

APPENDIX C – RELEVANT DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

The only draft environmental planning instrument relevant to the assessment of the subject development application is the draft LEP (DLEP) for the Byron Bay Area. The DLEP was placed on exhibition between 20 January 2006 and 7 April 2006 and as such is a matter for consideration, however the DLEP is neither imminent nor certain and as such the weight given to the plan will be affected accordingly.

Under the DLEP the subject site is to be rezoned to part Business (Tourism), part Environmental Management (Tourism), part Environmental Management (Coastal Non Urban) and part Environmental Conservation (High Conservation Value Vegetation).

The proposed tourist development and existing cabins within Lot 6 in DP 243218 appear to fall within zones Business (Tourism) and Environmental Management (Tourism) (note due to the scale and the zoning not following property boundaries it is not possible to be definitive). It would appear that most of the tourist accommodation units fall within the Business (Tourism) zone, however some units, particularly those to the south of the site are in the Environmental Management (Tourism) zone.

The site also is identified as falling within a wildlife corridor, with the exception of the land zoned Business (Tourism) and approximately half the land zoned Environmental Management (Tourism) (around the edges of the zone and all of Lot 6 in DP 243218).

The plan does not contain a savings provision and as such the plan would apply to the site upon gazettal.

Permissibility

Clause 19 provides objectives for each zone and identifies uses that are permissible with consent as follows:

Business (Tourism)

- a) *to identify land for tourist infrastructure and encourage tourist accommodation and facilities;*
- b) *to permit tourist development and uses associated with, ancillary to, or supportive of, tourist developments including retailing and service facilities where such facilities are an integral part of the tourist development and are of a scale relative to the needs of that development only;*
- c) *to ensure development is carried out in a manner that improves the quality of the environment, including quality of design, and is within the servicing capacity of the locality;*
- d) *to ensure that the siting, intensity and design of development are consistent with the ecological characteristics and values of the locality; and*
- e) *to control by means of a development control plan the location, form, character and density of permissible development.*

Objectives (a), (b) and (e) are the same as for the existing 2(t) zone under BLEP 1988 and have been addressed previously in relation to that instrument. The proposed accommodation units are of superior design to the existing development on the site and the incorporation of improved drainage and water supply infrastructure and improved landscaping will ensure the development improves the quality of the environment. As has been addressed previously within the report, the development can be appropriately serviced. Finally, the impact of the design, location and intensity of the proposed development on the ecological characteristics and values of the locality has been addressed in the SIS, which is assessed at section 5 of this report.

The proposed works are defined as bushfire hazard reduction work, environmental management work, take-away food shop, general store, restaurant, shop, serviced apartments and a motel, all of which are permissible with consent. It is noted that due to the size of the accommodation units they do not fall under the definition of holiday cabin.

Environmental Management (Tourism)

- a) *to maintain existing natural vegetation and preserve the integrity of the natural environment;*
- b) *to provide for low scale, low density tourist accommodation and other tourist facilities in a natural setting;*
- c) *to encourage environmental education, passive recreation, and an understanding of natural systems;*
- d) *to improve the management of native vegetation and wildlife habitats for conservation purposes;*
- e) *to prevent activities that are likely to have overall detrimental effects on the environment, and to restrict developments which would prejudice the ongoing conservation or rehabilitation of environmentally important areas;*
- f) *to maintain the visual qualities of the landscape;*
- g) *to encourage and improve control of noxious plants, environmental weeds and introduced animals by means not likely to be significantly detrimental to natural ecosystems; and*
- h) *to minimise the removal of native vegetation for construction and bushfire management purposes.*

The proposed works involve minimal removal of native vegetation and seek to introduce new native vegetation. The tourist accommodation within the northern and western areas of the zone are very low in scale and density, with the development at the south-eastern portion being low scale but of higher density.

The development proposal identifies a tourist education program and the landscaping and treatment of the surrounding grounds promotes passive recreation pursuits. The design of the proposal (Stage 1) is suitable for the setting in which it is to be placed.

The bushfire hazard APZs are located in areas that already have limited native vegetation and as such their creation will result in little loss of vegetation.

The proposed works are defined as bushfire hazard reduction work, environmental management work and a motel, all of which are permissible with consent.

Aims and Objectives

Clauses 5 and 6 sets the aims, objectives and guiding principles of the DLEP and the proposal is considered to be consistent with them.

Strategic Objectives

Ecology

Clause 14 sets strategic objectives for ecology as follows:

- a) *maintain, improve and restore ecosystem functions;*
- b) *manage and rehabilitate areas of native vegetation;*
- c) *conserve vegetation and other habitats that have a high conservation value;*
- d) *regenerate and revegetate important areas that facilitate the dispersal and movement of native flora and fauna;*
- e) *prevent developments that form barriers to flora and fauna dispersal and movement;*

- f) control and mitigate the impact of noxious plants, environmental weeds and introduced animals;*
- g) minimise the risk of predation by domestic animals on native fauna;*
- h) compensate for loss of biodiversity through ecological restoration;*
- i) protect and maintain ecosystem service, particularly those provided by wetlands and waterbodies;*
- j) minimise adverse impacts on the environment of Cape Byron Marine Park and national park estate; and*
- k) promote the re-establishment of local ecological function and the use of endemic native plant species in conjunction with development and landscaping proposals.*

The proposal includes revegetation works for part of the existing golf course, a Dune Management Plan for stabilisation works to the dunes and revegetation of the edges of the waterbodies. Such works, together with the proposed buffers to the sensitive habitats satisfactorily address the strategic objectives, with the exceptions of objectives (e) and (g).

With regard to objective (e), the additional density of development in Stage 1 within the Environmental Management (Tourism) zone, without the removal of the cabins on Lot 6 in DP 243218, creates an unacceptable barrier to the movement of fauna to the south of the site. This is contrary to objective (e) and the designation of this area as a wildlife corridor. Accordingly, a deferred commencement condition of consent requiring the demolition of the cabins within Lot 6 in DP 243218 and the lodgment of a Vegetation Management Plan for the revegetation of this area is recommended.

Tourism

Clause 14 sets strategic objectives for tourism as follows:

- a) Control and limit tourism developments in the short term until a New Tourism Management Plan is adopted;*
- b) Minimise the adverse impacts of tourism on the quality of life and amenity of permanent residents;*
- c) Limit tourist accommodation in residential areas to small scale developments compatible with permanent residential living;*
- d) Concentrate tourist accommodation in the town centre and near the beach; and*
- e) Limit holiday letting of houses and dwellings to specific geographic areas.*

Objectives (c) and (e) are not relevant to the application and objective (b) is achieved due to the distance of the site from permanent accommodation. The development is located near the beach and as such satisfies objective (d). Given the DLEP has not been gazetted it would be inappropriate to give substantive weight to objective (a), it being noted the development is permissible under the LEP 1988 and the DLEP.

Urban Design

Clause 14 sets strategic objectives for urban design as follows:

- a) Maintain low building heights;*
- b) Apply urban design principles to larger residential developments;*
- c) Create a high visual amenity;*
- d) Create a town centre that responds to retail and lifestyle needs, increases pedestrian and landscape amenity and reduces the visual presence and impact of motor vehicles;*
- e) Provide variety in architecture;*
- f) Reduce the environmental impact of development;*
- g) Facilitate access to public transport;*
- h) Promote pedestrian and cycle permeability through the town;*
- i) Reduce motor vehicle dependency;*

- j) *Promote energy efficient design; and*
- k) *Promote accessibility for disabled persons.*

Objectives (b), (d) and (h) do not apply to the proposal given its location and use. As has been determined in the urban design assessment of the proposal by Architectus Sydney Pty Ltd (see Appendix H), the proposed buildings are low in height, create a high visual amenity and provide a variety in architecture, satisfying objectives (a), (c) and (e). Environmental impact is reduced by the provision of buffer zones and the appropriate approach to water management, satisfying objective (f). The treatment of stormwater and the design of the buildings promote energy efficiency and the central location of the internal town centre and provision of internal and external pedestrian and cycle paths satisfy objectives (g), (i) and (j).

The proposal has not addresses access to the development to any significant degree and whilst it is noted that the need to raise the buildings for flood reasons makes provision of accessibility more difficult, it is appropriate to ensure that a selection of accommodation units and all facilities are accessible.

In order to achieve this it is recommended that the following be required by way of a condition of consent:

- one of the ground floor hotels suites, one of the units within a "C" style building, one of the "Unit 2" units within the "D" style building and one of the units within a E" style building are to be made accessible (a total of 4 units);
- the units are to comply with the requirements of AS1428 and the use of a chair lift for access into the ground level is acceptable if an appropriate ramp would be too long. Access is not required to the upper level of the units within building styles "C", "D" or "E";
- an accessible parking space is to be provided adjacent to each accessible unit;
- an accessible path of travel is to be provided from each accessible unit to the parking space and from the unit to each of the facilities available within the site;
- the resort management, conference rooms, health spa, café/store, juice bar, reception, change rooms and pool are to be made accessible in accordance with the requirements of AS1428 by use of appropriate ramps and one parking space opposite the bus stop is to be a designated accessible parking space.

Environmental Hazards

Clause 14 sets strategic objectives for environmental hazards as follows:

- a) *Identify areas subject to risk from coastal processes and control development in those areas; and*
- b) *Consider the risk posed by natural hazards such as acid sulfate soils, bushfire and flooding.*

The proposed tourist development within Stage 1 is to be outside the identified coastal processes risk area.

The site is subject to all of the hazards identified under objective (b). As has been addressed in the assessment of LEP 1988, the acid sulfate soils on the site can be appropriately managed and the proposal has satisfactorily addressed the flooding hazard on the site. With regard to the issue of bushfire hazard, the comments provided by the Rural Fire Services indicate that appropriate APZs can be provided for the development, satisfying objective (b).

Desired Future Character Statements

Clause 15 sets the following desired future character for the site:

This will be the largest tourist development in the area, and will provide tourist accommodation and some on-site shopping in a central precinct.

Some holiday cabins around the edge of the central precinct will be set in open areas of regenerating native bushland.

Sand dunes, coastal vegetation and small lakes will separate the development from the beach. The development will not be visible from the beach.

The proposal is consistent with the first and third statement. The second statement is unclear as it is not defined what the edge areas is and given no holiday cabins are proposed, none are provided in any area.

Subdivision

The provisions of clause 25 make subdivision permissible on all land but require development consent. Further, the clause prohibits strata subdivision on land in various zones including Environmental Management (Tourism).

Clause 26 provides minimum areas for subdivision in different zones and requires the consent authority to be satisfied a lot is of suitable size, has suitable road frontage and can be developed in accordance with the relevant instruments applying to the land. Within the Business (Tourism) and Environmental Management (Tourism) zones the minimum allotment size is 1 hectare.

The proposal provides for subdivision (Community Title) in both the areas zoned Business (Tourism) and Environmental Management (Tourism). The minimum allotment size proposed is 1.256ha (Part Lots 8) and as such the proposal satisfies this provision.

All of the proposed allotments have access to either Bayshore Drive or a proposed road within the proposed community property of the subdivision and as such are of suitable size and have suitable access to a road.

Finally, the proposal seeks to strata subdivide the tourist units within each proposed allotment and as such proposes some strata subdivision within the Environmental Management (Tourism) zone. It would appear that the relevant objective in relation to this prohibition on strata subdivision is objective (e), which seeks:

- a) *to prevent fragmentation and other adverse impacts on habitat and environmentally sensitive areas;*

Whilst it is planned to strata subdivide the tourist units within the Environmental Management (Tourism) zone, the minimum subdivision area is satisfied within the Community Title Subdivision. The intention of not fragmenting the environmentally sensitive area is satisfied by the larger torrens title allotment within the community subdivision, with the strata lot being tied to the Community Management Association rules. These are required to ensure that the environmentally sensitive areas of the site are suitably managed and maintained and the strata titling of the tourist units within the Environmental Management (Tourism) zone as well as those within the Business (Tourism) will not affect the development's compliance with this objective. For this reason, and as the plan has no certainty or immanence, the strata subdivision is considered reasonable in this instance. A condition of consent is recommended requiring each units within the development to be bound by the strict requirements of the

Community Management Association rules, the environmental management requirements of which will not be able to be altered without the approval of Council.

Height

Clause 27 provides that consent should not be granted to any development if the floor of the top level of the building is greater than 4.5m above the existing ground level or if the height of the building is greater than 9m (measured from the highest point on the building to the existing ground level).

This is the same provision as in the current LEP and has been addressed in the assessment of that instrument in Appendix B.

Bush Regeneration and Ecologically Sustainable Vegetation Removal

Clause 31 requires that within the Environmental Management (Tourism) zone and within the wildlife corridors consent cannot be granted to development that will result in the removal of native vegetation or the destruction or removal of wildlife habitat unless satisfactory ecological management works are carried out. The objectives of the clause are to achieve no net loss of native vegetation or ecological function and to minimise and compensate for impacts on vegetation and habitat. Clause 32 identifies the level of information required to be submitted to assess an application in relation to clause 31.

The SIS, revegetation of substantial areas of land (eg the golf course) and the DMP are considered to appropriately address the impact on native vegetation. However, the increased density in the southern area of the site can only be supported subject to the removal of cabins on Lot 6 DP 243218 and the revegetation of this land to provide a wildlife corridor. Subject to the previously described deferred commencement condition the proposal will satisfy this clause.

Development near Environmental Conservation Zones

The development proposes works within the Environmental Management (Tourism) zone within 50m of an Environmental Conservation zone and as such clause 33 applies. The clause requires that consent cannot be granted for development within 50m of an Environmental Conservation zone unless the consent authority is satisfied that the development will not adversely impact on the zone, will not adversely impact upon wildlife movement or the long term connectivity of vegetated areas and that impacts on habitat are minimised. Further, clause 38 addresses development within the wildlife corridors and requires consideration of impacts on habitat and wildlife movement and the impacts of APZs.

In particular, the density of development proposed in the southern portion of the site within the Environmental Management (Tourism) zone is significant. When considered together with the existing cabin development on Lot 6 in DP 243218 (which is wholly located within a wildlife corridor), it is excessive with regard to the movement of wildlife along the identified southern corridor.

For this reason it is considered necessary to require the demolition of the cabin development within Lot 6 in DP 243218 as part of Stage 1 in order to justify and ameliorate the impact of the density of development in the southern portion of the site. This area should be appropriately revegetated and included within Part Lot 9 for dedication for ongoing preservation of the habitat of the area and continuation of the southern wildlife link. Subject to this occurring the requirements of clauses 33 and 38 will be satisfied.

Development Adjoining Cape Byron Marine Park

Clause 39 applies to development within 100m of Cape Byron Marine Park and requires the consent authority to be satisfied that the development will not have adverse impacts on the flora and fauna in the Marine Park, on riparian vegetation or habitats or surface water and ground water quality.

The proposal provides a series of stormwater measures to improve the water quality over that of the existing development and as such there will not be any adverse impacts on the flora and fauna in the Marine Park as a result of surface water and ground water quality.

The improvements in water quality and the provision of improved wildlife habitat and movement due to the proposed 5m landscaped buffers around the existing man-made waterbodies and the buffer to the estuary will reduce impacts upon the flora and fauna in the Marine Park to an acceptable level.

Acid Sulfate Soils

Clause 42 addresses the Acid Sulfate Soils Planning Map for the area. The assessment of the application with regard to ASS is addressed within the assessment of the current LEP in Appendix B and is considered satisfactory in relation to the requirements of clause 42.

Flood Liable Land

Clause 43 deals with development on flood prone land and requires consent for the erection of a building on flood prone land. The suitability of the development having regard to the flood prone nature of the land is addressed in the assessment of the existing LEP in Appendix B and is considered satisfactory in relation to the requirements of clause 43.

Development in the Environmental Management (Coastal Non-Urban) Zone

Clause 44 deals with development in the Environmental Management (Coastal Non-Urban) Zone and has similar requirements to those in the existing LEP for any development in the 7(f1) Coastal Lands Zone. Clause 46 deals with works in areas subject to coastal erosion.

The impact of the works proposed within the Environmental Management (Coastal Non-Urban) Zone have been addressed in relation to the existing LEP in Appendix B and is considered satisfactory in relation to the requirements of clause 44. The works within the coastal erosion zone comprise a beach access track, revegetation works under the DMP and the demolition of the Bayshore Building, and are satisfactory having regard to the requirements of clause 46.

Bushfire Reduction Requirements

Clause 47 deals with development requiring bushfire hazard management works and as such applies to the proposal. The Rural Fire Service has advised that subject to conditions the mitigation measures are satisfactory. However, as is addressed previously in this assessment the density of development within Stage 1 at the southern portion of the site and the required APZ are such that they detrimentally impact on the required southern wildlife corridor when considered in conjunction with the existing cabin development on Lot 6 in DP 243218. As such it is a recommendation that the cabin development on Lot 6 in DP 243218 be demolished and the land appropriately revegetated to ensure a satisfactory wildlife corridor is established.

Aboriginal Archaeology

Clause 53 applies to development that may affect a place of Aboriginal significance. An assessment of the likelihood of such places has been prepared by Navin Officer Heritage Consultants in consultation with the Tweed Byron Local Aboriginal Land Council and the Arakwal Corporation.

The findings of the report are that there are no long-term Aboriginal cultural heritage constraints to the proposed development. Recommendations for limited additional archaeological subsurface testing, on-going consultation with the Arakwal Corporation and regular inspection by a suitably qualified person of land surface disturbance areas during construction are made and should be included in any recommended conditions of consent.

Provision of Services

Clause 58 requires that consent not be granted to development unless prior arrangements have been made to adequately provide sewerage, drainage and water services for the site. This has been addressed in relation to the assessment of the existing LEP and is considered to be satisfactory.

Serviced Apartments

Clause 71 applies to tourist developments containing serviced apartments. The entire development falls within the definition of serviced apartments and as such the clause applies. The clause requires assessment against the design quality principles of Schedule 8 and the Residential Flat Design Code. Clause 72 provides density controls for serviced apartments and requires 300m² of land per serviced apartment, unless a site specific DCP provides for an alternative density. The proposal is well below this density, with 117 units proposed on a site area of 11.4 hectares, resulting in just over 10 units per hectare. The density controls of the site specific DCP are addressed in Appendix D.

The suitability of the design of the development is addressed in an urban design review by Architectus Sydney Pty Ltd (attached at Appendix H).