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General Manager
Byron Shire Council
PO Box 219
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31 Jan. 2020

Dear Sir

Re Development Application
Storage sheds (2), vehicular access & infrastructure ancillary to an approved
'agricultural produce industry' (boutique micro-distillery)
Lot 5 DP 594645, 80 St. Helena Rd., Byron Bay, NSW

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1. Development Plans
by AGS Commercial Pty Ltd
2. Plan of Partial Detail Survey
by Canty's surveyors
3. On-site Wastewater Management Assessment
by Greg Alderson & Assoc
4. Civil Works Drawings
by Manage-Design-Engineer (MDE) Pty Ltd

1 Introduction

I act on behalf of the Landowners and Applicants, Mr Martin & Mrs Pam Brook in regard to the above matter and have prepared this letter report as the Development Application (DA) Statement of Environmental Effects (SEE) for; storage sheds (2), vehicular access & infrastructure ancillary to an approved 'agricultural produce industry' (boutique micro-distillery).

The sheds are proposed to be constructed in 2 stages and are to be used for the storage and maturation of alcohol manufactured by the micro-distillery.

The DA is to be lodged with Byron Shire Council (BSC).

The following Development Plans (refer to **Attachment No. 1**) prepared by AGS Commercial Pty Ltd show the proposed development:

- Dwg SK1d - 20/1/20 – Proposed storage sheds
- Dwg SK2c - 20/1/20 – Floor plans and elevations

Application pursuant to s. 68 of the *Local Government Act 1993* for the on-site wastewater management system is to be sought following determination of the DA or concurrent to the assessment and determination of the DA.

The following specialist assessments and reports support the DA.

Attachment No. 2 is a copy of the survey plan showing location of land boundaries, contours, closest building, existing farm access, vegetation and other detail, prepared by Canty's Surveyors.

Attachment No. 3 is copy of the on-site wastewater management assessment by Greg Alderson & Assoc for the toilet in the Stage 2 storage shed.

Attachment No. 3 is copy of the preliminary plans for civil works, including earthworks, pavements, stormwater and erosion control by Manage-Design-Engineer (MDE) Pty Ltd.

2 General description of adjoining land use

The following aerial images show the land, the approx. boundaries of the land and adjoining land.



Map No. 1 – Aerial image of land & locality
Data source Sixmaps Jan 2020



Map No. 2 – Aerial image of land & development site
Data source Sixmaps Jan 2020

Adjoining land predominantly comprises; the Pacific Motorway and small rural holdings used for agricultural and residential purposes.

3 General description of land

3.1 Real property and address

The micro-distillery is located on land used for a macadamia farm and rainforest orchard known as; Lot 5 DP 594645, 80 St. Helena Rd., Byron Bay. The land has an area of 37.1ha.

The partial plan of detail survey (refer to **Attachment No. 2**) shows the land proposed to be developed.

The land comprises a single allotment and is irregular in shape with a 179m wide frontage to St Helena Rd.

3.2 Existing use

The existing macadamia farm comprises:

- approx. 4,200 mature macadamia trees
- native rainforest and harvestable areas
- the dwelling
- a farm machinery shed and a farm storage shed and
- micro distillery building.

Rainforest regeneration and native tree planting for both conservation purposes and as inputs into the micro distillery have been undertaken on approx. 35% of the farm.

The following photographs show the existing micro distillery and land on which the sheds are proposed to be developed.



Photograph 1 The existing micro distillery and farm building



Photograph 2 The land to be developed – view from access road near shed



Photograph 3 The land to be developed

The land was previously used for growing macadamia trees.

Fencing

Rural fencing is along all boundaries.

3.3 Vehicular access

Vehicular access (approx. 4-5m wide) to the internal farm road to the micro distillery exists from St Helena Rd.

3.4 Land height

The height of the land to be developed varies from 72m(AHD) to 78m(AHD) and has a slope of approx. 6 – 9% (3.5 – 5°).

The Plan of Partial Detail Survey (refer **Attachment No. 2**) shows the existing levels of the land proposed to be developed, the farm shed near the micro distillery and the existing farm access.

3.5 Soils

The geotechnical assessment undertaken for the micro distillery building describes the general profile of stiff to very stiff, high plasticity, silty clay residual basalt derived soil becoming very stiff to hard with depth.

3.6 Flora and fauna

The land to be developed does not support native vegetation.

Photographs No. 2 & 3 shows the existing vegetation on the land to be developed.

3.7 Acid sulfate soils

The land to be developed has no probability of containing acid sulfate soils.

3.8 Heritage

The land contains no heritage items nor is it in a heritage conservation area.

3.9 Land contamination

The land to be developed is not within the 200m investigation buffer of any former cattle tick dip site.

3.10 Watercourses

No watercourses traverse the land to be developed. The land to be developed is approx. 50m from an un-named watercourse. The land drains to the southwest towards the watercourse.

3.11 Flooding

The land to be developed is not prone.

3.12 Groundwater

The geotechnical assessment undertaken for the micro distillery building did not encounter groundwater.

3.13 Bushfire

The mapping of bush fire prone vegetation identifies that the land contains Category 1 bushfire prone vegetation and is within a 100m 'buffer' to mapped Category 1 vegetation.



Map No. 3 – Aerial image zone and bushfire mapping
Data source NSW Dept Planning Jan 2020

The land to be developed is not mapped as potentially bushfire prone.

Water supply comprises 2 x 18,000L rainwater tanks with a stored capacity of 36,000L. Of this a minimum of 15,000L is retained for emergency fire protection purposes. The tanks are connected to a Honda Davey GX200 diesel fire fighter pump with 70m of hose.

3.14 Coastline

The land is approx. 5-6km landward of the nearest coastline.

3.15 Visual character

Map No. 1 and **Photographs No. 2 & 3** show the visual characteristics of the land to be developed.

The land proposed to be developed is not visible from St Helena Rd or readily visible from adjoining land or the Pacific Highway.

3.16 Services

Water supply

There is no reticulated water to the land proposed to be developed. Refer to Section 3.13.

Wastewater disposal

The land proposed to be developed is not sewered.

Stormwater disposal

Stormwater on the land proposed to be developed infiltrates the soil profile and/or surface drains to the south.

Electricity and telecommunications

Above ground electricity is provided to the micro distillery building.

4 General description of proposed development

4.1 The buildings and use

The DA proposes 2 storage sheds, vehicular access & infrastructure ancillary to an approved 'agricultural produce industry' (boutique micro-distillery). The sheds are proposed to be constructed in 2 stages to match production at the distillery and type of alcohol produced. There is insufficient storage space at the distillery.

Bottled and barrelled alcohol will be taken to the sheds by forklift from the distillery and product to be dispatched loaded on delivery vehicles at the sheds

Bottled and barrelled alcohol will be stored on a pallets racking system.

Attachment No. 1 shows the proposed sheds.

4.1.1 Floor plan areas

The total floor plan area of the sheds is 900m² (2 x 450m²).

4.1.2 Setbacks

The Stage 1 shed is setback approx. 9.8m and Stage 2 shed approx. 21m from the western boundary and approx. 370+m from the northern (St Helena Rd) boundary.

4.1.3 Building height

The max. building height of the sheds from existing ground level is approx. 8.3m.

4.1.4 Materials and colours

Table No. 1 identifies the external building materials and colours of the sheds.

Table No. 1 Preliminary schedule of external materials and colours

Building element	Material	Colour
External walls	Colorbond	Basalt to match distillery building
Roofing & guttering	Colorbond	Basalt to match distillery building
Roller doors	Colorbond	Basalt to match distillery building

4.1.5 Earthworks

Attachment No. 4 shows the proposed earthworks, drainage and erosion control.

Re-shaping and filling of the land to be developed is proposed, extending over approx. 3,435m² (to varying depths up to 2m) and involves; stripping of topsoil (approx. 344m³) and 'cut-to-fill' earthworks with approx. 955m³ of earth excavated and placement of approx. 950m³ of fill. The stripped topsoil and balance of earthworks stockpiled for re-use on the farm.

4.2 Vehicular access, parking and traffic generation

Vehicular access and parking

Provision is made for the access and manoeuvring of a heavy rigid vehicle. Access will be from the existing farm road.

Traffic generation

The use of the sheds will reduce despatch traffic generated by the by the micro distillery as the need to use limited storage in the distillery building is reduced and the products can be stored for longer periods.

4.4 Tree removal, landscaping and fencing

There are no trees on the land to be developed to be removed.

4.5 Services

Water supply

The proposed sheds will be provided with rainwater tanks, though they are not yet sized. An additional 10,000L tank will be provided as a static supply for bushfire protection.

Water supply at the distillery building comprises 2 x 18,000L rainwater tanks with a stored capacity of 36,000L.

Wastewater disposal

Effluent generated by the toilet will be directed to a new on-site wastewater management system (refer to **Attachment No. 3**).

Stormwater disposal

Attachment No. 4 shows the proposed stormwater management, excluding provision of rainwater tanks.

The overflow from the rainwater tanks and hard surface areas will be directed to adjoining grassed areas.

Electricity and telecommunications

An above ground electricity service will be extended to the sheds.

5 Characterisation of proposed development

5.4.1 Byron Local Environmental Plan 2014 (BLEP 2014)

Land use zone (Map LZN_003CA):- RU2-Rural landscape & DM-Deferred matter

Building height (Map HOB_003CA):- Area 'J' 9m

Water catchment (Map DWC_003C)

As a consequence of the DM zone on part of the land it remains part zoned 1(a)(General Rural) and 7(d)(Scenic escarpment) under the Byron Local Environmental Plan 1988.

The land upon which the development is proposed is zoned RU2.

5.4.2 Land use definitions

The proposed development is ancillary to an approved agricultural produce industry operating ancillary to an existing macadamia farm.

Parent definition

rural industry means the handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes, and includes any of the following:

(a) agricultural produce industries,

- (b) livestock processing industries,
- (c) composting facilities and works (including the production of mushroom substrate),
- (d) sawmill or log processing works,
- (e) stock and sale yards,
- (f) the regular servicing or repairing of plant or equipment used for the purposes of a rural enterprise.

Child definition

agricultural produce industry means a building or place used for the handling, treating, processing or packing, for commercial purposes, of produce from agriculture (including dairy products, seeds, fruit, vegetables or other plant material), and includes wineries, flour mills, cotton seed oil plants, cotton gins, feed mills, cheese and butter factories, and juicing or canning plants, but does not include a livestock processing industry.

Permissibility

The development and use of the sheds for the storage of the product of the micro-distillery is ancillary to its operation and consistent with the key threshold character 'tests' for ancillary use as set out in the Dept. of Planning Circular *PS13-001 – How to characterise development*.

6 Environmental impact assessment

Clause 50(1)(a) of the *Environmental Planning and Assessment Regulation 2000* requires that a DA must contain the information and be accompanied by the documents specified in Part 1 of Schedule 1 of those Regulations.

Clause 2(4) of Part 1 of Schedule 1 requires that the DA be accompanied by a SEE which indicates the following matters:

- a) the environmental impacts of the development
- b) how the environmental impacts of the development have been identified and
- c) the steps to be taken to protect the environment or to lessen the expected harm to the environment.

The key potential environmental impacts or issues are:

1. potential for impact on the landscape
2. potential noise and odour impacts on adjoining land
3. potential for impact on soils and water management
4. consideration of potential for crime and the security of the sheds and
5. potential for environmental risks and hazards.

The potential environmental impacts or issues have been determined having regard to the following:

- completion of 3 site and locality inspections, discussions with Mr Martin Brook, Mrs Pam Brook, Mr Eddie Brook and experience of the author of this report
- consideration and review of the DA plans (refer to **Attachment No. 1**)
- consideration of development in the locality of the land
- consideration of the land use survey (refer to **Attachment No. 2**)
- consideration of the wastewater assessment (refer to **Attachment No. 3**)
- consideration of the civil plans (refer to **Attachment No. 4**)
- consideration of the topography, view corridors and vegetation on and use of adjoining land
- review of the BLEP 2014 and BDCP 2014 and assessment and approval of DA No. 2015.666 for the existing micro distillery.

The extent and significance of the potential impact / issue is discussed below.

6.1 Potential for impact on the landscape

The visual catchment, from which the land to be developed is visible is highly restricted and not visible from St Helena Rd. The western boundary is screened or buffered by landscape / biological buffer trees and new Pacific Highway.

Summary and conclusion of impact assessment

The change of an existing landscape and/or views into and over land is significantly influenced by the location of the observer, the topography, location, height, design of the proposed development and location, height and design of adjoining development.

The proposed development is similar in scale, form and character with existing buildings on the land and will comfortably 'fit' into the existing built pattern of settlement, not dominating nor adversely impacting on the landscape and scenic qualities of the visual catchment of the land.

6.2 Consideration of potential noise and odour impacts on adjoining land

The proposed development is within the land approx. 115m from the distillery building. The sheds are:

- approx. 333m from the southern boundary and isolated or buffered by macadamia trees from land that is used for cattle grazing
- approx. 9.8m from the western boundary and screened or buffered by landscape / biological buffer trees from land that is used for cattle grazing and new Pacific Highway and
- approx. 460m from the eastern boundary and isolated or buffered by macadamia trees from land that is used for cattle grazing.

The closest dwelling on adjoining land is approx. 436m from the sheds and near St. Helena Rd.

Short term noise will be generated by construction activities. Potential for noise impact by construction activities is mitigated by the following circumstances:

- the relatively short length of the construction period
- that construction activities occur only during daylight hours and on days and during times approved by BSC (typically Monday to Friday 7am to 6pm & Saturdays 8am to 1pm)
- that construction noise will be approved by BSC not to exceed thresholds permitted by the NSW Industrial Noise Policy and
- the location of the development site in relation to the Pacific Motorway.

Longer term noise will not be generated by the use of the sheds as that is for storage.

All processing activities are conducted within the micro distillery building.

Summary and conclusion of impact assessment

Having regard to the above there is no risk of offensive noise or odours been generated by the proposed development.

6.3 Soils and water management

Earthworks have the potential to cause soil erosion and the pollution of surface waters. Earthworks comprise excavation and filling to provide create building platforms and access.

A soil erosion and water management plan for construction of the works will be prepared and submitted to BSC or an Accredited Certifier for approval prior to construction works commencing.

The basic principle in management of soil and water on construction sites is to minimise erosion from the land by appropriate construction practices. Appropriate structural measures are employed to capture sediment generated by construction activities and rainfall.

Attachment No. 4 shows provision for sediment control and the proposed stormwater management system.

Summary and conclusion of impact assessment

Construction activities are within the land and adjoining areas used for growing macadamia trees or grassed, therefore the potential for adverse impact on soils and water highly unlikely.

Contemporary engineer designed soil and water control measures appropriately placed and provided during the period of construction further minimise the risk of soil erosion and potential for sedimentation of the local drainage system during the construction period.

6.4 Consideration of potential for crime and the security of the buildings

The following principles apply to people looking to commit crime:

- The greater the risk of being seen challenged or caught, the less likely they are to commit a crime.
- The greater the effort required, the less likely they are to commit a crime.
- The lesser the actual or perceived reward, the less likely they are to commit a crime.

It follows that the built environment can and should be designed, managed and manipulated to ensure that:

- There is more chance of being seen, challenged, caught or reported to authorities.
- Greater effort to gain entry and exist is required.
- The rewards, actual or perceived, are less.

The following identifies (in *italics*) and comments on the assessment criteria that seek to:

- *enhance the safety of development for all users and*
- *minimise the opportunities for crime to be committed.*

Surveillance

Siting and design of buildings

Buildings should be sited in a manner that encourages opportunities for surveillance.

Assessment comment

Direct public road access is only available from St. Helena Rd. A security gate and CCTV surveillance system has been provided at the entrance of the land and CCTV at the micro distillery building. Signage at the St Helena Rd entrance advises appointments are necessary prior to entering the land. An alarm and CCTV system will be provided at the sheds.

Mixed-use

A neighbourhood will benefit from mixed-use development whereby 24 hour surveillance can be encouraged.

Assessment comment

Not applicable.

Lighting

Lighting should be easily maintained, vandal resistant and have particular regard to the specific environment in which it serves.

Assessment comment

Night security lighting of the sheds is proposed as part of the alarm and CCTV surveillance system.

Access control and target hardening

Access

Strategic design and management can restrict access to designated areas.

Assessment comment

There is 1 gated entrance for employees, service contractors and public to access the land and micro distillery.

Spaces should be clearly defined as private semi-private or public by the use of fencing, bollards, vegetation, landscaping changes in ground level, traffic calming, paving type and signage.

Assessment comment

The location of the proposed sheds is close to the distillery building and is discrete and well within the land and access managed and monitored.

Target hardening

Target hardening literally refers to making a premise or piece of property harder to target for non-legitimate purposes. It should be considered when the choice of construction material is being decided upon.

Assessment comment

The sheds will be constructed on a concrete slab with metals framing, cladding, window & door frames and roofing.

Target hardening can be achieved by the use of security hardware such as locks, chains, alarms and human measures (security guards).

Assessment comment

All external building materials are durable.

Territorial reinforcement

Establish ownership and the sense of ownership in the communal areas surrounding private areas.

Assessment comment

Access to the sheds is managed and controlled.

Defensible space

Visible signs of care and order, in any environment, are signals that the environment is maintained and 'defended' and that the community is protecting itself. The environment therefore gives the impression that greater effort is required to commit a crime and that there is greater chance of detection.

Assessment comment

The sheds will be regularly serviced and maintained by the owners.

A well maintained environment can also reduce fear of crime. Areas that display signs of decay, graffiti and vandalism are usually more intimidating to the general public from those that appear to be well cared for and regularly maintained.

Assessment comment

As above.

Summary and conclusion of impact assessment

Satisfactory measures have been adopted and are used to provide for security and minimise potential for crime.

6.5 Environmental risks and hazards

Flooding

The land is not flood prone.

Bushfire threat

The land proposed to be developed is not mapped bushfire prone. Sufficient land is available to provide asset protection zones around the sheds and sufficient static dedicated water supply will be made available.

Geological stability

Visual survey of the land suggests that it is stable and there is a low potential for landslide or subsidence above or below it.

Land contamination

The land is not considered to be potentially contaminated.

Summary and conclusion of impact assessment

The risks and hazards to the land are not a constraint to the proposed development.

7 Statutory assessment

The following environmental planning instruments apply to the land and proposed development and provide an assessment of the proposal pursuant to Part 4 Division 4.3 Clause 4.15(1) of the *Environmental Planning and Assessment Act 1979*.

Clause 4.15(1) requires consideration of the following matters (identified in italics).

4.15 Evaluation

(1) Matters for consideration—general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) the provisions of:

(i) any environmental planning instrument, and

(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

(iii) any development control plan, and

(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

- (v) any coastal zone management plan (within the meaning of the [Coastal Protection Act 1979](#)),
 that apply to the land to which the development application relates,
 (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
 (c) the suitability of the site for the development,
 (d) any submissions made in accordance with this Act or the regulations,
 (e) the public interest.

7.1 State Environmental Planning Policies

Clause 4.15(1)(a)(i) – environmental planning instrument

State Environmental Planning Policy No. 55-Remediation of Land (SEPP No. 55)

Assessment comment

The land is not on BSC's register of potentially contaminated sites.

Having regard to investigations undertaken for DA No. 2015.666 the land is not considered to be potentially contaminated.

State Environmental Planning Policy-Infrastructure 2007 (I-SEPP)

Assessment comment

All required infrastructure services are available and/or can be provided to the sheds.

State Environmental Planning Policy (Primary production and rural development) 2019

Assessment comment

The land and adjoining land is mapped as regionally significant farmland. The land is not mapped as state significant agricultural land under the SEPP.

The following provides comments on the consistency of the proposed development with the aims (identified in *italics*) of the Policy.

Clause 3 Aims of Policy

The aims of this Policy are as follows:

- (a) *to facilitate the orderly economic use and development of lands for primary production,*

Assessment comment

The productive agricultural land is a developed macadamia orchard and is maintained. The agricultural processing industry (micro distillery) is ancillary to agricultural production of macadamia nuts and growing of rainforest botanicals used in the production of distilled alcohol. Additional buildings for storage and maturation of the alcohol are ancillary to the micro distillery.

- (b) *to reduce land use conflict and sterilisation of rural land by balancing primary production, residential development and the protection of native vegetation, biodiversity and water resources,*

Assessment comment

The risk of land use conflict is considered to be low and the sheds will be used for storage only.

- (c) *to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*

Assessment comment

Not applicable.

(d) *to simplify the regulatory process for smaller-scale low risk artificial waterbodies, and routine maintenance of artificial water supply or drainage, in irrigation areas and districts, and for routine and emergency work in irrigation areas and districts,*

Assessment comment

Not applicable.

(e) *to encourage sustainable agriculture, including sustainable aquaculture,*

Assessment comment

The agricultural processing industry is ancillary to agricultural production of macadamia nuts and growing of rainforest botanicals used in the production of distilled alcohol.

(f) *to require consideration of the effects of all proposed development in the State on oyster aquaculture,*

Assessment comment

Not applicable.

(g) *to identify aquaculture that is to be treated as designated development using a well-defined and concise development assessment regime based on environment risks associated with site and operational factors.*

Assessment comment

Not applicable.

Conclusion SEPPs

The proposed development reasonably satisfies relevant provisions of the SEPP's that apply to the land and it.

7.2 Byron Local Environmental Plan 2014 (BLEP 2014)

Clause 4.15(1)(a)(i) – environmental planning instrument

Assessment comment

The land proposed to be developed is zoned RU2-Rural landscape under the BLEP 2014.

The following provisions of the BLEP 2014 (identified in summary in *italics*) apply to part of the land and proposed development.

Part 2 – Zone identification and land use table - objectives

Assessment comment

The following provides comments on the consistency of the proposed development with the objectives (identified in *italics*) of the RU2 zone.

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*

Assessment comment

The proposed development is ancillary to the operation of the micro distillery, farm and Brookfarm agri-business.

- *To maintain the rural landscape character of the land.*

Assessment comment

Because of its location the development has no impact on the rural landscape character of the land.

- *To provide for a range of compatible land uses, including extensive agriculture.*

Assessment comment

The proposed development is ancillary to the operation of the micro distillery, farm and Brookfarm agri-business.

- *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.*

Assessment comment

Not applicable to the DA.

- *To protect significant scenic landscapes and to minimise impacts on the scenic quality of the locality.*

Assessment comment

Because of its location the development has no impact on the scenic qualities of the locality.

Part 3 – Exempt and complying development

Assessment comment

The proposed development is not exempt or complying development.

Clause 4.3 – Height of Buildings

Assessment comment

The max. height of the sheds above existing ground level is approx. 8.3m. The max. permissible building height is 9m.

Clauses 4.4 & 4.5 – Floor space ratio

Assessment comment

Not applicable to the DA.

Clause 4.6 – Exceptions to development standards

Assessment comment

Not applicable to the DA.

Clause 5.4 – Controls relating to miscellaneous permissible uses

Assessment comment

Not applicable to the DA.

Clause 5.5 – Development within the coastal zone

Assessment comment

The land is not in the coastal zone.

Clause 5.6 – Architectural roof features

Assessment comment

Not applicable to the DA.

Clause 5.9 – Preservation of trees

Assessment comment

No trees are proposed to be removed.

Clauses 5.10 – Heritage conservation

Assessment comment

Not applicable to the DA.

Clause 6.1 – Acid sulphate soils

Assessment comment

Not applicable to the DA.

Clause 6.2 – Earthworks

Assessment comment

Attachment No. 4 shows the proposed earthworks.

Re-shaping and filling of the land to be developed is proposed, extending over approx. 3,435m² (to varying depths) and involves; stripping of topsoil (approx. 344m³) and 'cut-to-fill' earthworks with approx. 955m³ of earth excavated and placement of approx. 950m³ of fill.

The following provides comments on the consistency of the proposed development with the particular requirements (identified in *italics*) of Clause 6.2.

(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,

Assessment comment

Erosion and sediment controls will be placed (where required) around the land and area to be disturbed prior to works commencing and retained until works are completed. The area of earthworks is contained within the land.

(b) the effect of the development on the likely future use or redevelopment of the land,

Assessment comment

The earthworks are moderate in nature and scale and ancillary to the on-going use of the land for agricultural and distillery.

(c) the quality of the fill or the soil to be excavated, or both,

Assessment comment

Engineered founding fill will be sourced from an approved quarry.

(d) the effect of the development on the existing and likely amenity of adjoining properties,

Assessment comment

The proposed earthworks will not impact on adjoining land.

(e) the source of any fill material and the destination of any excavated material,

Assessment comment

Any fill to be imported will be from an approved source.

(f) the likelihood of disturbing relics,

Assessment comment

The likelihood of relics occurring at the site of the proposed development is highly unlikely given the historic clearing and use of the land and the development of the land for the growing of macadamias.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,

Assessment comment

The land proposed to be developed is near an intermittent watercourse. The land appears stable and grassed between the site to be developed and intermittent watercourse and effective environmental controls can be placed, therefore it is highly unlikely there be potential for an adverse impact on local waterway.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Assessment comment

Contemporary engineer designed soil and water control measures appropriately placed and provided during the period of construction minimise the risk of soil erosion and potential for sedimentation of the local drainage system during the construction period.

Clause 6.3-Flood planning

Assessment comment

The land is not flood prone.

Clause 6.5-Drinking water catchments

Assessment comment

The land is within a drinking water catchment. The proposed on-site wastewater system has the capacity to provide for the toilet in a shed. Refer **Attachment No. 3**.

Clause 6.6 – Essential services

Assessment comment

There is an adequate supply of water and electricity to the land and adequate arrangements can be made for the disposal of sewage. Stormwater drainage can be provided in accordance with BSC's requirements.

Assessment conclusion

The proposed development complies with the BLEP 2014.

7.3 Draft environmental planning instruments

Clause 4.15(1)(a)(ii) – draft environmental planning instruments

Not applicable to the DA.

7.4 Development control plans

Clause 4.15(1)(a)(iii) – development control plans

The *EP&A Act* includes certain provisions [s. 3.42 Purpose and status of development control plans & s. 4.15(3)] relating to the purpose and use of development (including performance) standards in Development Control Plans (DCP).

In summary those provisions seek to ensure that development which is permissible is facilitated and that BSC is obliged to be flexible in applying the provisions of the DCP and to allow reasonable alternative solutions that achieve the objectives of those provisions.

The following in summary identifies (in *italics*) the 'key' provisions of the Byron Development Control Plan 2014 (BDCP 2014) that might be considered to apply to the proposed development.

Chapter B2 – Preservation of trees and other vegetation

Assessment comment

The proposal requires no removal of trees.

Chapter B3 – Services

Clause B3.2.1 – Services

Assessment comment

All required services are available (or can be provided) to the land and proposed sheds.

Clause B3.2.4 Stormwater management

Assessment comment

Attachment No. 4 shows the proposed stormwater management system.

Stormwater management will comprise; capture and controlled release of roof rainwater and diversion of hard surface stormwater to adjoining grassed areas which is suited to the rural location.

Chapter B4 – Traffic planning, vehicle parking circulation and access

Clause B4.2.2 – Parking layout standards

Assessment comment

Not applicable to the DA.

Clause B4.2.3 – Vehicle access and manoeuvring area

Assessment comment

The internal access driveway will be constructed of compacted gravel. Vehicles are able to enter and leave the land in a forward direction onto St Helena Rd.

Clause B4.2.4 – Structure adjacent to driveways

Assessment comment

Good visibility is available to the left and right at the driveway intersection with St Helena Rd.

Clause B4.2.5 – Car parking requirements

Assessment comment

Not applicable to the DA.

Clause B4.2.6 – Underground basement car parks

Assessment comment

Not applicable to the DA.

Clause B4.2.7 – Car parking credits and street parking

Assessment comment

Not applicable to the DA.

Clause B4.2.8 – Bicycles and motor bikes

Assessment comment

Not applicable to the DA.

Clause B4.2.9 – Loading bays

Assessment comment

Loading will occur immediately adjoining the bays and access designed to provide for a heavy rigid vehicle.

Clause B4.2.10 – Monetary contributions

Assessment comment

Not applicable to the DA.

Clause B4.2.11 – Landscaping

Assessment comment

Not applicable to the DA.

Clause B4.2.12 – Parking schedules

Assessment comment

Not applicable to the DA.

Chapter B5 – Providing for cycling

Assessment comment

Not applicable to the DA.

Chapter B6 – Buffers and minimising land use conflicts

Assessment comment

Refer to comments made in Section 6.2.

Chapter B7 – Mosquitos and biting midges

Clause B7.2.2 – Strategies and guidelines for proposed development in risk zones

Assessment comment

Not applicable to the DA.

Chapter B8 – Waste minimisation and management

Clause B8.2.2 – Site waste minimisation and management plans

Assessment comment

Suitable arrangements are made for the provision of storage of garbage and recyclables and collection for the micro distillery. The use of the sheds does not generate waste.

Quantification of construction waste together with generation of operational waste for a development of this scale at this stage of design and development is difficult to accurately estimate and somewhat irrelevant.

It is anticipated that a condition of approval will require that a Waste Minimisation Management Plan for the development and use will be prepared and approved prior to issue of applications and/or Construction Certificates for the sheds.

Chapter B9 – Landscaping

Clause B9.2 – Landscape plan requirements

Clause B9.2.1 – When is a landscape plan required

Assessment comment

Not applicable to the DA.

Clause B9.8 – Industrial development

Clause B9.8.1 – Industrial landscaping

Assessment comment

Though it is not industrial development the proposal meets the objectives of the DCP by reasonably achieving the prescriptive standards.

Clause B9.9 – Car parking and open storage areas

Clause B9.9.1 – Landscaping of car parking and open storage areas

Assessment comment

There are no proposed open storage areas.

Chapter B10 – Signage

Assessment comment

Not applicable to the DA.

Chapter B11 - Planning for Crime Prevention

Assessment comment

Refer to Section 6.4.

Chapter B12 - Social Impact Assessment

Assessment comment

Not applicable to the DA.

Chapter B13 – Access and mobility

Assessment comment

Not applicable to the DA.

Chapter B14 – Excavation and fill

Clause B14.2 – Excavation and fill in all zones

Assessment comment

Clause 14.2 requires excavation earthworks be limited to a depth of 1m and filling is to be limited to a height of 1m.

Attachment No. 4 shows the proposed earthworks.

Re-shaping and filling of the land to be developed is proposed, extending over approx. 3,435m² (to varying depths) and involves; stripping of topsoil (approx. 344m³) and 'cut-to-fill' earthworks with approx. 955m³ of earth excavated and placement of approx. 950m³ of fill.

The proposed earthworks meet the objectives for the extent of earthworks by:

- having minimal environmental impact on and disturbance of the land
- been wholly located within the land and
- minimising the risk of soil erosion by providing retaining structures and contemporary soil erosion measures before and during construction.

Part C – Further controls applying to land

Chapter C2 – Areas affected by flood

Assessment comment

Not applicable to the DA.

Chapter C3 – Visually prominent sites and development

Not applicable to the DA.

Chapter D8 – Public art

Clause D8.2.1 – Provisions of public art

Assessment comment

Not applicable to the DA.

Chapter D5 Industrial development

Clause D5.2.1 – Building lines

Assessment comment

The sheds are setback approx. 370+ from St Helena Rd.

Clause D5.2.2 – Building criteria

Assessment comment

Table No. 1 describes the materials and colours of the sheds.

Clause D5.2.3 – Water and sewer services

Assessment comment

Not applicable to the DA.

Clause D5.2.4 – Energy efficient industrial development

Assessment comment

Not applicable to the DA.

Clause D5.2.5 – Water sensitive urban design and industrial development

Assessment comment

Refer to Sections 4.5 and 6.5.

Clause D5.2.6 – Car parking and access

Assessment comment

Refer to comments made in regard DCP Chapter B4.

Clause D5.2.7 – Landscaping and screening

Assessment comment

Not applicable to the DA.

Clause D5.2.8 – Signage

Assessment comment

Not applicable to the DA.

Clause D5.2.9 – Fencing

Assessment comment

No fencing is proposed. The land is fenced.

Clause D5.2.10 – Outdoor storage areas

Assessment comment

No outdoor storage areas are proposed.

Clause D5.2.11 – Dwellings in association with industry

Assessment comment

Not applicable to the DA.

7.4.1 Variation from DCP controls

Assessment comment

The provisions [s. 3.42 Purpose and status of development control plans & s. 4.15(3)] seek to ensure that development which is permissible is facilitated and that BSC is obliged to be flexible in applying the provisions of the DCP and to allow reasonable alternative solutions that achieve the objectives of those provisions.

The proposed development is consistent with and does not seek departure / variation to the provisions of the DCP.

7.5 Planning agreements

Clause 4.15(1)(a)(iiia) – planning agreements

Assessment comment

Not applicable to the DA.

7.6 Regulations

Clause 4.15(1)(a)(iv) – regulations

Demolition of Buildings - provisions of Australian Standard No. AS 2601-1991: The Demolition of Structures, July 1, 1993.

Assessment comment

Not applicable to the DA.

Fire prevention

Assessment comment

Fire prevention and safety measures will be provided in the sheds in accordance with the Building Code of Aust.

7.7 Coastal zone management plan

Clause 4.15(1)(a)(v) – coastal zone management plan

Assessment comment

Not applicable to the DA.

7.8 Considerations

Clause 4.15(1)(b) – environmental impact

Assessment comment

Refer to Section 6.

In the context of the local landscape and streetscape the proposed development will make little change the existing visual character of the land.

The visual impact of the development from the public domain is nil.

Adequate provision is made for vehicular access, electricity and telecommunications and provision of water and effluent disposal.

The external design and character of the proposed sheds is compatible with other farm and distillery buildings on the land.

No cumulative impacts are likely to be generated by the proposed development.

Clause 4.15(1)(c) – site suitability

Assessment comment

The design of the shed is functional and satisfactory. No constraints are known to exist which may hinder the erection and use of them.

Clause 4.15(1)(d) – submissions

Assessment comment

BSC may publicly advertise the DA in accordance with DCP 2014 for the public exhibition and notification of DA's.

Clause 4.15(1)(e) – public interest

Assessment comment

The proposed development satisfactorily meets relevant state and local planning strategies and policies and does not conflict with the public interest.

7.9 Assessment Section 1.7 EP&A Act – Biodiversity Conservation Act 2016

Assessment comment

Past clearing of the land have extensively disturbed and removed the majority of the original vegetation that may have once have existed on it. The macadamia trees previously at the site of the proposed development have been removed and vegetation now comprises groundcover.

Photographs Nos. 2 & 3 shows the vegetation on the land proposed to be developed.

Substantial bushland regeneration and planting of harvestable native botanicals has occurred on other parts of the land. Additional planting of harvestable botanicals will occur in the cleared area.

In this context, it is reasonable to conclude that the proposed development will not create significant adverse impacts on threatened species, populations and ecological communities.

7.10 Assessment Section 4.15 EP&A Act - bushfire

Assessment comment

A bushfire threat was undertaken for DA No. 2015.666 for the micro distillery by BCA Check (Sept 2015) which provided the documentation to enable the consideration and assessment by BSC and the NSW Rural Fire Service of the micro distillery against the requirements of the guidelines titled 'Planning for Bushfire Protection 2006' (PBP 2006).

Section 4.15 of the *EP&A Act* states that BSC cannot grant consent for the carrying out of development (other than subdivision for residential or rural residential purposes or 'special fire protection purposes' (as defined in the *Rural Fires Act 1993*) for any purpose on bush fire prone land unless it:

- is satisfied that the development conforms to the specifications and requirements of the PBP 2006 that are relevant to the development or
- has consulted with the Commissioner or 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 bushfire.

PBP 2006 will in due course be replaced by 'Planning for Bushfire Protection 2018'.

The land on which the non-habitable sheds are to be erected (and adjoining land, refer to Map No. 2) is cleared land and not mapped as bushfire prone.

The following additional information is provided in accordance with Clause 44 of the *Rural Fires Regulation 2013* (identified in *italics*).

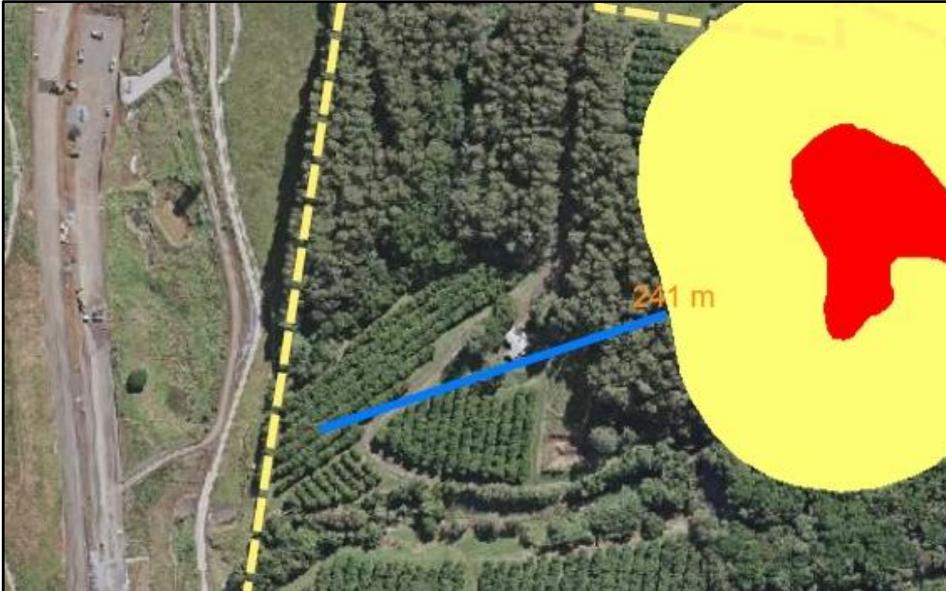
(a) a description (including the address) of the property on which the development the subject of the application is proposed to be carried out,

Assessment comment

Refer to Section 2.

Maps No. 3 & No. 4 shows the location of the land, cadastral information, aerial imagery and mapped bushfire prone land.

The land proposed to be developed for the sheds is approx. 240m downslope from the 100m buffer to Category 1 bushfire prone vegetation to the northeast. Refer Map No. 4.



Map No. 4 – Bushfire – setbacks to bushfire prone vegetation
Data source NSW Dept Planning Jan 2020

The adjoining land is used for the motorway and rural and rural residential purposes.

The site of the proposed development is not within land mapped as bushfire prone.

(b) a classification of the vegetation on and surrounding the property (out to a distance of 140 metres from the boundaries of the property) in accordance with the system for classification of vegetation contained in Planning for Bush Fire Protection,

Assessment comment

The vegetation on the land and adjoining land for approx. 140m comprises; the Pacific Highway, grazed grassland, managed macadamia trees or rainforest regeneration areas.

(c) an assessment of the slope of the land on and surrounding the property (out to a distance of 100 metres from the boundaries of the property),

Assessment comment

The land proposed to be developed has a slope of approx. 6 – 9% (3.5 – 5⁰).

(d) identification of any significant environmental features on the property,

Assessment comment

There are no significant environmental features on the land to be developed. The land is not recognised by BSC as having high conservation value.

(e) the details of any threatened species, population or ecological community identified under the [Threatened Species Conservation Act 1995](#) that is known to the applicant to exist on the property,

Assessment comment

No threatened species, population or ecological communities are known to occur on the land proposed to be developed.

(f) the details and location of any Aboriginal object (within the meaning of the [National Parks and Wildlife Act 1974](#)) or Aboriginal place (within the meaning of that Act) that is known to the applicant to be situated on the property,

Assessment comment

No Aboriginal objects or places are known and are unlikely to occur on the land proposed to be developed.

(g) a bush fire assessment for the proposed development (including the methodology used in the assessment) that addresses the following matters:

(i) the extent to which the development is to provide for setbacks, including asset protection zones,

Assessment comment

The proposed sheds are not located on land mapped as bushfire prone.

The land between the proposed sheds and boundaries will be managed and comprises mown grass and landscape and rainforest regeneration areas.

(ii) the siting and adequacy of water supplies for fire fighting,

Assessment comment

A 10,000L dedicated static water supply for bushfire protection will be provided at the sheds. Section 3.13 describes the water supply at the distillery building.

(iii) the capacity of public roads in the vicinity to handle increased volumes of traffic in the event of a bush fire emergency,

Assessment comment

St Helena Rd is a bitumen rural residential road 2-lane wide. The internal driveway to the distillery from St Helena Rd is 3.5-4.0m wide with a passing bay approx. every 200m.

(iv) whether or not public roads in the vicinity that link with the fire trail network have two-way access,

Assessment comment

Not applicable.

(v) the adequacy of arrangements for access to and egress from the development site for the purposes of an emergency response,

Assessment comment

The existing intersection onto and vehicular access from St Helena Rd was approved in DA No. 2015.666.

(vi) the adequacy of bush fire maintenance plans and fire emergency procedures for the development site,

Assessment comment

Adjoining land is used for rural and rural residential purposes. The Pacific Highway is located approx. 120m west of the proposed sheds.

(vii) the construction standards to be used for building elements in the development,

Assessment comment

Refer to Table No. 1.

(viii) the adequacy of sprinkler systems and other fire protection measures to be incorporated into the development,

Assessment comment

Not applicable.

(h) an assessment of the extent to which the proposed development conforms with or deviates from the standards, specific objectives and performance criteria set out in Chapter 4 (Performance Based Controls) of Planning for Bush Fire Protection.

Assessment comment

The following identifies the responses to the 'standards for bush fire protection measures' identified in summary in *italics* of Chapter 4 of PBP 2006.

Asset protection zones

- Within land for approx. 10m from all elevations of the sheds.

Public roads

St Helena Rd is a bitumen rural residential road 2-lane wide which connects to Hinterland Way.

Property access

The internal driveway to the distillery from St Helena Rd is 3.5-4.0m wide with a passing bay approx. every 200m.

Fire trails

Not applicable.

Services

A 10,000L dedicated static water supply for bushfire protection will be provided at the sheds.

Water supply at the distillery building comprises 2 x 18,000L rainwater tanks with a stored capacity of 36,000L. Of this a minimum of 15,000L is retained for emergency fire protection purposes. The tanks are connected to a Honda Davey GX200 diesel fire fighter pump with 70m of hose.

(2) An application for a bush fire safety authority must also be accompanied by the prescribed information if:

(a) the proposed development is subdivision for the purposes of dwelling houses, dual occupancies or secondary dwellings on property that is in an urban release area, and
Assessment comment

The prescribed information is provided.

(b) the application specifies that the applicant wishes the Commissioner, when determining the application, to consider whether it would be appropriate for the future erection of the dwelling houses, dual occupancies or secondary dwellings concerned to be excluded from the application of section 79BA of the [Environmental Planning and Assessment Act 1979](#).

Assessment comment

The prescribed information is provided.

(3) The prescribed information is:

(a) a plan of subdivision that shows:

(i) the bush fire attack levels that will apply to the property on completion of any clearing of vegetation proposed to be carried out as part of any subdivision work (within the meaning of the [Environmental Planning and Assessment Act 1979](#)), and

Assessment comment

Not applicable.

(ii) proposed setbacks of any buildings that are, or may in future, be erected on the property, including asset protection zones, and

Assessment comment

Not applicable.

(b) any further information concerning the proposed development that the Commissioner may require.

Assessment comment

Not applicable.

8 Conclusion

The purpose to the DA is for 2 storage sheds, vehicular access & infrastructure ancillary to an approved 'agricultural produce industry' (micro-distillery).

There is no bar to the development as proposed in the DA. Should BSC have any queries please do not hesitate to contact either Mrs Pam Brook or Mr Eddie Brook or me.

Yours faithfully



Malcolm Scott M.P.I.A.

Enc

Cc Mr Martin Brook, Mrs Pam Brook & Mr Eddie Brook
AGS Commercial Pty Ltd

REFERENCES

1. Byron Shire Council. Byron Local Environmental Plan 2014.
2. Byron Shire Council. Byron Development Control Plan 2014.
3. DA No. 2015.666.

USAGE NOTE

This report was prepared for the purpose and exclusive use of Mr Martin Brook, Mrs Pam Brook & Mr Eddie Brook and is not to be used for any other purpose or by any other person or corporation. Malcolm Scott, Consultant Town Planner, accepts no responsibility for any loss or damage suffered, however so arising, to any person or corporation who may use or rely on this report for a purpose other than that described above.

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END OF REPORT

31 Jan. 2020