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DA 10.2021.5.1

BYRON SHIRE COUNCIL

AN ANIMAL LIBERATION SUBMISSION

We acknowledge the
Traditional Owners of
country throughout
Australia and recognise
their continuing
connection to land, waters
and culture.

We acknowledge that this
document was written on
land stolen from and
never ceded by the
Gadigal People.

We pay our respects to
their Elders past, present
and emerging.



*We don't have a duty to **speak** for the animals;
we have an obligation to be **heard**
for the animals.*

Matt Ball (2006)



DOCUMENT DETAILS

Animal Liberation. 2021. A submission by Animal Liberation in response to the Development Application No 10.2021.5.1 and associated documents and plans lodged with Byron Shire Council. Sydney: Animal Liberation.

ABOUT ANIMAL LIBERATION

Animal Liberation has worked to permanently improve the lives of all animals for over four decades. We are proud to be Australia's longest serving animal rights organisation. During this time, we have accumulated considerable experience and knowledge relating to issues of animal welfare and animal protection in this country. We have witnessed the growing popular sentiment towards the welfare of animals, combined with a diminishing level of public confidence in current attempts, legislative or otherwise, to protect animals from egregious, undue, or unnecessary harm. Our mission is to permanently improve the lives of all animals through education, action, and outreach.

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DISCLOSURE

In line with section 147(4) of the Environmental Planning and Assessment Act 1979, Animal Liberation confirms its understanding and acceptance that any submissions made in respect of the proposed development are available for public inspection under the provisions of the Government Information (Public Access) Act 2009 (GIPA Request).

In line with Amendments to Local Government and Planning Legislation requiring the public disclosure of donations or gifts when lodging or commenting on development proposals, Animal Liberation discloses and confirms that it has not made any political donations and/or of gifts in the 2 years preceding the application.



8 February 2021
Byron Shire Council
council@byron.nsw.gov.au



We present this submission on behalf of Animal Liberation.

Animal Liberation is grateful to Byron Shire Council for the opportunity to lodge a submission in response to Development Application ('DA') No 10.2021.5.1, and the associated Statement of Environmental Effects ('SoEE'), documents and plans, lodged with Byron Shire Council by Balanced Systems Planning Consultants on behalf of the Applicant, Mr Barry Wain.

We note the proposed development includes 1) Dwelling House, Swimming Pool, Cabana & Shed and, 2) Change of Use of Existing Dwelling House into Central Facility Building including Accommodation Bedrooms for existing Rural Tourist Facility, in the Byron Shire Local Government Area ('LGA').

We request that it be noted from the outset that Animal Liberation's submission is not intended to provide an exhaustive commentary or assessment in response to the issues contained within the scope of the DA, and/or, the corresponding SoEE, additional documents and plans. Rather, our submission is intended to provide a general examination and responses to select areas of key concern.

As such, the absence of discussion, consideration or analyses of any particular aspect or component must not be read as or considered to be indicative of consent or acceptance. For the purposes of this submission, Animal Liberation's focus covers aspects that we believe warrant critical attention and response.

Animal Liberation has no 'economic' or 'vested interest' pertinent to this planning proposal, however, we care deeply about Animals, our shared Environment, and People including our 'Humanity' which extends to our unique and valued rural communities. We also support the democratic process of public exhibition and the right to have an opinion and voice that opinion, and we support and encourage a rigorous and robust Council assessment process.

Animal Liberation is conversant with the valid local concerns about the proposed development and we share these concerns. We confirm that Animal Liberation lodged an emailed complaint to the NSW Environment Protection Authority ('EPA') and Council on 29 January 2021, about the Applicant's tree clearing, without consent, in an area which is a clear wildlife corridor for local koala populations including breeding females and joeys. Our complaint requested an immediate "stop work" notice and that applicable penalties be issued against the landholder and DA Applicant.

We have thoroughly reviewed the Applicant's DA, SoEE and associated plans and documents, in addition to applicable Council, State and Commonwealth planning instruments, and our primary objections to the proposed development are set out below.

Lisa J. Ryan

Regional campaigns co-ordinator

Alex Vince

Campaign director



**WITHOUT MEANINGFUL AND CONSISTENT REFORMS AND
LEGAL PROTECTIONS, KOALAS WILL NOT SURVIVE**



PREFACE

We appreciate Council's assessing staff and decision makers have an onerous responsibility with this challenging planning proposal, and that the assessment review must remain independent, objective and informed during the entire process. We acknowledge and further appreciate that this planning proposal includes risks and impacts which extend beyond the Byron Shire Council LGA, and accordingly, carries an added and heavy burden of responsibility.

- 1.1 As the primary consent authority, Byron Shire Council is required to thoroughly assess the adequacy of information provided and the measures proposed by the Applicant, to mitigate any potential risks, adverse impacts (including cumulative impacts). This is clearly outlined in the Environmental Planning and Assessment Act 1979 (hereafter, 'EP&A Act') which also requires Council give due consideration to social impacts and public interest relating to any proposed development. In sum, these considerations are a necessary and integral part of any comprehensive, objective and meaningful development assessment in line with the applicable planning instruments. Public interest is very strong and Council is required to consider contemporary public views and expectations.
- 1.2 In addition to applicable planning Instruments, Regulations, and Government Guidelines; Council must take the following matters into consideration, in line with Section 4.15 of the Environmental Planning and Assessment Act 1979. The provisions of particular interest which form a strong basis for Animal Liberation's points of objection, include:
- 1.2.1 the likely impacts of that development including environmental impacts on both the natural and built environments and social and economic impacts in the locality;
 - 1.2.2 the suitability of the site for the Development and;
 - 1.2.3 the public interest.

PREFACE

- 1.3 Animal Liberation is strongly opposed to DA No 10.2021.5.1 for a proposed Dwelling House, Swimming Pool, Cabana & Shed and Change of Use of Existing Dwelling House into Central Facility Building including Accommodation Bedrooms for existing Rural Tourist Facility in the Byron Shire LGA. The basis of our objection points are detailed as follows and are submitted for Council's consideration.

WHAT HAPPENS TO THEM MATTERS TO THEM

REGAN 1983



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- 2.1 Internationally, nationally and locally, we have reached a major ecological crossroad unlike any experienced before in human history. Due to a rapidly increasing human population and the corresponding encroachment this necessitates, a range of direct and indirect impacts have been inflicted on the natural world and the habitats of many species worldwide (Ehrlich 1994; WWF 2017;. Our exploitation of the earth's finite natural resources, the manipulation of the environment for various anthropogenic purposes and the inevitable harm this causes all beings who depend on an increasingly fragile ecosystem have caused widespread damage. This is compounded by the undisputed impacts and consequences of the climate crisis and the ecological emergency it has engendered. These impacts have serious ramifications for humans and animals alike (Jeffries 2020).
- 2.2 There has been enormous growth in awareness and public interest about human-animal relationships, protection of the environment, heritage and Aboriginal cultural heritage and climate change. This has caused a major shift in the public's expectations about how we manage these considerations.
- 2.3 We recognise Byron Shire Council has been more progressive than many NSW Councils in its efforts to acknowledge and manage the important considerations outlined above. Similarly, we acknowledge that there have been measures implemented to balance these considerations with the needs of a rapidly growing local population. However, in spite of the efforts we believe it is necessary to express and present a complimentary range of views on these matters for Council's consideration. We firmly believe that there can be no compromise when it comes to protecting our shared fragile environment and the unique and irreplaceable animals who form the distinctive Australian biodiversity revered and awed around the world.
- 2.3.1 We note Byron Shire Council's website confirms the region has an extremely high level of biodiversity known to support high numbers of rare or threatened plants and animals. Seventy (70) plant species and ninety (90) animal species are recognised as vulnerable or endangered (BSC 2021a). Even small remnants of local Byron bushland provide habitat for threatened species including orchids, koalas and the Mitchell's rainforest snail (BSC 2020a).

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2.3.2 Of particular significance is the fact that the region includes the highest frog, snake and marsupial diversity per unit area of land in Australia. Bird diversity in the region is second only to the wet tropics with the coastal wetlands being a food supply for migratory birds from all over the world. Over half the state's plant species occur in this northeast corner of NSW. The endangered ecological community includes Byron Bay Dwarf Graminoid Clay Heath, which occurs only in Byron Shire and only around 5 hectares remains in the world. Of note, the hinterland includes one of the last remaining refuges of the ancient Gondwanan rainforests that have grown in Australia for 40 million years (BSC 2021a).

2.3.3 Council's website also confirms its local unique environment is under threat from a number of impacts. These include land clearing, climate change and human disturbance (BSC 2021a).

2.4 In NSW, we are continuing to regress at an alarming rate in the protection of koalas and their habitat. The public are increasingly disillusioned by the lack of priority and the absence of actions implemented by Government at all levels to halt the ongoing and rapid decline of healthy and sustainable NSW koala populations. Animal Liberation shares these public views. There is a rapidly eroding level of trust and confidence in elected legislators and all decision makers, particularly concerning publicly declared proclamations to save and protect Australia's iconic and irreplaceable koalas. The frequently stated intent to 'protect and preserve' has not translated into real or meaningful legal protections for NSW koalas or their habitat. Indeed, koala protections in NSW have regressed to a dangerous and alarming level.

2.4.1 Recent media reports have expressed this widespread disappointment and growing frustration. For example, the Sydney Morning Herald recently published an article which questioned the concern proclaimed by many politicians: "We say we love them, but in the 230 years since the arrival of the First Fleet, we have systematically and thoughtlessly killed koalas". It went on to explain that in June of 2020, an upper house inquiry declared that "without urgent action, the marsupial would be extinct in the state by 2050". Meanwhile, the Federal government is assessing koala populations in NSW, ACT and Queensland for a potential

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2.4.1 “uplisting” of their current status of “vulnerable” to “endangered”. The article explained that “a vulnerable species faces a high risk of extinction in the wild; an endangered species has a very high risk” (Wood 2021).

2.5 NSW koalas are in serious trouble and cannot wait any longer for substantive legal reforms to protect them and their habitat. While secondary impacts to NSW koalas are also substantial, the most urgent and pressing threat is the destruction of koala habitat and the failure by decision makers to act.

2.5.1 In NSW our iconic koalas are listed as a vulnerable threatened species with the real risk of extinction in the medium term. Individual NSW koala populations on the lower north coast, Northern Rivers and northern Sydney Pittwater local government areas are already listed as endangered populations (DPIE 2017; DPIE 2018). Without urgent and decisive actions, inaction will ultimately cement Australia’s appalling world’s worst mammal extinction record as representing more than merely a trend or series of calamitous errors (Short and Smith 1994; Woinarski et al. 2015). It will secure our infamy in history as refusing to act in the face of sound science.

2.5.2 NSW koala populations estimates vary. However, the rapid and ongoing steep decline in populations is not in dispute. In 2016, the NSW Chief Scientist conservatively estimated that approximately 36,000 NSW koalas remain in the State. This figure represents a 26% decline over the last three generations of koalas (between approximately 15-21 years) (O’Kane 2016). It is important to note that these estimates were made prior to the devastating 2019/2020 bushfires which affected over 3 million hectares of all moderate to very high suitability koala habitat in eastern NSW alone and killed over 6,000 individuals (DPIE 2020; WWF 2020).

2.6 The status of NSW koala’s as vulnerable, threatened and endangered has never been more pressing. This has been recognised by a range of organisations, including the World Wide Fund for Nature-Australia (WWFAustralia), the

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- 2.6 International Fund for Animal Welfare and Humane Society International, following the devastating 2019/2020 bushfires (WWF 2020).
- 2.6.1 The Natural Resources Commission's report assessing the Land Conservation Reform Management and Biodiversity Conservation Reforms highlighted the devastating impacts resulting from the NSW Government's changes to land clearing laws in 2016 (NRC 2019). This report describes NSW land clearing as a "state-wide risk to biodiversity" and confirms the outrageous extent of environmental vandalism, some of which they can't even account for, and which has been enabled by the policies and policy direction of the NSW Government.
- 2.7 In spite of this evidence strongly supporting the listing of koalas as vulnerable across NSW, including recognition that 'habitat' is the most vital component for koala survival, and repeated and consistent testimony from koala experts; government legislators and decision-makers continue to ignore the urgent plight of NSW koalas in favour of other vested economic considerations and policy directions. Shamefully, this has been evidenced in numerous instances over recent decades by the behaviours, actions and policy directives adopted by decision makers. This continues largely unabated in a profoundly apathetic, unethical and patently unaccountable manner.
- 2.7.1 Australia's environment and species protection laws and policies at Federal, State and Local council level are palpably inadequate and continue to fail koalas and permit the razing or fragmentation of their limited habitat. Legislation and policy contradictions and inconsistencies with decision making add to these inadequacies and failures, along with government's core economic interests and priorities being afforded blatantly biased and preferential treatment.
- 2.7.2 Such inaction has fomented community concerns. According to recent media reports this means that "above all else, our insatiable needs have led to the greatest threats' koalas face: climate change and its handmaidens, more extreme droughts and bushfires" (Wood 2021).

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2.7.3 The article continued to challenge the outpouring of worldwide concern expressed in the wake of the release of devastating images of injured wildlife, stating that "despite the international spotlight the 2019-20 fires threw on the urgency of the species' plight, one year on, governments have taken little meaningful action to protect the marsupial and its habitat". While it was recognised that concern for iconic species, such as the koala, translates into the engagement of community members in conservation issues who may otherwise remain uninvolved, it emphasised the vulnerability of "umbrella species" who rely on "a broad range of habitats which are home to many other species". It concluded that there needed to be a pressure to "put measures in place to protect koalas in the wild", noting that this would thereby mean other species will also benefit (Wood 2021).

2.8 Australia lost 3 billion animals during the 2019/2020 bushfires and the NSW northern rivers area was badly impacted with the loss of many thousands of koalas and other native species. Koalas are threatened and endangered. Protecting koalas means protecting their habitat. Every single remaining koala is vitally important, and we must do everything in our power to protect them for future generations and a balanced ecosystem and environment. There can be no more compromise.



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"Habitat" for koalas means homes, food and water sources, safety and survival...

PROPOSED DEVELOPMENT

- 3.1 The Applicant's DA includes proposals for the 1) the construction of a new dwelling house in a suitable location on the site, and, 2) conversion of the existing dwelling house into a central facility building that includes additional accommodation bedrooms and shared facilities as part of the existing rural tourist accommodation facility, which obtained planning permission from Byron Shire Council in December 2017 under DA No 10.2017.360.1.
- 3.2 The proposed development also involves moving the existing driveway and construction of a new house, effectively allowing the existing dwelling to increase current capacity for tourist accommodation.
- 3.2.1 The proposed new driveway would be situated alongside established and planted koala habitat, and in our informed view, would be disastrous for existing koalas which utilise these trees and use the property to transverse the landscape. The camphor trees on both sides of the dirt part of Rifle Range Rd road are currently used by koalas and thus must be deemed koala use trees. The camphors and the koala trees along this part of the dirt road also serve as part of the critical movement corridor for these koalas.
- 3.2.2 Further, we understand that recent tourist reviews on accommodation websites confirm sightings of koalas within the site, and one description of the site on Airbnb refers to the koala corridor as one of the attractions: "You may be lucky enough to come across some of our wildlife. As well as the glorious native birdsong in the morning we are a Koala corridor so it is very likely you will spot one of our much loved residents".

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3.3 Koala Habitat, as defined in the Byron Shire Council Development Control Plan ('DCP'), includes:

3.3.1 "Areas of native vegetation, including plantings, that comprise koala use tree species found in Schedule 2 of the Koala Habitat Protection SEPP 2019 specific to the North Coast Koala Management Area" and;

3.3.2 Sightings and or records of koalas (within a 2.5km range of koala habitat) persistent over 3 koala generations that may be evidenced by breeding female and or historical records and or survey".

3.4 Local wildlife carers have confirmed that koalas have been rescued on the Applicant's side of the road as well as directly from the property in question. Eyewitness accounts confirm sightings of koalas in the camphor trees, including breeding females and joeys along this section of road and in particular, the section near the existing driveway. It is a fact that koalas are utilising habitat on the property as well as traversing the landscape across the property.

3.4.1 As the Applicant has now removed camphors along his boundary line, he has severed a section of the critical movement corridor. The proposed new driveway would be situated directly along the edge of koala habitat trees on Applicant's property, noting that the previous DA included the planting of additional koala and rainforest trees. Current koala populations are using these established trees and to propose a driveway running along them will cause a barrier for koalas to safely cross the natural landscape, severing this important corridor.

GENERAL

3.5 Animal Liberation contends that to the untrained eye, the Applicant's lengthy SoEE, documents and plans will appear comprehensive however, we believe the information submitted by the Applicant is scant, and does not include sufficient detail to enable a comprehensive assessment. Nor does the information provided respond to, or address, all the critical planning criteria, to the level and standard required in line with the relevant planning instruments. Animal Liberation contends the proposed development lacks "merit".

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- 3.6 The Applicant has failed to clearly differentiate between the construction and operational phases including the applicable risks and impacts occurring during these separate phases, including the decommission of existing access crossover and driveway. The Applicant's DA and SoEE does not adequately or accurately reflect the full scale of the proposed development, or, the associated risks and impacts of the proposed development, taking into account existing development and operations, and the proposed combined development, which we believe will result in excessive development.
- 3.7 Animal Liberation contends the proposed development/s should be assessed in the context of the full scope of the existing facility and operations and proposed facilities and operations, to ensure adequate consideration and assessment of the full range of risks, impacts and cumulative risks and impacts.
- 3.8 In addition to the Applicant's failure to identify, respond to and address all risks and impacts and cumulative risks and impacts, the Applicant has also failed to adequately demonstrate how they would monitor, avoid, minimise, mitigate and manage those risks and impacts they have identified.
- 3.8.1 The Applicant has relied on numerous assumptions and statements indicating they have various levels of "confidence" with many of their non-evidenced control measures - other potential risks and impacts are missing entirely. Such omissions and lack of detail prevents decision makers from undertaking a comprehensive, objective and meaningful development assessment, in line with the applicable planning instruments and community expectations. Such omissions also impede sound and effective assessment; and decision making can become problematic, flawed, and can potentially lead to serious, adverse, ongoing, permanent and irreversible consequences.
- 3.9 The Applicant has failed to adequately address and respond to Section 4.15 of the Environmental Planning and Assessment Act 1979 as follows.
- 3.9.1 the likely impacts of that development including environmental impacts on both the natural and built environments and social and economic impacts in the locality;



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3.9.2 the suitability of the site for the Development;

3.9.3 any submissions made in accordance with this Act or the Regulations and;

3.9.4 the public interest.

3.10 Animal Liberation contends the environmental risks and impacts to the natural and built environments (in addition to social and economic impacts) that will likely emanate from the proposed development, are substantial. Further, the site is unsuitable and the proposed development is not in the public interest. Apart from facilitating the commercial interests of a private business, the proposed development offers minimal benefits to the local community.

3.10.1 The Applicant has failed to adequately demonstrate how they would avoid and mitigate environmental harm, (indeed even prior to approval, they have demonstrated willful environmental harm) and have failed to demonstrate either the suitability of the site, or how the proposed development is in the public interest.

3.11 We note the Applicant agrees the proposed development is Integrated development. Animal Liberation disagrees with the Applicant's assertion that this Integrated classification only requires referral to the NSW Rural Fire Service under S100B of the Rural Fires Act 1997. We also disagree with the Applicant's claim that the relevant assessment and management requirements for the mapped bushfire prone land in the north-west and east of the site are adequate. The site is surrounded by other mapped bushfire prone land which the Applicant has completely ignored.

3.12 Animal Liberation contends that the proposed development is also Integrated Development insofar as it involves a series of likely, demonstrated and evidenced risks and potential impact to the local environment and biodiversity.

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3.12.1 We disagree with the Applicant's proposition that the "development application does not trigger any requirements under Designated development criteria." Animal Liberation believes the proposed development should be classified as Designated development given the environmental risks and impacts (notably koalas), is considered high and accordingly, must invoke a greater level of scrutiny as part of the assessment process than would normally be the case.

3.12.2 Animal Liberation contends that the proposed development is Designated development and that for the purpose of this planning assessment, must be classified and assessed accordingly including, the requirement to compile and submit an Environmental Impact Statement (EIS) in line with the Secretary's Environmental Assessment Requirements (SEARs).

3.13 Section 3 of the Environmental Planning and Assessment Regulation 2000, under Part 2, Clause 36 outlines the relevant 'factors to be taken into consideration'. In forming its opinion as to whether or not development is designated development, a consent authority is to consider:

3.13.1 the impact of the existing development having regard to factors including:

A previous environmental management performance, including compliance with the conditions of any consents, licences, leases or authorisations by a public authority and compliance with any relevant codes of practice and;

B rehabilitation or restoration of any disturbed land and;

C the number and nature of all past changes and their cumulative effects.

3.13.2 the likely impact of the proposed alterations or additions having regard to factors including:

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- A the scale, character or nature of the proposal in relation to the development and;
- B the existing vegetation, air, noise and water quality, scenic character and special features of the land on which the development is or is to be carried out and the surrounding locality and;
- C the degree to which the potential environmental impacts can be predicted with adequate certainty and;
- D the capacity of the receiving environment to accommodate changes in environmental impacts.

3.13.3 any proposals:

- A to mitigate the environmental impacts and manage any residual risk and;
- B to facilitate compliance with relevant standards, codes of practice or guidelines published by the Department or other public authorities.

3.14 Designated Development refers to developments that are high-impact developments or are located in or near an environmentally sensitive area, or, are listed in Schedule 3 of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation) as being designated development.

3.14.1 Schedule 3, Part 2 of the EP&A Regulation also refers to alterations or additions and whether such alterations or additions result in a significant increase in the environmental impacts of the total development.



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- 3.15 **It is Animal Liberation's strong and informed view that the proposed development, including 'change of use' and conversion, and taking into consideration the existing operations, the total scale and environmental impact, residual risk and the cumulative effects is Designated development and the applicable SEARs should apply.**
- 3.16 If approved, the proposed development will result in numerous adverse impacts and will pose significant risks to the local environment, biodiversity and ecosystems. The 'precautionary principle' must be applied in environmental planning decision-making with the conservation of biological diversity and ecological integrity being a fundamental consideration. The 'precautionary principle' requires decision-making to give the environment the benefit of the doubt.
- 3.17 The proposed development is not aligned to ecologically sustainable development ('ESD') and the conservation of biological diversity and ecological integrity processes which forms part of environmental law and inter generation equality. Council, as the consent authority is required to conserve and enhance the community's resources so that ecological processes on which life depends, are maintained, and that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.
- 3.17.1 The proposed development is not aligned to protecting and preserving native habitat where a fundamental consideration should require all planning and decision making to include an Environmental and Species Impact Statement. The Applicant has in fact demonstrated a blatant lack of respect and regard towards the protection and preservation of native habitat.
- 3.18 Based on an abundance of credible scientific evidence relating to climate change including current and emerging climate and general weather patterns, we are concerned that much of the submitted SoEE information and data, including numerous 'assumptions', has not fully considered climate change and the 'un-predictability' of our environment.

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- 3.19 The Applicant's SoEE states: "This report demonstrates, in the context of relevant Council, state government policies and objectives, and other relevant legislation, the proposal will generate minimal adverse environmental impacts while generating multiple positive impacts. The proposal is considered to be highly consistent with Council strategies, and achieves the key aims and objectives of dwelling houses and rural tourist accommodation in the Byron Shire." Animal Liberation strongly disagrees with the Applicant's non-evidenced assertions.
- 3.19.1 Under the 'Objectives of the Proposal', the SoEE includes: "Protect and enhance the site's ecological systems". Further in the SoEE, it includes reference to measures to "ensure the proposal does not generate adverse impacts on any Aboriginal cultural heritage". In complete contrast, the Applicant has already caused negative impacts to the site's ecological systems, and the SoEE's only reference to Aboriginal cultural heritage is "An AHIMS search resulted in no recognised aboriginal sites or places on the subject site or in the vicinity of the site."
- 3.19.2 The Applicant, in their SoEE confirms that "no native vegetation is to be removed to facilitate the proposed the new dwelling and driveway" and "the proposal does not involve the disturbance of natural ecosystems or any important areas of native habitat." The Applicant has, however, willfully and illegally removed trees (camphors) prior to assessment or any consent authority approval for this DA in an area identified as a wildlife corridor which includes breeding females and joeys. Further, Animal Liberation contends the Applicant's tree clearing has disturbed and destroyed some native vegetation and will, if required, provide council with images to demonstrate this native vegetation destruction.
- 3.19.3 The Applicant's submitted plans depicting the access road states there will be "minimum vertical clearance of 4m to any overhanging obstructions, including tree branches". As the access road is situated close to the protected koala corridor, (includes 44 mature tallowood trees), branches of mature koala food trees will need to be lopped to achieve this minimum vertical clearance.

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3.19.4 We acknowledge the camphors are not native, however there is abundant scientific evidence to support the fact that these trees provide shade (as per current summer conditions) and safety for koalas. Further, the Applicant undertook this tree clearing without any consent. From the relevant agencies, and a complete lack of concern for the welfare and protection of the koalas on the property and its surrounds.

3.20 The development is not consistent with the aims and objectives Byron Shire Council's Local Environment Plan 2014 ('LEP') or the Development Control Plan ('DCP') as follows:

3.20.1 The proposed development does not protect and enhance ecological processes and is not considered consistent with the guiding principles. The proposal is located an ecological sensitive area.

3.20.2 The Applicant's SoEE's assertion "No land use conflicts have been identified with adjoining properties" does not adequately demonstrate that sufficient investigation or review of any "conflicts" has been undertaken.

3.20.3 The SoEE has not demonstrated that the proposed earthworks will not have any significant detrimental impact on the environment, nor that these earthworks are able to be adequately managed.

3.20.4 The Applicant has failed to provide a soil and erosion management plan for assessment.

3.20.5 The proposed development is not small scale or low impact and the overall footprint of the proposed works is significant and will have a significant adverse impact on the natural environment.

3.20.6 The Applicant has failed to provide a detailed landscaping plan.



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- 3.20.7 The submitted SoEE does not serve as an assessment of all potential environmental impacts.
- 3.20.8 The Applicant has failed to address the required 20 metre buffer zone for koala trees as outlined in Council's DCP.
- 3.20.9 The DCP includes requirements for appropriate lighting for koalas, such as 'down lighting' within 30m of koala habitat. We understand neighbours have reported spotlights pointed at trees on the property to enable tourists to view the koalas at night. This constitutes deliberate disturbance of a threatened species and accordingly contravenes wildlife legislation (Biodiversity Conservation Act 2016).
- 3.21 Animal Liberation contends that enforced compliance with the Development Standards would be both reasonable and necessary.
- 3.22 Animal Liberation contends that the Applicant's assessment of the development in relation to environmental and amenity related matters is inadequate and that the proposed mitigation measures would be ineffective. We believe that moderate and significant adverse risks and impacts would result and indeed have already resulted, and that these considerations have not been appropriately addressed to a level to demonstrate the merits of the proposal, nor demonstrated that the proposal warrants approval.
- 3.23 There is no evidence to confirm the Applicant has undertaken any expected level of consultation with key stakeholders including sensitive receptors, the broad community and notably, the traditional Aboriginal custodians of the land.
- 3.23.1 Animal Liberation considers the Applicant's cursory and almost dismissive attention to heritage, Aboriginal heritage, and the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales, to be highly offensive, and not in keeping with Council's own undertakings, public statements and plans. Further the Applicant appears to be uninformed about the requirements in line with the relevant planning instruments as outlined in the National Parks and Wildlife Act 1997.

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- 3.24 The Applicant has failed to respond to and/or address the generic due diligence assessment steps. As the proposed development will disturb the ground surface, the due diligence process outlined in the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (Cultural Heritage Guidelines) is necessary.
- 3.25 In line with the mandatory Cultural Heritage Guidelines, it is imperative that the development should not proceed without a detailed Aboriginal Cultural Heritage Assessment (ACHA) or Aboriginal Heritage Impact Permit (AHIP) being undertaken at the Applicant's expense.
- 3.25.1 It is important to note that AHIMS (only) records information about Aboriginal sites that have been provided to Office of Environment, and information recorded on AHIMS may vary in its accuracy and may not be up to date; location details are recorded as grid references and it is important to note that there may be errors or omissions in these recordings; some parts of New South Wales have not been investigated in detail and there may be fewer records of Aboriginal sites in those areas. These areas may contain Aboriginal sites which are not recorded on AHIMS. Aboriginal objects are protected under the National Parks and Wildlife Act 1974 even if they are not recorded as a site on AHIMS.
- 3.25.2 It is not sufficient for the Applicant to merely state that "an AHIMS search resulted in no recognised Aboriginal sites or places on the subject site or in the vicinity of the site". The Applicant has failed to seek or obtain other sources of information and indeed has failed to consult at all.
- 3.26 The Applicant's DA Application Form describes the subject land as RU2 Rural Landcape, yet in complete contradiction, the Applicant's SoEE states the land is RU1 Primary Production land use. Further the Application Form incorrectly notes "the proposed development will not directly impact threatened species, populations, ecological communities or their habitats, in contradiction to the land identified as Red Flag/Ecological Setbacks in the Biodiversity Chapter of Byron Shire Council's DCP.

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3.27 The proposed development is situated in a local water drinking catchment and we note, the Applicant's assertion that the western vegetated patch is identified on the NSW Biodiversity Values Map due to the location of Paddys Creek which transverses this part of the site. We believe this to be incorrect, and that Paddys Creek crosses the eastern portion of the site which is mapped on the NSW Biodiversity Values Map.

3.27.1 A previous DA restriction on the use of land, pursuant to the provisions of Section 88E of the Conveyancing Act 1919, has been placed on the title of the land, that subject of this consent, stating: "No works or activities shall be carried out on the burdened land that has a negative impact on the koala habitat on, or adjoining, the burdened land, other than in accordance with the Environmental Enhancement and Management Plan approved in accordance with conditions of development consent number DA 10.2017.360.1" According to Byron Shire DCP all plantings of koala food use trees and restoration of koala habitat as a result of consent conditions under the Environmental Planning and Assessment Act 1979 are to be protected in perpetuity by an effective legal restriction on the title of the land.

3.27.2 The SoEE states: "Water supply for the new dwelling will be achieved by means of roof water harvesting and water tank storage. The central facility building will benefit from existing water storage tanks for water supply." The Applicant has however failed to describe or demonstrate adequate water capacity and storage for fire-fighting purposes.

3.28 We note the 'Bushfire Assessment Report; compiled by Legate Pty Ltd, correctly states: "The proposed development site is classified as bushfire prone land on BSC's Bushfire Prone Land Maps which have been ratified by the Commissioner, NSW Rural Fire Service ('RFS'). An application for a Bushfire Safety Authority is required under section 100B of the Rural Fires Act as this is, under this act, a Special Fire Protection Purpose ('SFPP') development,

3.28.1 The same report, however, incorrectly states that "the development is not near a riparian zone, there are no areas of geological interest near the development and there is no evidence of Koala presence near the development." The report also incorrectly states: "There

POINTS OF OBJECTION

3.28.1 are no threatened species, populations, endangered ecological communities or critical habitat known to the applicant or observed at time of assessment. There are no past studies or surveys of this site or the immediate vicinity.”

3.29 The Applicant’s scant and cursory reference to increased traffic movements is completely inadequate and fails to consider the risks and impacts on critical biodiversity.

3.30 Animal Liberation contends that the SoEE fails the “Test of Significance”, as outlined in the Biodiversity Conservation Act 2016 and whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats, and, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction.



SUMMARY & CONCLUSION

**“Whenever people are upset about protecting animals, it’s usually because they’ve got a financial stake in not doing so”
- Evan Quartermain (2021)**

- 4.1 In their DA and SoEE, the Applicant has failed to identify, respond to and address all risks and impacts and cumulative risks and impacts, and has failed to adequately demonstrate how they would monitor, avoid, minimise, mitigate and manage these risks and impacts.
- 4.2 We acknowledge and appreciate the technical complexity of this proposed development and the difficulty and challenges faced by even the most experienced planning staff when assessing such information that frequently requires experienced, expert and scientific evaluation. We also note that in line with the applicable legislation and planning instruments, Council is required to ensure the assessment review remains independent, objective and informed during the entire process and that the assessment process is strongly founded on informed opinion and evidence.
- 4.3 Council is compelled to act impartially and ensure the correct and consistent application of local, state and federal legislation, including the objective and transparent assessment of planning proposals. Councillors are elected to represent everyone in the community, and apply objective, impartial and informed consideration of matters which hold strong public interest.
- 4.3.1 Council as the primary consent authority, is required to thoroughly assess the adequacy of information provided and the measures proposed by the Applicant, to mitigate any potential risks, adverse impacts including cumulative impacts. This is clearly outlined in the Environmental Planning and Assessment Act 1979 which requires Council give due consideration to social impacts and public interest relating to any proposed development. All these considerations are accordingly a necessary and integral part of any comprehensive, objective and meaningful development assessment in line with the applicable planning instruments.

- 4.4 It is imperative that decision makers don't trivialise, dismiss or ignore public interest, or place the unsustainable, short-term, economic benefits of a privately owned commercial business ahead of the welfare of animals, the environment or the long-term best interests of the broad community. We have a clear moral, social and environmental responsibility to protect our shared and fragile environment and all biodiversity, no create additional pressures.
- 4.5 In addition to the individual risks and impacts outlined in our objection, when combined, these are glaring and serious cumulative risks and impacts where adequate monitoring, avoidance, minimisation, mitigation and management would prove to be problematic and indeed, impossible.
- 4.6 The 'precautionary principle' must be applied in environmental planning decision-making, and conservation of biological diversity and ecological integrity should be a fundamental consideration. The 'precautionary principle' requires decision-making to give the environment the benefit of the doubt. The Applicant's professed benefits to the region are negligible and come with an exorbitant and costly price tag of imminent and serious risks and impacts. There is no justification for the extensive and permanent consequences to our nonhuman animals and the local environment.
- 4.7 Based on the points of objection outlined in section 3 of this submission, it is our strong view that the Applicant has failed to adequately address or respond to the mandatory assessment criteria as outlined in applicable legislation and planning instruments. This assessment and corresponding decision making must take into account, the 'Precautionary Principle' requiring decision-making to give the environment the benefit of the doubt.
- 4.8 Animal Liberation strongly urges the Byron Shire Council decision makers to conclusively refuse the respective DA and apply the maximum allowable applicable penalties for the willful environmental vandalism already undertaken on the site by the Applicant.



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