



10 December 2015

Department of Planning & Environment
Locked Bag 9022
GRAFTON NSW 2460
Attention: Luke Blandford
By email

Dear Luke

Re: Planning Proposal 26.2015.6.1 to amend Byron LEP 1988 – West Byron

Further to your emails dated the 2nd and 4th of December 2015, Council provides the following information to the matter raised.

1. **Amending the Planning Proposal** – Council notes the Departments concerns about the proposal not being in accordance with the Standard Instrument LEP provisions. Notwithstanding this, the proposal seeks to amend Byron LEP 1988, not the standard instrument Byron LEP 2014 and it is highly likely that a number of DA's will be assessed and determined under the 1988 LEP prior to the controls being brought across and into Byron LEP 2014. Further, the matter of infrastructure within E Zones is likely to remain an issue under the Byron LEP 2014, once the E Zones are introduced. A solution to this issue will need to be developed for the 2014 LEP at some time in the future.

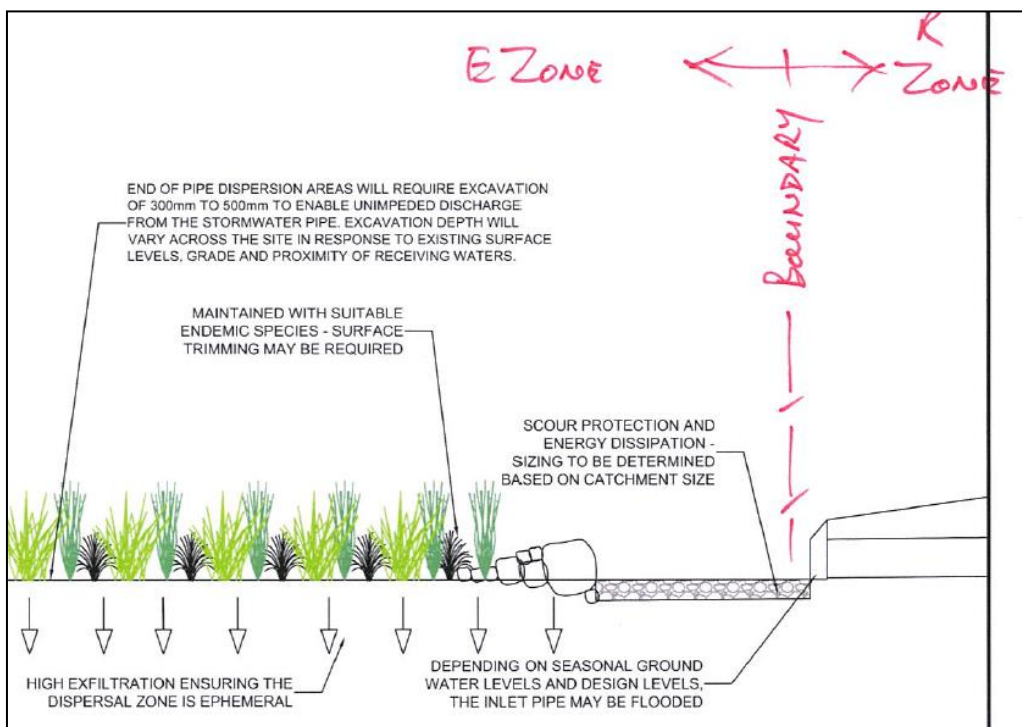
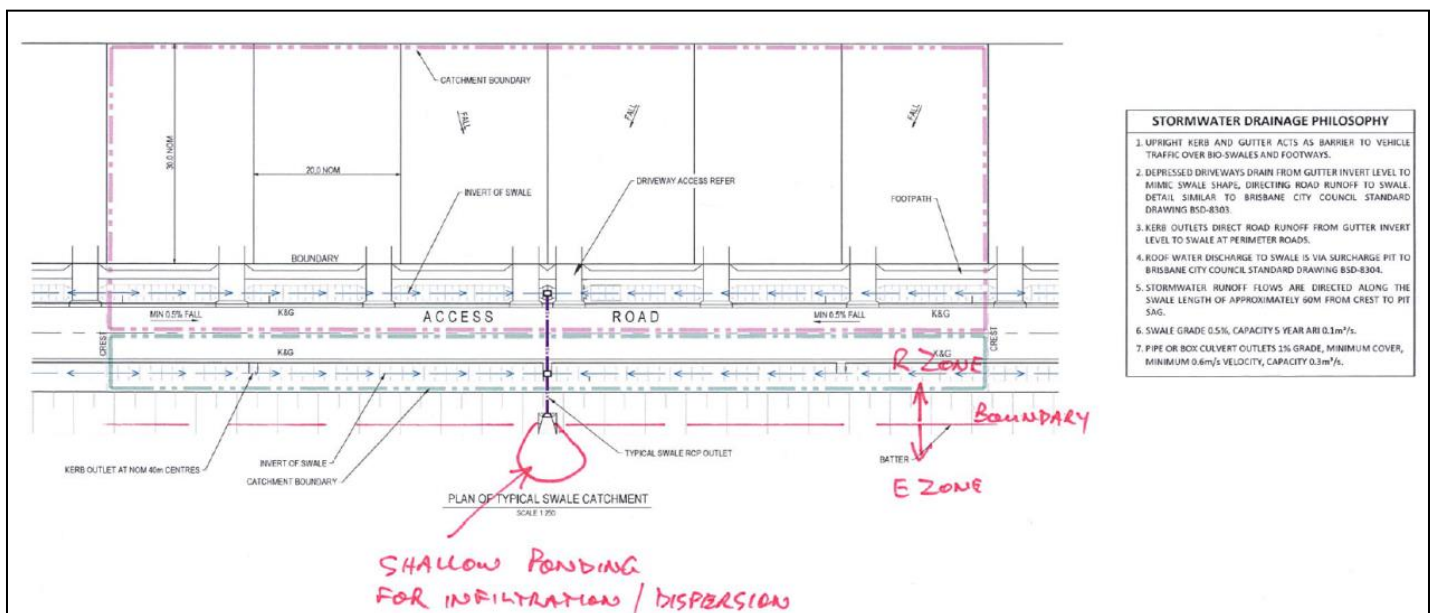
The planning proposal as sent to the DPE has been adopted by Council resolution. Any changes to the Planning Proposal would need to be affected by way of Conditions of Gateway Determination. Council Planning Staff have no authority to make any additional changes until such time as the Gateway is issued. Council notes that Ballina LEP 2012 has an enabling clause (Clause 7.10) for stormwater infrastructure with a reference to the SEPP (Infrastructure) 2007 for how to define the infrastructure. As such it is apparent that a precedent has been accepted in terms of resolving infrastructure issues by the Department of Planning and Environment in terms of the Standard Instrument Template. Further, the reference to the SEPP provides good guidance as to how such infrastructure could be defined.

The purpose of the draft clause was to enable necessary infrastructure and earthworks to occur within West Byron with consent. In doing so, this would also clarify any legal issues in terms of permissibility or characterisation in terms of definition. Trying to characterise such works as flood mitigation or some other permissible land use as ancillary development or the like provides no certainty to Council staff, the developers or the community. *(N.B In this regard the Departments attention is drawn to **Conservation of North Ocean Shores Inc v Byron Shire Council and Others** 167 LGERA 52; [2009] NSWLEC 69)*

2. **Residential Yields in the R2 Zone** – As opportunities will still be available for a number of medium density housing forms in the R2 Zone, it is unlikely there will be any major impacts on expected residential yields for West Byron. Significantly the draft provisions seek to provide a degree of differentiation with the R3 Medium Density Zone, whilst also ensuring that as lots are released in the

R2 Zone they are of a suitable size to achieve the objectives of the low density zone if utilised for dual occupancy or medium density housing purposes.

3. **Dwelling entitlements in the E3 Zone** – It is noted there is no minimum lot size for dwellings in the E3 Zone. A clause similar to Clause 4.2E(4) from Lismore LEP 2012 would serve the purpose of providing a restriction on any undersized lots that may be created from being used for residential purposes. Councils notes that Lot 2 DP 878549 and Lot 10 DP1143215 Melaleuca Drive are undersized E3 Zoned lots with dwellings upon them. Any additional clause may need to reflect their existing development rights in terms of residential use.
4. **Clarification of Councils Resolution in relation to works in the E Zones** – The Council Resolution to amend the draft infrastructure clause would prevent major works occurring within section of the main drain zoned E3 or E2. However, stormwater drainage, sewage or water infrastructure could cross over the E zoned land, or in terms of stormwater, for example discharge into the drain zoned E2 or E3. The Council resolution did not provide for any variation mechanisms within the clause. The following preliminary plans show how stormwater drainage works could cross over and discharge stormwater into the E Zones for infiltration/ dispersal.



Should you have any enquiries please contact Chris Larkin by phone (02) 6626 7136 or email chris.larkin@byron.nsw.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Ch. Larkin', with a stylized flourish at the end.

Chris Larkin
Major Projects Planner