input type="checkbox"/> 61   <input type="checkbox"/> 62   <input type="checkbox"/> 63   <input type="checkbox"/> 64   <input type="checkbox"/> 64A   <input type="checkbox"/> 64B   <input type="checkbox"/> 64C   <input type="checkbox"/> 64D
Part 4	<input type="checkbox"/> 65   <input type="checkbox"/> 66   <input type="checkbox"/> 67   <input type="checkbox"/> 68   <input type="checkbox"/> 69   <input type="checkbox"/> 70   <input type="checkbox"/> 71   <input type="checkbox"/> 72   <input type="checkbox"/> 73   <input type="checkbox"/> 74   <input type="checkbox"/> 75   <input type="checkbox"/> 76   <input type="checkbox"/> 77   <input type="checkbox"/> 78   <input type="checkbox"/> 79   <input type="checkbox"/> 80   <input type="checkbox"/> 81   <input type="checkbox"/> 82   <input type="checkbox"/> 83   <input type="checkbox"/> 83A   <input type="checkbox"/> 83B   <input type="checkbox"/> 84   <input type="checkbox"/> 85   <input type="checkbox"/> 86   <input type="checkbox"/> 87   <input type="checkbox"/> 88   <input type="checkbox"/> 89   <input type="checkbox"/> 90   <input type="checkbox"/> 91   <input type="checkbox"/> 92   <input type="checkbox"/> 93   <input type="checkbox"/> 94   <input type="checkbox"/> 95   <input type="checkbox"/> 96   <input type="checkbox"/> 97   <input type="checkbox"/> 98   <input type="checkbox"/> 98A   <input type="checkbox"/> 98B   <input type="checkbox"/> 99   <input type="checkbox"/> 100   <input type="checkbox"/> 101

In accordance with LEP 1988 clauses 5, 8 and 9:

- (a) The proposed development is defined in the LEP 1988 Dictionary as a ‘public utility undertaking’;
- (b) The subject site comprises land zoned 5(a) Special Uses Zone, 7(a) Wetlands Zone and 7(b) Coastal Habitat Zone land according to the map under LEP 1988. The development envelope only affects a small area of land in the 5(a) zone (refer **Figure 11**).
- (c) The proposed development is considered to be ‘any other public purpose’ which is permissible with development consent; and
- (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

Zone Objective	Consideration
The objectives of this zone is to designate land for certain community facilities and services including areas for off-street parking in private ownership.	The proposal, being for a public purpose, is consistent with the zone objectives.

#### Clause 36 Development adjoining wetland

This clause states:

- (1) *This clause applies to land adjoining or contiguous to land within Zone No 7 (a).*

*(2) A person shall not clear, drain, excavate or fill land to which this clause applies without the consent of the council.*

*(3) The council shall not consent to the carrying out of development on or adjoining or contiguous to land within Zone No 7 (a) unless it has taken into consideration—*

*(a) the likely effects of the development on the flora and fauna found in the wetland,*

*(b) the likely effects of the development on the water table, and*

*(c) the effect on the wetlands of any proposed clearing, draining, excavating or filling.*

An engineering, ecological and environmental health assessment of the application included consideration of these matters and it is concluded that the proposal is satisfactory subject to conditions.

The remaining checked clauses have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development complies with relevant clauses of LEP 1988 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

#### Clause 40 Height

This clause requires:

*(1) The objectives of this clause are as follows—*

*(a) to achieve building design that does not exceed a specified maximum height from its existing ground level to finished roof or parapet,*

*(b) to ensure that the height and scale of development is appropriate to its location, surrounding development and the environmental characteristics of the land.*

*(2) The council must not consent to the erection of any building—*

*(a) on land within Zone No 3 (a), if—*

*(i) the floor of the topmost floor level of the building exceeds 7.5 metres above the existing ground level, or*

*(ii) the vertical distance between the topmost part of the building and the existing ground level below exceeds 11.5 metres, or*

*(b) on land within any other zone, if—*

*(i) the floor of the topmost floor level of the building exceeds 4.5 metres above the existing ground level, or*

*(ii) the vertical distance between the topmost part of the building and the existing ground level below exceeds 9 metres.*

The only part of the proposed building within the area affected by Byron LEP 1988 is the edge of the percolator and combined heat and power unit. These structures are below 9m in height in the 5(a) zone and consequently comply with the requirements of clause 40(2) (b) (ii) .

#### **4.4 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

None relevant to the proposal.

#### 4.5 Byron Shire Development Control Plan 2014 (DCP 2014)

DCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP& A Act because it applies to the land to which LEP 2014 applies. The DCP 2014 Parts/Chapters that are checked below are of relevance to the proposed development:

Part A	<input checked="" type="checkbox"/>
Part B Chapters:	<input checked="" type="checkbox"/> B1   <input type="checkbox"/> B2   <input checked="" type="checkbox"/> B3   <input checked="" type="checkbox"/> B4   <input type="checkbox"/> B5   <input checked="" type="checkbox"/> B6   <input type="checkbox"/> B7   <input checked="" type="checkbox"/> B8   <input checked="" type="checkbox"/> B9   <input type="checkbox"/> B10   <input type="checkbox"/> B11   <input checked="" type="checkbox"/> B12   <input type="checkbox"/> B13   <input checked="" type="checkbox"/> B14
Part C Chapters:	<input type="checkbox"/> C1   <input type="checkbox"/> C2   <input type="checkbox"/> C3   <input type="checkbox"/> C4
Part D Chapters	<input type="checkbox"/> D1   <input type="checkbox"/> D2   <input type="checkbox"/> D3   <input type="checkbox"/> D4   <input checked="" type="checkbox"/> D5   <input type="checkbox"/> D6   <input type="checkbox"/> D7   <input type="checkbox"/> D8   <input type="checkbox"/> D9
Part E Chapters	<input type="checkbox"/> E1   <input type="checkbox"/> E2   <input type="checkbox"/> E3   <input type="checkbox"/> E4   <input type="checkbox"/> E5   <input type="checkbox"/> E6   <input type="checkbox"/> E7   <input type="checkbox"/> E8   <input type="checkbox"/> E9   <input type="checkbox"/> E10

The checked Parts/Chapters referred to in the above Table have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development is demonstrated to meet the relevant Objectives of all relevant Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

Part A13.4 – Community Consultation Prior to the Lodgement of a Development Application – Pre-lodgement community consultation was undertaken prior to the application being lodged. A summary of the consultation results is provided in the EIS and the response to submissions. A Social Impact Statement has been provided with the application in accordance with the requirements of Chapter B12 – Social Impact Assessment. The SIA recommends:

*To minimise the potential for social impacts on the local community, the following recommendations are proposed. These matters need to be considered in the Environmental Impact Assessment process:*

- 1. Traffic and Parking Assessment Report and Noise Impact Assessment to consider potential impacts, mitigation measures and/or alternative access arrangements into the proposed development. Consideration should be given to alternative access routes to mitigate against potential impacts on Bayshore Drive;*
- 2. Visual Impact Assessment to consider minimum security lighting to prevent impacts on nocturnal fauna located on neighbouring wetlands and the surrounding area;*
- 3. Appropriate security fencing as part of the Byron Bay Sewage Treatment Plant to be considered to ensure that unauthorised access is prevented;*
- 4. Air quality impact assessment to consider worst case scenario conditions to ensure no impacts on local air quality; and*

*5. Pedestrian and cyclist safety on the main haul route to be considered in the Traffic and Parking study.*

Council’s Engineer has reviewed the application regarding access, traffic and stormwater management (Chapters B3 - Services, B4 – Traffic Planning, Vehicle Parking, Circulation and Access) and found the proposal to be satisfactory subject to recommended conditions.

The proposal meets the relevant objectives of B14 – Excavation and Fill. Detailed engineering design will be required with the Construction Certificate.

Councils Environmental Health Officer has reviewed the application regarding site waste minimisation and land use conflicts (Chapters B6 – Buffers and Minimising land Use Conflicts and B8 – Waste Minimisation and Management) and found the proposal to be satisfactory subject to recommended conditions.

Councils Ecologist has reviewed the application with respect to biodiversity (Chapter B1 - Biodiversity) and found the proposal to be satisfactory subject to conditions. The assessment notes that:

*The proposal requires a variation to the prescriptive measures of Section B1.2.1 of Chapter B1 of the DCP. Specifically, the proposed development footprint is within the required 30m setback area to TECs (Swamp sclerophyll forest) and the 50m setback area to important wetlands on the site. The application acknowledged this and discussed impact mitigation measures and proposed the following biodiversity conservation actions to compensate for the variation:*

- *The installation of artificial nesting structures to encourage breeding by threatened avifauna*
- *Sourcing local provenance bird attracting flora for installation of a ‘living fence’ near the proposed development footprint*

*Given the likely impacts of the proposal on an SAI entity, it is considered that these proposed measures should be expanded to include a broader BCMP (Biodiversity Conservation Management Plan) for the proximate areas. This will be recommended as a condition.*

**4.5B Byron Shire Development Control Plan 2010 (DCP 2010)**

DCP 2010 is an applicable matter for consideration in the assessment of the subject development application) in accordance with subsection 4.15(1) of the EP& A Act because its purpose is to provide planning strategies and controls for various types of development permissible in accordance with LEP 1988. DCP 2010 is applicable due to the small encroachment of the proposal into the Deferred Matter land under Byron LEP 2014.

The DCP 2010 Chapters/Parts that are checked below are of relevance to the proposed development:

Chapter 1 Parts:	<input checked="" type="checkbox"/> A General   <input type="checkbox"/> B   <input type="checkbox"/> C   <input type="checkbox"/> D   <input type="checkbox"/> E   <input checked="" type="checkbox"/> F Waste Minimisation and Management   <input checked="" type="checkbox"/> G Vehicle Circulation and Parking   <input checked="" type="checkbox"/> H Landscape   <input type="checkbox"/> J   <input type="checkbox"/> K   <input type="checkbox"/> L   <input checked="" type="checkbox"/> N Stormwater Management
Chapters:	<input type="checkbox"/> 4   <input type="checkbox"/> 6   <input type="checkbox"/> 7   <input type="checkbox"/> 8   <input type="checkbox"/> 9   <input type="checkbox"/> 10   <input type="checkbox"/> 11   <input type="checkbox"/> 12   <input type="checkbox"/> 14   <input checked="" type="checkbox"/> 15 Industrial Development   <input type="checkbox"/> 16   <input checked="" type="checkbox"/> 17 Public Exhibition and Notification of

	Development Applications  <input type="checkbox"/> 18  <input type="checkbox"/> 19  <input type="checkbox"/> 20  <input checked="" type="checkbox"/> 21 Social Impact Assessment  <input type="checkbox"/> 22
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The checked Parts/Chapters referred to in the above Table have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development is demonstrated to meet the relevant Objectives of all relevant Parts/Chapters (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

The applicant has addressed the relevant controls in an Addendum to the EIS and this assessment is considered to be satisfactory.

Many of the controls in Byron DCP 2010 have been included and updated in Byron DCP 2014 which has been assessed above.

#### 4.6 Environmental Planning & Assessment Regulation 2000 Considerations

Clause	This control is applicable to the proposal:
92 Additional matters that consent authority must consider	Not applicable
93 Consideration of fire safety	Not applicable – relates to the change of use of an existing building
94 Consent authority may require buildings to be upgraded	Not applicable
94A Fire safety considerations relating to temporary structures	Not applicable

#### 4.7 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

##### ***Natural environment***

The potential impacts of the proposal on the natural environment, including impacts on vegetation and fauna, ecology and biodiversity, water quality and air quality have been assessed by both Council staff and relevant external agencies and discussed throughout this report.

Following an initial assessment of the application, additional information was sought from Council in respect of the following:

- Acid sulfate soils – an amended ASS Management Plan was requested that assess the management of ASS leachates and groundwater in the context for the threatened wallum frog species habitat requirements and groundwater quality in general and management and fate of any extractions.
- Biodiversity Conservation – Further assessment was required expanding the assessment to include additional surrounding areas potentially impacts by the development. Further assessment was also required of indirect impacts (including impacts from traffic, noise and light on the threatened bird species occupying the wetlands) and treatment of acid sulfate soils.

Additional statutory and policy requirements were also required to be addressed, including those relating to the Byron Coast Comprehensive Koala Plan of Management and Byron DCP Chapter B1 Biodiversity.

The additional information was submitted which included amending the proposal to relocate the proposed access away from the wetlands to the east of the STP. The applicants full response to Councils information request is provided in **Attachment 2**.

The additional information sought by the EPA included:

- Acid sulfate soils – the applicant was asked to provide additional details of the acid sulfate soil neutralisation treatment methodology. This included location and size of the neutralisation area footprint, details of the lined treatment pad, preliminary designs for leachate management infrastructure (bunds, collection pits, drains, storage tanks), water treatment measures and management measures to avoid and minimise discharges (e.g. disposal to sewer at the adjacent Byron Bay Sewage Treatment Plant or at a licensed facility). If discharges are still required, a water pollution impact assessment is required to inform licensing considerations consistent with s45 POEO Act (see below under stormwater discharges).
- Stormwater discharges - Given the risks associated with contaminated stormwater and the sensitive receiving environment, further practical and reasonable measures to avoid and minimise discharges should be considered, including, but not limited to, at-source controls, enhanced erosion and sediment control measures, greater onsite water storage capacity (such as larger basins where practicable), and offsite disposal (e.g. the adjacent Byron Bay Sewage Treatment Plant) of captured water where discharges have the potential to cause harm. Details of mitigation measures to avoid and minimise discharges is required.

If discharges to surface waters are still required, a water pollution impact assessment commensurate with the potential risks and consistent with the National Water Quality Guidelines would be required to inform licensing considerations consistent with section 45 of the Protection of the Environment Operations Act 1997.

- Leachate Management - details to be provided on how any leachate generated onsite will be managed during operations.

The applicant provided additional information to the EPA (see **Attachment 4**), which in summary included:

- An updated ASS Management Plan which includes a commitment to use screw pile foundations to reduce bulk excavations at depth to minimise the disturbance of ASS, details of the ASS treatment pad size and location and an updated construction soil and water management plan.
- If ASS treatment is required during bulk excavations then stormwater runoff and leachate captured during this treatment will be pumped out for disposal to a suitably licensed facility. No discharge to the environment/adjacent ground surfaces will be required during bulk excavation and treatment of ASS.
- Advice that due to the controls proposed, the risk that contaminated stormwater will be discharged to adjacent sensitive environments is insignificant. The rationale for this conclusion is:
  - The highest risk of contamination occurs during cut and fill

- The cut to fill phase is expected to take no more than 2 weeks
- Groundwater is at 1.4m (Bore 8) and 1.1m (Bore 11) below ground surface, while most of the excavation will be <1m
- Cut >1m occurs mainly adjacent to existing STP infrastructure, which is on ground at a higher RL due to previous construction and fill and, therefore, is highly unlikely to encounter groundwater
- Rainfall runoff and leachate collected during ASS treatment, and any contaminated groundwater collected during cut and fill, will be pumped out for disposal to a suitably licensed facility.
- Upon completion of cut and fill phase, and after all necessary treatment of ASS is complete, the construction site will retain the perimeter bunding along with the ability to retain the 100yr storm event. Minimal areas of soil will be exposed since most of the footprint will be covered with pavement or foundations. At this point, the possibility of contaminated water retained onsite is insignificant. Only then will water retained onsite be tested and discharged per standard Blue Book water quality requirements.
- Advice that leachate (also known as percolate) from both aerobic and anaerobic processes can be stored in the percolate tank (600 m<sup>3</sup> capacity). The process is designed for zero liquid discharge, however, in the unlikely event that excess leachate is generated by the process, it will be pumped out from the percolate storage tank and treated at a suitably licensed facility.

All waste will be enclosed in a shed/tunnel or covered by a roof so rainfall will not generate leachate. Leachate generated in the receival hall (seepage from delivered materials) will be contained in the hall by bunding, collected in the receival hall pump sump, and reused in the process. In the unlikely event of a fire, firewater will be contained in the receival hall and pumped out and treated at a suitably licensed facility. By design, the Receival Hall does not drain to the external stormwater sump.

Council staff were satisfied with the additional information provided subject to conditions.

Following review of the additional information, the EPA issued General Terms of Approval.

The application demonstrates a positive outcome with respect to reducing organic waste disposed to landfill while using biogas derived from waste in place of fossil fuels to generate electricity

Conditions of consent are recommended with respect to the preparation of a Biodiversity Conservation Management Plan, Mitchell's Rainforest Snail Management Plan, tree protection, stormwater management, erosion and sediment control and acid sulfate soil management. Compliance with the EPA's General Terms of Approval and bush fire conditions will also be required.

### **Traffic**

The EIS is supported by a Traffic and Parking Assessment Report which examines both operational and construction traffic. The assessment includes the following conclusions and recommendations:

Conclusions:

- *an analysis of the existing Byron Sewage Treatment Plant (STP) indicates the site has the capacity to accommodate the proposed Bioenergy Facility (BEF) Development*

- *the proposed development involves the construction of a new BEF with the facility occupying a footprint of approximately 4,000m<sup>2</sup>*
- *the proposed BEF is expected to generate in the order of 10 truck movements per day, with a maximum of 2 trucks on-site at any given time (since revised to 8 truck movements – refer Attachment 2).*
- *the proposed facility is expected to employ an additional 3 to 5 staff*
- *the proposed facility has potential nett increase in the traffic generation of approximately 7 vph (inclusive of the 2 x truck movements) during the AM and PM commuter peak periods*
- *the impact of the development traffic on the road network will not have any unacceptable traffic implications*
- *the anticipated construction traffic is expected to generate in the order of 6-8 truck movements per day; i.e. less than the proposed operational traffic*
- *whilst there is an increase of movements generated from the development proposal, the sludge deliveries of the existing Byron STP of approximately 45 truckloads per cycle (equating to 390 truckloads per year) would remain on-site to complement the BEF instead of being trucked off the site as a ‘separated waste’ product*
- *the development proposal will allow for more bioenergy to be produced and exported to the grid which compliments the existing Byron STP*
- *the existing and proposed trucks servicing the site remains unchanged, serviced by commercial vehicles ranging from medium and large rigid trucks up to and including 19m long AV (Semi-trailer) trucks.*
- *the off-street parking provision is in accordance with Council’s requirements and not expected to result in any unacceptable parking implications.*

#### Recommendations

- *whilst the existing and proposed trucks servicing the site remains unchanged, it is recommended that the intersection along the south-western corner of the Bayshore Drive/Wallum Place intersection is to be widened to better accommodate simultaneous turning movements. A detailed civil plan should be designed for the road upgrade works in due course.*
- *based on the previous traffic studies undertaken by Bitzios Consulting and the desktop review by Cardno, it is recommended that the future 4-lane widening along Ewingsdale Road, between the proposed sports field and the roundabout at Sunrise Boulevard, is to be completed before the 2028 design horizon.*

As discussed in the ‘Referral’ section of this report, the application has been reviewed by Council’s development engineer and TfNSW. Overall, Council officers consider that the road network will not be adversely impacted by the traffic generated by the proposed development. Conditions are recommended including the upgrading of the Bayshore Drive/Wallum Place intersection.

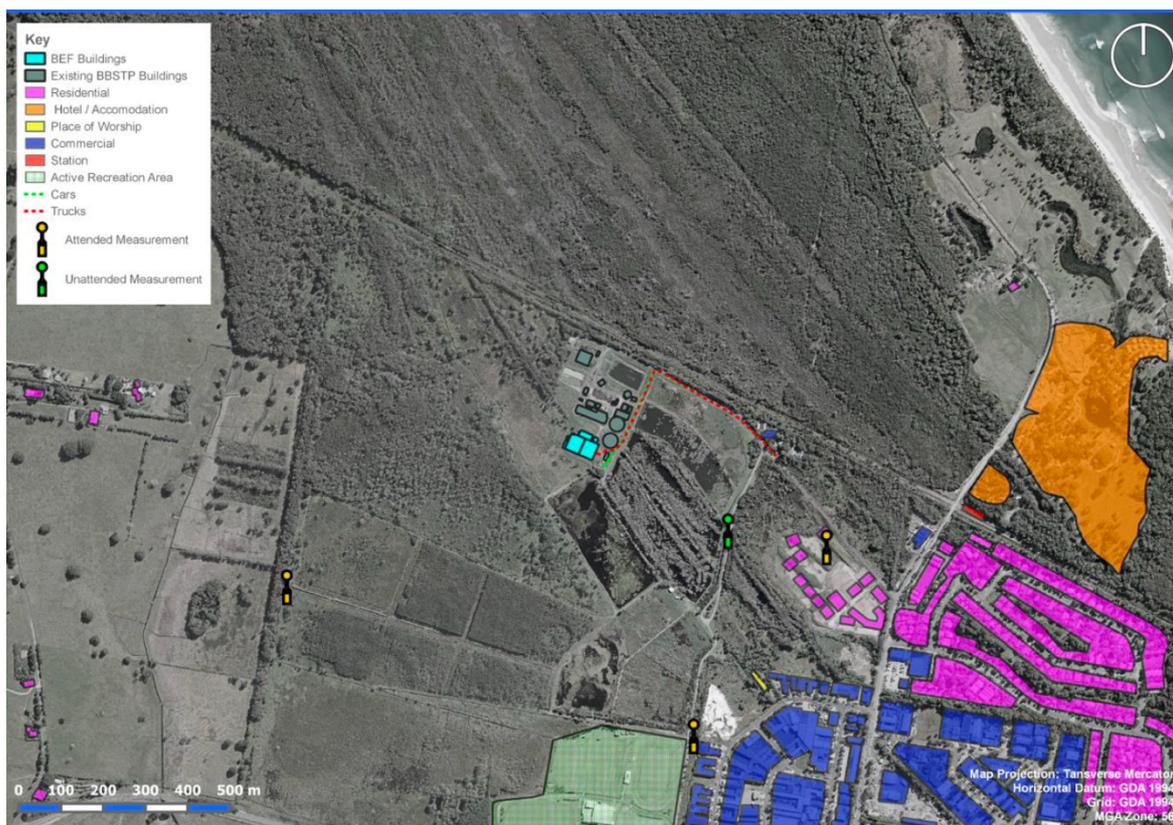
Public submissions have been received querying the traffic generated by transporting the compost away from the site after processing. In this regard the applicant has advised that:

*Garden organics must be delivered from Myocum, so BSC will be backloading those (maximum) 2 trucks of garden organics per day with compost, which will be transported to product storage back*

at Myocum or directly to customers (when delivery can be coordinated). This makes economic sense and minimises truck movements. The original 10 truck movements was a conservative number that allowed for 2 separate trucks/day just to pick up product (no backloading). The traffic study is still based on this more conservative number (10 trucks/day).

### Noise and Vibration

The EIS was accompanied by a Noise and Vibration Impact Assessment (Waves Acoustic Consulting Pty Ltd, June 2021) which reviewed potential amenity impacts on surrounding residents in relation to these issues. **Figure 16** below shows the proximity of the nearest noise sensitive receivers in the surrounding area and the noise monitoring locations used for the assessment.



**Figure 16** – Site, surrounding development and noise logging location

The following main operational noise and vibration sources from the proposed facility were identified and assessed:

- External:
  - Offsite vehicle movements on the nearby road network.
  - Onsite vehicle movements ie mainly delivery trucks.
  - Mechanical services to operate the facility.
  - Power Generation (CHP) and the gas flare.
- Internal
  - Material processing / screening / sorting.
  - Vehicle movements to load and manoeuvre materials ie loaders and material handlers.

Operational traffic generation noise and construction noise and vibration was also assessed.

The conclusions of the report are summarised below:

- This assessment has demonstrated that the predicted noise emissions from the site to the surrounding environment are low. The proposed development satisfies the Project Noise Trigger Levels (PNTLs) of the NSW Noise Policy for Industry (NPI) during all time periods at all nearby noise-sensitive receivers. However, we recommend that the final mechanical services noise levels are reviewed by a suitably qualified acoustic consultant during the detailed design of the building to ensure the environmental noise levels comply with the criteria
- The proposed development satisfies the sleep disturbance trigger levels at all nearby sensitive receivers.
- The existing traffic noise levels on the nearby affected roads already likely exceed the RNP criteria. Therefore, all new traffic noise increases must satisfy the RNP 2 dB increase criteria. The assessment shows that the proposed development generates negligible additional traffic noise. The NSW Road Noise Policy (RNP) criteria are satisfied as a result.
- The construction noise impacts have been assessed in accordance with the NSW Interim Construction Noise Guidelines (ICNG). During standard construction hours minor exceedances of the NMLs are predicted at the closest residential receivers. No receivers were found to be 'highly noise affected' as per the ICNG. Standard noise mitigation measures are recommended for the construction phase as a result.
- Construction traffic noise levels must satisfy the RNP 2 dB increase criteria. The assessment shows that the construction traffic generates negligible additional traffic noise. The NSW Road Noise Policy (RNP) criteria are satisfied as a result.
- The potential for vibration impacts at residential receivers due to the construction or operation of the development are effectively nil.
- The closest STP buildings with offices / permanent staff are approximately 100 m from the proposed construction works. At this distance, no exceedances of the Ground Borne Noise or the Human Comfort targets are predicted.
- The nearest STP buildings (which are unoccupied) are all concrete reinforced buildings. This means the most applicable screening criterion for cosmetic building damage is 25.0 mm/s. The construction scenarios provided shows that equipment with the highest potential to generate vibration is the large excavator. If this equipment is used with a hydraulic hammer (ie as a rock breaker) the minimum offset distance to the existing STP buildings should be no less than 10 m. At distances of 10 m or greater the risk of cosmetic damage to the STP buildings is low.  
  
If the large excavator (with a hydraulic hammer) must be used within 10 m of an STP building, then continuous vibration monitoring should be performed during construction.
- It is concluded that the proposed Bioenergy Facility (BEF) is a complying development with respect to noise and vibration impacts and is therefore suitable for construction and operation.

The Noise and Vibration Impact Assessment was assessed by the EPA and additional information sought with respect to operational road traffic noise and construction noise. In particular, the applicant was asked to:

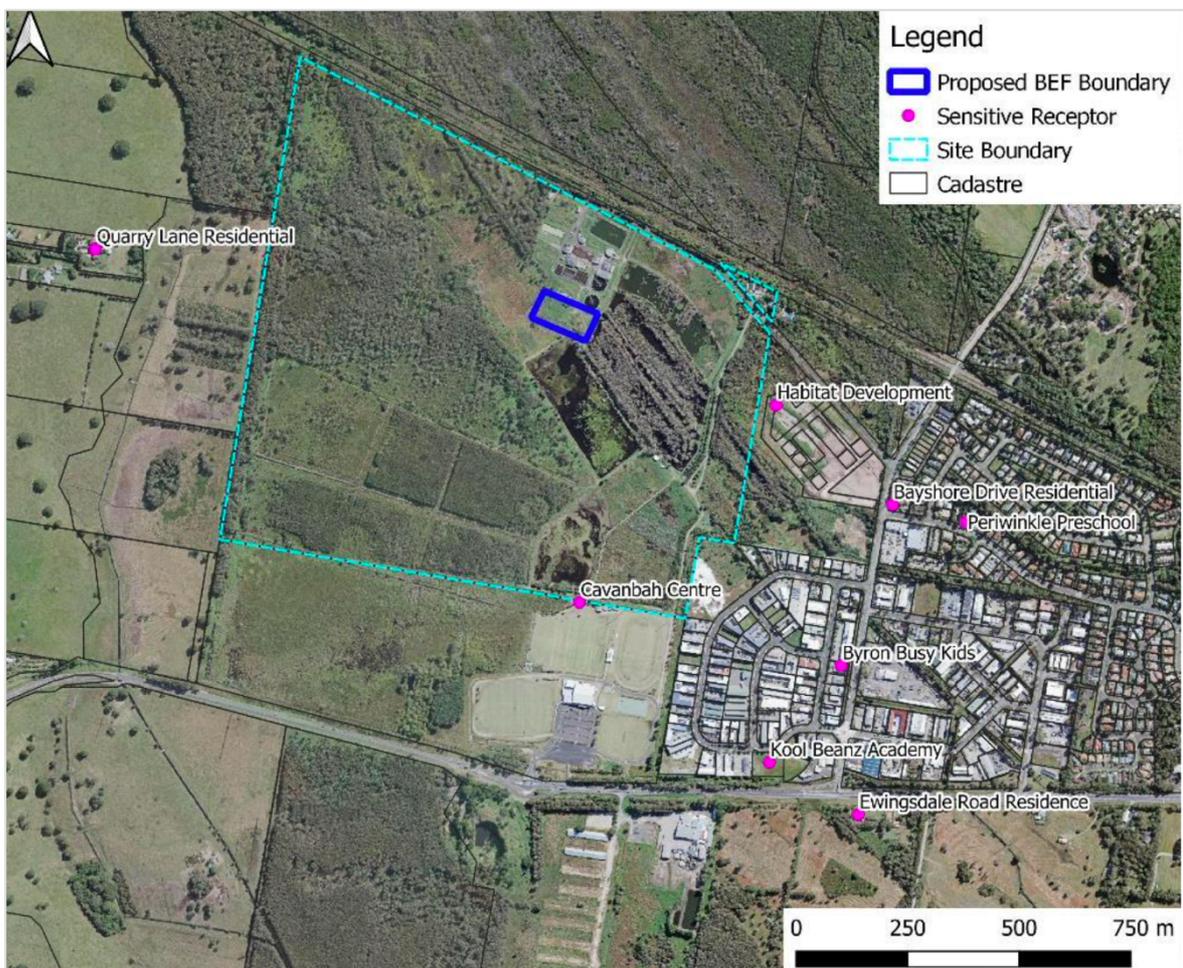
- provide details to address the potential for night time impacts from road traffic noise on Wallum Place.

- review the traffic volumes, on Wallum Place on sections either side of Gallagher Street and Porter Street together, with the times of use of Wallum Place and the operational road traffic noise assessment updated accordingly.
- review and update the construction noise assessment to address the disparity between truck numbers in the NIA and EIS and the comments on the operational road traffic noise assessment.
- review and amend the management and mitigation of construction noise to include further investigation of reasonable and feasible mitigation measures (where details are not known, a conceptual assessment would be sufficient) to satisfy the ICNG.

The applicant addressed these issues and their response is provided in **Attachment 4**. Following review of the additional information the EPA has issued General Terms of Approval with conditions regarding noise limits, monitoring and reporting.

### **Air Quality**

The EIS was accompanied by an Air Quality Assessment (Trinity Consultants Australia, April 2021). The sensitive receptors included in the assessment are shown on **Figure 17** below.



**Figure 17 - Sensitive Receptors**

The assessment indicates that:

*The key air quality indicators associated with the operational phase of the proposed bioenergy facility include combustion emissions from the CHP and odour emissions from the biofilter. There is*

*also the potential for particulate emissions associated with material unloading and handling, material sorting, shredding and truck movements over paved surfaces. However, given that these processes are occurring within a fully enclosed receival hall, and all on-site surfaces will be paved, particulate emissions are anticipated to be minimal.*

*The potential for odour emissions is associated with activities occurring inside the main building, including the receival hall (including material storage, material handling and digestate unloading), anaerobic digestion tunnels and aerobic tunnels. The building will be under constant negative pressure to draw all process air through an appropriately sized biofilter located outside the main building. Fast open and close doors will be utilised for the receival hall to further minimise fugitive emissions via access doors. These doors will only be opened when trucks enter or exit the receival hall.*

*Particulate emissions are also associated with the construction phase of the proposed development. However, impacts from construction are anticipated to be low due to minimal earthworks being required. A flare is also proposed to be used when the CHP is not operating (e.g. breakdown) and to briefly burn off residual low quality biogas prior to opening AD tunnels. Given the limited frequency of use, and that the flare is designed appropriately for complete combustion of the biogas, the potential air quality impacts associated with flare use are expected to be low.*

*For the purpose of quantitatively assessing potential impacts, this assessment includes the modelling of the CHP exhaust emissions and odour emissions from the biofilter. These air emission sources are expected to define air quality compliance for the project.*

The conclusions of the assessment include:

- The results of the modelling indicate full compliance for combustion and odour emissions from the bioenergy facility at the nearby sensitive receptors. Compliance is predicted for combustion pollutants by a substantial margin.
- When odour emissions are combined with the emissions from the Byron Bay Sewage Treatment Plant (using conservative data in the absence of site specific information), the 2.5 OU criteria is exceeded at the Habitat sensitive receptors to the east, Cavanbah Centre to the south and the commercial/industrial receptor to the south east. However, given only a single odour complaint has been received in relation to the Sewage Treatment Plant over the past 10 years, the potential for cumulative impacts is expected to be minimal.
- To minimise potential odour emissions from the site, mitigation measures such as the operation of the facility under negative pressure such that all emissions from the facility are treated by a biofilter prior to release to the atmosphere are proposed. To ensure the biofilter acts efficiently, a monitoring program ought to be implemented.
- If complaints relating to the bioenergy facility are received during operations, contingency mitigation measures are available which can be retrofitted to the proposed biofilter infrastructure. For example, an acid scrubber to reduce ammonia concentrations may be retrofitted at the facility and the biofilter could be covered and connected to an elevated stack to improve odour dispersion.

Additional information and clarification on a number of matters was sought from the EPA and the applicants response is provided (**Attachment 4**).

Following assessment of the additional information the EPA issued General Terms of Approval with conditions requiring the preparation of an Air Quality and Odour Management Plan, the undertaking of air quality monitoring and reporting.

## *Conclusion*

Potential impacts on the built environment in terms of traffic, noise, vibration and air quality impacts have been assessed by both Council staff and relevant external agencies and discussed above and throughout this report. Subject to the imposition of management measures the proposal has been assessed as being acceptable.

### ***Building Height and Visual Impacts***

Although the proposal exceeds the height limit prescribed by Byron LEP 2014, due to the topography of the site, proximity to the existing STP infrastructure and the height of surrounding vegetation, the visual impacts of the proposal are considered acceptable.

### **Social Environment**

The proposal will not have a significant social impact on the locality. There is a positive social outcome in reducing organic waste disposed to landfill, which will make additional capacity available for the diversion of more waste from landfill as the population and economic activity in the area grows, and using biogas derived from waste for electricity production.

Potential social impacts in terms of amenity and the use of the site for bird watching will be managed by compliance with management plans and conditions of consent.

### **Economic impact**

The applicant has outlined the business case for the proposed development and commented that *the proposed project is forecast to carry its own operational costs and service its own debt with no external support from the Council funds.*

The application has demonstrated that the proposal will not have a significant economic impact on the wider community.

### **Construction Impacts**

The development will generate impacts during its construction. Conditions of consent recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

## **4.8 The suitability of the site for the development**

As discussed, various sites were considered for the proposed development and the subject site assessed the most suitable in terms of various factors including locational/access issues, land availability outside of the 1:100 year flood event, ability to tie in to the electrical grid and location to off-site and on-site feedstock supplies.

The assessment of the potential impacts of the development indicates that these can be managed within acceptable limits. Conditions will be imposed in this regard. The site is considered suitable for the proposed development.

## **4.9 Submissions made in accordance with this Act or the regulations**

The development application was publicly exhibited from 14 July 2021 to 25 August 2021.

A total of 70 general public submissions were received during the public exhibition period, including 10 from organisations and 60 from individuals. Of these 69 were objections to the proposal and one (1) in support.

The primary issues raised in the submissions include:

- Biodiversity impacts by both construction and operation.
- Fauna impacts – including the access road being too close to the wetlands and associated impact on birds that use the wetlands and impact of flare on fauna
- The EIS should have covered all of the wetlands, not only the development envelope.
- Location not a good choice because of wetland values
- Lack of community consultation
- Impacts to bird watching activities and tourism
- Lack of assessment of indirect impacts
- Noise impacts
- Traffic impacts
- Will cause greenhouse gas emissions
- No business plan and not a worthwhile investment
- Referral to Commonwealth required.
- Height control exceedance

As previously discussed, the applicant has reviewed the submissions and provided a response in the attached document titled 'Response to Submissions' report (**Attachment 2**). This also includes a response to issues raised or additional information sought by government authorities, including Byron Shire Council assessment officers.

Of note, following public exhibition, and in response to issues raised with respect to the access location and potential impacts on the wetlands and bird habitat, the applicant amended the proposal with respect to the site access. It is now proposed to access the proposed facility via the existing STP access rather than adjacent to the wetlands.

The 'Response to Submissions' generally covers the issues raised. These issues, the applicant's response and assessment comments on each item is provided in the Table contained in **Attachment 5**. Any additional issues not noted in the applicant's response are also addressed.

It is considered that, in general terms, the issues raised in these submissions have been considered in the assessment as detailed in the preceding sections of this report, the Table in **Attachment 5** and the above considerations under s.4.15 of the EP&A Act 1979.

#### **4.10 Public interest**

The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

## **5 DEVELOPER CONTRIBUTIONS**

### **5.1 Water & Sewer Levies**

No Section 64 levies will be required.

### **5.2 Developer Contributions**

No Developer Contributions will be required.

## 6 DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

## 7 CONCLUSION

The DA proposes a Bioenergy Facility.

The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed, and consequently the site is considered suitable for the development. The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the conditions listed in the Recommendation of this Report below.

## 8 RECOMMENDATION

It is recommended that:

1. The proposed variation to the Building Height standard in clause 4.3 of Byron LEP 2014 be granted; and
2. Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.364.1 for Bioenergy Facility, be granted consent subject to the following conditions:

## 9 CONDITIONS OF CONSENT

## SCHEDULE 1. CONDITIONS OF CONSENT

### Parameters of consent

#### 1. Approved plans and supporting documentation

Development must be carried out in accordance with the following approved plans and supporting documentation (stamped by Council), except where the conditions of this consent expressly require otherwise.

Plan No.	Rev	Description	Drawn by	Dated
4312SK1100	S	Proposed Site Plan with Aerial Overlay	SHAC	22/12/2021
4312SK1101	V	Proposed Site Plan	SHAC	22/12/2021
4312SK2201	A	Floor Plan – Receival Hall	SHAC	30/04/2021
4312SK2202	A	Floor Plan – Composting Tunnels	SHAC	30/04/2021
4312SK2210	A	Floor Plan – Administration Building	SHAC	30/04/2021
4312SK2401	F	Roof Plan	SHAC	22/12/2021
4312SK3101	A	North & South Elevations – Main Building	SHAC	30/04/2021
4312SK3102	A	East & West Elevations – Main Building	SHAC	30/04/2021
4312SK3110	A	Elevations – Administration Building	SHAC	30/04/2021
4312SK3201	A	Sections 1 & 2	SHAC	30/04/2021
4312SK3201	B	Sections – Administration Building	SHAC	30/04/2021
1983-LP01	C	Landscape Concept Plan	Moir Landscape Architecture	30/05/2021
190178-C02	7	General Arrangement Plan	MPC Consulting Engineers	16/11/2021

190178-C03	7	Typical Sections and Details	MPC Consulting Engineers	16/11/2021
190178-C04	7	Entry Road and Link Road	MPC Consulting Engineers	16/11/2021
190178-C05	7	Entry Road Cross Section Sheet 1 of 2	MPC Consulting Engineers	16./11/2021
190178-C06	7	Entry Road Cross Section Sheet 2 of 2	MPC Consulting Engineers	16/11/2021
190178-C07	7	Pavement Layout Plan Link Road Section	MPC Consulting Engineers	16/11/2021
190178-C08	7	Stormwater Drainage Longitudinal Sections – Sheet 1	MPC Consulting Engineers	16/11/2021
190178-C09	7	Stormwater Drainage Longitudinal Sections – Sheet 2	MPC Consulting Engineers	16/11/2021
190178-C10	7	Earthworks Cut and Fill Plan	MPC Consulting Engineers	16/11/2021
190178-C11	7	Soil and Water Management Plan Acid Sulphate MNGT – Sheet 1	MPC Consulting Engineers	16/11/2021
190178-C12	7	Soil and Water Management Plan Acid Sulphate MNGT – Sheet 2	MPC Consulting Engineers	16/11/2021
190178-C13	7	Soil and Water Management Plan Post Acid Sulphate MNGT – Sheet 1	MPC Consulting Engineers	16/11/2021
190178-C14	7	Soil and Water Management Plan Post Acid Sulphate MNGT – Sheet 2	MPC Consulting Engineers	16/11/2021
190178-C15	7	Soil and Water Management Plan Details	MPC Consulting Engineers	16/11/2021

21007		Traffic & Parking Assessment Report SEAR 1471 – Proposed Bioenergy Facility	Varga Traffic Planning	17/06/2021
Project No. 2000486.02	2	Byron Bioenergy Facility Response to submissions Appendix G ‘Acid Sulfate Soils Management Plan’	Douglas Partners	October 2021
		Noise and Vibration Impact Assessment Byron Bay Bioenergy Facility	Waves Consulting	18/06/2021
		<i>Waste Minimisation and Management Plan Byron Shire Council Byron Bioenergy Facility</i>	Jackson Environment and Planning Pty Ltd	15/06/2021
217402.0006report02		Air Quality Assessment - Proposed Bioenergy Facility, Byron Bay	Trinity Consultants Australia	26./04/2021

The development is also to be in accordance with any changes shown in red ink on the approved plans or conditions of consent.

The approved plans and related documents endorsed with the Council stamp and authorised signature must be kept on site at all times while work is being undertaken.

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

**Note:** an inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

2. **Processing Limit**

The facility is to receive and process a maximum of 28,000 tonnes of waste material per annum.

3. **Conditions prescribed by the Regulation**

This development consent is subject to the conditions prescribed by the regulations in accordance with subsection 4.17(11) of the Environmental Planning and Assessment Act 1979. Conditions are provided in **Schedule 2** of this consent.

4. **Integrated Approvals from other State Government Approval Bodies**

This development consent includes an Integrated development approvals under Sections 4.46 and 4.47 of the Environmental Planning and Assessment Act 1979, being Sections 43(b), 48 and 55 of the Protection of the Environment Operations Act 1997 and is subject to the General Terms of Approval from *NSW Environment Protection Authority in Notice*

No. 1613881 dated 12 November 2021 contained in **Schedule 3** of this Notice of Determination.

5. **Bush fire safety measures**

This land is identified as being designated bush fire prone land and under section 4.14 of the Environmental Planning and Assessment Act 1979, Council must be satisfied prior to making a determination for development on bush fire prone land that the development complies with “Planning for Bush Fire Protection 2019”.

The development is approved subject to the NSW Rural Fire Service conditions provided in **Schedule 4** of this consent, or as otherwise approved by the NSW Rural Fire Service.

6. **Bushfire Audit**

To ensure on-going compliance with the bush fire prevention measures contained in **Schedule 4** of this consent, an annual bush fire prevention audit from the site operator is to be submitted to Council.

7. **Mitigation Measures**

Compliance with the mitigation measures identified in Section 15 of the Environmental Impact Statement dated 22 June 2021 (Jackson Environment and Planning Pty Ltd) and the additional measures identified in the Executive Summary of the ‘Response to Submission’ document prepared by Jackson Environment and Planning Pty Ltd, unless varied by a condition of this Consent.

**The following conditions are to be complied with prior to issue of a Construction Certificate for building works**

8. **Long Service Levy to be paid**

In accordance with Section 4.68 of the Environmental Planning and Assessment Act 1979 (as amended), a Construction Certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid (as applicable).

These payments can be made online at [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au). Proof of payment is required to be submitted with the Construction Certificate application.

For further information regarding the Long Service Payment please refer to the website above.

9. **Contaminated Soil and Groundwater Management Plan**

Consistent with the recommendations within the Preliminary Site Investigation for Contamination report provided (E2021/88361) the following investigations and reporting is required:

- a) Additional sampling is required to meet the recommended sampling density to characterise a 0.9 ha site and minimise the likelihood of missing contaminated soils hot spots in accordance with the NSW EPA Guidelines (reference [Statutory guidelines \(nsw.gov.au\)](http://www.nsw.gov.au)).
- b) If any excess soil is created during works, removal of the soil will require stockpiling and additional analysis, to ensure proper disposal and management

of the soil, consistent with NSW EPA guidelines (reference [Statutory guidelines \(nsw.gov.au\)](#))

- c) if during works, groundwater is extracted, treatment and additional analysis will be required before disposal on or offsite. consistent with NSW EPA guidelines (reference [Statutory guidelines \(nsw.gov.au\)](#))
- d) an Unexpected Finds Protocol (UFP) should be prepared and included in works/bulk earthworks environmental management plans at the site.

10. **Detailed Environmental Management Plan - Construction**

An Environmental Management Plan (EMP) must be submitted to Council for approval prior to any construction works commencing. The EMP must be prepared by a suitably qualified professional and contain details of measures to be undertaken to ensure that demolition and/or construction works for the whole development do not result in any on and off-site impacts that could interfere with neighbourhood amenity by reason of noise, vibration, smell, fumes, smoke, dust, wastewater or otherwise. All works must be in accordance with NSW WorkCover Authority.

11. **Biodiversity Conservation Management Plan**

A Biodiversity Conservation Management Plan (BCMP) must be prepared by a qualified ecologist with experience in biodiversity conservation in the northern rivers. The BCMP must detail protection and compensation measures to protect and improve the biodiversity values of areas proximate to the development area.

The BCMP must be in accordance with the *Guidelines for preparing Vegetation Management Plans (VMP) or Biodiversity Conservation Management Plans (BCMP)* available on Council's website. The BCMP must include, but may not be limited to:

- A review of the landscape context of the site to inform the proposed ecological restoration methodology. This should include an assessment of the distribution of native vegetation communities, threatened species and ecological communities known or likely to occur, and habitat connectivity across the broader landscape.
- An assessment of the existing ecological condition and values of areas proximate to the development area to inform the proposed biodiversity conservation actions.
- Management actions for threatened species recorded or known to occur within and adjacent to the development area, including:
  - Installation of artificial nesting structures for coastal raptor species.
  - Installation of nest/den/roost boxes for hollow-dependent birds, small scansorial and arboreal mammals and micro-chiropteran bats
- A landscape plan that describes the location and species of locally native plantings to be established and function as a screen around the development footprint.
- A list of performance indicators for each year of the program to provide a means of measuring the progress of conservation actions.
- Details of reporting and monitoring to be carried out.

12. **Mitchell's Rainforest Snail Management Plan**

A Mitchell's Rainforest Snail Management Plan (MRSMP) must be prepared by a qualified ecologist. The MRSMP must detail measures to mitigate impacts on the Mitchell's rainforest snail during construction. The MRSMP must include, but may not be limited to:

- A pre-construction search and relocation effort of the development area, with any Mitchell's rainforest snails found being relocated to a nearby habitat area.
- Collection of any logs, woody debris, and leaf litter from the development site and relocation to a nearby habitat area.

13. **Trees to be retained and protected**

The trees adjacent to the development footprint are to be protected and retained. A suitable defined barrier is to be provided to protect these for the duration of the construction period. This barrier is to remain in place until final perimeter fencing is constructed.

Activities that are excluded within the TPZ (as per section 4.2 of AS4970-2009) include machine excavation, placing of fill, parking of vehicles and plant, and storage of material. If these activities are required within the TPZ they may only occur under the supervision of the project arborist (minimum AQF level 5 qualified arborist).

Where pruning is required to give clearance for the construction of the car park area, the pruning must be carried out only to the minimum amount necessary by an arborist qualified to a minimum of AQF 3 in Arboriculture and in accordance with the requirements of *AS 4373-2007 Pruning of amenity trees*.

14. **Retained Trees**

All trees to be retained in accordance with this development consent must be illustrated on any and all relevant Construction Plans, along with their Tree Protection Zones formulated in accordance with *AS 4970-2009 – Protection of Trees on Development Sites*.

15. **Construction site management plan**

Before the issue of a construction certificate, the applicant must ensure a construction site management plan is prepared before it is provided to and approved by the certifier. The plan must include the following matters:

- location and materials for protective fencing and hoardings to the perimeter on the site
- provisions for public safety
- pedestrian and vehicular site access points and construction activity zones
- details of construction traffic management, including proposed truck movements to and from the site and estimated frequency of those movements, and measures to preserve pedestrian safety in the vicinity of the site
- protective measures for on-site tree preservation (including in accordance with AS 4970-2009 Protection of trees on development sites and Council's DCP, if applicable) and trees in adjoining public domain (if applicable)
- details of any bulk earthworks to be carried out
- location of site storage areas and sheds
- equipment used to carry out all works
- a garbage container with a tight-fitting lid
- dust, noise and vibration control measures
- location of temporary toilets.

The applicant must ensure a copy of the approved construction site management plan is kept on-site at all times during construction.

**16. Geotechnical Report required – Building Works**

A certificate from a professional Engineer experienced in Geotechnical Science is to be provided to the Principal Certifying Authority, certifying that the site is stable and will not be affected by landslide or subsidence at, above or below the site when the building is erected. The certificate must be prepared in accordance with AS 1726.

**17. Geotechnical Report required – Engineering Works**

A certificate from a professional Engineer experienced in soil mechanics is to be provided to the Principal Certifying Authority, certifying that:

- a) the design of the civil engineering works, including retaining walls and/or cut & fill batters, has been assessed as structurally adequate,
- b) the civil engineering works will not be affected by landslip or subsidence either above or below the works; and
- c) adequate drainage has been provided.

**18. Plans of retaining walls and drainage**

The application for a Construction Certificate is to include plans and specifications that indicate retaining walls or other approved methods of preventing movement of the soil, where any excavation or filled area exceeds 600mm in height. Adequate provision must be made for drainage.

Such plans and specifications must be approved as part of the Construction Certificate.

**19. Geotechnical Report required – Soil Classification**

A soil report is to be provided to the Principal Certifying Authority from a professional Engineer experienced in Geotechnical Science as to the classification of the soil type on the site, consistent with the requirements of AS2870.

**20. Sediment and Erosion Control Management Plan required**

The application for a Construction Certificate is to include plans and specifications that indicate the measures to be employed to control erosion and loss of sediment from the site. Control over discharge of stormwater and containment of run-off and pollutants leaving the site/premises must be undertaken through the installation of erosion control devices such as catch drains, energy dissipaters, level spreaders and sediment control devices such as filter fences and sedimentation basins.

Such plans and specifications must be approved as part of the Construction Certificate.

**NOTE: The plans must be in compliance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".**

**21. On-site stormwater detention (OSD) and Stormwater Quality Improvement Devices (SQIDs) required**

The application for a Construction Certificate is to include plans and specifications for stormwater drainage in accordance with the relevant Australian Standard. All stormwater

drainage for the development must be conveyed via an on-site stormwater detention system by gravity in accordance with the approved plans

The following must be included/provided to support the detailed internal stormwater drainage design:-

- a) Measures such as a concrete swale at the front of the retaining wall must be designed and constructed to capture the surface flows generated by the hardstand area surrounding the main building flowing towards the retaining wall and connect into the proposed stormwater line 5.
- b) The untreated hardstand directly connecting stormwater line 5 and the untreated gravel hardstand surrounding the main building also connecting into stormwater line 5 must be treated with a GPT with nutrient removal.
- c) minimum OSD volume of 300m<sup>3</sup> with a maximum PSD of 207 litres per second.
- d) Sand Filter and GPT in accordance with the approved plans.
- e) Provision must be made to provide supporting details to demonstrate that the proposed Stormwater Quality Improvement Devices such as sand filter and GPT's proposed and/or required in the development meets the nutrient removal efficiencies specified in the DCP2014 for Council's approval.

Such plans and specifications must be approved as part of the Construction Certificate.

All stormwater drainage systems within the lot and the connection to a public or an inter-allotment drainage system must:

- (a) comply with any requirements for the disposal of stormwater drainage and on-site stormwater detention contained in Council's Development Control Plan, Stormwater Guideline and Local Approvals Policy; and
- (b) unless exempt from obtaining an approval under section 68 of the Local Government Act 1993 by a Local Approvals Policy, an approval must be obtained under that Act prior to issue of a Construction Certificate.

## 22. **Consent required for works within the road reserve**

Consent from Council must be obtained for works within the road reserve pursuant to Section 138 of the Roads Act 1993. Three (3) copies of engineering construction plans must accompany the application for consent for works within the road reserve.

Such plans are to be in accordance with Council's current Design & Construction Manual and are to provide for the following works:

### **Road/Pavement Widening**

Kerb and gutter, road pavement and associated drainage construction, footpath formation including any necessary relocation of services at the south-western corner of the Bayshore Drive/Wallum Place intersection as identified in VARGA Traffic Planning – SEARS 1471 Traffic and Parking Assessment Report dated 17 June 2021 with ref 21007 and VARGA Traffic Planning drawing Road Upgrade – Proposed kerb radii realignment dated 12.3.2021.

Works in the road reserve in accordance with Council's current 'Rivers Local Government Development Design & Construction Manual Standard Drawings'.

### **Driveway (Wallum Place)**

A driveway upgrade generally in accordance with the following drawing:  
a) MPC Consulting Engineers drawing 190178-C02,

- b) Type 2 of TfNSW model drawing dated 19/05/2020 and
- c) Council's standard "Northern Rivers Local Government Development Design & Construction Manuals

**Weighbridge (Wallum Place)** The proposed weighbridge in Wallum Place as shown on MPC Consulting Engineers drawing 190178-C02 must be deleted and relocated to Council operational land.

**23. Traffic Guidance Scheme (TGS)**

Prior to issue of the construction certificate, consent from Council must be obtained for a Traffic Guidance Scheme (TGS) pursuant to Section 138 of the Roads Act 1993. The plans and specifications are to include the measures to be employed to control traffic (inclusive of construction vehicles) during construction. The TGS is to be designed in accordance with the requirements of the current version of the Transport for NSW *Traffic Control at Work Sites Technical Manual*.

The plan shall incorporate measures to ensure that motorists using road adjacent to the development, residents and pedestrians in the vicinity of the development are subjected to minimal time delays due to construction on the site or adjacent to the site.

The TGS must be prepared by a suitably qualified Transport for NSW accredited person.

**24. Car parking layout, vehicle circulation and access plans required.**

The application for a Construction Certificate is to include plans and specification that indicate access, parking and manoeuvring details in accordance with the plans approved by this consent.

The access, parking and manoeuvring for the site is to comply with the requirements of AS 2890.1-2004: Parking facilities, Part 1: Off-street car parking and AS 2890.2 – 2010 - Parking facilities, Part 2: Off-street commercial vehicle facilities. Plans are to include, but not be limited to, the following items:

- i. Internal Vehicle Circulation & STP Parking**
  - a) pavement design, comprising an all weather surface, such as asphalt, bitumen seal, concrete, or other similar treatment;
  - b) 6 x 60° parking bay in accordance with AS2890.1:2004
  - c) Minimum aisle width of 4.9m, please note the current aisle width is only 3.8m, therefore widening at this section of the internal vehicle circulation is required
  - d) longitudinal section from the road centreline to the car space(s);
  - e) cross sections every 15 metres;
  - f) drainage details;
  - g) turning paths of 19m AV vehicle; and
  - h) line marking and signage.
- ii. Internal Vehicle Circulation & Carparking Plan**
  - a) Generally in accordance with MPC Consulting Engineers drawing 190178-C07
  - b) pavement design, comprising an all weather surface, such as asphalt, bitumen seal, concrete, or other similar treatment;
  - c) site conditions affecting the access;
  - d) existing and design levels;

- e) longitudinal section from the road centreline to the car space(s);
- f) cross sections every 15 metres;
- g) drainage details;
- h) turning paths; and
- i) line marking and signage.

The engineering plans and specifications are to be designed by a qualified practising Civil Engineer. The Civil Engineer is to be a corporate member of the Institution of Engineers Australia or is to be eligible to become a corporate member and have appropriate experience and competence in the related field.

Such plans and specifications must be approved as part of the Construction Certificate.

NOTE: The plans must be in compliance with Council's current "Northern Rivers Local Government Development Design & Construction Manuals and Standard Drawings".

**25. Bond required to guarantee against damage to public land**

A bond of \$5000 is to be paid to Council as guarantee against damage to surrounding public land and infrastructure during construction of the proposed development. Evidence is to be provided to Council indicating the pre development condition of the surrounding public land and infrastructure. Such evidence must include photographs. The proponent will be held responsible for the repair of any damage to roads, kerb and gutters, footpaths, driveway crossovers or other assets.

Such bond will be held until Council is satisfied that the infrastructure is maintained/repaired to pre development conditions and that no further work is to be carried out that may result in damage to Council's roads, footpaths etc.

**26. Fibre-ready Facilities and Telecommunications Infrastructure**

Prior to the issue of the Construction Certificate in connection with a development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:

- (i) the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose; and
- (ii) the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

(Note real estate development project has the meanings given in section 372Q of the Telecommunications Act).

**27. Vegetation Removal**

No vegetation to be cleared or removed until a Construction Certificate has been issued.

**28. Safety**

Compliance with all requirements of Fire and Rescue NSW with respect to proposed fire and life safety measures.

**The following conditions are to be complied with prior to any building or construction works commencing**

**29. Erosion and Sediment Control Management Plan required**

Erosion and sedimentation controls are to be in place in accordance with the approved Erosion and Sediment Control Plan.

Sediment and erosion control measures in accordance with the approved Erosion and Sedimentation Control plan/s must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

Any such measures that are deemed to be necessary because of the local conditions must be maintained at all times until the site is made stable (i.e. by permanent vegetation cover or hard surface).

**Note: Council may impose on-the-spot fines for non-compliance with this condition.**

**The following conditions are to be complied with during any building or construction works**

**30. Construction times**

Construction works must not unreasonably interfere with the amenity of the neighbourhood. Construction noise, when audible from adjoining residential premises, can only occur:

- a. Monday to Friday, from 7 am to 6 pm.
- b. Saturday, from 8 am to 1 pm.

No construction work to take place on Saturdays and Sundays adjacent to Public Holidays and Public Holidays and the Construction Industry Awarded Rostered Days Off (RDO) adjacent to Public Holidays.

Exceptions may be granted via Public Health Orders

**31. Construction Noise**

Construction noise is to be limited as follows:

- a. For construction periods of four (4) weeks and under, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 20 dB(A).
- b. For construction periods greater than four (4) weeks and not exceeding twenty-six (26) weeks, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A)

**Note: Council may impose on-the-spot fines for non-compliance with this condition.**

**32. Acid Sulfate and Excavated Soils**

Stockpiles and banded soils and water management areas must be within the existing sewage treatment plant compound. They are not to be placed outside the approved development envelope.

**33. Protection of Native Trees**

All trees nominated to be retained by notation or condition as a requirement of the development consent shall be maintained and protected during demolition, excavation and construction on the site in accordance with *AS 4970-2009 – Protection of Trees on Development Sites*.

34. **Maintenance of sediment and erosion control measures**

Sediment and erosion control measures must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

35. **Stormwater drainage work**

Stormwater drainage for the development must be constructed in accordance with the approved plans and specification by a suitably qualified person.

36. **Signs to be erected on building and demolition sites**

A sign must be erected in a prominent position on the work site:

- a. stating that unauthorised entry to the work site is prohibited, and
- b. showing the name of the person in charge of the work site and a telephone number at which that person may be contacted outside working hours.

Any such sign is to be removed when the work has been completed.

37. **Builders rubbish to be contained on site**

All builders rubbish is to be contained on the site in a 'Builders Skips' or an enclosure. Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

38. **Traffic:**

Construction traffic must be limited to existing sealed roads. Traffic is not permitted throughout the constructed wetland or biodiversity conservation areas.

39. **Excavated natural materials and demolition waste disposal**

Any and all excavated natural materials and demolition and builders waste transported from the site must be accompanied (a copy kept with the transporter) by a NSW Protection of The Environment Operations Act s143 Notice. Template s143 Notices are available at <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/wasteregulation/160095-notices143-form.docx>

40. **Removal of demolition and other wastes**

All wastes, including asbestos and lead-contaminated wastes, associated with these works are to be handled and disposed of in accordance with the requirements of the Work Cover Authority. The applicant/owner is to produce documentary evidence that this condition has been met. Wastes must be disposed of at a Licenced Waste Facility.

All wastes removed from the site must be managed and disposed of in accordance with the NSW EPA Waste Classification Guidelines (2014) <https://www.epa.nsw.gov.au/your-environment/waste/classifying-waste/waste-classification-guidelines>

41. **Prevention of water pollution**

Only clean and unpolluted water is to be discharged to Council's stormwater drainage system or any watercourse to ensure compliance with the Protection of Environment Operations Act.

No waste water, treated waste water is to be discharged to areas outside the existing sewage treatment plant compound.

42. **Aboriginal Cultural Heritage**

The proposal is to be undertaken in accordance with the recommendations of the '*Byron Bioenergy Facility EIS – Aboriginal Cultural Heritage Assessment' dated 21 May 2021*', which are:

Recommendation 1: Aboriginal Object Find Procedure

If suspected Aboriginal material has been uncovered because of development activities within the Project Area:

- work in the surrounding area is to stop immediately;
- a temporary fence is to be erected around the site, with a buffer zone of at least 10 metres around the known edge of the site;
- an appropriately qualified archaeological consultant is to be engaged to identify the material;
- if the material is found to be of Aboriginal origin, the Bundjalung of Byron bay Aboriginal Corporation is to be consulted in a manner as outlined in the Aboriginal Cultural Heritage Consultation Requirements for Proponents (2010); and
- should the works be deemed to have harmed the Aboriginal objects the Heritage NSW should be notified immediately via the EPA Enviro Hotline.

Given the proximity of the Project Area to known sites of cultural value it is recommended that a cultural induction is provided to contractors to support the implementation of the Aboriginal Object Find Procedure.

Recommendation 2: Aboriginal Human Remains

Although it is unlikely that Human Remains will be located at any stage during earthworks within the Project Area, should this event arise it is recommended that all works must halt in the immediate area to prevent any further impacts to the remains. The Site should be cordoned off and the remains themselves should be left untouched. The nearest police station (Byron Bay), the Bundjalung of Byron Bay Aboriginal Corporation and the Heritage NSW Regional Office (Coffs Harbour) are all to be notified as soon as possible. If the remains are found to be of Aboriginal origin and the police do not wish to investigate the Site for criminal activities, the Aboriginal community and Heritage NSW should be consulted as to how the remains should be dealt with. Work may only resume after agreement is reached between all notified parties, provided it is in accordance with all parties' statutory obligations.

**The following conditions are to be complied with prior to occupation of the building**

43. **Works to be completed prior to issue of a Final Occupation Certificate**

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All of the works indicated on the plans and approved by this consent, including any other consents that are necessary for the completion of this development, are to be completed and approved by the relevant consent authority/s prior to the issue of a Final Occupation Certificate.

Any Security bond paid for this application will be held until Council is satisfied that no further works are to be carried out that may result in damage to Councils road/footpath reserve.

44. **Roadworks, Driveway, Internal Access and parking areas to be completed.**

Roadworks, driveway, internal access and parking areas are to be constructed in accordance with the engineering plans required by this consent and the Roads Act consent. Certification that the driveway has been constructed in accordance with the engineering plans and Work-As-Executed (WAE), prepared by a suitably qualified engineer, together with a final completion letter from Council for the Roads Act works, must be submitted to the Principal Certifying Authority prior to the issue of an occupation certificate.

45. **On-site Stormwater Detention (OSD) and Stormwater Quality Improvement Devices (SQIDs) – Certification of works**

All stormwater drainage works, including OSD & SQIDs, for the development must be constructed in accordance with the approved plans and specification prior to issue of an occupation certificate. Certificate/s of Compliance and Work-As-Executed (WAE) plans for the stormwater works must be submitted to the Principal Certifying Authority prior to the issue of an occupation certificate.

The certificate/s and WAE plans are to be prepared by a suitably qualified engineer and must be in accordance with Council's Comprehensive Guidelines for Stormwater Management.

46. **Operational Environmental and Emergency Response Management Plan**

An operational environmental and emergency response management plan must be developed and submitted to council and relevant external agencies for approval prior to occupation and operation commencing.

The plan must consider all the risks and mitigation strategies discussed within the Preliminary Hazard Analysis and Environmental Risk Assessment and other mitigation strategies within other reference documents, for example noise, air, light, odour, solid and liquid waste management, and traffic assessments.

The plan must include site plans, a site induction and training register that details the name and date that personnel have been inducted and trained and details of signage where required.

**The following conditions are to be complied with at all times**

47. **Must not interfere with the amenity of the neighbourhood**

The use of the development must not interfere with the amenity of the neighbourhood by reason of noise, vibration, smell, fumes, smoke, dust, wastewater or otherwise. In particular:

- a. Any complaints to Council about 'offensive' noise will be dealt with under the provisions of the Protection of the Environment Operations Act 1997.
- b. Only clean and unpolluted water is permitted to be discharged to Councils' stormwater drainage system or any waters.
- c. All wastes shall be contained within appropriate containers fitted with a tight-fitting vermin-proof lid.
- d. All waste storage and sewage facilities shall be serviced and maintained to ensure that all relevant environment protection standards are satisfied.
- e. Goods deliveries shall be restricted to daytime operating hours.

48. **Hours of Operation**

Hours of operation are limited to 7am to 5pm Monday to Friday and 8am to 1pm on Saturdays with no work on Sundays or public holidays.

49. **Biodiversity conservation management works**

Biodiversity conservation actions must be undertaken and continued in accordance with the approved Biodiversity Conservation Management Plan (BCMP), during which time monitoring reports must be submitted to Council.

50. **Emergency access road - signage to be installed**

Clear and obvious signage is to be installed on the gate and along the existing gravel access road east of the sewage treatment plant facility and west of the constructed wetlands declaring that they are only to be used for emergency and maintenance access purposes.

51. **Vehicles to enter/leave in a forward direction**

Vehicles using any off-street loading/unloading and/or parking area must enter and leave in a forward direction. All driveways and turning areas must be kept clear of obstructions that prevent compliance with this condition.

52. **Loading and unloading not to occur on the street**

The loading and unloading bay must be available at all times for the loading and unloading of goods for the development. All loading and unloading is to take place within the curtilage of the premises.

53. **Traffic:**

Construction traffic must be limited to existing roads. Traffic is not permitted throughout the constructed wetland or biodiversity conservation areas.

54. **Lighting.**

No night time light is permitted save for motion detected security lighting and as otherwise required by the Building Code of Australia.

55. **Trade Waste**

All trade waste pre-treatment devices shall be serviced and maintained to ensure that all relevant environment protection standards are satisfied.

56. **Waste Water management:**

All waste water is to be collected and treated where necessary for pumping or transport to a licensed waste water processing facility.

57. **Site Waste Minimisation and Management**

All works must comply with the objectives of waste minimisation and waste management of Part B8.1.2 of DCP 2014.

58. **Compliance with bushfire conditions**

Documentary evidence from a suitably qualified professional is to be submitted demonstrating that the bush fire conditions of this Notice of Determination have been complied with.

59. **Work and storage – inside building**

All material handling, stockpiling and processing must be undertaken inside and not external to the site buildings.

## **SCHEDULE 2. PRESCRIBED CONDITIONS**

**The prescribed conditions in accordance with Division 8A of the Environmental Planning and Assessment Regulation as at the date of this development consent as are of relevance to this development must be complied with:**

Clause 98 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989

Clause 98A Erection of signs

Clause 98B Notification of Home Building Act 1989 requirements

Clause 98E Condition relating to shoring and adequacy of adjoining property

Refer to the NSW State legislation for full text of the clauses under Division 8A of the [Environmental Planning and Assessment Regulation 2000](http://www.legislation.nsw.gov.au). This can be accessed at <http://www.legislation.nsw.gov.au>.

## SCHEDULE 3. INTEGRATED DEVELOPMENT GENERAL TERMS OF APPROVAL

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Protection of the Environment Operations Act 1997

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## Administrative conditions

### A1. Information supplied to the EPA

A1.1 Except as expressly provided by these general terms of approval, works and activities must be carried out in accordance with the proposal contained in:

- the development application IDA 10.2021.364.1 submitted to Regional Planning Panel on 6 July 2021;
- environmental impact statement *Byron Bioenergy Facility Environment Impact Assessment, 45 Wallum Place, Byron Bay, prepared by Jackson Environment & Planning Pty Ltd, dated 22 June 2021* relating to the development; and
- all additional documents supplied to the EPA in relation to the development, including:
  - *Air Quality Assessment - Proposed Bioenergy Facility, Byron Bay, prepared by Skala Australia Pty Ltd, dated 26 April 2021;*
  - *Noise & Vibration Impact Assessment - Byron Bay Bioenergy Facility (BEF), 45 Wallum Place, Byron Bay, NSW, prepared by Waves Consulting, dated 18 June 2021*
  - *Waste Minimisation and Management Plan, Byron Shire Council, Byron Bioenergy Facility, Prepared by Jackson Environment & Planning Pty Ltd, dated 15 June 2021*
  - *Planning Secretary's Environmental Assessment Requirements (SEAR 1471), prepared by DPIE, dated 3 August 2021*

### A2. Fit and Proper Person

A2.1 The applicant must, in the opinion of the EPA, be a fit and proper person to hold a licence under the *Protection of the Environment Operations Act 1997*, having regard to the matters in s.83 of that Act.

## Limit conditions

### L1. Pollution of waters

L.1.1 Except as may be expressly provided by a licence under the *Protection of the Environment Operations Act 1997* in relation of the development, section 120 of the *Protection of the Environment Operations Act 1997* must be complied with in and in connection with the carrying out of the development.

### L2. Waste

L2.1 The licensee must not cause, permit or allow any waste generated outside the premises to be received at the premises, except the wastes expressly referred to in the column titled "Waste" and in meeting the definition, if any, in the column titled "Description" in the table below.

Any waste received at the premises must only be for the activities referred to in relation to that waste in the column titled "Activity" in the table below.

Any waste received at the premises is subject to those limits or conditions, if any, referred to in relation to that waste contained in the column titled "Other Limits" in the table below.

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This condition does not limit any other conditions in this licence.

Code	Waste	Description	Activity	Other limits
NA	General solid waste (non-putrescible)	As described in Schedule 1 of the POEO Act, as in force from time to time	Energy recovery from general waste	28,000 T of waste per annum
NA	General solid waste (putrescible)	As described in Schedule 1 of the POEO Act, as in force from time to time	Energy recovery from general waste	28,000 T of waste per annum

*Note: For the purpose of clarifying condition L2.1, the maximum total limit of waste consisting of all or any of "General solid waste (non-putrescible)" and "General solid waste (putrescible)" that can be used for energy recovery is 28,000 T per annum of waste for recovery.*

**L2.2** This condition only applies to the storage, treatment, processing, reprocessing or disposal of waste at the premises if it requires an environment protection licence under the *Protection of the Environment Operations Act 1997*.

*Note: Condition L2.2 is included to ensure that a premises based activity is not used as a waste facility (unless that scheduled activity is permitted by another condition).*

**L2.3** A combined maximum of 28,000T per annum of the following materials can be received and treated at the facility:

- Food and garden waste
- Food waste commercial
- Fats oil and grease (dewatered)
- Garden waste
- Dewatered biosolids
- Wood waste
- Paper or Cardboard

### L3. Noise limits

**L3.1** Noise from the premises must not exceed the noise limits at the times and locations in the table below:

Location	Noise Limits in dB(A)			
	Day	Evening	Night	Night
	LAeq(15 minute)	LAeq(15 minute)	LAeq(15 minute)	LAFmax
9 Easy Street, Byron Bay, 2481 (SP101239)	42	35	35	52
All other residential receivers	40	35	35	52

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**L3.2** For the purposes of condition L3.1:

- a) Day means the period from 7am to 6pm Monday to Saturday and the period from 8am to 6pm Sunday and public holidays.
- b) Evening means the period from 6pm to 10pm.
- c) Night means the period from 10pm to 7am Monday to Saturday and the period from 10pm to 8am Sunday and public holidays.

**L3.3** Meteorological conditions

- a) The noise limits set out in condition L3.1 apply under the following meteorological conditions:

Assessment Period	Meteorological Conditions
Day	Stability Categories A, B, C and D with wind speeds up to and including 3m/s at 10m above ground level.
Evening	Stability Categories A, B, C and D with wind speeds up to and including 3m/s at 10m above ground level.
Night	Stability Categories A, B, C and D with wind speeds up to and including 3m/s at 10m above ground level; or Stability category E and F with wind speeds up to and including 2m/s at 10m above ground level.

- b) For those meteorological conditions not referred to in condition L3.3(a), the noise limits that apply are the noise limits in condition L3.1 plus 5dB.

**L3.4** For the purposes of condition L3.3:

- a) The meteorological conditions are to be determined from meteorological data obtained from the meteorological weather station identified by the proponent when application for environment protection licence is submitted to the EPA.
- b) Stability category shall be determined using the following method from Fact Sheet D of the *Noise Policy for Industry* (NSW EPA, 2017):
  - i. Use of sigma-theta data (section D1.4).

**L3.5** To assess compliance:

- a) with the LAeq(15 minutes) or the LMax noise limits in condition L3.1 and L3.3, the noise measurement equipment must be located:
  - (i) approximately on the property boundary, where any residence is situated 30 metres or less from the property boundary closest to premises; or where applicable,
  - (ii) in an area within 30 metres of a residence façade, but not closer than 3 metres where any residence on the property is situated more than 30 metres from the property boundary closest to the premises; or, where applicable,

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- (iii) in an area within 50 metres of the boundary of a National Park or Nature Reserve,
- (iv) at any other location identified in condition L3.1
- b) with the LAeq(15 minutes) or the LMax noise limits in condition L3.1 and L3.3, the noise measurement equipment must be located:
  - (i) at the reasonably most affected point at a location where there is no residence at the location; or,
  - (ii) at the reasonably most affected point within an area at a location prescribed by condition L3.5 (a).

**L3.6** A non-compliance of conditions L3.1 and L3.3 will still occur where noise generated from the premises is measured in excess of the noise limit at a point other than the reasonably most affected point at the locations referred to in condition L3.5 (a) or L3.5 (b).

**NOTE to L3.5 and L3.6:** *The reasonably most affected point is a point at a location or within an area at a location experiencing or expected to experience the highest sound pressure level from the premises.*

**L3.7** For the purpose of determining the noise generated from the premises, the modifying factor corrections in Table C1 in Fact Sheet C of the *Noise Policy for Industry* (NSW EPA, 2017) may be applied, if appropriate, to the noise measurements by the noise monitoring equipment.

**L3.8** Noise measurements must not be undertaken where rain or wind speed at microphone level will affect the acquisition of valid measurements.

## L4. Hours of operation

**L4.1** All construction work at the premises must be conducted between 7am and 6pm Monday to Friday and between 8am and 1pm Saturdays and at no time on Sundays and public holidays.

**L4.2** Activities at the premises, other than construction work, may only be carried out at the times specified in the table below.

Activity	Permitted hours of operation
Heavy vehicle movements (inbound and outbound)	Monday to Friday 7am to 5pm; and Saturdays 8am to 1pm.
Light vehicle movements (inbound and outbound)	24 hours 7 days a week.
Materials handling, stockpiling and processing	Monday to Friday 7am to 5pm; and Saturdays 8am to 1pm.
Use of mobile plant	Monday to Friday 7am to 5pm; and Saturdays 8am to 1pm.
Mechanical services and power generation	24 hours 7 days a week.

**L4.3** This condition does not apply to the delivery of material outside the hours of operation permitted by condition L4.1 or L4.2, if that delivery is required by police or other authorities for safety reasons; and/or the operation or personnel or equipment are endangered. In such circumstances, prior notification is provided to the EPA and affected residents as soon as possible, or within a reasonable period in the case of emergency.

**L4.4** The hours of operation specified in conditions L4.1 and L4.2 may be varied with written consent if the EPA is satisfied that the amenity of the residents in the locality will not be adversely affected.

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## L5. Construction noise

L5.1 All reasonable and feasible mitigation must be implemented to control construction noise to seek to achieve the noise management levels in the *Noise Policy for Industry* (NSW EPA, 2017) .

## Operating conditions

### ***01. Activities must be carried out in a competent manner***

**O1.5** The flare must be designed to achieve a minimum combustion temperature of 760 deg C, and a minimum residence time of 0.6 seconds.

**O1.6** The final design of the combined heat and power plant discharge stack must include a sampling plane compliant with Australian Standard AS4323.1 *Stationary source emissions - Selection of sampling positions (1995)*.

**O1.7** All material unloading, storage, processing and loading must be undertaken within an enclosed building that is operated under negative pressure.

**O1.8** All air collected from the receival hall, digesters and composting tunnels must be directed to the biofilter or combusted in the flare and/or the CHP unit.

*Note: The POEO Act states that no offensive odour may be emitted from particular premises unless potentially offensive odours are identified in the licence and the odours are emitted in accordance with conditions specifically directed at minimising the odours are permitted.*

### ***03. Odour***

**O3.3** The Proponent shall prepare, implement and maintain in consultation with a recognised odour control specialist, an Air Quality and Odour Management Plan describing measures to minimise odour impacts associated with the operation. The Plan shall include, but not necessarily be limited to:

- i) objectives and targets.
- ii) key performance indicators.
- iii) identification of all sources of odour associated with the operation.
- iv) a detailed description of the odour mitigation methods and management practices to ensure offensive odour impacts do not occur off-site. Mitigation and management measures identified in Section 9 of the *Air Quality Assessment – Proposed Bioenergy Facility, Byron Bay, prepared by Trinity Consultants Australia, dated 26 April 2021*.
- v) a detailed description of the methods used for monitoring the effectiveness of the odour mitigation methods and management practices for all sources of odour associated with the operation, including the biofilter.
- vi) location, frequency and duration of monitoring.

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- vii) details of proposed contingency measures should odour impacts occur.
- viii) a communications strategy for handling potential odour complaints that includes recording, investigating, reporting and actioning.
- ix) system and performance review for continuous improvement
- x) an odour complaints register must document investigations undertaken to identify the cause(s) of odour and action(s) to rectify the complaints.

## **04. Dust**

**04.1** Activities occurring at the premises must be carried out in a manner that will minimise emissions of dust from the premises.

**04.2** Trucks entering and leaving the premises that are carrying loads must be covered at all times, except during loading and unloading.

## **05. Stormwater/sediment control - Construction phase**

**05.1** A Construction Soil and Water Management Plan (CSWMP) must be prepared and implemented. The plan must describe the measures that will be employed to minimise soil erosion and the discharge of sediment and other pollutants to lands and/or waters during construction activities. The CSWMP should be prepared in accordance with the requirements for such plans outlined in *Managing Urban Stormwater: Soils and Construction* (available from the Department of Housing).

**05.2** The Construction Soil and Water Management Plan should include a water quality monitoring program for any surface water discharges. Water quality monitoring should include all potential pollutants of concern until it can be demonstrated that any surface water discharges do not contain contaminants or contaminants are only present at trivial levels.

**05.3** The Construction Soil and Water Management Plan should include a Trigger Action Response Protocol (TARP) linked to the water quality monitoring program. The TARP should include a set of contingency responses for any pollutant levels that exceed specified maximum levels based on the ANZG (2018) default guideline values for high conservation/ecological value ecosystems. The TARP should set out the contingencies to be implemented which could include, but are not limited to:

- a. options to avoid contaminated stormwater discharges e.g. diverting contaminated stormwater to sewer (the adjacent Byron Bay Sewage Treatment Plan) or offsite disposal at a licensed facility
- b. full capture and reuse where safe and practical to do so
- c. additional or improved contaminated water treatment.

**05.4** Prior to the commencement of construction, the applicant must demonstrate that the acid sulfate treatment pad liner will achieve a minimum hydraulic conductivity of  $1 \times 10^{-8}$  millimetres/second or less with a constructed clay liner of at least 0.5 metres or a geosynthetic liner providing the equivalent or better protection.

**05.5** If construction stage stormwater discharges are unavoidable, a water pollution impact assessment commensurate with the potential risk and consistent with the national Water Quality Guidelines will be required to inform licensing consistent with Section 45 of the *Protection of Environment Operations Act 1997*. The Assessment must at a minimum:

- a. predict the expected frequency and volume of discharges

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- b. characterise the quality of any discharges in terms of the concentrations of all pollutants present at non-trivial levels
- c. assess the potential impacts of the proposed discharges on the environmental values of the receiving waterways consistent with the *Australian and New Zealand Guidelines for Fresh and Marine Water Quality* (ANZG, 2018) for high conservation/ecological value ecosystems
- d. demonstrate that all practical and reasonable measures to avoid or minimise water pollution are considered and implemented
- e. propose appropriate discharge criteria based on the potential water quality impacts and the practical measures available to minimise pollution.

## **06. Stormwater/sediment control - Operation phase**

**06.1** A Stormwater Management Scheme must be prepared for the development and must be implemented. Implementation of the Scheme must mitigate the impacts of stormwater run-off from and within the premises following the completion of construction activities. The Scheme should be consistent with the Stormwater Management Plan for the catchment. Where a Stormwater Management Plan has not yet been prepared the Scheme should be consistent with the guidance contained in *Managing Urban Stormwater: Council Handbook* (available from the EPA).

**06.2** The Applicant should consider all practical and reasonable management measures to avoid and minimise discharges, including but not limited to:

- a. enhanced erosion and sediment controls (e.g. enhanced at-source controls to prevent or minimise pollutants entering runoff)
- b. reuse of stormwater runoff where it is safe and practical to do so
- c. options to avoid contaminated stormwater discharges (e.g. disposal to sewer at the adjacent Byron Bay Sewage Treatment Plant or offsite disposal at a licensed facility).

## **Monitoring conditions**

### **M1. Monitoring records**

**M1.1** The results of any monitoring required to be conducted by the EPA's general terms of approval, or a licence under the Protection of the Environment Operations Act 1997, in relation to the development or in order to comply with the load calculation protocol must be recorded and retained as set out in conditions M1.2 and M1.3.

**M1.2** All records required to be kept by the licence must be:

- in a legible form, or in a form that can readily be reduced to a legible form;
- kept for at least 4 years after the monitoring or event to which they relate took place; and
- produced in a legible form to any authorised officer of the EPA who asks to see them.

**M1.3** The following records must be kept in respect of any samples required to be collected: the date(s) on which the sample was taken;

- the time(s) at which the sample was collected;

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- the point at which the sample was taken; and
- the name of the person who collected the sample.

## **M2. Requirement to monitor noise**

**M2.1** Attended noise monitoring must be undertaken in accordance with Condition L3.5 and must:

- a) occur at each location specified in Condition L3.1;
- b) occur annually in a reporting period;
- c) occur when the premises is operating in manner representative of its approved use;
- d) occur during each day, evening and night period as defined in the *Noise Policy for Industry* for a minimum of:
  - 1.5 hours during the day;
  - 30 minutes during the evening; and
  - 1 hour during the night.
- e) occur for two consecutive operating days.

## **M3. Testing methods - concentration limits**

*(Licences with air monitoring requirements)*

**M3.1** Monitoring for the concentration of a pollutant emitted to the air required to be conducted by the EPA's general terms of approval, or a licence under the *Protection of the Environment Operations Act 1997*, in relation to the development or in order to comply with a relevant local calculation protocol must be done in accordance with:

- any methodology which is required by or under the POEO Act 1997 to be used for the testing of the concentration of the pollutant; or
- if no such requirement is imposed by or under the POEO Act 1997, any methodology which the general terms of approval or a condition of the licence or the protocol (as the case may be) requires to be used for that testing; or
- if no such requirement is imposed by or under the POEO Act 1997 or by the general terms of approval or a condition of the licence or the protocol (as the case may be), any methodology approved in writing by the EPA for the purposes of that testing prior to the testing taking place.

*Note: The Clean Air (Plant and Equipment) Regulation 1997 requires testing for certain purposes to be conducted in accordance with test methods contained in the publication "Approved Methods for the Sampling and Analysis of Air Pollutants in NSW".*

## **Reporting conditions**

**R1.1** The applicant must provide an annual return to the EPA in relation to the development as required by any licence under the *Protection of the Environment Operations Act 1997* in relation to the development. In the return the applicant must report on the annual monitoring undertaken (where the activity results in pollutant discharges), provide a summary of complaints relating to the development, report on compliance with licence conditions and provide a calculation of

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licence fees (administrative fees and, where relevant, load based fees) that are payable. If load based fees apply to the activity the applicant will be required to submit load-based fee calculation worksheets with the return.

### ***R5. Noise monitoring report***

**R5.1** A noise compliance assessment report must be submitted to the EPA within 30 days of the completion of the annual monitoring. The assessment must be prepared by a competent person and include:

- a) an assessment of compliance with noise limits presented in Condition L3.1 and L3.3;
- b) include an assessment of modifying factors according to Fact Sheet C of the *Noise Policy for Industry*, and
- c) an outline of any management actions to address any exceedences of the limits contained in Condition L3.1 and L3.3.

## Attachment – Conditions for EPA licence

### Administrative conditions

#### Other activities

This licence applies to all other activities carried on at the premises, including:

- Composting
- Waste storage
- Waste processing (non-thermal treatment)

### Operating conditions

#### ***O1. Activities must be carried out in a competent manner***

**O1.1** All plant and equipment installed and used at the premises

- a) must be maintained in a proper and efficient condition; and
- b) must be operated in a proper and efficient manner.

**O1.2** Activities conducted on the premises must be undertaken in a manner that prevents or minimises the emission of air impurities from the premises.

**O1.3** The development must be designed, constructed, operated and maintained in a manner that does not preclude the retrofit of air quality (including odour) emissions controls and management measures.

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**O1.4** The flare must be operated in such a way that a flame is present at all times while air impurities are required to be treated.

## **O2. Maintenance of plant and equipment**

**O2.1** All plant and equipment installed at the premises or used in connection with the licensed activity:

- must be maintained in a proper and efficient condition; and
- must be operated in a proper and efficient manner.

**O2.2** The premises must be maintained in a condition which prevents or minimises the emission of air impurities from the premises.

**O2.3** The final design of the combined heat and power plant discharge stack must include a sampling plane compliant with *Australian Standard AS4323.1 Stationary source emissions - Selection of sampling positions (1995)*.

## **O3. Odour**

**O3.1** The proponent must not cause or permit the emission of offensive odour beyond the boundary of the premises.

*Note: Section 129 of the Protection of the Environment Operations Act 1997 provides that the licensee must not cause or permit the emission of offensive odour beyond the boundary of the premises but provides a defence if the emission is identified in the relevant environment protection licence as a potentially offensive odour and the odour was emitted in accordance with the conditions of a licence directed at minimising odour.*

**O3.2** No condition of this licence identifies a potentially offensive odour for the purposes of Section 129 of the *Protection of the Environment Operations Act 1997*.

## **Monitoring and recording conditions**

### **Recording of pollution complaints**

#### **M4. Recording of pollution complaints**

**M4.1** The licensee must keep a legible record of all complaints made to the licensee or any employee or agent of the licensee in relation to pollution arising from any activity to which this licence applies.

**M4.2** The record must include details of the following:

- the date and time of the complaint;
- the method by which the complaint was made;
- any personal details of the complainant which were provided by the complainant or, if no such details were provided, a note to that effect;
- the nature of the complaint;

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- the action taken by the licensee in relation to the complaint, including any follow-up contact with the complainant; and
- if no action was taken by the licensee, the reasons why no action was taken.

**M4.3** The record of a complaint must be kept for at least 4 years after the complaint was made.

**M4.4** The record must be produced to any authorised officer of the EPA who asks to see them.

### ***M5. Telephone complaints line***

**M5.1** The licensee must operate during its operating hours a telephone complaints line for the purpose of receiving any complaints from members of the public in relation to activities conducted at the premises or by the vehicle or mobile plant, unless otherwise specified in the licence.

**M5.2** The licensee must notify the public of the complaints line telephone number and the fact that it is a complaints line so that the impacted community knows how to make a complaint.

**M5.3** This condition does not apply until 3 months after this condition takes effect.

## Reporting conditions

### ***R2. Annual Return documents***

#### **R2.1 What documents must an Annual Return contain?**

**R2.1.1** The licensee must complete and supply to the EPA an Annual Return in the approved form comprising:

- a) Statement of Compliance; and
- b) Monitoring and Complaints Summary.

A copy of the form in which the Annual Return must be supplied to the EPA accompanies this licence. Before the end of each reporting period, the EPA will provide to the licensee a copy of the form that must be completed and returned to the EPA.

#### **R2.2 Period covered by Annual Return**

**R2.2.1** An Annual Return must be prepared in respect of each reporting, except as provided below

*Note: The term "reporting period" is defined in the dictionary at the end of this licence. Do not complete the Annual Return until after the end of the reporting period.*

Where this licence is transferred from the licensee to a new licensee,

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- a) the transferring licensee must prepare an annual return for the period commencing on the first day of the reporting period and ending on the date the application for the transfer of the licence to the new licensee is granted; and
- b) the new licensee must prepare an annual return for the period commencing on the date the application for the transfer of the licence is granted and ending on the last day of the reporting period.

*Note: An application to transfer a licence must be made in the approved form for this purpose.*

Where this licence is surrendered by the licensee or revoked by the EPA or Minister, the licensee must prepare an annual return in respect of the period commencing on the first day of the reporting period and ending on

- i) in relation to the surrender of a licence - the date when notice in writing of approval of the surrender is given; or
- ii) in relation to the revocation of the licence – the date from which notice revoking the licence operates.

### R2.3 Deadline for Annual Return

**R2.3.1** The Annual Return for the reporting period must be supplied to the EPA by registered post not later than 60 days after the end of each reporting period or in the case of a transferring licence not later than 60 days after the date the transfer was granted (the 'due date').

### R2.4 Notification where actual load can not be calculated

(Licences with assessable pollutants)

**R2.4.1** Where the licensee is unable to complete a part of the Annual Return by the due date because the licensee was unable to calculate the actual load of a pollutant due to circumstances beyond the licensee's control, the licensee must notify the EPA in writing as soon as practicable, and in any event not later than the due date.

The notification must specify:

- the assessable pollutants for which the actual load could not be calculated; and
- the relevant circumstances that were beyond the control of the licensee.

### R2.5 Licensee must retain copy of Annual Return

**R2.5.1** The licensee must retain a copy of the annual return supplied to the EPA for a period of at least 4 years after the annual return was due to be supplied to the EPA.

### R2.6 Certifying of Statement of Compliance and Signing of Monitoring and Complaints Summary

**R2.6.1** Within the Annual Return, the Statement of Compliance must be certified and the Monitoring and Complaints Summary must be signed by:

- a. the licence holder; or
- b. by a person approved in writing by the EPA to sign on behalf of the licence holder.

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A person who has been given written approval to certify a Statement of Compliance under a licence issued under the Pollution Control Act 1970 is taken to be approved for the purpose of this condition until the date of first review this licence.

### **R3. Notification of environmental harm**

**R3.1 Note:** *The licensee or its employees must notify the EPA of incidents causing or threatening material harm to the environment immediately after the person becomes aware of the incident in accordance with the requirements of Part 5.7 of the Act*

Notifications must be made by telephoning the EPA's Pollution Line service on 131 555.

The licensee must provide written details of the notification to the EPA within 7 days of the date on which the incident occurred.

### **R4. Written report**

**R4.1** Where an authorised officer of the EPA suspects on reasonable grounds that:

- a. where this licence applies to premises, an event has occurred at the premises; or
- b. where this licence applies to vehicles or mobile plant, an event has occurred in connection with the carrying out of the activities authorised by this licence,

and the event has caused, is causing or is likely to cause material harm to the environment (whether the harm occurs on or off premises to which the licence applies), the authorised officer may request a written report of the event.

The licensee must make all reasonable inquiries in relation to the event and supply the report to the EPA within such time as may be specified in the request.

The request may require a report which includes any or all of the following information:

- a. the cause, time and duration of the event;
- b. the type, volume and concentration of every pollutant discharged as a result of the event;
- c. the name, address and business hours telephone number of employees or agents of the licensee, or a specified class of them, who witnessed the event; and
- d. the name, address and business hours telephone number of every other person (of whom the licensee is aware) who witnessed the event, unless the licensee has been unable to obtain that information after making reasonable effort;
- e. action taken by the licensee in relation to the event, including any follow-up contact with any complainants;
- f. details of any measure taken or proposed to be taken to prevent or mitigate against a recurrence of such an event;
- g. any other relevant matters.

The EPA may make a written request for further details in relation to any of the above matters if it is not satisfied with the report provided by the licensee. The licensee must provide such further details to the EPA within the time specified in the request.

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## General conditions

### **G1. Copy of licence kept at the premises or on the vehicle or mobile plant**

**G1.1** A copy of this licence must be kept at the premises or on the vehicle or mobile plant to which the licence applies.

The licence must be produced to any authorised officer of the EPA who asks to see it.

The licence must be available for inspection by any employee or agent of the licensee working at the premises or operating the vehicle or mobile plant.

## Special conditions

**E1.1** The licensee must engage a suitably qualified person to undertake post-commissioning air emissions sampling to verify the emission performance of the Combined Heat and Power (CHP) unit.

**E1.2** The post-commissioning sampling required under E1.1 must occur within 3 months of the commissioning of the plant and corresponding air pollution controls.

**E1.3** Sampling at the CHP unit ventilation outlet must be performed for all pollutants specified in Column 1, using the methods listed in Column 3. All sampling and analysis must be undertaken in accordance with the *Approved Methods for the Sampling and Analysis of Air Pollutants in New South Wales*.

**Table 1**

Pollutant	Units of measure	Sampling Method
Sulfur Dioxide	Milligrams per cubic metre	TM-4
Ammonia*	Milligrams per cubic metre	ISO 21877*
Formaldehyde*	Milligrams per cubic metre	USEPA Method 323 or USEPA Method 318 or USEPA SW-846 Test Method 0011*
Nitrogen dioxide	Milligrams per cubic metre	TM-11
Volatile organic compounds	Milligrams per cubic metre	TM-34
Carbon Monoxide	Milligrams per cubic metre	TM-32
Temperature	degrees Celsius	TM-2
Velocity	metres per second	TM-2

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Moisture	Percent	TM-22
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\* Where an alternative method is proposed to be used, this must be approved in writing by the EPA prior to its use.

**E1.4** A minimum of two rounds of sampling must be undertaken to provide a suitable characterisation of emissions.

**E1.5** Sampling must be conducted when plant/ process conditions are representative of emissions during representative periods of normal operation.

**E1.6** An air emissions verification report (the Report) must be prepared and must contain, as a minimum, the following information:

- a) A description of the process operating conditions at the time of sampling, including:
  - a. description of the process (e.g. processing rates, materials produced, products used, activities)
  - b. process flow diagram showing all inputs and outputs
  - c. description of all air pollution control systems

*Note: Supporting evidence must be included which confirms that the plant/ process was operating under normal, representative conditions at the time of sampling.*

- b) A detailed description of the sampling location. Engineering drawings, schematics or photographs should be included to support the description.
- c) All information required to be reported under Section 4 of the *Approved Methods for the Sampling and Analysis of Air Pollutants in New South Wales*.
- d) Comparison of measured emissions against the concentrations listed in Table 2 below:

**Table 2**

Pollutant	Units of measure	100 percentile concentration standard	Reference conditions	Oxygen Correction*	Averaging period
Sulfur Dioxide	Milligrams per cubic metre	90	Dry, 273K, 101.3 kPa	3.0 %	1 hour
Ammonia	Milligrams per cubic metre	30	Dry, 273K, 101.3 kPa	3.0 %	1 hour
Formaldehyde	Milligrams per cubic metre	20	Dry, 273K, 101.3 kPa	3.0 %	1 hour
Nitrogen dioxide	Milligrams per cubic metre	450	Dry, 273K, 101.3 kPa	3.0 %	1 hour
Volatile organic compounds	Milligrams per cubic metre	40	Dry, 273K, 101.3 kPa	3.0 %	1 hour
Carbon Monoxide	Milligrams per cubic metre	125	Dry, 273K, 101.3 kPa	3.0 %	1 hour

- e) Where the comparison under d) identifies monitoring results greater than the 100<sup>th</sup> percentile concentration standard, the Report must identify additional mitigation measures to achieve the concentrations standards. A timeline for implementation of any additional mitigation measures identified must also be nominated within the Report.

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*Notes: The EPA may utilise the information contained in the report submitted to include additional conditions in this EPL, including emissions limits and requirements for ongoing monitoring.*

**E1.7** The report must be provided to the EPA no later than 2 months after completion of the post commissioning monitoring.

## **Additions to Definition of Terms of the licence**

- Noise Policy for Industry - the document entitled "*Noise Policy for Industry*" published by the NSW Environment Protection Authority in October 2017.
- Noise – 'sound pressure levels' for the purposes of conditions L3.1 to L3.8.
- LAeq (15 minute) - the value of the A-weighted sound pressure level of a continuous steady sound that, over a 15 minute time interval, has the same mean square sound pressure level as a sound under consideration with a level that varies with time (Australian Standard AS 1055:2018 *Acoustics: description and measurement of environmental noise*).
- LAFmax – the maximum sound pressure level of an event measured with a sound level meter satisfying Australian Standard AS IEC 61672.1-2013 *Electroacoustics - Sound level meters - Part 1: Specifications* set to 'A' frequency weighting and fast time weighting.

## SCHEDULE 4. NSW RURAL FIRE SERVICE CONDITIONS



### NSW RURAL FIRE SERVICE

Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 2482

Your reference: (CNR-36832) 10.2021.364.1  
Our reference: DA20211005004293-CL55-1

**ATTENTION:** Kellie Shapland

Date: Wednesday 23 March 2022

Dear Sir/Madam,

**Development Application**  
**s4.14 – Other – Waste or resource management facility**  
**45 WALLUM PLACE BYRON BAY 2481, 2//DP706286**

I refer to your correspondence dated 16/03/2022 seeking advice regarding bush fire protection for the above Development Application in accordance with Clause 55(1) of the *Environmental Planning and Assessment Regulation 2000*.

The New South Wales Rural Fire Service (NSW RFS) has considered the information submitted and provides the following recommended conditions:

#### General Conditions

1. A Bush fire Emergency Management and Operations Plan shall be prepared that includes the following
  - 24/7 contact details of site site operator;
  - internal road system;
  - location of fire fighting water supply outlets;;
  - availability of fire-suppression equipment, access and water;
  - storage and maintenance of fuels and other flammable materials;
  - notification procedures for any fires (except gas flare);
  - management of gas flare on TOBAN fire weather days;
  - appropriate bush fire emergency management and evacuation planning.

#### Asset Protection Zones

***The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:***

2. A minimum 6 metre trafficable defensible space be maintained around the perimeter of the proposed site, as indicated in 'Proposed Site Plan' numbered 4312 SK1100, RevS, dated 22 December 2021. The trafficable component shall consist of a two-wheel drive, all-weather road surface capable of:
  - carry fully loaded firefighting vehicles (up to 23 tonnes);

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#### Postal address

NSW Rural Fire Service  
Locked Bag 17  
GRANVILLE NSW 2142

#### Street address

NSW Rural Fire Service  
4 Murray Rose Ave  
SYDNEY OLYMPIC PARK NSW 2127

T (02) 8741 5555  
F (02) 8741 5550  
[www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)

- suitable access for a Category 1 fire appliance to within 4m of a fire fighting water supply;
- a minimum vertical clearance of 4m to any overhanging obstructions,;
- curves have a minimum inner radius of 6m and are minimal in number to allow for rapid access and egress; and
- the minimum distance between inner and outer curves is 6m.

#### **Construction Standards**

***The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:***

3. New construction of the habitable buildings (office, amenity, etc) shall comply with section 3 and section 7 (BAL 29) Australian Standard AS3959-2018 *Construction of buildings in bushfire-prone areas* or the relevant requirements of the *NASH Standard - Steel Framed Construction in Bushfire Areas* (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of *Planning for Bush Fire Protection 2019*.

4. The Receiving hall, Aerobic tunnels Anaerobic tunnels, Biofilter, Water tanks and ancillary structures walkways, awnings, etc) shall

- Constructed predominantly of non-combustible materials; or
- Section 3 (excluding section 3.5) and Section 9 (BAL FZ) of Australian Standard AS3959-2018 *Construction of buildings in bushfire-prone areas* or the relevant requirements of the *NASH Standard - Steel Framed Construction in Bushfire Areas* (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of *Planning for Bush Fire Protection 2019*; and
- No windows, doors or emergency exits are situated on the flame zone side of the building. The emergency exits are located via the receiving hall on the eastern side of the structure.

5. Structure and shade materials in the inner protection area shall be non-combustible or have a Flammability Index of no greater than 5 when tested in accordance with *Australian Standard "AS1530.2-1993 Methods for Fire Tests on Building Materials, Components and Structures - Test for Flammability of Materials"*.

6. A minimum 1.8 metre high radiant heat shield made of non-combustible materials shall be constructed along the site boundary (except to the STW boundary) adjacent to the hazard. All posts and rails shall be constructed of steel. The bottom of the fence is to be in direct contact with the finished ground level or plinth.

7. The biogas storage dome shall :

- be certified by a suitably qualified engineer to withstand the modelled radiant heat exposure from a external (offsite) bush fire;
- an engineered water sprinkler system shall be installed on the roof of the biogas storage dome. The sprinkler system shall be constructed from non-combustible components. The system shall be designed to create a curtain of water to cover/protect the entire dome;
- a on-site static water supply in addition to the site firefighting supply, sufficient to run the sprinkler system for 30 minutes shall be installed, in a non-combustible tank or underground supply.
- the system shall include an activation system by both automated and manual means from a safe location i.e. from the receiving hall or areas of low bushfire threat.

#### **Water and Utility Services**



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**The intent of measures is to minimise the risk of bush fire attack and provide protection for emergency services personnel, residents and others assisting fire fighting activities. To achieve this, the following conditions shall apply:**

8. Water, electricity and gas must comply with the following:

- Fire hydrant design, spacing, sizing and pressures must comply with AS2419.1. Fire hydrants must not be located within any road carriageway. Ring main systems must be used for urban subdivisions with perimeter roads..
- All aboveground water pipes external to the building must be metal including and up to any taps/outlets/fittings.
- Gas fittings to the habitable buildings must be installed and maintained as set out in the relevant standard and all pipes external to the building must be metal including and up to any taps/outlets/fittings. Polymer-sheathed flexible gas supply lines must not be used.

**Landscaping Assessment**

**The intent of measures is for landscaping. To achieve this, the following conditions shall apply:**

9. Landscaping shall comply with Appendix 4 of *Planning for Bush Fire Protection 2019*.

**General Advice – Consent Authority to Note**

# To ensure on-going compliance with the recommended bush fire prevention measures, the consent authority should require an annual bush fire prevention audit from the site operator. Said audit will ensure the site has suitable on-going bush fire protection measures.

For any queries regarding this correspondence, please contact Alan Bawden on 1300 NSW RFS.

Yours sincerely,

Timothy Carroll  
**Manager Planning & Environment Services**  
**Built & Natural Environment**

## SCHEDULE 5. REASONS FOR DECISION, HOW COMMUNITY VIEWS WERE ADDRESSED

*Note: From July 1 2018, Council's are required to give and publicly notify reasons for a range of planning decisions where they are deciding if development should proceed to help community members to see how their views have been taken into account and improve accountability to stakeholders. A statement of reasons for the determination of this application is provided below.*

Statement of Reasons
The proposed development complies with the provisions of Byron Local Environmental Plan 1988.
The proposed development complies with the provisions of Byron Local Environmental Plan 2014.
The proposed development complies with relevant State Environmental Planning Policies
The proposed development complies with relevant provisions of Development Control Plan 2014
The proposed development complies with relevant provisions of Development Control Plan 2010
The proposed development complies with Environmental Planning & Assessment Regulation 2021 considerations.
The proposed development will not have significant adverse impact on the natural, built or social environment or economic impacts on the locality.
The proposed development is considered suitable for the proposed site.
The development application was notified/advertised in accordance with Council's Community Participation Plan. Issues raised in the submissions have been addressed during assessment of the application.
The proposed development is unlikely to prejudice or compromise the public interest.

How community views were addressed
The DA was advertised in accordance with Council's Community Participation Plan. The submissions received were considered on merit and addressed during assessment of the application.  To view the considerations, please contact Council to view a copy of the assessment report relating to this DA.

## SCHEDULE 6. NOTES

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### Construction Certificate required:

This development consent is issued under the Environmental Planning and Assessment Act 1979 and does not relate to structural aspects or specifications of the building under the Building Code of Australia. All buildings and alterations require the issue of a Construction Certificate prior to works commencing. Application forms are available from the customer services counter or Council's website [www.byron.nsw.gov.au](http://www.byron.nsw.gov.au)

**Principal Certifying Authority:**

Work must not commence until the applicant has:-

- a. appointed a Principal Certifying Authority (if the Council is not the PCA); and
- b. given Council at least two days notice of the intention to commence the erection of the building. Notice must be given by using the prescribed 'Form 7'.
- c. notified the Principal Certifying Authority of the Compliance with Part 6 of the Home Building Act 1989.

**Occupation Certificate required:**

The building must not be occupied until the Principal Certifying Authority has issued an Occupation Certificate.

**Protection of the Environment Operations Act 1997:**

It is an offence under the provisions of the Protection of the Environment Operations Act 1997 to act in a manner causing, or likely to cause, harm to the environment. Anyone allowing material to enter a waterway or leaving material where it can be washed off-site may be subject to a penalty infringement notice ("on-the-spot fine") or prosecution.

**Enclosed public places (smoke-free environment)**

Environment Act 2000 and the Smoke-Free Environment Regulation 2000 and the guidelines in the Regulation for determining what an enclosed public place is. Enquiries may be directed to the NSW Department of Health. The legislation may be viewed on: <http://www.legislation.nsw.gov.au/maintop/scanact/inforce/NONE/0>

**Penalties apply for failure to comply with development consents**

Failure to comply with conditions of development consent may lead to an on the spot fine being issued pursuant to section 4.2(1) of the Environmental Planning & Assessment Act 1979 or prosecution pursuant to section 9.50 of the Environmental Planning & Assessment Act 1979.

**Relics Provisions- Advice**

Attention is directed to the NSW Heritage Act 1977 and the provisions of the Act in relation to the exposure of relics. The Act requires that if:

- a) a relic is suspected, or there are reasonable grounds to suspect a relic in ground, that is likely to be disturbed damaged or destroyed by excavation; and/or
- b) any relic is discovered in the course of excavation that will be disturbed, damaged or destroyed by further excavation;

Those responsible for the discovery must notify nominated management personnel who will in turn notify the Heritage Council of New South Wales or its delegate, the Office of Environment and Heritage, NSW Heritage Branch, and suspend work that might have the effect of disturbing, damaging or destroying such relic until the requirements of the NSW Heritage Council have been satisfied (ss139, 146).