

## COUNCIL ASSESSMENT REPORT

### NORTHERN REGIONAL PLANNING PANEL

|  |   |
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| <b>PANEL REFERENCE &amp; DA NUMBER</b> | PPSNTH-267 – Byron – 10.2017.201.3  |
| <b>PROPOSAL</b>                        | S4.56 to amalgamate stages from 7 to 4; removal of time frame between stages; temporary stockpile of fill material; deletion of boardwalk; and consequential amendments to conditions to modify Subdivision of Six (6) Lots into One Hundred and Forty Nine (149) Lots consisting of One Hundred and Forty Five (145) Residential Lots, Four (4) Large Residential Lots and dedication of residual land to Council for Public or Drainage Reserves.   |
| <b>ADDRESS</b>                         | 342 Ewingsdale Road and 22A and 22B Melaleuca Drive, Byron Bay  |
| <b>APPLICANT</b>                       | Rob van Iersel - Planit Consulting Pty Ltd  |
| <b>OWNER</b>                           | NSPT Pty Ltd  |
| <b>DA LODGEMENT DATE</b>               | 14/11/2023  |
| <b>APPLICATION TYPE</b>                | S4.56 Modification  |
| <b>REGIONALLY SIGNIFICANT CRITERIA</b> | <p><u>Original DA</u></p> <p>The original proposal was classified as “regionally significant development” as defined under Clause 20 of the now repealed SEPP (State and Regional Development) 2011 and Schedule 4A (3) of the Environmental Planning and Assessment Act 1979 (EP&amp;A Act) as at the date of DA lodgement, the proposal was “Development that has a capital investment value of more than \$20 million”.</p> <p><u>S4.56 – revised CIV using current costings</u></p> <p>Clause 8A (1) (a), Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: General development over \$30 million.</p> |
| <b>CIV</b>                             | \$35,384,706  |
| <b>CLAUSE 4.6 REQUESTS</b>             | Not applicable  |
| <b>KEY SEPP/LEP</b>                    | <p>Relevant environmental planning instruments</p> <ul style="list-style-type: none"> <li>State Environmental Planning (Biodiversity and Conservation) 2021</li> <li>State Environmental Planning Policy (Planning Systems) 2021</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> </ul>  |

|   |  |
|---|--|
|   | <p>Relevant Local Environment Plan</p> <ul style="list-style-type: none"> <li>Byron Local Environment Plan 1988</li> </ul> <p>Relevant Development Control Plan</p> <ul style="list-style-type: none"> <li>Byron Development Control Plan 2014</li> </ul> <p>Relevant planning agreement</p> <ul style="list-style-type: none"> <li>(VPA) 2013/8948</li> </ul> |
| <b>TOTAL &amp; UNIQUE SUBMISSIONS ISSUES SUBMISSIONS KEY IN</b> | <p>9 in total</p> <p>6 unique submissions</p> <p>Key issues:</p> <ul style="list-style-type: none"> <li>Deletion of 12 months monitoring period</li> <li>Consolidation of staging</li> </ul>   |
| <b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>                    | <ul style="list-style-type: none"> <li>Proposed Draft Conditions</li> <li>Proposed Staging Plans</li> <li>Proposed Landscape Masterplan Addendum</li> <li>Current conditions of consent S4.56 10.2017.201.2</li> </ul>   |
| <b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b>             | Not applicable   |
| <b>RECOMMENDATION</b>   | Approval   |
| <b>DRAFT CONDITIONS TO APPLICANT</b>                            | No   |
| <b>SCHEDULED MEETING DATE</b>                                   | 22 May 2024  |
| <b>PLAN VERSION</b>   | <p>Staging Plans, Drawing Numbers 0011 – 0014, Rev A, Job No. J7148, dated 26/07/2023, prepared by Planit Consulting.</p> <p>Landscape Master Plan Addendum, Page 1, Rev 01, Project No. J7148, dated September 2023, prepared by Planit Consulting.</p>   |
| <b>PREPARED BY</b>  | Council Planner – Greg Yopp  |
| <b>DATE OF REPORT</b>   | 22 May 2024  |

## EXECUTIVE SUMMARY

This Section 4.56 Modification seeks approval to amalgamate stages from 7 to 4; removal of time frame between stages; temporary stockpile of fill material; deletion of boardwalk; and consequential amendments to conditions.

The proposed modification, with the exception of the removal of the 12 months for monitoring between stages, is supported.

The application was lodged on 14/11/2023 and placed on public exhibition from 22/11/23 to 19/12/23. Council received nine (9) submissions in opposition to the modification application.

A detailed consideration of the applicable environmental planning instruments was provided in the Commissioner's Judgement on the original application (*Villa World Byron Pty Ltd v Byron Shire Council* [2020] NSWLEC 1612). The modification application does not raise any new issues in relation to the environmental planning instruments; proposed instruments; development control plans; planning agreements; and the regulations; applicable to the original development application, other than those listed below.

### Relevant State Environmental Planning Policies

In accordance with clause 4.8 of SEPP (Biodiversity & Conservation) 2021, the Byron Coast Comprehensive Koala Plan of Management (BCKPoM) applies. The modification application does not seek to change the subdivision layout, extent of works, tree removal or environmental restoration works. As such, the proposal is consistent with the Byron Coast Comprehensive Koala Plan of Management.

Pursuant to Chapter 2 Coastal Management, Section 2.8(1) of SEPP (Resilience and Hazards) 2021, the proposed removal of the 12 months monitoring period between stages is not supported as it provides an opportunity for monitoring/data collection and subsequent amendments to plans of management. This feedback loop has the potential to ensure optimal environmental outcomes, in particular, conservation of acid frogs.

### LEP 1988

The proposed development is consistent with the LEP 1988 zone objectives with the exception of the removal of the 12 month monitoring period between subdivision stages. The majority of the retained and created acid frog habitats are located in Zone E2 Environmental Conservation. The removal of the monitoring period is inconsistent with LEP 1988 Clause 78(a) & (b), Zone E2 Objectives.

The proposal, with the exception of the removal of the 12 month monitoring period, is consistent with LEP 1988 Clause 88 Development within the Coastal Zone. The proposed removal of the 12 month period is inconsistent with Clauses 88(1)(b) and 88(2)(e).

### DCP 2014

The proposed staging plan is inconsistent with DCP 2014 Section E8.10.1 Prescriptive Measure 7, however, it is consistent with the Objectives and Performance Criteria, and as such is supported.

The proposed deletion of the raised boardwalk is consistent with DCP 2014 Section E8.10.8.8 Buffer to Ewingsdale Road; and Appendix A Concept Plan. The DCP concept plan only includes a pathway along Ewingsdale Road and not an additional raised boardwalk. The

proposed Landscape Plan still includes the Ewingsdale Road footpath/cycleway. The approved raised boardwalk would have limited passive surveillance.

#### S7.11 Development Contributions and payments under the Water Management Act 2000

The proposed amendment to staging conditions does not require any amendment to conditions regarding S7.11 Development Contributions, or payments under the Water Management Act 2000.

#### Likely impacts of the development

The proposed removal of the 12 months monitoring period could potentially result in adverse impacts on the sensitive coastal ecosystems in the location. The remaining components of the proposed development are not likely to involve negative, social, economic or environmental impacts.

#### Submissions

Council received nine (9) submissions in opposition to the modification application. The key issues raised in submissions are considered to be:

- Opposition to the removal of the 12 months monitoring period between stages.
- Opposition to the consolidation of stages.

Other matters raised were in opposition to the approved subdivision generally, such as increased traffic, and were not related to the proposed modification.

## 1. THE SITE AND LOCALITY

### 1.1 The Site

| Site characteristic          | Details  |
|------------------------------|--|
| Land is legally described as | LOT: 1 DP: 542178,<br>LOT: 227 DP: 755695,<br>LOT: 7020 DP: 1113431 (portion of) (drainage allotment),<br>LOT: 9 DP: 111821,<br>LOT: 229 DP: 755695 (portion of),<br>LOT: 1 DP: 1166535 (portion of),<br>LOT: 5 DP: 1222674,<br>LOT: 6 DP: 1222674<br>Portion of Melaleuca Drive adjacent to Lot 6 DP1222674 |
| Parcel number/s              | 114330, 114320, 241870, 238016, 114350, 241616, 268571, 268572   |
| Property address is          | 342 Ewingsdale Road BYRON BAY,<br>Ewingsdale Road EWINGSDALE,<br>22B Melaleuca Drive BYRON BAY,<br>22A Melaleuca Drive BYRON BAY   |
| Land is zoned:               | Development area:<br>R2 Low Density Residential<br>RE1 Public Recreation<br>Residual land:<br>E2 Environmental Conservation<br>E3 Environmental Management<br>C2 Environmental Conservation<br>1(d) Investigation<br>7(a) Wetlands   |
| Land area                    | 74 hectares  |
| Coastal wetlands             | Some of the the approved subdivision is within 100m of mapped coastal wetlands   |
| Constraints                  | <ul style="list-style-type: none"><li>• Flood Liable Land (1 in 100 year)</li><li>• Bushfire prone land (combination of Category 1 and Buffer)</li><li>• Acid Sulfate Soils (Class 2 and Class 3)</li><li>• High Environmental Value vegetation</li><li>• Koala Habitat</li></ul>                            |

The generally level site is located on the southern side of Ewingsdale Road, opposite the Byron Arts and Industry Estate and is part of the West Byron Urban Release Area. Much of the land is cleared, with areas of vegetation towards the south.

The approved development involved a wide range of environmental restoration, enhancement and landscape works. Significant rehabilitation, weed control and revegetation, have been undertaken. Figure 1 provides an aerial view of the site. Figure 2 provides an aerial view of the site including zones and West Byron Urban Release Area. Figure 3 provides and extract of LEP 1988 Land Zoning Map – West Byron.



Figure 1. Aerial view of the subject site

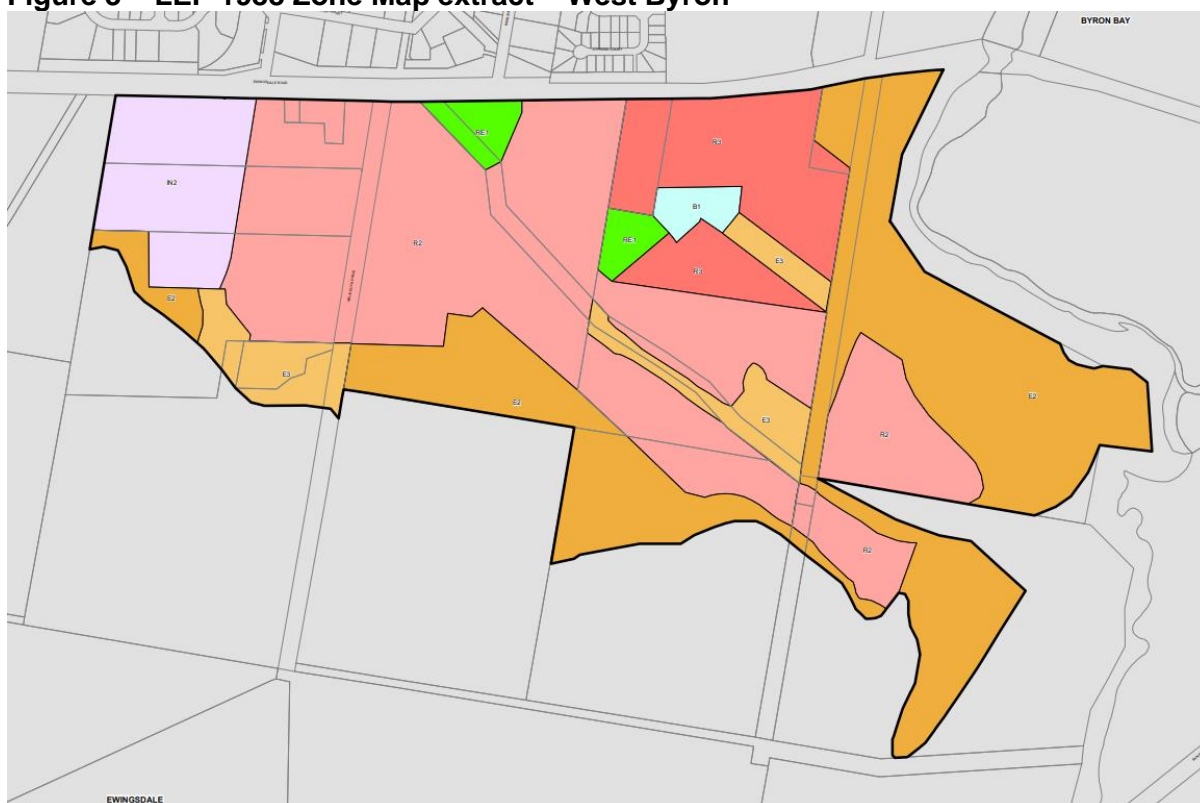


Figure 2 – West Byron Urban Release Area with zone boundaries





**Figure 3 – LEP 1988 Zone Map extract – West Byron**



## 1.2 The Locality

- To the immediate north is Ewingsdale Road and then the Byron Bay Arts & Industry Estate and the Sunrise Beach residential area;
- To the south is “coastal swamp forest” and at the terminus of Melaleuca Drive are three properties being the Planula Bed & Breakfast Retreat, the Temple Byron healing centre and the Vidal property;
- To the west is a former chicken processing plant and beyond this the Ewingsdale rural residential area; and
- To the east is the Belongil Fields caravan park, the proposed Site R&D subdivision (10.2017.661.1) and beyond this Belongil Creek.
- The site is 2.5km west of the Byron Bay Town Centre; 2.6km east of the Byron hospital; adjacent to the main road; primary and secondary schools are located within 6km.

## 2. THE PROPOSAL AND BACKGROUND

### 2.1 The Proposal

The Section 4.56 Modification seeks consent to amend staging; permit sand stockpiling; delete a raised boardwalk; and consequential amendment to conditions. The existing consent provides for the creation of 149 residential lots over 7 stages. Details are provided below:

- Amalgamation of stages from 7 to 4 (Refer to Attachment B for proposed staging plans). The previous modification approved in November 2021, adjusted the initial stages of construction within Stage 1-B and Stage 2. The proposed amendments do not further amend these first stages. Rather Stages 3 to 7 are proposed to be amalgamated into 2 stages. The number of residential lots in the approved staging and proposed staging is summarised below. Refer to Figures 4 and 5 for extracts from approved and proposed staging plans and Table 1. SUPPORTED

**Table 1 - Approved and proposed staging**

| Approved staging |                  |                            | Proposed staging |                  |                            |
|------------------|------------------|----------------------------|------------------|------------------|----------------------------|
| Stage            | Residential lots | Larger single dwelling lot | Stage            | Residential lots | Larger single dwelling lot |
| 3                | 15               | 1                          | 3                | 32               | 3                          |
| 4                | 17               |                            | 4                | 59               |                            |
| 5                | 28               |                            |                  |                  |                            |
| 6                | 31               |                            |                  |                  |                            |
| 7                |                  | 2                          |                  |                  |                            |
| <b>Total</b>     | <b>91</b>        | <b>3</b>                   |                  | <b>91</b>        | <b>3</b>                   |

- Removal of the timeframe between stages (currently 12 months stop work and monitoring between stages); NOT SUPPORTED The proponent then requested a modification to Condition 4 so that instead of 12 months between “the completion of construction works”, it is 12 months between “the completion of bulk earthworks”. NOT SUPPORTED
- Approval to retain a temporary stockpile of fill material (40m x 100m x 2m) between construction stages (Refer to Figures 6 and 7). SUPPORTED
- Deletion of the boardwalk proposed as a "nature walk" within the Ewingsdale Road buffer area. Refer to Attachment C for Landscape Master Plan Addendum. Refer to Figure 8 and 9 for extracts of the approved and proposed Landscape Materplans. SUPPORTED
- Consequential amendments to various conditions (1, 3, 11, 13, 19, 32, 42b), 42p), 45 51, 55, 58, 91m), 93 & 105) regarding modified staging and fill stockpile (Refer to Attachment A – Draft Conditions of Consent). SUPPORTED
- Minor housekeeping amendments to conditions listed in the table below. (Refer to Attachment A – Draft Conditions of Consent). The staff recommendation for each condition is listed in the table. **Note.** Proposed/recommended amendments to conditions in blue text.

| Condition No. | Amended condition  | Staff comment |
|---------------|--|---------------|
| 11            | <p><b>Updated Groundwater Management Plan – Monitoring</b></p> <p>The condition requires the submission of a groundwater monitoring plan for each subdivision stage. Insert additional requirement for groundwater management and monitoring in the existing condition. This modification recommended by Council's EHO</p> <p>e) Data and learning from monitoring to date, including any additional adaptation and contingency measures garnered from monitoring conducted to date.</p> | Support       |



| Condition No. | Amended condition  | Staff comment |
|---------------|--|---------------|
| 8             | <p><b>Integrated approvals from other State Government Approval Bodies</b></p> <p>The condition links the Rural Fire Service GTA's to the staging plan in Condition 1. The existing date of the GTA's listed in Condition 8 was superseded with a more recent GTA. Staff recommend that the date is updated to reflect the most recent GTA for the subdivision. The amended condition follows:</p> <p><i>This development consent includes an Integrated development approval under Sections 4.46 and 4.47 of the Environmental Planning and Assessment Act 1979, being an authorisation under section 100B of the Rural Fires Act 1997 in respect of bush fire safety of development of land for subdivision of land, and is subject to the General Terms of Approval from NSW Rural Fire Service dated <del>6 November 2020</del> 30 July 2021 contained in Schedule 1 of these conditions of consent and subject to amended plans as per condition 1 of this consent.</i></p> <p>Moreover, it is noted that the GTA's were not included in the appropriate schedules in the consent for NSW RFS or Water NSW. Staff also recommend that the aforementioned GTA's are included in the appropriate schedules.</p> | Support       |
| 13            | <p><b>Additional Monitoring and Reporting Requirements</b></p> <p>The condition details monitoring requirements for numerous plans of management. The applicant seeks to delete the requirement for annual reporting for a total period of at least 10 years from the commencement of subdivision works. This is not supported by staff as the time frame for subdivision works, even with the proposed reduced staging is likely to be around 8 years. The proposed amendment follows:</p> <p><i>c) At least annual reporting thereafter for a total period of at least ten (10) years from the commencement of subdivision works.</i></p>  | Not supported |
| 32            | <p><b>Acid Frog Management Plan (AFMP)</b></p> <p>The condition requires, among other things, monitoring of acid frogs to continue for 20 years including annual reporting. This may have been reasonable with the original 7 stages and 12 months between each stage, which equates to approximately 15 years construction phase. With the proposed staging modification from 3 -7 to 3 – 4 and the maintenance of the 12 month monitoring period, equating to, say, 8 years construction phase, it is considered 10 years annual reporting is reasonable. The proposed amendment follows:</p> <p><i>b) Updated monitoring provisions that detail monitoring to continue for at least <del>20 years</del> 10 years including annual reporting.</i></p>  | Support       |

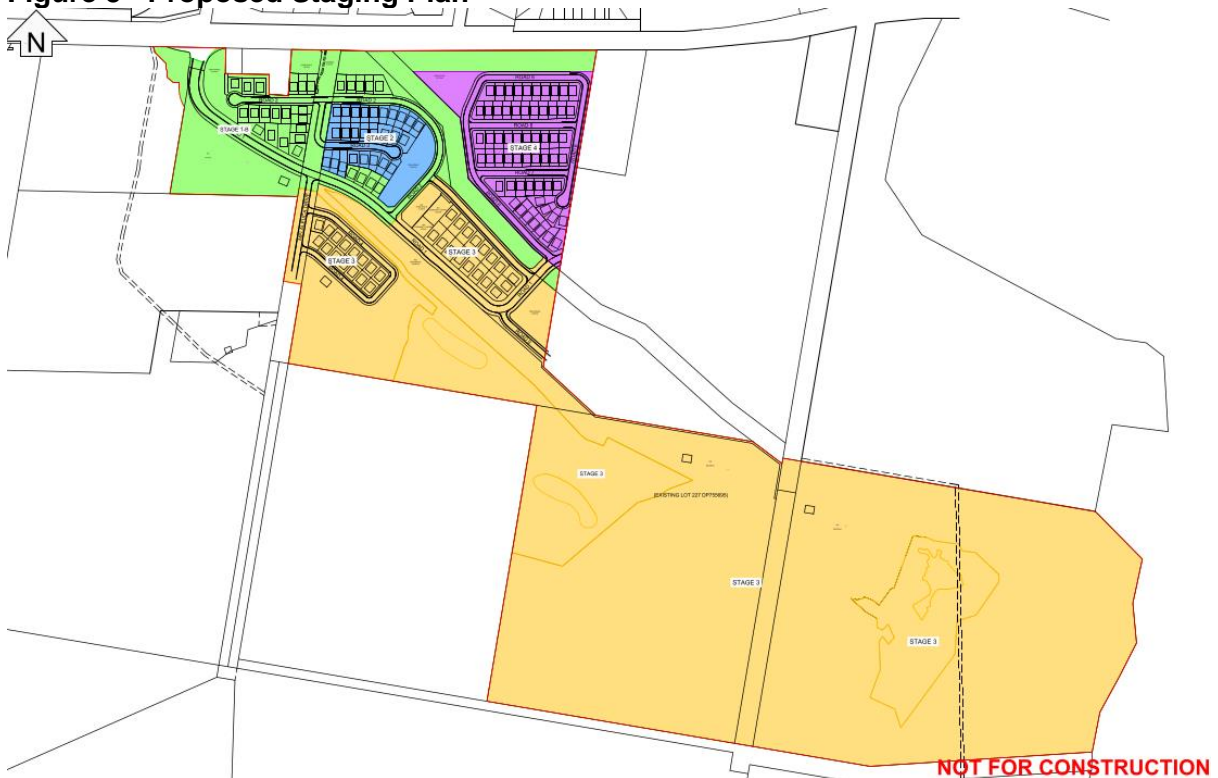
| Condition No. | Amended condition   | Staff comment |
|---------------|---|---------------|
| 34            | <p><b>Acid Sulfate Soils Management Plan (ASSMP)</b></p> <p>The condition requires an updated acid sulfate soil management plan prior to each stage. Council recommends a minor update of the condition to incorporate a more effective feedback mechanism into updated report. The proposed amendment follows:</p> <p><i>h) Incorporating data and learning from monitoring to date. Include adaptation and contingency measures garnered from monitoring conducted to date.</i></p> <p><i>i) The plan must also include measures to minimise the impact of any acid sulfate soils treatment on the pH of the environments required for targeted acid frogs.</i></p> | Support       |
| 37            | <p><b>Vibration Management Plan</b></p> <p>The current location of the condition in the consent requires a vibration management plan prior to the issue of a subdivision works certificate. condition requires the prior to commencement of works. The proponent seeks to have this condition relocated to “during subdivision works”</p>   | Not supported |
| 44            | <p><b>Traffic Control Plan</b></p> <p>The condition requires the submission of a traffic control plan prior to the issue of a Subdivision Works Certificate. The proponents seeks to have the condition relocated to “Prior to construction of subdivision works”</p>   | Not supported |

The description of the staging is set out in Condition 3 of the current consent (Refer to Attachment D Notice of Determination for S4.56 10.2017.201.2, determined on 4 November 2021). The Condition 4 twelve months requirement between the completion of construction works of stages, provides an opportunity for monitoring of various environmental parameters. The primary reason for applying the 12 months “stop work and monitoring program” was in relation to groundwater. The 12 month period is a safeguard to ensure works do not continue if downstream groundwater dependent species and ecosystems are at threat due to changes in groundwater dynamics and quality. In this regard, monitoring involved, inter alia, groundwater and acid frog species. Refer to Figure 10 for Site Layout Plan including Acid Frog Habitat (extract from the approved Acid Frog Management Plan).

**Figure 4 – Approved Staging Plan**



**Figure 5 - Proposed Staging Plan**





**Figure 6 – Sand Stockpile Plan**



**Figure 7 – Sand Stockpile Photo**

**Note.** The sand has been stabilised with vegetation and is proposed to be used for future subdivision stages.





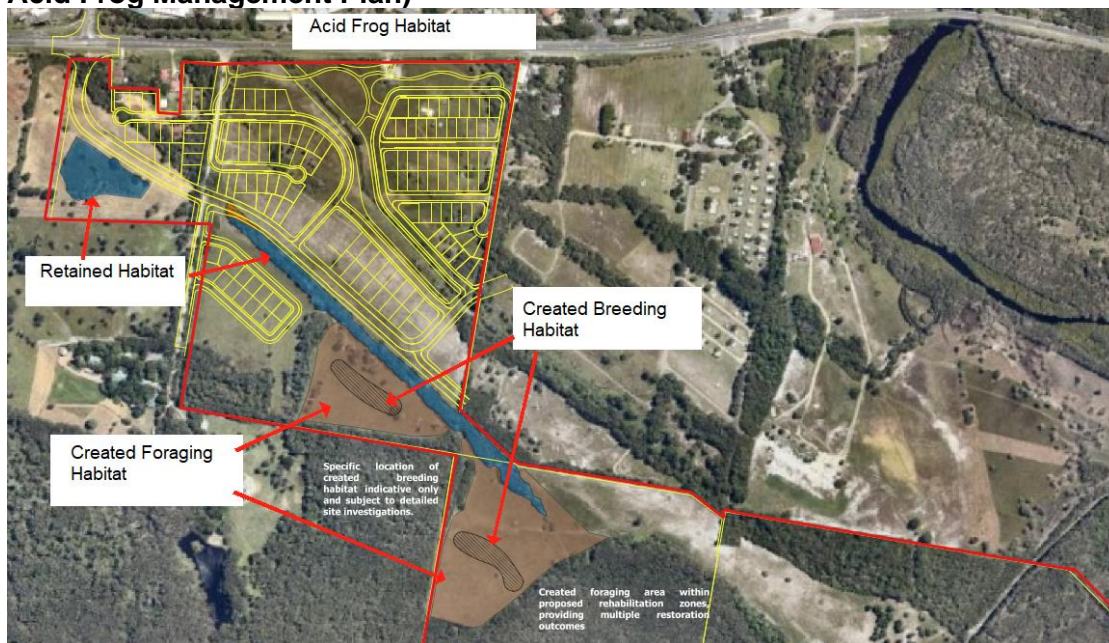
**Figure 8 – Approved raised timber boardwalk (Extract from Approved Landscape Masterplan)**



**Figure 9 – Proposed deletion of raised timber boardwalk (Extract from Proposed Landscape Masterplan)**



**Figure 10 - Site Layout Plan including Acid Frog Habitat (extract from the approved Acid Frog Management Plan)**





## 2.2 Background

The S4.56 modification application was lodged on 14 November 2023. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

**Table 1: Chronology of the s4.56 Modification**

| Date                     | Event   |
|--------------------------|---|
| 14/11/2023               | DA lodged   |
| 22/11/2023 to 19/12/2023 | Exhibition of the application   |
| 16/11/2023               | External agency referral <ul style="list-style-type: none"> <li>• Police</li> <li>• Land and Environment Court</li> <li>• RFS (March 2024) response not received</li> </ul>                         |
| February 2024            | Request for Information from Council to applicant <ul style="list-style-type: none"> <li>• Water quality monitoring data</li> <li>• Acid frog monitoring data</li> </ul>                            |
| March 2024               | Request for Information from Council to applicant <ul style="list-style-type: none"> <li>• Data analysis for water quality monitoring</li> <li>• Justification for deletion of boardwalk</li> </ul> |
| 12/3/2024                | Panel briefing  |

## 2.3 Site History

| Application   | Detail  | Outcome             |
|---------------|---|---------------------|
| 10.2017.201.1 | <ul style="list-style-type: none"> <li>• Lodged - 10/5/2017</li> <li>• Refused by NRPP – 8/4/2018</li> <li>• Class 1 appeal lodged - 4/10/2019</li> <li>• Conciliation – 20/8/2020 to 12/10/2020</li> <li>• Amended proposal – August 2020</li> <li>• Further conciliation – 6, 10 &amp; 19 November 2020</li> <li>• Approved NSW LEC consent orders 8 December 2020 (2019/310612) – Subdivision of 9 lots into 149 residential lots including: 145 smaller residential; 4 larger residential lots, 7 green infrastructure lots and associated works</li> </ul> | Approved by NSW LEC |
| 10.2017.201.2 | <ul style="list-style-type: none"> <li>• Modify staging timeframes and consequential amendments</li> <li>• Lodged 9/6/2021</li> <li>• Public exhibition – 24/6/2021 to 21/7/2021</li> <li>• Applicant amended proposal to retain 12 months groundwater monitoring between stages – 3/8/2021</li> </ul>  | Approved 4/11/2021  |

| Application | Detail  | Outcome |
|-------------|---|---------|
|             | <ul style="list-style-type: none"> <li>Applicant requested alteration of stage boundaries – 3/9/2021</li> </ul> |         |

### 3. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
  - (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 Planning 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), 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.*

These matters are further considered below.

It is noted that the proposal is considered to be (which are considered further in this report):

- Integrated Development (s4.46)

#### 3.1 Section 4.56 Modification by Consent Authorities of Consents Granted by the Court

|                        |   |
|------------------------|---|
| <b>Section 4.56(1)</b> | <ul style="list-style-type: none"> <li>The development to which the consent as modified relates is substantially the same as the originally approved development in that no change to the number of lots or the lot layout for the subdivision is proposed.</li> <li>The application was publicly notified in accordance with Council's Community Participation Plan.</li> <li>Council has notified, or made reasonable attempts to notify, each person who made a submission in respect of the original</li> </ul> |
|------------------------|---|

|                         |   |
|-------------------------|---|
|                         | development application of the proposed modification by sending written notification to the last address known to Council.<br><ul style="list-style-type: none"> <li>• A consideration of submissions received is included in this report.</li> </ul> |
| <b>Section 4.56(1A)</b> | The assessment process has included a consideration of: the matters referred to in Section 4.15(1) of the EP&A Act is included in this report; and the reasons for the grant of the original consent.   |


### 3.2 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

A detailed consideration of the applicable environmental planning instruments was provided in the Commissioner's Judgement on the original application (*Villa World Byron Pty Ltd v Byron Shire Council* [2020] NSWLEC 1612). The modification application does not raise any new issues in relation to the environmental planning instruments; proposed instruments; development control plans; planning agreements; and the regulations; applicable to the original development application, other than those listed below.

#### (a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

| EPI  | Matters for Consideration  | Comply |
|--|--|--------|
| State Environmental Planning Policy (Biodiversity & Conservation) 2021 | <p>Chapter 4: Koala Habitat Protection 2021</p> <p>In relation to koala habitat protection, the subject site falls within the area of an approved Koala Plan of Management under the State Environmental Planning Policy (Biodiversity and Conservation). In accordance with clause 4.8 of the SEPP, the Byron Coast Comprehensive Koala Plan of Management (BCKPoM) applies.</p> <p>The management objectives for the West Byron Koala Management Precinct are "<i>to consolidate the existing sub-populations and improve the exchange of genetic material with other KMPs to the north and south</i>".</p> <p>The modification application does not seek to change the subdivision layout, extent of works, tree removal or retention or environmental restoration works. As such, a detailed review of the proposal against the BCKPoM has not been carried out but is generally consistent with the BCKPoM as the proposal as originally approved:</p> <ul style="list-style-type: none"> <li>• Has a limited area of mapped koala potential habitat;</li> <li>• Will retain some of the habitat but also result in the removal of some mapped koala potential habitat (see Figure 3);</li> </ul> | Yes    |

| EPI                              | Matters for Consideration  | Comply                                |
|----------------------------------|--|---------------------------------------|
|                                  | <ul style="list-style-type: none"> <li>Commits to environmental restoration and enhancement works on several areas of the site which are expected to improve habitat connectivity and wildlife corridors;</li> <li>Will use “fauna neutral” plant species near Ewingsdale Road to help reduce road-strike;</li> <li>Commits to environmental monitoring during and following construction; and</li> <li>Will restrict the keeping of cats and dogs through registration of a restriction of use on property titles.</li> </ul> <p>Figure 11 provides a Koala Habitat map under the CKPoM with area of habitat marked in green.</p> <p><b>Figure 11 – Koala Habitat Map</b></p>    |                                       |
| SEPP (Resilience & Hazards) 2021 | <p><b>Chapter 2: Coastal Management</b></p> <ul style="list-style-type: none"> <li><b>Section 2.8(1)</b> - Development on land in proximity to coastal wetlands or littoral rainforest</li> </ul> <p><i>(1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on—</i></p> <p><i>(a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or</i></p> <p><i>(b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.</i></p> <p>Council's Ecologist and EHO do not support the removal of a 12 month period in Condition 4(a) that requires “Monitoring for at least 12 months following completion of construction works for the stage in question”. The 12 month period between stages provides an opportunity for monitoring/collecting data and subsequent amendments to plans of management. This feedback loop has the potential to ensure optimal outcomes for acid frogs. This approach</p> | Yes<br>subject to<br>staff<br>changes |

| EPI | Matters for Consideration   | Comply |
|-----|---|--------|
|     | <p>will enable the further assessment of impacts on the biophysical, hydrological and ecological integrity of the adjacent coastal wetland.</p> <p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li>• Amalgamation of stages from 3-7 to 3-4 - <b>SUPPORTED</b></li> <li>• Removal of 12 month monitoring period – <b>NOT SUPPORTED</b></li> <li>• Retention of fill stockpile - <b>SUPPORTED</b></li> <li>• Deletion of boardwalk - <b>SUPPORTED</b></li> <li>• Consequential amendment of conditions - <b>SUPPORTED</b></li> </ul> |        |

### Byron Local Environmental Plan 1988

The proposed S4.56 modification application does not raise any new issues in relation to the Byron LEP 1988 other than those listed below.

| Byron LEP 1988  | Matters for Consideration   | Comply  |
|---|---|---|
| <p>Clause 72 - Zone objectives and control of development</p> <p>Clause 73 – R2 Objectives</p> <p>Clause 78 – E2 Objectives</p> | <p>Pursuant to Clause 72 Byron LEP 1988 the proposal is permissible in the zone with consent. The proposal is consistent with the zone objectives.</p> <p><u>Clause 73 – Zone R2 Objectives</u><br/> <i>a) to provide for the housing needs of the community within a low density residential environment,</i><br/> <i>(b) to enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></p> <p><u>Clause 78 – Zone E2 Objectives</u><br/> <i>(a) to protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values,</i><br/> <i>(b) to prevent development that could destroy, damage or otherwise have an adverse effect on those values.</i></p> <p>The retained Acid Frog habitat is located partially within Zone R2 and predominantly within Zone E2. All of the created Acid Frog habitat is located within Zone E2</p> <p>Council's Ecologist and EHO do not support the removal of a 12 month period in Condition 4(a) that requires "Monitoring for at least 12 months following completion of construction works for the stage in question". The justification for this decision relates to monitoring/collecting data and providing an opportunity for feedback into plans of management, so as adjustments could be made in plans to ensure optimal outcomes for acid frogs. This approach will enable the further assessment of impacts on the biophysical, hydrological and ecological integrity of the adjacent coastal wetland.</p> <p>The fill stockpile is located within Zone R2 and is unlikely to negatively impact the environment.</p> <p><b>Recommendation:</b></p> | <p>Yes<br/>subject to<br/>staff<br/>changes</p> |



| Byron LEP 1988   | Matters for Consideration   | Comply  |
|--|---|---|
|  | <ul style="list-style-type: none"> <li>• Amalgamation of stages from 3-7 to 3-4 - <b>SUPPORTED</b></li> <li>• Removal of 12 month monitoring period – <b>NOT SUPPORTED</b></li> <li>• Retention of fill stockpile - <b>SUPPORTED</b></li> <li>• Deletion of boardwalk – <b>SUPPORTED</b></li> <li>• Consequential amendment of conditions - <b>SUPPORTED</b></li> </ul>   |   |
| <p>Clause 88 - Development within the coastal zone</p> | <p>In relation to the original application, there was agreement that the matters set out in cl 88(2) and 88(3) were considered and the proposed development (as amended) satisfied the requirements.</p> <p>Clause 88(1)(b)<br/>This objective is of relevance to this modification application:<br/><i>(i) protect, enhance, maintain and restore the coastal environment, its associated ecosystems, ecological processes and biological diversity and its water quality,</i></p> <p>88(2)(e)<br/>This provision is also relevant to the proposal<br/>Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered the relevant matters set out under sub clause (2), particularly in this case being:</p> <p><i>(e) how biodiversity and ecosystems, including:</i></p> <ul style="list-style-type: none"> <li><i>(i) native coastal vegetation and existing wildlife corridors, and</i></li> <li><i>(ii) rock platforms, and</i></li> <li><i>(iii) water quality of coastal waterbodies, and</i></li> <li><i>(iv) native fauna and native flora, and their habitats, can be conserved, and</i></li> </ul> <p>Of relevance to the consideration under Cl 88(1)(b) &amp; 88(2)(e) is whether the proposed amalgamation of staging and removal of 12 months monitoring period will result in an increase in adverse impacts on the coastal environment and ecosystems. It is a balance between the facilitation of the orderly and economic use and development of land and the protection of the environment.</p> <p>Council staff support the proposal with the exception of the removal of the removal of the 12 month monitoring period between stages.</p> | <p>Yes<br/>subject to<br/>staff<br/>changes</p> |

| Byron LEP 1988          | Matters for Consideration  | Comply |
|-------------------------|--|--------|
| Clause 98B - Earthworks | <p>A number of conditions were imposed on the original consent to manage the impact of earthworks, particularly on waterways) associated with construction of the proposed subdivision (cl 98B (1)).</p> <p>Development consent must not be granted for earthworks unless the consent authority has considered the relevant matters set out under sub clause (3) particularly in this case being:</p> <p><i>(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,</i></p> <p><i>(e) the effect of the development on the existing and likely amenity of adjoining properties,</i></p> <p><i>(i) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive land and measures to prevent sediment, building materials, waste or other pollutants from leaving the site and entering adjoining land, street gutters, drains or watercourses,</i></p> <p><i>(j) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</i></p> <p>The applicant argues that the reduction in the number of stages will reduce the time taken to construct the subdivision and consequently exposure of the local area and residents to subdivision construction works and associated impacts (e.g. noise and dust).</p> <p>The current approval includes conditions to manage the impacts of earthworks on waterways including specification of a maximum disturbed area (condition 20), management of drainage (condition 29), erosion and sediment control plan (conditions 45, 62 and 77) and receiving environment monitoring (e.g., condition 79).</p> | Yes    |

**(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments**

There is one proposed instruments which will have commenced (but not completed) public consultation under the EP&A Act at the date of 22/5/24, and is relevant to the proposal:

West Byron Planning Proposal – Transition to LEP 2014 is planned for public exhibition in May 2024. The proposal is to transition zones, minimum lot size, land use table and the like from LEP 1988 to LEP 2014. It is a “like for like” transition. Any submissions from the exhibited planning proposal will not be reported back to Council until July 2024 at the earliest.

The proposal is generally consistent with the proposed instrument.

**(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

The proposed S4.56 modification application does not raise any new issues in relation to the Byron DCP 2014 other than those listed below.

| <b>Byron DCP 2014</b>                    | <b>Matters for Consideration</b>   | <b>Comply</b> |
|--|--|---------------|
| Chapter E8 West Byron Urban Release Area | Chapter E8 of the DCP 2014 applies to land identified as the West Byron Bay Site which includes the subject land of this development application.  | Yes           |
| E8.10.1 Staging Plan                     | <p>Many of the prescriptive measures for the staging plan can't be met by the proposed development due to the subdivision being separated into an eastern and western development with separate designs and applications in contrast to the staging envisaged by DCP 2014 (e.g., roundabouts, Main Spine Road, Village Centre Precinct).</p> <p>However, of relevance to this proposal to modify the size and number of stages is Prescriptive Measure 7 (E8.10.1):</p> <p><i>Where more than 100 lots are to be released as part of a subdivision, a staging plan to be submitted with the development application breaking such land releases into stages of no more than 50 lots to enable the co-ordination and provision of necessary infrastructure and services.</i></p> <p>All approved stages will deliver less than 50 lots. The amended Stage 4 seeks to deliver 59 lots (refer to Figures 4 and 5 and Table 1) which is greater than the maximum specified, however, this change is not contrary to the staging objectives and performance criteria which are largely focussed on ensuring orderly and co-ordinated development of the site.</p> | Yes           |
| E8.10.8.8 & Appendix B – Concept Plan    | <p><b>Removal of Walkway</b></p> <p>A pathway along Ewingsdale road is approved under the existing landscape plan and is still proposed as part of the proposed amended landscape plan (refer to Figures 8 and 9). The proposed deletion of the walkway is consistent with Section E8.10.8.8 Buffer to Ewingsdale Road; and Appendix A Concept Plan. The concept plan only includes a pathway along Ewingsdale Road and not an additional raised boardwalk.</p> <p>The proponent has stated that a lack of passive surveillance for the raised boardwalk through bushland is a safety concern. The boardwalk was to be located within an area of open space which will be dedicated to Council upon completion of the current stage of subdivision. The proponent stated that the boardwalk was discussed with Council's Assets Team, who expressed concerns regarding ongoing maintenance of the structure, given its location within the vegetated buffer and low lying land.</p>  | Yes           |

## Byron S7.11 Development Contributions Plan 2014

Development Contributions are payable under Byron S7.11 Development Contributions Plan 2014 in the current consent (10.2017.201.2). No variation to the contributions condition is required as the condition (Condition 114) is worded to provide flexibility for payment as a lump sum or proportional to any staging regime.

### **(d) Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act**

The following planning agreement/s has been entered into under Section 7.4 of the EP&A Act:

A voluntary planning agreement (VPA) 2013/8948 was executed on 21 October 2014 between the Minister for Planning and the Byron Bay West Landowners Association (the developer) on Lots described as 5/DP622736, 6/DP622736, 1/DP542178, 227/DP755695, 229/DP755695, 9/DP111821, 1/DP1166535, 1/DP201626, 2/DP542178, 1/DP780242, 2/DP818403 and 1/DP520063. The executed agreement facilitates the delivery of the developer's contribution towards the provision of regional infrastructure and to ensure conservation land is appropriately rehabilitated and maintained.

The proposal is consistent with this Planning Agreement.

### **(e) Section 4.15(1)(a)(iv) - Provisions of Regulations**

| <b>Environmental Planning and Assessment Regulations 2021</b>        | <b>Applicable to the proposal:</b> | <b>Considered the control as it relates to the proposal:</b> | <b>If this control is applicable, does the proposal comply?</b> |
|--|------------------------------------|--|---|
| Section 61 - Additional matters that consent authority must consider | N/A                                | N/A  | N/A   |
| Section 62 - Consideration of fire safety                            | N/A                                | N/A  | N/A   |
| Section 64 - Consent authority may require upgrade of buildings      | N/A                                | N/A  | N/A   |
| Section 63 - Considerations for erection of temporary structures     | N/A                                | N/A  | N/A   |

### **3.3 Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

| <b>Impact on:</b>          | <b>Likely significant impact/s?</b>   |
|----------------------------|---|
| <b>Natural environment</b> | Council's Ecologist and EHO do not support the removal of a 12 month period in Condition 4(a) that requires "Monitoring for at least 12 months following completion of construction works for the stage in question". The justification for this decision relates to monitoring/collecting data and providing an opportunity for feedback into plans of management, so as |

| Impact on:                | Likely significant impact/s?  |
|---------------------------|---|
|                           | <p>adjustments could be made in plans to ensure optimal outcomes for acid frogs. This approach will enable the further assessment of impacts on the biophysical, hydrological and ecological integrity of the adjacent coastal wetland.</p> <p>The remaining components of the proposal are adequately controlled by existing or proposed amended conditions and it is considered that there will not be a significant impact on the natural environment.</p> <p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li>• Amalgamation of stages from 3-7 to 3-4 - <b>SUPPORTED</b></li> <li>• Removal of 12 month monitoring period – <b>NOT SUPPORTED</b></li> <li>• Retention of fill stockpile - <b>SUPPORTED</b></li> <li>• Deletion of boardwalk – <b>SUPPORTED</b></li> <li>• Consequential amendment of conditions - <b>SUPPORTED</b></li> </ul> |
| <b>Built environment</b>  | No. The proposal will not have a significantly adverse impact on the built environment of the locality.   |
| <b>Social Environment</b> | No. The proposal will not have a significant adverse social impact on the locality.   |
| <b>Economic impact</b>    | No. The proposal will not have a significant adverse economic impact on the locality.   |

Accordingly, it is considered that the proposal (including the recommended retention of the 12 month period between stages) will not result in any significant adverse impacts in the locality as outlined above.

### 3.4 Section 4.15(1)(c) - Suitability of the site

The proposed modification is not considered to impact on the suitability of the site for the development.

### 3.5 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 4 of this report.

### 3.6 Section 4.15(1)(e) - Public interest

The proposal is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

## 4. REFERRALS AND SUBMISSIONS

### 4.1 Agency Referrals and Concurrence

The S4.56 Modification application has been referred to various agencies for as required by the EP&A Act and outlined below in Table 3.



**Table 3: Concurrence and Referrals to agencies**

| Agency   | Concurrence/<br>referral trigger  | Comments<br>(Issue, resolution, conditions)  | Resolved |
|--|---|--|----------|
| <b>Concurrence Requirements (s4.13 of EP&amp;A Act)</b>    |   |  |          |
| N/A  |   |  |          |
| <b>Referral/Consultation Agencies</b>                      |   |  |          |
| NSW Police   | Consent is sought for, inter alia, the deletion of the raised boardwalk (refer to Figure 6). The applicant states that the boardwalk is inconsistent with the principles of Crime Prevention Through Environmental Design (CPTED). Referred to NSW Police for comment | No response within the requested 21 days. The removal of the boardwalk is discussed elsewhere in this report and is supported by Council staff.  | Y        |
| NSW Land and Environment Court                             | DA 10.2017.201.1 was approved by the NSW LEC. The subject S4.56 modification required the notification of the LEC pursuant to S 107 of the EP&A Regulation 2021.  | No response from the LEC required.   | Y        |
| <b>Integrated Development (S 4.46 of the EP&amp;A Act)</b> |   |  |          |
| RFS  | Bush fire safety authority GTA's issued under S100B - <i>Rural Fires Act 1997</i> for DA 10.2017.201.1 (subdivision). The subject S4.56 also referred to NSW RFS under S100B.   | <p>The 4.56 modification application has been referred to the Rural Fire Service for an updated Bush Fire Safety Authority and general terms of approval (GTA). At the time of writing this report, the Rural Fire Service had not provided updated GTA's. There is no material difference to the proposal as approved by the Rural Fire Service other than the total number and order of stages in the subdivision.</p> <p>It is considered that wording in Condition 8 of the Consent (refer to section 2.1 of this report for proposed amended condition 8) could be amended to link the proposed staging plans to the subsequent updated RFS GTA's. Alternatively, consideration of this modification could be</p> | Y        |

| Agency | Concurrence/<br>referral trigger | Comments<br>(Issue, resolution, conditions)             | Resolved |
|--------|----------------------------------|---|----------|
|        |                                  | deferred pending an updated Bush Fire Safety Authority. |          |

## 4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 4**.

**Table 4: Consideration of Council Referrals**

| Officer                      | Comments  | Resolved  |
|------------------------------|---|---|
| Ecologist                    | <p>Acid frogs</p> <p>Acid frogs are a group of highly specialised, threatened species which occur along coastal sandy lowlands in SEQ and northern NSW. They are unique from other frog species as their embryos can tolerate the highly acidic (pH&lt;5) and tannin stained, low nutrient water of the wallum environments. The preferred coastal habitat overlaps with densely human populated area. Soil sandiness, vegetation, presence and/or type of wetland, hydrological regime, and clay content are all determinants of suitable acid frog habitat.</p> <p>The subject site, in its pre-development state incorporated acid frog habitat. There are numerous approved management plans associated with the subdivision consent, including an Acid Frog Management Plan, which plays a significant role in the providing appropriate controls to maintain and enhance the acid frog habitat. The plan, among other things, provides for monitoring and reporting and adaptive responses. If monitoring data is not positive regarding the presence of the acid frogs, the proponent needs to correct the situation. All monitoring reports are sent to Council (the subdivision certification authority). This monitoring and feedback can be effective, especially when there is a 12 month 'break period' between stages which provides time to assess biodiversity works (acid frog habitat retention and enhancement works) and determine whether key performance indicators of the management plan are being met.</p> <p>Council's Ecologist is of the view acid frog surveying to date has been inadequate and that further comprehensive acid frog surveying is needed before Council considers removing the 12 month biodiversity monitoring period.</p> | Yes, subject to the retention of the 12 month period between stages |
| Environmental Health Officer | <p>Water quality is a key determinant of suitable acid frog habitat. At Council's request, the applicant submitted water quality reporting. At Council's further request, a statistical analysis of the voluminous water quality dataset was submitted. Council's EHO, on the basis of the water quality analysis for the site, does not support either the amalgamation of the staging or the</p>  | Yes, subject to the retention of the 12 month period                |

| Officer                    | Comments  | Resolved       |
|----------------------------|---|----------------|
|                            | <p>removal of the 12 month monitoring period between stages. A brief summary of the shortcomings of the water quality analysis include:</p> <ol style="list-style-type: none"> <li>1. Graphs exclude rainfall events, statistical analysis is basic, baseline data is not qualified</li> <li>2. The report does not compare the trends apparent during construction with pre construction trends, nor does it state the desired outcomes or objectives.</li> <li>3. The report is not consistent with a typical scientific report. So it lacks, among other things a discussion of the results, conclusions, and recommendations.</li> <li>4. There is little interpretation of correlations between surface and groundwater qualities.</li> <li>5. No references to ANZECC guidelines.</li> <li>6. Lack of detailed discussion for each relevant analyte including, baseline (preconstruction), during construction, standard deviations for each monitoring site</li> <li>7. The statistical analysis needs to discuss if the deviation values against baseline against ANZECC and or desirable outcomes e.g. surface water qualities remain or not within or outside of baseline variations and are or are not suitable for the survival of the target species.</li> <li>8. Lack of post construction data to decide if the ground and surface water qualities are within accepted guidelines and suitable for target species</li> <li>9. Lack of recommendations for changing monitoring or groundwater, surface water or ASS management plans based on current monitoring.</li> </ol> <p>Further the ameliorative measure pertaining to pH of surface water relies heavily on neutralising acidic pH with the ongoing 'dusting' of drainage channels with lime, that of course is not a sustainable long term solution and may indeed not be a desirable outcome for acid frogs.</p> <p>Based on the shortcomings in the report and the short, two sampling events, post construction monitoring Council's EHO does not support the amalgamation of staging or the removal of the 12 months monitoring period.</p> | between stages |
| Development Engineering    | No objections subject to conditions.  | Yes            |
| 7.11 Contributions Officer | Referral not required. No variation to the contributions condition is required as the condition (Condition 114) is worded to provide flexibility for payment as a lump sum or proportional to any staging regime.   | Yes            |
| Water and Sewer Engineer   | Referral not required. No variation to the payments under the Water Management Act 2000 (Condition 115) as payments are not broken up into stages.  | Yes            |

### 4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 22 November 2023 until 19 December 2023A total of 6 unique submissions (9 in total), comprising 6 objections to the proposal, were received.

The issues raised in these submissions are addressed in Table 5.

**Table 5: Community Submissions**

| <b>Issue</b>  | <b>Assessment comments</b>  |
|---|---|
| Developer must adhere to original consent.  | S4.56 of the EP& A Act 1979 enable a modification of consent. The proposed modification is substantially the same.  |
| Opposition to removal of 12 month wait period between stages.<br><br>Opposition to reduction in number of stages.<br><br>Wait period between stages absolutely provides time for monitoring, reporting and ameliorative action. | The 12 months between stages enables a longer period of monitoring to determine if there are any adverse impacts. A greater number of stages provides more opportunity for monitoring and reporting. Therefore, a greater opportunity to respond to adverse impacts.<br><br>Submitted acid frog monitoring and water quality data indicated that more monitoring is required.<br><br>There are conditions of approval that require updated management plans to be submitted and approved prior to the issue of Subdivision Works Certificate for each stage of construction. The updated management plans must consider and report on monitoring undertaken during construction of the previous stage of works. There will still be an opportunity for ameliorative action with the retention of the 12 month period. |
| Increased traffic congestion.   | The proposed modification does not provide for additional lots. No impact on traffic generation.  |
| Negative impact on wetlands and Belongil Creek.   | The proposed modification does not change the development footprint.  |
| Flood mitigation and raising sea levels.  | The proposed modification does not change the development footprint or the final fill levels.   |
| Increased water use and sewerage demand   | The proposed modification does not change the development footprint, nor does it provide for additional lots.   |
| Concern the deletion of nature walk destroying wallum bushland.   | The approved nature walk would require some clearing in existing vegetated areas. The deletion of a requirement for the boardwalk would likely support more wallum bushland.<br>The deletion of the boardwalk is consistent with DCP 2014 Chapter E8.   |

## 5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

**5.1** Potential impacts on Biodiversity with any modification on timeframes that can be used for monitoring.

Council's Ecologist and EHO do not support the removal of a 12 month period in Condition 4(a) that requires "Monitoring for at least 12 months following completion of construction works for the stage in question". The justification for this decision relates to monitoring/collecting data and subsequent amendments to plans of management. This feedback loop has the potential to ensure optimal outcomes for acid frogs.

Resolution: The issue has been resolved. The proposed amendments are supported with the exception of the removal of the 12 month monitoring period between stages.

## **6. CONCLUSION**

This Section 4.56 modification application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application, as amended by Council staff, can be supported.

The proposed removal of the 12 month period between stages is not supported as it provides an opportunity for monitoring/collecting data and subsequent amendments to plans of management. This feedback loop has the potential to ensure optimal outcomes for acid frogs.

It is considered that the key issues as outlined in Section 6 have been resolved satisfactorily through amendments to the proposal and in the recommended draft conditions at **Attachment A**.

## **7. RECOMMENDATION**

That the Section 4.56 Modification Application 10.2017.201.3 to amalgamate stages from 7 to 4; temporary stockpile of fill material; deletion of boardwalk; and consequential amendments to conditions to modify Subdivision of Six (6) Lots into One Hundred and Forty Nine (149) Lots consisting of One Hundred and Forty Five (145) Residential Lots, Four (4) Large Residential Lots and dedication of residual land to Council for Public or Drainage Reserves at 342 Ewingsdale Road and 22A and 22B Melaleuca Drive, Byron Bay; be APPROVED pursuant to Section 4.16(1)(a) or (b) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of Consent
- Attachment B: Staging Plans
- Attachment C: Landscape Plan Addendum
- Attachment D: Existing Notice of Determination S4.56 10.2017.201.2