



<b>DATE OF DETERMINATION</b>	26 May 2022
<b>DATE OF PANEL DECISION</b>	25 May 2022
<b>DATE OF PANEL MEETING</b>	17 May 2022
<b>PANEL MEMBERS</b>	Paul Mitchell (Chair), Stephen Gow, Penny Holloway, Joe Vescio and David Brown
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	Simon Richardson declared a conflict of interest as he has voted on the early stages of the development as a Mayor and Councillor of Byron Shire Council

Public meeting held by videoconference on 17 May 2022, opened at 4:05pm and closed at 6:40pm.

#### **MATTER DETERMINED**

PPSNTH-102 – Byron –10.2021.364.1 at 45 Wallum Place, Byron Bay – bioenergy facility (as described in Schedule 1).

#### **PANEL CONSIDERATION AND DECISION**

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

#### **Application to vary a development standard**

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Byron Local Environmental Plan 2014 (LEP), that has demonstrated that:

- a) compliance with cl. 4.3 (Height of Buildings) is unreasonable or unnecessary in the circumstances; and
- b) there are sufficient environmental planning grounds to justify contravening the development standard

the Panel is satisfied that:

- a) the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- b) the development is in the public interest because it is consistent with the objectives of cl. 4.3 (Height of Buildings) of the LEP and the objectives for development in the RU2 zone; and
- c) the concurrence of the Secretary has been assumed.

#### **Development application**

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

#### **REASONS FOR THE DECISION**

The Panel determined to uphold the Clause 4.6 variation to building height; and approve the application for the following reasons:

1. The proposed development is permissible in the affected zones (RU2 and 5A) by virtue of relevant provisions of the Transport and Infrastructure SEPP. The proposal is also satisfactory with respect to all applicable SEPPs; specifically the Panel notes:
  - that there is no evidence of koalas occurring on the site;
  - that, subject to the conditions imposed, the proposal will not significantly affect the biophysical, hydrological or ecological integrity of the nearby wetlands and littoral rainforest;
  - that the site is not within a coastal environment, vulnerability or use area;
  - that the proposal is not hazardous or offensive development; and
  - that the land is suitable for the proposed use from a contamination perspective.
2. The site of the proposed development is suitable for the intended use because it is adequately separated from sensitive nearby uses and has all necessary infrastructure including suitable road access.
3. The proposal will be both socially and environmentally beneficial. It will transform materials that would otherwise become wastes into useful products and will generate additional energy derived from renewable sources for use in the adjoining sewage treatment plant and in the waste processing facility itself. The primary results will be reduced wastes needing disposal and reduced need for electricity from the external grid.
4. The proposal, incorporating the conditions imposed, will have no unacceptable impacts on the natural or built environments; the facility will be fully enclosed thus minimising the potential for noise and air-borne emissions. The Panel notes that the application has been assessed by a wide range of specialists from both within the Council and externally, including the NSW EPA, and all these specialists either support or do not object to the proposal.
5. The Panel has carefully considered all issues raised in submissions and considers they have been resolved either by the design of the amended proposal or conditions imposed. There are no residual impacts or issues that warrant refusal of the application.
6. For the reasons given above, approval of the proposal is in the public interest.

## CONDITIONS

The Development Application was approved subject to the conditions in the Council Assessment Report with the following amendments:

1. Condition 1 amended by adding the following words:

The development is also to be undertaken generally in accordance with the Environmental Impact Statement prepared by Jackson Environment and Planning Pty Ltd, dated 28/06/2021 as amended or updated by:

- updated Section 11.3.6 (Construction Impacts) dated 19/10/2021
- Addendum 1 dated 28/03/2022

2. A new Condition 3 is to be inserted, reading as follows:

### **Compliance Audits**

Compliance audits are to be undertaken on three separate occasions- three, 12 and 36 months after operations at the bioenergy facility commence. Each audit is to review and report on the facility's compliance with all conditions of consent given in this determination and is to make necessary recommendations to address any non-compliances. The audits are to be undertaken by a suitably qualified and independent person[s], whose suitability is approved by Council's Manager of Sustainable Development prior to the person[s] being appointed. The audit reports together with any responses from the operator of the facility are to be published on Council's website within seven (7) days of receipt of the audit report and any operator response. The auditor[s] is to be retained by the operator of the facility and the costs of the audits are to be met by the operator.

3. Condition 6 to be amended to read:

### **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.

*Note: Notwithstanding Condition 4 (dot point 3) of Schedule 4, doors for maintenance and emergency access to the technical corridors only may be provided on the flame zone side of the building, provided these are constructed to the standard of Condition 4 dot points 1 or 2.*

4. A new Condition 9 to be inserted, reading as follows:

### **Bird Population Studies**

Studies of bird populations in the wetlands adjoining the facility are to be undertaken on two occasions; firstly, prior to the facility becoming operational and secondly, 36 months after operations commence. The studies are to document the population size of relevant target bird species that illustrate habitat conditions and quality. The studies are to be undertaken by an independent and suitably qualified ornithologist, whose suitability is to be approved by Council’s Manager of Sustainable Development prior to the person[s] being appointed. The reports are to make any recommendations necessary to address any adverse impacts on bird habitats in the wetlands, that can be attributed to the bioenergy facility. The reports are to be published on Council’s website together with any response from the facility’s operator within seven (7) days of receipt of the audit report and any operator response. The costs of the reports are to be met by the operator.

5. Condition 13 to be amended by adding the following advisory note:

**Note:** the BCMP should require publication of reports on Council’s website together with any response from the facility’s operator within seven (7) days of receipt of the reports and any operator responses.

6. A new Condition 51 to be inserted, reading as follows:

### **Truck movements**

The number of trucks serving the facility is limited to eight inward trips per day (giving 16 movements in total) measured as a daily average using total truck movements recorded in each calendar month.



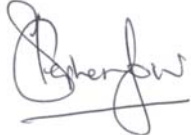


## **CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Impact on wetlands – flora/fauna/hydrology
- Potential noise and lighting impacts to wildlife
- Potential traffic impacts particularly in relation to noise
- Impact on wildlife corridors
- Safety concerns and greenhouse gas emissions from bioenergy facility
- Height exceedance
- Economic benefits questioned

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting.

The Panel notes that in addressing these issues appropriate conditions have been imposed addressing these concerns.

PANEL MEMBERS	
 Paul Mitchell OAM (Chair)	 Penny Holloway
 Stephen Gow	 Joe Vescio
 David Brown	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-102 – Byron –10.2021.364.1
2	PROPOSED DEVELOPMENT	Proposed Bioenergy Facility (BEF) 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.
3	STREET ADDRESS	Lot 2 DP 706286 (No. 45) Wallum Place, Byron Bay
4	APPLICANT/OWNER	Byron Shire Council
5	TYPE OF REGIONAL DEVELOPMENT	Council related development over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>○ State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>○ State Environmental Planning Policy (Primary Production) 2021</li> <li>○ State Environmental Planning Policy (Transport &amp; Infrastructure) 2021</li> <li>○ Byron Local Environmental Plan 2014</li> <li>○ Byron Local Environmental Plan 1988</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Byron Development Control Plan 2014</li> <li>○ Byron Development Control Plan 2010</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil</li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Council Assessment Report: 9 May 2022</li> <li>• Clause 4.6 variation request: 11 June 2021</li> <li>• Written submissions during public exhibition: 70</li> <li>• Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>○ Vicki Sloane, Rodney Falconer, David Dixon, John Lazarus, Peter Maslen and Jan Barham</li> <li>○ Council assessment officer – Gene Mason</li> <li>○ On behalf of the applicant – Angus Johnstone, Kurtis Lindsay and John Hart</li> </ul> </li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Briefing: 22 September 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Paul Mitchell (Chair), Stephen Gow, Penny Holloway, Joe Vescio and David Brown</li> <li>○ <u>Council assessment staff</u>: Kellie Shapland (Consultant) and Chris Larkin</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>• Site inspection: <ul style="list-style-type: none"> <li>○ Joe Vescio: 16 May 2022</li> </ul> </li> <li>• Final briefing to discuss council’s recommendation: 17 May 2022 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Paul Mitchell (Chair), Stephen Gow, Penny Holloway, Joe Vescio and David Brown</li> <li>○ <u>Council assessment staff</u>: Kellie Shapland (Consultant), Greg Smith, Gene Mason and Renan Solatan</li> <li>○ <u>Department staff</u>: Carolyn Hunt and Lisa Foley</li> </ul> </li> </ul>
<b>9</b>	<b>COUNCIL RECOMMENDATION</b>	Approval
<b>10</b>	<b>DRAFT CONDITIONS</b>	Attached to the Council Assessment Report