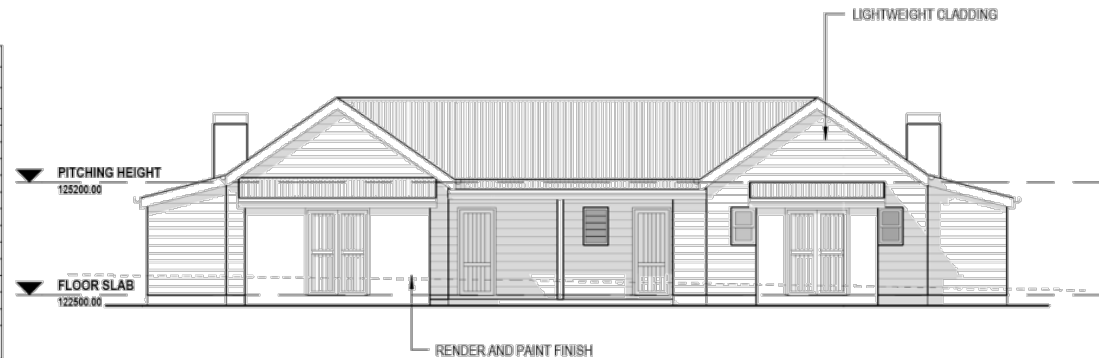


NORTH ELEVATION
1 : 100

EXTERNAL WINDOW & DOOR SCHEDULE					
MARK	NOMINATED SIZE		COMMENTS	HEAD HEIGHT	LOCATION
	HEIGHT	WIDTH			
W01	900	500	DOUBLE HUNG	2100	ROBE
W02	500	500	OPERABLE GLASS LOUVRES	2100	ENSUITE
W03	500	500	DOUBLE HUNG	2100	BED
W04	500	500	DOUBLE HUNG	2100	BED
W05	500	450	DOUBLE HUNG	2100	ENSUITE
W06	500	450	DOUBLE HUNG	2100	ENSUITE
W07	1500	1200	SLIDING WINDOW	2100	ENSUITE
W08	500	500	DOUBLE HUNG	2100	LIVING
W09	500	500	DOUBLE HUNG	2100	LIVING
W10	1500	1200	SLIDING WINDOW	2100	ENSUITE
W11	500	450	DOUBLE HUNG	2100	ENSUITE
W12	500	450	DOUBLE HUNG	2100	ENSUITE
D01	2100	800	EXTERNAL SWING DOOR	2100	ENTRY
D02	2100	800	EXTERNAL SWING DOOR	2100	ENTRY
D03	2100	4200	SLIDING DOOR + LOUVRES OVER	2100	LIVING
D04	2100	2100	SLIDING DOOR	2100	KITCHEN
D05	2100	2100	SLIDING DOOR	2100	KITCHEN
D06	2100	4200	SLIDING DOOR + LOUVRES OVER	2100	LIVING



SOUTH ELEVATION
1 : 100

DESIGNED BY RON JOHNSON
BROOKLET, NSW PH: (02) 6687 8478

PROPOSED CABINS & RECREATION
841 FERNLEIGH ROAD
BROOKLET, LOT 17 DP 10312423

ELEVATIONS DA07

date: APRIL 2019
scale: 1 : 100 (at A3)
drawn: CAW

17/04/2019 9:05:37 PM



MALCOLM SCOTT B.A. & D.U.R.P. (UNE) M.P.I.A.
CONSULTANT TOWN PLANNER

440 Dorrroughby Rd Dorrroughby 2480 NSW (ABN 37 057 633 138)
Ph 0266 895 815 Mobile Ph 0427 202170 Email mscott@spot.com.au

General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478
Att Ms Lucy Bennett
Town Planner

6 Dec. 2019

Dear Ms Bennett

Re Development Application (DA) No. 2019.694
Lot 17 DP 1031242 - 841 Fernleigh Rd, Brooklet, NSW
Submission of objection

I act on behalf of the Gaia Group Pty Ltd in regard to the above matter. The Gaia Group Pty Ltd own and operate Gaia Retreat and Spa at 933 Fernleigh Rd, Brooklet, NSW. The Group also owns land known as 927 and 931 Fernleigh Rd.

In Sept. 1983 Ballina Shire Council approved the change of use of an approved sanatorium to a tourist facility (holiday accommodation) together with additions and alterations to the gymnasium and restaurant and reception building.

The Gaia Retreat and Spa has progressively developed and grown to be a world class and multiple award winning retreat / tourist facility. Gaia Retreat and Spa is a globally known tourist facility and a significant local employer.

Gaia Retreat and Spa prides itself on operating a facility with great integrity, its positive contribution to the environment of the land and its connections with neighbours and with business and similar facilities in the region.

A vital component of the success of Gaia Retreat and Spa, which it has been developing, protecting and enhancing, is the amenity, peace and tranquillity of the facility in a rural setting. Considerable effort has been made to landscape the facility, make provision for walking tracks and undertake bushland regeneration on the land. To-date approx. 3,500 rainforest trees have been planted on the property. Those parts of the property of visual and other significance are protected.

The land on which Gaia Retreat and Spa is located adjoins the land the subject of DA No. 2019.694.

DA No. 2019.694 is for:

1. Visitor and tourist accommodation comprising;
 - Eight (8) cabins in 4 buildings approx. 800+m² in area
 - A recreation and administration building and commercial kitchen approx. 400+m² in area
 - Swimming pool, spa and ancillary infrastructure, roads, parking areas, wastewater systems etc and

Page 1

2. An information and education facility comprising a cooking school for 12 people operating on 3 occasions per week.

The DA documentation also mentions:

1. DA No. 2012.465 for the change use of a building to a 2 bedroom farm stay (tourist facility)
2. DA No. 2018.482 for the partial change use of the 2 bedroom farm stay building to a cooking school (home business) and
3. the provision of a farm gate stall, however the location and nature of it is not shown on plan.

DA No. 2018.482 for the cooking school (home business) was refused by Council.

The following are the key issues and reasons for the objection:

- 1 The overall nature and scale of the proposed development is not consistent with contemporary planning controls.

Below I have made comments in regard the proposed development and the considerations of Clause 7.9 (reproduced in *italics*) of the *Ballina Local Environmental Plan 2012* relating to rural and nature-based tourism development.

7.9 Rural and nature-based tourism development

(1) The objective of this clause is to ensure that services and facilities provided for tourists in rural and natural areas do not adversely impact on the agricultural production, scenic or environmental values of the land.

Comment

The proposed development seeks to retain the 30 head cattle grazing enterprise on the land and bushland rehabilitation, however that agricultural use of the land is not well documented and quantified in the DA. It is highly likely that the proposed development will potentially generate an income greater than the grazing of cattle and would be the dominant use of the land, as opposed to the development been ancillary to agricultural production.

The proposed cabin buildings and recreation, administration and commercial kitchen building will be clearly visible from sections of the recreation open space area and walking track within Gaia near the common northwestern and western boundaries.

(2) This clause applies to land in the following zones—

- (a) Zone RU1 Primary Production,*
- (b) Zone RU2 Rural Landscape.*

Comment

The land on which the development is proposed and on which Gaia Retreat and Spa is located is zoned RU1.

(3) Development consent must not be granted to tourism development on land to which this clause applies unless the consent authority is satisfied that—

- (a) there is, or will be, adequate vehicular access to and from a road, other than a classified road, taking into account the scale of the development proposed, and*

Comment

This consideration is for Councils determination.

(b) the development is small scale and low impact, and

Comment

Small scale means a scale that corresponds to that of residential uses in a rural or environmental locality.

The DA proposes 5 new buildings and presumably the continued use of the farm stay approved by DA No. 2012.465.

The 4 cabin buildings (comprising 8 cabins) and recreation, administration and commercial kitchen building have a combined footprint of approx. 1,200m² and floor area of approx. 890m².

Excluding the existing dwelling on the land, the 8 proposed cabins (4 x 2 bedroom + 4 x 1 bedroom) and 2 bedroom approved farm stay, potentially providing in the order of 28 equivalent beds.

The engineering assessment for the DA indicates that the use of the cabins will generate in the order of 18 vehicular trips per day and commercial cooking school an additional 10 trips per day if 4 of the 12 students were staying in the cabins. If all 12 students of the cooking school travelled it is likely it may generate 14 trips per day.

Potentially the proposed development may generate in the order of 28 to 32 trips per day.

The scale of the proposed development does not correspond to that of a residential use in the locality, where rural landholdings in the locality typically support 1 possibly 2 dwellings (say 12 equivalent beds) and a number of ancillary farm sheds / outbuildings. Typically a rural landholding in the locality is likely to generate in the order of 8 to 10 trips per day.

The source and quantity of water for potable and non-potable purposes and for fire prevention is not documented in the DA.

The proposed development requires the provision of 2 large on-site wastewater management systems larger than that required to service 1 possibly 2 rural dwellings.

The DA indicates that staffing of the kitchen will be 3 – 4 people and no mention is made of the human resources required to service the cabins and generally manage the proposed facility.

The proposed development is not representative of residential use of rural land in the locality as a consequence of the number and size and configuration of new cabins and buildings, the additional traffic generated, likely demand and use of water and provision of utility services and number of employees.

The proposed development is not small scale and low impact.

(c) the development is complementary to the rural or environmental attributes of the land and its surrounds, and

Comment

Arguably the proposed development will not complement the rural / agricultural attributes of the land but rather it will be the dominant attribute and use.

(d) the development will not have a significant adverse impact on agricultural production, amenity or significant features of the natural environment.

Comment

Refer to my comments in regard the objective of Clause 7.9(1) and consideration of Clause 7.9(3)(c).

(4) Development consent must not be granted to development for the purpose of tourist and visitor accommodation on a lot that is land to which this clause applies unless—

(a) a lawfully erected dwelling house or dual occupancy (attached) is situated on the lot, or

(b) a dwelling house may be erected on the lot under this Plan.

Comment

This consideration is for Councils determination.

(5) Development consent must not be granted to development under subclause (4) if the development—

(a) includes an ancillary caretaker's or manager's residence, or

(b) is for the purpose of more than 1 bed and breakfast accommodation.

Comment

This consideration is for Councils determination.

(6) In this clause—

small scale means a scale that corresponds to that of residential uses in a rural or environmental locality.

tourism development means development for any of the following purposes—

(a) caravan parks,

(b) cellar door premises,

(c) charter and tourism boating facilities,

(d) home industries that provide services, or the sale of goods, on site to visitors,

(e) information and education facilities,

(f) kiosks,

(g) markets,

(h) recreation facilities (major),

(i) recreation facilities (outdoor),

(j) rural industries that provide services, or the sale of goods, on site to visitors,

(k) tourist and visitor accommodation.

Comment

The proposed development is for tourist and visitor accommodation and it is not small scale and low impact.

- 2 The appropriateness of the proposed development in the RU1 zone having regard to the objectives of the zone and recent refusal by Council of DA No. 2018.482 for a cooking school (home business).

Below I have made comments in regard the proposed development and the objectives of the RU1 zone (reproduced in *italics*).

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

Comment

The DA does not quantify the existing primary industry / agricultural use of the land and proposed development.

- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*

Comment

The proposed development (tourist and visitor accommodation) is likely to be dominant use of the land and has no particular nexus to its existing agricultural use (grazing of cattle).

- *To minimise the fragmentation and alienation of resource lands.*

Comment

The spatial requirements of the proposed development will remove that land from future agricultural production.

- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

Comment

The land use risk conflict assessment supporting the DA does not appear to recognise the existence of Gaia Retreat and Spa.

- *To maintain the rural, cultural and landscape character of the locality.*

Comment

The proposed development changes and does not maintain the rural and landscape character of the locality.

- *To enable development that is compatible with the rural and environmental nature of the land.*

Comment

The DA does not demonstrate how what is proposed is compatible with the rural nature of the land.

- *To ensure that there is not unreasonable or uneconomic demands for the provision of public infrastructure.*

Comment

This objective is for Councils consideration.

DA No. 2019.694 seeks approval of the commercial cooking school as an 'information and education facility', whereas DA No. 2018.482 sought approval for a cooking school as a 'home business'.

An 'information and education facility' means a building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.

The proposed commercial cooking school is not like an art gallery, museum, library or visitor information centre and appears to be more by nature and use (ref. <https://bhavanacookingschool.com>) a hybrid type of boutique small restaurant.

Restaurants are a prohibited development in the RU1 zone.

- 3 The proximity of the proposed development to facilities within Gaia in particular the recreation open space area and walking track within Gaia near the common northwestern and western boundaries and yoga and meditation room.

The separation distance from the recreation open space area and walking track within Gaia near the common northwestern and western boundaries and proposed

recreation, administration and commercial kitchen building varies from approx. 240m to 280+m. The yoga and meditation room is approx. 300m from the proposed recreation, administration and commercial kitchen building.

4 The potential for adverse noise impact.

There is no acoustic assessment in the DA documentation for the proposed development.

5 The potential for adverse visual impact.

There is no visual impact assessment in the DA documentation for the proposed development. The site of the proposed development is clearly visible from sections of the recreation open space area and walking track within Gaia near the common northwestern and western boundaries.

6 The provision of an adequate reliable water supply.

There is no detail in regard water supply (source, quantity and quality) in the documentation for the proposed development.

7 The estimated cost of development.

The estimated cost of the proposed development at \$2.235M seems low for a proposed luxury facility with ancillary infrastructure.

Gaia Retreat and Spa have instructed me; it is their opinion that the proposal should be refused or significantly scaled back in order that contemporary planning controls can be achieved and the potential for unintentional off-site impacts onto its operation minimised.

Yours faithfully



Malcolm Scott M.P.I.A.
Cc Gaia Retreat and Spa

Colin and Elizabeth Green
845 Fernleigh Road Brooklet
NSW 2479
30 November 2019

Ms Lucy Bennett
Planning and Environmental Health Division
Ballina Shire Council
40 Cherry Street
Ballina NSW 2478

Re : DA 2019/694 -Notification of Development Application
841 Fernleigh Road Brooklet

Dear Ms Bennett ,

We refer to your letter dated 13 November 2019 regarding the proposed Tourist and Visitor Accommodation applied for in the aforementioned DA .

We adjoin the said property and have been resident here for 12 years. We recall that the said property was purchased around the same time by the Smith family. We have only spoken to them once in that time when they lost their cat after moving up here a few years ago.

They did let the property for home stays and functions during this time and while we got some noise (bit of loud music and the odd drunk wandering along the roadway) it was not enough to bother us and the lettings were infrequent.

This is a quiet area. The usual mowers ,chains saws etc during the day time but not much noise at night.

We are not familiar with the Ballina Council's LEP but note that our rate notice states our rating category as "Residential Rural ". Accordingly we are unclear whether the current zoning permits the kind of development proposed . We put our trust in you, your fellow council officers and elected councillors to ensure that the current zoning allows this development as it is quite substantial and unusual for the area. Gaia Spa has been nearby for many years but we think it is a different concept to that proposed . We never hear any noise from Gaia.

Our main concern with the proposed development is with the additional potential for noise and disruption to our quiet neighbourhood and quiet enjoyment and wellness of the adjoining properties . The development proposes 4 x 1 bedroom and 4 x 2 bedroom lodges. Our perusal of the plan suggests that each bedroom is able to accommodate two persons so at peak capacity there is potentially an additional 24 persons on site. Assuming each couple has a motor vehicle then there is the potential for at least 24 (coming and going) additional car movements per day . Some of these probably will be in the evening as the guests visit the restaurants in the area for dinner .

The development also incorporates a Recreation Pavilion with pool and spa for guests . This will generate some additional noise but as we believe MR and Mrs Smith have young school age children no doubt they will ensure that noise particularly loud music is kept to an acceptable level .

As best we can determine from the plans the current cooking school is to be expanded . This will

generate additional car movements.


Additionally there will be staff movements such as the persons who clean the guest rooms, recreation pavilion , pool and jacuzzi, gardeners looking after the community garden, other support staff and tourism activities . Say another 10 to 20 movements per day. We are situated on the side of the hill facing the entrance roadway and because of the valley like terrain noise does seem to be exacerbated from time to time. If the Council does approve the development then perhaps there can be a speed limit on vehicles when passing neighbouring properties of say 30 KPH as it is a gravel road which is noisier than paved surfaces and does create dust..

The other MAJOR concern we have ,which may be unfounded , is that guests will be permitted to operate vehicles such as ATV's and Trail Bikes up and down the driveway. One of the objectives of the Development that we have been advised of is that the Development intends to focus on "Ecotourism " . The allowance of ATV's and Trail bikes would be in direct conflict with this objective we believe apart from the awful impact on the wellbeing of the neighbours. We feel very strongly about this point as we have experienced such inconvenience in the past and have had to take appropriate actions.

We confirm that we have never made and have no intention of making in the future

- any reportable political donations to any local Councillor of the Ballina Shire Council
- any gifts to any local Councillor or employee of the Ballina Shire Council

Your faithfully ,



Colin and Elizabeth Green

MALCOLM SCOTT B.A. & D.U.R.P. (UNE) M.P.I.A.
CONSULTANT TOWN PLANNER
440 Dorrroughby Rd Dorrroughby 2480 NSW (ABN 37 057 633 138)
Ph 0266 895 815 Mobile Ph 0427 202170 Email mscott@spot.com.au

General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478
Att Ms Lucy Bennett
Town Planner

20 Dec. 2019

Dear Ms Bennett

Re Development Application (DA) No. 2019.694
Lot 17 DP 1031242 - 841 Fernleigh Rd, Brooklet, NSW
Submission of objection

I act on behalf of the Ms Susie Ferguson in regard to the above matter. Ms Ferguson owns land (in Byron Shire) to the north-west-north of the land on which the development is proposed.

The approx. distance between Ms Ferguson's dwelling and the proposed recreation and administration building and commercial kitchen is some 1.1km.

Ms Ferguson has asked me to advise Council that she is concerned about:

1. Potential for noise impact from the facility as it (noise particularly in the evening and night) travels down across and into the valley and no noise impact assessment appears to have supported the application.
2. The overall nature and scale of the proposed development which is not consistent with the variety but predominantly agricultural land uses in the locality.
3. The potential for adverse visual impact when viewed from her dwelling and parts of her land.
4. The provision of an adequate reliable water supply as local supplies are been sorely tested at the moment.

I'm instructed it is Ms Ferguson's view that the proposal should significantly scaled back so the potential for unintentional off-site impacts of it and its operation minimised.

Yours faithfully



Malcolm Scott M.P.I.A.
Cc Susie Ferguson

Page 1



NORTHERN RIVERS LAND SOLUTIONS
Surveying | Town Planning | Engineering | Environmental
ABN: 93 143 457 210

Job No. 19080

4 December 2019

The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Dear Sir,

Re: Objection to DA 2019/694.1 New Tourist Facility - Tourist and Visitor Accommodation comprising eight holiday cabins, communal recreation building and an information education facility for the purposes of a cooking school – 841 Fernleigh Road, Brooklet - Lot 17 DP 1031242.

Council advertised the subject development application for public comment and on behalf of Dunnet Group, I wish to advise that Northern Rivers Land Solutions have been retained to prepare the following submission objecting to the abovementioned development application.

Objection 1

The proposal incorporates a new building to be utilised for cooking classes and defines the use as an *information and education facility* under the Ballina Local Environmental Plan 2012 (see definition below).

information and education facility means a building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.

Previous advice given to this office by Ballina Shire Council regarding a similar proposal advised that this definition is not considered appropriate for a cooking school and was more akin to a *function centre*, which is a prohibited land use in the RU1 zone. A copy this advice is contained in the attached minutes.

Council need to be consistent in their advice given and adopt the same approach to this development.

Objection 2

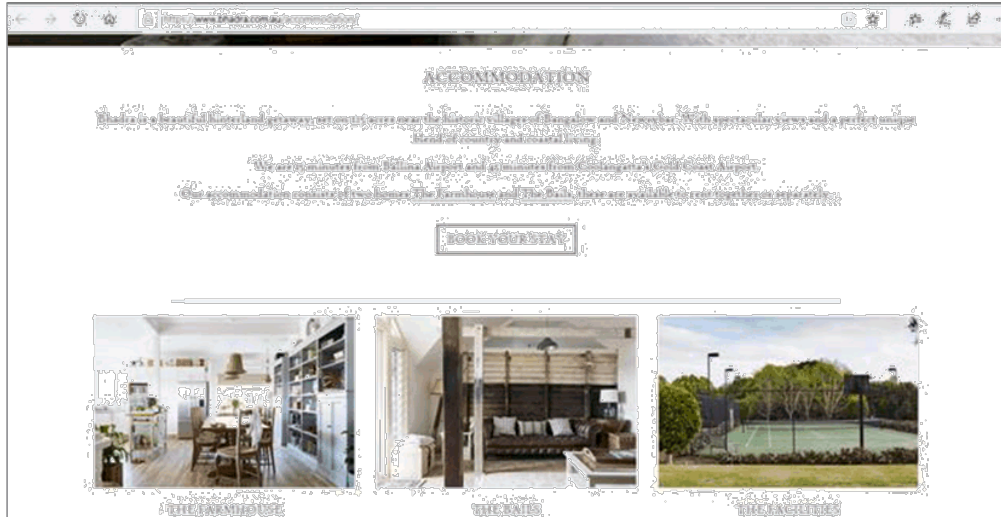
The existing "Bails" building is approved for farm stay tourist accommodation under the consent for Development Application 2012/465. It has come to our attention that the farmhouse, which is the managers' residence, is also being used for short-term accommodation which is contrary to condition 35 of the conditions of consent which states:

35. *The existing main dwelling house on the subject property must be used as a manager's residence and at no time must this dwelling house nor part of this dwelling house be used for short term accommodation.*



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ABN: 93 143 457 210

Evidence of this can be viewed via the following link:
<https://www.bhadra.com.au/accommodation/>



(screenshot of Bhadra Accommodation website taken 25/11/2019)

This is a clear breach of the conditions of consent and Council is duty bound to investigate the breach under Section 9.34 of the Environmental Planning & Assessment Act 1979.

Objection 3

The internal access road to the development site is unsealed and has the potential to result in dust, light and noise impacts to adjoining properties and in particular residential buildings. In addition, the development will substantially increase traffic travelling on Fernleigh Road, which is a narrow, sealed road in generally poor condition.

The Traffic Study prepared by SDS Civil Enterprises calculates a peak of 10 vehicles movements per day (VMPD) generated by the cooking school and 18 VMPD for the accommodation units, however it fails to take into consideration the vehicle movements created by the existing dwelling, agricultural land uses, and the need for deliveries and cleaning services to the property.

The cooking classes are proposed to run 3 times per week for up to 12 people, constituting up to 27.6 vehicles movements per day. When run in conjunction with the accommodation units, existing dwelling and agricultural activities, the actual number of vehicle movements is likely to be significantly higher.

Utilising the staff and visitor numbers provided within the applicants report, the actual traffic generation at peak times is likely to be:



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 ABN: 93 143 457 210

Use	Vehicles movements per day
Tourist and visitor accommodation units (4 x 1 bed and 4 x 2 bed) @ 2.3 movements per bed as per Ballina Shire Council Section 94 table.	27.6
Cooking school (12 participants)	24
Service vehicles (estimate 2 per day)	4
Approved Farm Stay Accommodation	4
Main dwelling house (as per RMS Technical Direction)	7.4
Staff (4 as per report)	8
Total	74.8

This indicates that the actual traffic generation is likely to be well above the applicants' estimates. There is likely to be additional vehicle movements generated by cattle trucks and farm machinery which have not been included in the above figures. The proposed development is clearly Traffic Generating Development and should be assessed as such.

In addition, the sight distance at the entry/exit to the property is approximately 80m which is substantially less than required under Austroads Standards for an 80km/h speed environment and does not allow a west-bound driver on Fernleigh Road sufficient distance to avoid a collision with a vehicle egressing the property. This is considered to be a major safety issue considering the amount of additional traffic that will be generated if the development was to go ahead.

Objection 4

The Land Use Conflict Risk Assessment, prepared by Tim Fitzroy and Associates, considers the potential impact of the land use on the operation of the nearby macadamia farm and nursery, however it fails to address any potential impact on surrounding residences. These impacts may include dust, light, noise and additional traffic generation which will negatively impact on the general amenity of the locality, especially in regards to the proximity of the closest Dwelling House, which is located approximately 40m from the entrance driveway.

The objectives of the RU1 Primary Production zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To maintain the rural, cultural and landscape character of the locality.*



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ABN: 93 143 457 210

- *To enable development that is compatible with the rural and environmental nature of the land.*
- *To ensure that there is not unreasonable or uneconomic demands for the provision of public infrastructure.*

Clause 7.9 is also relevant and states:

- 1) *The objective of this clause is to ensure that services and facilities provided for tourists in rural and natural areas do not adversely impact on the agricultural production, scenic or environmental values of the land.*
- 2) *This clause applies to land in the following zones—*
 - (a) *Zone RU1 Primary Production,*
 - (b) *Zone RU2 Rural Landscape.*
- (3) *Development consent must not be granted to tourism development on land to which this clause applies unless the consent authority is satisfied that—*
 - (a) *there is, or will be, adequate vehicular access to and from a road, other than a classified road, taking into account the scale of the development proposed, and*
 - (b) *the development is small scale and low impact, and*
 - (c) *the development is complementary to the rural or environmental attributes of the land and its surrounds, and*
 - (d) *the development will not have a significant adverse impact on agricultural production, amenity or significant features of the natural environment.*

The combination of all of the existing and proposed land uses operating at the same time is not considered to be small scale and low-impact. The proposal is not compatible with the rural nature of the land and will negatively impact on the rural character of the locality.

The proposal has the potential to increase land use conflict in the zone and is clearly inconsistent with the objectives of the RU1 zone.

Rural lands are a finite resource and quarantining a large section of land for non-rural purposes such as this is not considered an appropriate outcome. The location also fragments the agricultural land into two unconnected sections, reducing the lots viability for agricultural use.

Objection 5

The applicant claims in Part 5.5 of the Statement of Environmental Effects that a site inspection has been undertaken by the Jali Local Aboriginal Land Council which concluded that the site is highly disturbed and is unlikely to contain items of cultural heritage. There are no documents to support this statement contained within the application.

A search using the Aboriginal Heritage Information Management System (AHIMS) shows that one Aboriginal site has been recorded in the vicinity of the site (see attached) and there is therefore the possibility that further archaeological deposits may be located throughout the site. A more detailed assessment should be undertaken by the applicant prior to the application progressing any further.



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ABN: 93 143 457 210

Conclusion

The proposed land use is considered to be incorrectly defined and therefore the permissibility of the proposal is unclear.

The scale of the existing and proposed development, being 8 units, farm stay accommodation, a cooking school and extensive agricultural grazing is not considered to be small scale or low impact as required by clause 7.9 of the Ballina LEP 2012 and Chapter 7 of Ballina Development Control Plan 2012. Whilst each of the land uses are generally permissible in the zone, with the exception of the cooking school, the cumulative impact of all of the uses occurring at the same time is not considered to be appropriate for the area and will significantly detract from the rural amenity of the locality.

The use of the main dwelling house for short term rental accommodation is also considered to be in breach of the approved conditions of Development Consent 2012/465, and should be investigated by Council, with compliance action taken if necessary.

The disregard by any development to Conditions of Consent has been reported by the Land and Environment Court as:

“Conditions are an integral part of a consent and it is a criminal offence to fail to comply with or breach any development consent condition. The conditions bind each and every individual and company who undertake any work under the development consent”.

Pursuant to Section 9.34 of the Environmental Planning and Assessment Act 1979, Council should issue an order to cease the use of the farm house for short term accommodation as it is in contravention of the conditions of Development Consent 2012/465.

The Statement of Environmental Effects and supporting documentation contain insufficient information regarding the potential for land use conflict and possibility of Aboriginal cultural heritage. The application is inconsistent with the objectives of the RU1 Primary Production zone and should not progress until further information is received, adequately addressing the issues raised in this submission.

On behalf of our client, we oppose the proposed development as it is incorrectly defined and will have an unacceptable impact on the rural amenity of the area and ask that Council take appropriate action as to the non-compliance with the existing consent for farm stay accommodation.

Please feel free to contact us if you require any further information.

Kind Regards,

Tony Hart,



NORTHERN RIVERS LAND SOLUTIONS
Surveying | Town Planning | Engineering | Environmental
ABN: 93 143 457 210

General Manager
Northern Rivers Land Solutions



**AHIMS Web Services (AWS)
Search Result**

Purchase Order/Reference : Brooklet search
Client Service ID : 467340

Northern Rivers Land Solutions
76 Tamar Street
Ballina New South Wales 2478
Attention: Mark Lyndon
Email: mark@nrls.com.au

Date: 26 November 2019

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lot : 17, DP:DP1031242 with a Buffer of 50 meters, conducted by Mark Lyndon on 26 November 2019.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of the Office of the Environment and Heritage AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

1	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location. *

If your search shows Aboriginal sites or places what should you do?

- You must do an extensive search if AHIMS has shown that there are Aboriginal sites or places recorded in the search area.
- If you are checking AHIMS as a part of your due diligence, refer to the next steps of the Due Diligence Code of practice.
- You can get further information about Aboriginal places by looking at the gazettal notice that declared it. Aboriginal places gazetted after 2001 are available on the [NSW Government Gazette](http://www.nsw.gov.au/gazette) (<http://www.nsw.gov.au/gazette>) website. Gazettal notices published prior to 2001 can be obtained from Office of Environment and Heritage's Aboriginal Heritage Information Unit upon request

Important information about your AHIMS search

- The information derived from the AHIMS search is only to be used for the purpose for which it was requested. It is not to be made available to the public.
- AHIMS records information about Aboriginal sites that have been provided to Office of Environment and Heritage and Aboriginal places that have been declared by the Minister;
- 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.
- This search can form part of your due diligence and remains valid for 12 months.

RECORD OF PRE-DA LODGEMENT MEETING

Meeting Time/Date: 10.30am, Tuesday 5 December 2017 (1 hour).

Attendees:

Council – Anthony Peters, Alistair Weallans, Rachael Jenner, Martin Scott, Georgia Lee

**Subject Land:**

Land Use Zone: RU1 Primary Production

Proposal

Description: Demolition of Existing Dwelling for New Dwelling House and Refurbishment of Existing Rural Workers Dwelling, Rural Industry, Farm Stay Accommodation, Educational Workshop.

Key Issues: Permissibility of proposed land uses, staging of development

Description of Site

The subject site is known as 841 Fernleigh Road, Brooklet. The site has a total area of approximately 58.9 hectares and is predominantly utilised for lychee production. The property is accessed via Rishworths Lane. Existing improvements include a dwelling house, rural workers dwelling and packing shed/office.

Town Planning

- The subject land is zoned entirely RU1 Primary Production under the Ballina Local Environmental Plan (BLEP) 2012.
- The following is a list of the main planning controls which should be considered in the preparation of the application(s) and addressed in the Statement of Environmental Effects:
 - BLEP 2012 (in particular the Plan and zone objectives)
 - Ballina Development Control Plan (DCP) 2012 – Chapters 2, 7
 - State Environmental Planning Policies – SEPP BASIX, SEPP 55

Key Development Phases

It is understood that the proposed development is to be carried out in four key phases (with separate Development Applications for each):

1. Refurbishment of rural workers dwelling, demolition of existing dwelling house and construction of new dwelling house (including "expanded dwelling")

- The demolition of the existing dwelling house was approved under DA 2016/482.
- The new dwelling house (and possibly the refurbishment depending upon extent) is to comply with the requirements of Chapter 7 Section 3.1 of the Ballina DCP 2012, bush fire and OSSM requirements.
- Current dual occupancy provisions would not allow the separation distance proposed between the two dwellings as a 'detached dual occupancy'. Notwithstanding, Council is currently considering an amendment to the BLEP 2012 to allow detached dual

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Page 2

5/12/2017

occupancies within the RU1 and RU2 zones. Once gazetted, any Development Application lodged should address the relevant dual occupancy requirements.

2. *Rural industry (value added products – lychees)*

- A "rural industry" is defined as the "handling, treating, production, processing, storage or packing of animal or plant agricultural products for commercial purposes". Please be advised that such products are required to be produced on the subject site and not sold directly from the site.
- Roadside stalls were also discussed within the meeting and are permissible within the RU1 Zone. A 'roadside stall' is defined in BLEP 2012 as "a place or temporary structure used for the retail sale of agricultural produce or hand crafted goods (or both) produced from the property on which the stall is situated or from an adjacent property". Clause 5.4 of BLEP 2012 states that the gross floor area (GFA) of roadside stalls must not exceed 8 metres. Chapter 7 Section 3.5 of the Ballina DCP 2012 also contains development controls for roadside stalls. The stall must be located entirely within the site and have appropriate access/parking.
- It was noted in the meeting that the applicant seeks to upgrade the existing packing shed (still operational) on the site to include a commercial kitchen to "prepare value added food products made from ingredients grown on the land". Cooking classes would not be permitted within a separate a 'commercial kitchen' building/structure, however, if focused for guests, small scale cooking classes could be conducted by residents within one of the proposed cabins or within the kitchen of the existing dwelling house (subject to food standard/safety requirements) as a 'home occupation' rather than the provision of a separate kitchen within the packing shed (i.e. only basic sanitary facilities should be provided and not a commercial kitchen).

3. *Tourist and visitor accommodation (eight cabins)*

- The supporting documentation refers to 'eco-tourist' facilities. Please be advised this land use is not permissible within the RU1 zone.
- 'Tourist and visitor accommodation' is a permissible land use within the RU1 zone and includes farm stay accommodation.
- The requirements of Chapter 7 Section 3.3 of the Ballina DCP are required to be addressed within a Development Application for tourist and visitor accommodation (i.e. maximum area, number of bedrooms, clustering etc).
- Please note one dwelling is required to function as the manager's residence for the tourist cabins and the rural workers dwelling or dwelling house will need to be changed/nominated to a dwelling house (manager's dwelling).
- The proposed clustering area of the cabins as identified in the supporting documents is not an ideal location due to potential land use conflict and distance from other improvements, including any manager's residence.

4. *Educational workshops (for guests and/or public)*

- An 'information and education facility' is a permissible land use in the RU1 zone subject to the prior consent of Council. Notwithstanding, the applicant is required to demonstrate how the proposed Phase 4 land use meets the definition of an 'information and education facility' within BLEP 2012.
- An 'information and education facility' would generally be for larger scale development in urban centres.

Page 3
Prepared
5/12/2017

- The intended use may be more akin to a 'function centre', however this land use is prohibited within the RU1 zone.

Other considerations

- The subject land is mapped as being bushfire prone. As a consequence, the proposal will be required to be referred to NSW Rural Fire Service and constitutes Integrated Development.
- The subject land is mapped as containing areas of core koala habitat under the Ballina Shire Koala Management Strategy (KMS) 2016. The requirements of the Strategy are required to be addressed within any Development Application lodged.
- Details of revegetation works are to be submitted as part of any Development Application lodged.

Environmental Health

Food

- For each relevant development application, the applicant should provide details in relation to any commercial food preparation/provision. In relation to the rural food industry, i.e. food processing, the details of the food processing and the fit out of the processing area shall be provided. In relation to the tourist facility/educational facility the applicant should detail if food will be provided. If food is to be provided the following information shall be submitted; what type of food, and where it will be sourced from, stored and prepared.

Private Water Supply

- Any water used for food preparation/processing and provided to the tourist cabins shall be provided in accordance with a Quality Assurance Plan (QAP) approved by the NSW Health. The NSW Health website provides information and templates to ensure QAPs for private water supplies are adequate to manage the risks presented. QAPs are required to be prepared and approved prior to the use of the private water supply.

OSSM

- The Development Applications should be supported by OSSM reports prepared by suitably qualified persons to demonstrate that sewage can be dealt with appropriately at the site. Early contact with Council's OSSM Officers is encouraged.

SEPP 55 – Land Contamination

- The applicant shall have consideration for the requirements of SEPP 55 and the application shall demonstrate that the site is suitable for the proposed use, or, if it is contaminated, that it can be remediated to make it suitable for the proposed use. A stage 1 preliminary assessment, including a site history, may be used to assess if contamination may be likely at the site. This will be required to be addressed for each Development Application submitted (for the relevant area of the site).

Land Use Conflict

- Council's DCP Chapter 2 Section 3.1 requires development on rural land to have consideration for the potential land use conflict created and if necessary recommend suitable buffers or other mitigation strategies. Each Development Application shall satisfactorily address these requirements.

Page 4

5/12/2017

Mosquito Management

- Council's DCP Chapter 2 Section 3.6 requires buildings comprising of residential accommodation, including dwelling houses and tourist and visitor accommodation, to incorporate effective mosquito screening to all windows and doors.

Engineering

Roads

- Chapter 7, Section 3.8.3 of Council's DCP generally requires that external road access be sealed for tourist and visitor accommodation. There is approximately 1km of Rishworths Lane which will likely require sealing and associated works for the tourist accommodation component of the development.
- Internal roads - access and parking will need to comply with AS2890.1
- Onsite parking will need to be provided as per Council's DCP, (e.g. 1 park per tourist cabin, 2 parks per dwelling etc). One of the tourist cabin parks will need to be disability compliant.

Stormwater

- Given the size of the site and the proportion of impervious area, it is unlikely that any stormwater quality controls will be required for the proposed development. However, the application should still identify how the stormwater objectives in Chapter 2 of the DCP are being achieved.

Water & Sewer

- Town services are not available and these will need to be managed onsite.

Contributions

- The tourist and visitor accommodation component of the development will incur Section 94 Road Contributions and Section 94 Open Space/Community Facility Contributions. For 1 bedroom tourist cabins, total contributions will equate to approximately \$5,500 per cabin (more for two bedrooms).
- S94 Road Contributions will likely be applicable to the education component of the development for trips which are generated that are not related to the proposed tourist cabins. Determination of these contributions would be merit based and details will need to be provided on the anticipated frequency and size of classes held.

Building

- Demonstrate compliance with the BCA.
- Dwelling houses (including farm stay) will require a Bushfire Consultant's report detailing relevant Bushfire Attack Level (BAL) and demonstrating how compliance with AS3959 (including Appendix 3, Planning for Bushfire Protection) is to be achieved;
- The provisions for one of the proposed future Farm Stay and/or any proposed educational component will need to be designed to achieve compliance with AS1428.1:2009 with regards to Access & Mobility. Accessible car parking provisions will also need to comply with AS/NZS 2890.6:2009;
- Any proposed works within the existing/proposed packing/office buildings will trigger the Disability (Access to Premises – Buildings) Standards 2010 and the need for accessible facilities may be required. Any proposed new works will need to comply with the requirements of AS1428.1:2009 (where applicable).
- It should be noted that compliance with the National Construction Code and Disability (Access to Premises – Buildings) Standards 2010 is only relative to a building/s and

Page 5

5/12/2017

there is still the potential for a claim under the Disability Discrimination Act (DDA) in relation to access provisions for the built environment. Therefore, it is recommended that accessibility be considered in the design of any future pathways, walking trails or the like.

Key Outcomes of Meeting

- The proponent will consider the abovementioned issues with the view of lodging a Development Application for Phase 1 in the near future.
- It was advised in the meeting that the consent previously issued under DA 2015/211 (staged boundary adjustment, three lot subdivision and change of use of existing workers dwelling to a dwelling house) may be problematic to the overall scheme proposed due to potential land use conflict etc. The development approved under DA 2015/211 is not considered to impact Phase 1 (dwelling houses/rural workers dwelling), however it is considered that this approval cannot coexist with the proposal in its current form. As such, the applicant will need to consider if they wish to surrender this consent or modify the existing consent via the deletion of Stage 2 (i.e. the three lot subdivision).

Copies of Council's Local Environmental Planning Policies, Development Control Plan and application forms are available on Council's website – www.ballina.nsw.gov.au

Note: The matters discussed at the pre-DA lodgement meeting and the information provided above is only preliminary advice. The meeting does not constitute a complete assessment of the proposal and additional matters may be raised during the assessment of a future Development Application. At no time should comments of Council officers be taken as a guarantee of approval of your proposal.

Brett Sharpe and Georgia Rhodes
825 Fernleigh Road
BROOKLET NSW 2479
5 February 2020

The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Att: Ms Lucy Bennett
Town Planner

Re: **Support of Development Application DA 2019.694.1
841 Fernleigh Road, Brooklet – Lot 17 DP 1031242**

We refer to your letter dated 13 November 2019 regarding the proposed Visitor and Tourist accommodation which is the subject of the Development Application.

We have owned and lived on our property for seventeen and a half years. We share a direct boundary with the Smith property, along the East side of our property, of approximately 600m.

We met the Smith family when they purchased their property some 13 years ago. Initially the Smith family primarily lived and worked in Sydney and only used their property during school holiday periods. The property was let from time to time for short home stays and the very occasional function, neither of which has ever bothered us. Generally, as noise goes, we are far more affected by farming activities from neighbouring macadamia nut farms than we have ever been from the Smith farm.

Approximately 4 years ago the Smith family made the decision to relocate permanently from Sydney to their property in Brooklet. Since this time we have witnessed an ongoing commitment from the Smith's to create a workable rural business. The Smith's have continually improved their land through the implementation of regenerative farming practices. They have implemented a holistic approach to land management that keeps water in the landscape, improves soil health and increases biodiversity as well as beginning to replant local rainforest species. We too have been encouraged by their example on our own property.

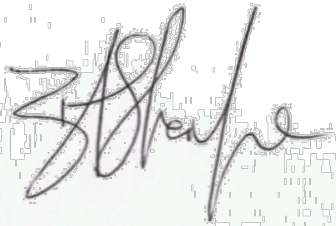
We have both attended classes at the Bhavana Cooking School. These classes have been a wonderful learning experience for us each time. The Bhavana Cooking School has shown ongoing support for local rural producers and suppliers, using all local produce in their classes, as well as from their own kitchen garden. The Smith's are active members within the Northern Rivers food Group - a local food producer group committed to creating new and diverse ways for local producers to market their products. In addition to that, the Smith's are regular supporters of the local Newrybar produce market as well as the Bangalow Farmer's Market.

We believe that the local economic impact from eco-tourism from the proposed development is very important to encourage in terms of employment, support for other local businesses both during construction and later, in the ongoing operational phases.


We are in full support of the proposed development. We believe the overall nature and scale of the proposed development is consistent with the variety but predominantly agricultural land uses in the area. As noted previously, the noise emanating from the many local macadamia farms which includes spraying, harvesting and sweeping from as early as 4am in the morning, to de-husking and drying, with machinery running up to 18 hours per day is, we believe, far more likely to adversely affect the local amenities, than the proposed development is ever likely to. The Gaia Retreat and Spa, which operates in the locality, is a much larger and busier tourist facility, than the Smith's proposed development will ever become.

Please feel free to contact us if you require any further information.

Yours faithfully



Brett Sharpe



Georgia Rhodes



28 March 2019

To whom it may concern

I am writing to provide context for the proposed development application through Ballina Shire Council by Greta & Perry Smith of Bhadra Property Holdings at 841 Fernleigh Road, Brooklet NSW 2479.

The proponents have been active participants in the Agritourism Business Development run by Regionality Pty Ltd and supported by Tweed Shire, Byron Shire, NSW Department of Premier and Cabinet, RDA Northern Rivers and Destination Tweed Ltd.

The program selected a number of suitable applicants, aspiring to develop agritourism on their property. One of the criteria for selection included their ability to develop an on-farm venture that would support agricultural productivity and improve on-farm viability through diversification and value adding to the produce and property, without compromising the productive capacity of the farm.

Overall the program took the cohort of farmers and rural land holders through a series of workshops to develop and expand their knowledge around the following key areas:

- Property assessment, usage, spare capacity, capability & resources
- Importance & maintenance of sustainable, regenerative agriculture as the basis of agritourism activity
- The tourism industry, experiences, accessibility, consumer trends
- Planning requirements, risk management, sustainability
- Marketing, scope, size, feasibility.
- Exploration of the opportunity to expand and diversify agricultural production on the property, and create a market for the produce through on-farm value adding and sales via agritourism.

We have worked with the proponents to refine their offering and thinking, to ensure it is consistent with the aims of the agritourism business development program. This proposed venture will help ensure ongoing viability of a relatively small farm. This proposal will provide stable demand for produce from the farm, therefore improving the viability of agricultural production on a small farm over the long term.

We are confident that the current and proposed activity is an excellent example of innovation on farm, complimenting other businesses in the area and adding to the viability of an agri and culinary cluster in and around Newrybar.

The Bhadra property:

- aims for high yield, low impact visitation
- has developed organic gardens for use on site
- offers a rural educational area for cooking classes, using produce from the property
- is actively seeking co-farming partnerships with young local farmers to increase primary production on the land, with the aim to supply their venture and others in the region.

abn:541 548 651 66 e:info@regionality.com.au www.regionality.com.au p.02 6674 1056



By including a property like Bhadra in the Agritourism program, the outcomes for a regional area such as the Northern Rivers include:

- Agri and food tourism cluster development
- Visitor dispersal throughout the region beyond the coastal areas such as Byron Bay and Ballina
- provision for local government areas to showcase exemplar rural properties and have open communication

Regionality has been thoroughly impressed with the conduct, philosophy and commitment to success shown by Bhadra Property Holdings. We have experienced open communication, dedication to the program and an active willingness to understand appropriate legislative requirements as well as feedback on proposed development of the property. They have actively engaged with and supported other members of the cohort, sharing their own skills, knowledge and connections.

We are happy to provide strong support for their development application and believe their capacity to deliver a high quality, agritourism experience that will add to the visitor and agri-food economy of the region, is very high.

Please do not hesitate to contact should you require clarification or further information on their participation in the Agritourism Business Development Program.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Rose Wright", is written over a light grey, textured background.

Rose Wright
Managing Director

From: [chris bedggood](#)
To: [Lucy Bennett](#)
Subject: DA 2019.694.1 - 841 Fernleigh Road Brooklet
Date: Tuesday, 11 February 2020 1:00:38 PM

CYBER SECURITY WARNING - This message is from an external sender - be cautious, particularly with links embedded within the message and/or attachments.

Hi Lucy,

I reside at 836 Fernleigh Road Brooklet, and am located directly opposite the Smith Family at 41 Fernleigh Road.

I have reviewed the DA proposal and am very supportive of progressing. I have lived opposite the Smiths for the past 18 months and cannot be more supportive of there development..They are wonderful neighbours who have really welcomed my family into the community, we see them regularly at local gatherings and they have helped immensely in helping us settle.

I see minimal impact to our lifestyles, much in the same way we see minimal impact from Gaia which is located quite close to us also. I hope that you enable Perry and Greta to continue developing a unique experience for those that come to our community for a visit.

Should you have any questions please do not hesitate to contact me.

Kind Regards,

Chris Bedggood
836 Fernleigh Road, Brooklet
0448911194

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To: [Ballina Shire Council](#)
Subject: Development Application (DA) No. 2019.694.
Date: Friday, 6 December 2019 4:46:17 PM

6 December 2019

Att: Ms Lucy Bennett

Ballina Town Planner

Dear Ms Bennett

With regard to Development Application (DA) No. 2019.694, at 841 Fernleigh Rd, Brooklet, NSW, I wish to express concerns about the possible future use of the proposed development.

My wife, [REDACTED] and I live at [REDACTED] Friday Hut Rd Binna Burra, quite close as the crow flies—or as noise travels—to the above property. Although we are in Byron Shire, our property [REDACTED] is mere metres away from the Ballina Shire. It is our hope, when it comes to planning the future for a very special community spanning both shires, that there is a co-ordinated effort to preserve and protect those things that make this region a special place to live and work, while allowing sensible and appropriate development.

Our particular concern with this venture is its size and nature—eight cabins with at least sixteen and potentially many more beds—plus a commercial kitchen. Even though I understand there is a small herd of cattle on the property, surely this development would become the primary income source, and would represent a straight tourist development dominating the landscape rather than one that would complement the existing primary production.

At present this district enjoys a beautiful natural landscape, quite spectacular in parts, with complementary farmland. I believe that should be protected, to everyone's benefit.

I believe this property has been used as a wedding reception centre in the relatively recent past, and I imagine, without significant adjustment to the proposed development, it could easily, for instance, be converted to a substantial wedding reception venue. We know how far music and associated party noise travel in this environment at night because we've already experienced it and know how intrusive and jarring it can be.

I also know only too well how often commercial developments might originate for one expressed purpose, only to morph into another once approval has been granted. I don't suggest that this is the definite intention in this case, but I would ask you to take all of these elements into consideration when considering this application.

Regards

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

Attention: Lucy Bennett
Town Planner

Dear Lucy,

RE: DA 2019.694.1, 841 Fernleigh Road, Brooklet NSW
Lot 17 DP 1031242

I write in support of the abovementioned Development Application for the proposed Visitor and Tourist Accommodation.

I have lived and owned [REDACTED] and [REDACTED] Friday hut road Brooklet for over 15 years [REDACTED]

[REDACTED] I believe this Application will compliment the surrounding area and add diversity and opportunity for its rural neighbours.

I believe the proposed development has the potential to showcase the best of what primary production in the northern precinct of the Ballina Shire has to offer for both tourists and residents alike.

As a resident and investor in this part of the Ballina Shire, I feel we are often overlooked and neglected for our contribution to wider Shire, so often you hear the phrase "Oh, we thought you were in the Byron Shire".

This development, I believe, once approved, has the potential to help further cement our place in the Shire and the Region as a visit and stay location alongside places like Gaia and will go a long way in making up for the distinct shortfall of such, in and around Newrybar.

I have lived [REDACTED] for some time and I feel what has been proposed in this DA will only add to the enjoyment and quality experience that these [REDACTED] establishments currently deliver.

I have known the proponents personally for some time and this gives me the confidence to know and recommend them as people who will deliver on their proposal.

I feel the Cooking School itself supports and promotes local produce and local content and this opportunity also compliments Ballina Councils recent push and focus on Food Hub concepts. Such opportunities will create even more diverse outcomes and growth opportunities for our local primary producers.

I, therefore, as a local resident add my full support for this proposal and would encourage Ballina Council to give this proposal the support it needs for the long term benefits of our area.

[REDACTED]