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Richmond Valley Council  
Locked Bag 10  
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Att Tony McAteer

29 June 2022

Dear Mr McAteer

**Re Independent Town Planning Assessment  
Concept Development Application (DA) No. 2015/96  
Lot 163 DP 831052, Lot 276 DP 755624, Lot 277 DP 755624, Crown Foreshore  
Reserve, Crown road reserve between Lot 276 DP 755624 and Lot 163 DP  
831052 and Iron Gates Dr road reserve.  
240 Iron Gates Dr. Evans Head NSW**

This letter report is a town planning assessment of DA No. 2015/96 and is set out in the following manner.

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## **Attachments**

No. 1	Copy of the review report 2 Feb. 2019
No. 2a	Copy of the Assessment Briefing Report (24 August 2021) prepared by the DoPI&E to the NRPP and
No. 2b	Minutes of the NRPP meeting 13 Sept. 2021
No. 3a	Copy of Development Plans Stages 1 and 2
No. 3b	Copy of Development Plans Stages 1 and 2
No. 3c	Copy of Landscape Plans
No. 4	Copy of Survey Plans
No. 5a	Maps showing location of Photographs
No. 5b	Copy of Photographs
No. 6	Summary of the issues raised in submissions from the public
No. 7a	Copy of advice from State agencies Exhibit 4
No. 7b	Copy of advice from State agencies Exhibit 5
No. 8	Copy of legal advice
No. 9	Copy of correspondence calculation of credits for direct and indirect environment impacts
No. 10	Copy of article from the Sydney Morning Herald 9 July 2020

## SUMMARY

Richmond Valley Council (RVC) has engaged me to undertake a town planning assessment of Development Application (DA) No. 2015/96.

DA No. 2015/96 was lodged with RVC on 27 Oct. 2014.

DA No. 2015/96 is for the staged subdivision of land to create 175 residential and another 8 allotments for private environmental protection, public reserves, fire trails and infrastructure purposes.

The determining / consent authority is the Northern Regional Planning Panel (NRPP). Because of *State Environmental Planning Policy No. 71 – Coastal Protection* (SEPP No. 71), now repealed, the Minister must have adopted a Master Plan prior to the determination of the DA as the land was in a sensitive coastal location.

A draft Master Plan was lodged with the Department of Planning, Infrastructure and Environment (DoPI&E) on 30 Oct. 2015 and withdrawn on 19 July 2021 as issues relating to the draft Master Plan were not resolved between the Applicant and DoPI&E.

In July 2021, the DA was amended to a Concept DA pursuant to s. 4.23 of the *Environmental Planning and Assessment Act 1979* (EPA Act).

The Concept DA is an 'integrated' development pursuant to s. 4.8 of the EPA Act and was referred to the following State agencies for issue of General Terms of Approval:

- NSW Rural Fire Service - s.100B *Rural Fires Act 1997*, relating to bushfire safety
- NSW Dept of Premier and Cabinet, Heritage NSW, Aboriginal Cultural Heritage Regulation - s. 90 *National Parks & Wildlife Act 1974*, relating to an application for a Aboriginal Heritage Impact Permit for approval of an Aboriginal Heritage Impact Permit to partially remove a shell midden
- NSW Office of Water - s. 90 of the *Water Management Act 2000*, relating to water management work approval to dewater during construction and
- Natural Resources Access Regulator (NRAR) - s. 91 of the *Water Management Act 2000* relating to activity within 40m of the Evans River.

At the time of completion of this report the following agencies have either issued their General Terms of Approval or provided comments:

- NSW Dept of Premier and Cabinet, Heritage NSW, Aboriginal Cultural Heritage Regulation (21 Feb. 2022)
- NRAR (23 Feb. 2022) and
- NSW Rural Fire Service (16 June 2022).

The Concept DA was also referred to for comment to the following Federal and State agencies:

- Dept of Defence
- NSW Police Force
- NSW Dept of Planning Infrastructure and Environment
- NSW Dept of Planning Infrastructure and Environment - Biodiversity and Conservation Division of the Environment Energy and Science Group
- NSW Dept. of Primary Industries–Agriculture
- NSW Dept. of Primary Industries–Fisheries
- Transport for NSW
- North Coast Local Land Services and
- Dept of Planning Industry and Environment - Crown Lands.

The DA and Concept DA have been public exhibited on 5 occasions. In total RVC have received:

- 656 public submissions of objection
- 2 petitions of objection containing 947 signatories
- 23 'postcards' of objection and
- 249 public submissions in support.

The town planning assessment report identifies:

- the key attributes and constraints of the land
- generally describes the proposed subdivision development
- identifies key issues / concerns made in the submissions
- provides a commentary in regard the key issues / concerns and
- provides a town planning assessment having regard to the planning legislation and controls applying to the land and proposed development.

The key planning issues include; legal matters, social impact, economic impact, Aboriginal cultural heritage, acid sulfate soils and groundwater, biodiversity, bushfire, flooding, land contamination, riparian zone and fishery, roads and traffic generation, provision of water supply and sewerage, stormwater drainage, the design of the subdivision, the physical impact to the land, the provision of land use buffers, impacts of climate change and biting insects.

The assessment identifies potential for substantial adverse impact on the biodiversity values of the land including threatened species and Koala, the risk of bushfire, isolation because of flooding and potential for adverse flood impacts onto adjoining land.

The assessments of groundwater, acid sulfate soils and land contamination are not comprehensive and do not sufficiently address the requirements of the *Richmond Valley Local Environmental Plan 2012* (RVLEP 2012).

The Concept DA does not satisfy all the Master Plan (Development Control Plan) matters of Clause 20 of SEPP No. 71.

Whilst the Concept DA will generate land for housing and has a substantial positive economic impact it will have a substantial adverse environmental impact and will in perpetuity be subject to the risk of bushfire, therefore on balance it is recommended that it be refused.

To assist the reader in the following report I have:

- *highlighted in blue with italics* the titles of reports and any direct statements I have taken from the documentation provided in support of the Concept DA and
- *highlighted in red with italics* comments by State Government Departments, comments in specialists reports provided in objections and the legislation applying to the land and Concept DA and
- *highlighted in green with italics* comments in regard draft versions of this report prepared by professional staff of RVC.

# 1 Introduction

Initially Richmond Valley Council (RVC) requested me to undertake a peer review of RVC's processing of Development Application (DA) No. 2015/96. This request was extended to prepare a preliminary and then the final town planning assessment of the DA following resignation of the Officer dealing with the application.

I am a qualified Town Planner with 8 years' experience as a community development officer / town planner, development assessment town planner and strategic town planner in Local Government and 25 years' experience as a consultant Town Planner, working as a Sole Trader. I am a member of the Planning Institute of Australia.

In Feb. 2019 I completed a review of the process and documentation for DA No. 2015/96.

**Attachment No. 1** is copy of the review report 2 Feb. 2019.

# 2 Tasks Undertaken

The following tasks have been undertaken since I prepared my review report of 2 Feb. 2019:

- attended 5 face-to-face and 6 'on-line' meetings with RVC town planning and other staff involved in the development assessment process in the period 21 Oct. 2021 to 28 June 2022
- identified and prepared a summary of issues raised in submissions made following the public notification and exhibition of the DA and Concept DA, and collated those with the summary of issues in submissions I prepared following the exhibition of the DA as originally lodged and its 2<sup>nd</sup> amendment
- read and reviewed the documentation lodged with the DA and subsequent amendments of it
- attended a site inspection on 11 March 2020 with RVC staff, Mr Jon Stone Dept of Planning Infrastructure and Environment (DoPIE), Mr Darryl Anderson Consultant Town Planner for the Landowner / applicant and Mr Graeme Ingles the Landowner / applicant
- attended a site inspection on 15 Dec. 2021 with RVC staff, Mr Anderson, an Engineer from Mr Lachlan Prizeman Engineer of Arcadis Consulting Pty Ltd and Mr Ingles
- I again inspected the site and Iron Gates Rd on 14 April 2022 to confirm the location of photographs I took at the 15 Dec. 2021 site inspection and
- prepared this assessment report.

# 3 The Land to which the DA relates, Ownership and Applicant

## 3.1 The land

The DA form and Statement of Environmental Effects (SEE) identify the land the subject of the DA as:

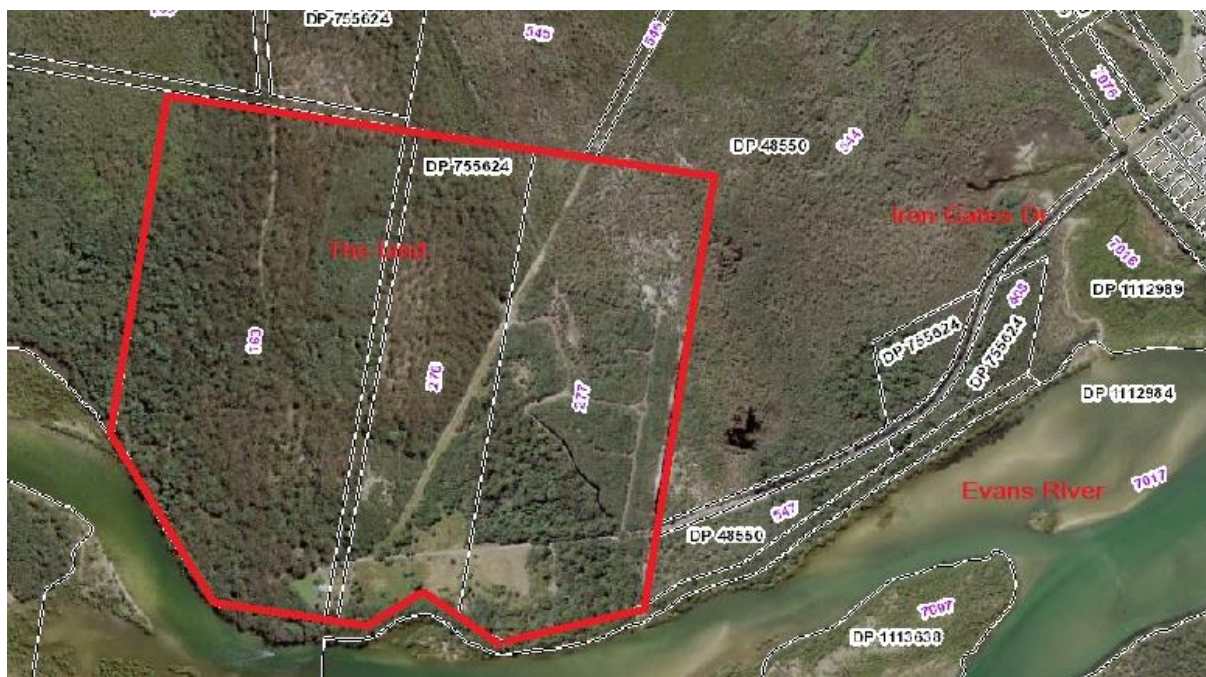
- Lot 163 DP 831052
- Lot 276 DP 755624 and
- Lot 277 DP 755624.

The DA also involves the following land:

- Part of the Crown road reserve between Lot 276 DP 755624 and Lot 163 DP 831052
- Part of a Crown Foreshore Reserve adjoining the Evans River and
- Iron Gates Dr road reserve.

**Maps No. 1** and **No. 2** show the land.





**Map No. 1 The land, adjoining land and Iron Gates Dr to Evans Head (Sixmaps 2021)**



**Map No. 2 The land and adjoining land (Sixmaps 2021)**

The Concept DA plans (refer to **Attachment No. 3a, No. 3b** and **No. 3c**) also show the land and adjoining land.

The total area of the land is approx. 72ha.

The 'total development footprint' is approx. 34.5ha, including the Crown road reserve and 2 proposed private environmental allotments of approx. 18.5ha located on land zoned C2.



Approx. 16ha is proposed to be developed for residential purposes ('proposed residential footprint'). This includes the land previously developed under DA No. 1992/149.

The Crown road reserve between Lot 276 DP 7555624 and Lot 163 DP 831052 is held under Enclosure Permit 40019 to Goldcoral Pty Ltd.

The consent of the Crown for development in road reserve was issued 16 Sept. 2019. The letter of consent indicates the consent will expire after a period of 12 months from the date of the letter if not acted on within that time. The revised DA was lodged 17 Sept. 2019.

The Crown letter of consent also requires that; *'if any modifications are made to the application (whether in the course of assessment, by conditions or consent or otherwise), it is your responsibility to ensure the modified development remains consistent with this landowner's consent'*.

The letter of consent lists the plans and various specialist report provided with the revised 2019 DA SEE. Whilst there is no change to the subdivision on the ground per se the DA has been amended to a Concept DA and the minor changes to the plans made. The Applicant has not provided copy of evidence notifying the Crown of amendment to the DA to a Concept DA.

South of and adjoining Lot 163 DP 831052 is a residual of Water Reserve (No. 28105) created in 1898.

The public works resumption for drainage works in 11/5/1894 F 3086 (schedule 5), shows that the road reserve limits should be approx. 48m east of the western boundary of Lot 276 DP 755624. The Crown owns the Water Reserve.

RVC have advised that; **the Water Reserve is a 'drainage reserve' created to enable widening of the river at the time the Tuckombil canal was dug near Woodburn to divert floodwaters from the Richmond River to the Evans River.**

The Water Reserve land is not part of the DA.

A Crown Foreshore Reserve runs along the foreshore of the Evans River on the southern side of boundary Lot 163 DP 831052, Lot 276 DP 7555624, and Lot 277 DP 7555624.

The Crown Foreshore Reserve is included in the DA and was proposed to be embellished / developed as part of the open recreational space for the subdivision. However, following concerns raised by Crown Lands in regard potential vegetation disturbance The DA was amended to remove all embellishment work and vegetation disturbance by DAC Planning Pty Ltd (27 July 2020).

All embellishment work and vegetation disturbance in the Crown Foreshore Reserve was removed from the draft Master Plan by DAC Planning Pty Ltd in the response to submissions to the draft Master Plan report (March 2020), copy of which was provided to RVC with the [Response to Submissions Varied Concept DA2015/0096](#) by DAC Planning Pty Ltd (Nov. 2021).

DAC Planning Pty Ltd in the response to submissions to the draft Master Plan report (March 2020) regarding the Crown Foreshore Reserve states:

*The issues raised by Crown Lands were discussed in the teleconference on 11 March 2020. In summary, Crown Lands maintained their concerns about the use and embellishment of the Evans River foreshore reserve (and potential related vegetation disturbance) to satisfy open space requirements.*

*To address these concerns, the Application Plans have been amended to remove all embellishment work (and vegetation disturbance) from the foreshore reserve.*

*It is a matter for Council and Crown Lands to determine whether or not the road reserve is transferred to RVC as the land is no longer required by Goldcoral Pty Ltd.*

RVC have advised:

- In letter dated 15 Dec. 2014 to Gold Coral Pty Ltd Council stated it was willing to take ownership of the allotment then proposed as a public reserve (Lot 183, 10,472m<sup>2</sup>). RVC did not indicate it would take on ownership of the Crown Foreshore Reserve.
- Since Dec. 2014 the proposed development has been amended significantly and the proposed public reserve now comprises Lot 141, (1,990m<sup>2</sup>) and Lot 142 (2,969m<sup>2</sup>).
- The Crown Foreshore Reserve is zoned C2 and RVC is not in the position to accept the transfer and ownership of it.

Notwithstanding the Applicants advice that all embellishment work and vegetation disturbance in the Crown Foreshore Reserve is removed from the DA and Concept DA:

- works and facilities are still shown on engineering and landscaping plans within or immediately adjoining it and
- there appears to be no resolution of its on-going ownership and management.

### **3.2 Land ownership**

The owner of:

- Lot 163 DP 831052
- Lot 276 DP 755624 and
- Lot 277 DP 755624.

is Goldcoral Pty Ltd, of which Mr Graeme Ingles is the Sole Director.

### **3.3 The Applicant**

The Applicant for the DA as lodged and 1<sup>st</sup> amendment was Goldcoral Pty Ltd C/- Planit Consulting Pty Ltd.

The Applicant following the 2<sup>nd</sup> and subsequent amendments to the DA is Goldcoral Pty Ltd with DAC Planning Pty Ltd as the town planning consultants.

## **4 DA lodgement, the Consent Authority and the Master Plan**

### **4.1 DA lodgement**

DA No. 2015/0096 was lodged with RVC on 27 Oct. 2014.

The DA was registered (No. 2014NTH020) with the Dept. of Planning on 29 Oct. 2014 as a matter to be determined by the Northern Joint Regional Planning Panel (now Northern Regional Planning Panel - NRPP).

On 26 July 2021 application was made to RVC pursuant to Clause 55 of the EPA Reg to amend the application to a Concept DA.

RVC was not in a position to accept the Concept DA amendment as the NRPP is the determining / consent authority.

The NRPP as the determining / consent authority received 2 Assessment Briefing Reports (17 August 2021 and 24 August 2021) prepared by the DoPI&E in regard amendment of the DA to a Concept DA and on 13 Sept. 2021 resolved to accept the amendment.

**Attachment No. 2a** and **No. 2b** is copy of the Assessment Briefing Report (24 Aug. 2021) prepared by the DoPI&E to the NRPP and minutes of the 13 Sept. 2021 meeting.

The amended Concept DA was uploaded to the DoPI&E portal on 10 Sept. 2021 and exhibited by RVC for the period 24 Sept. 2021 to 24 Oct. 2021.

Due to a clerical error in an advertising notice the Concept DA was re-exhibited by RVC for the period 18 Feb. 2022 to 19 March 2022.

#### **4.2 Consent authority**

The Concept DA is a 'coastal subdivision' greater than 100 allotments partially located in a 'sensitive coastal location'. The land, it is partially within 100m of; an estuary (Evans River), a national park (Bundjalung National Park) and wetland areas subject to the provisions of SEPP No. 14.

The Concept DA is regionally significant development pursuant to Clause 8 of Schedule 7 to *State Environmental Planning Policy (State and Regional Development) 2011* (SRD-SEPP 2011), now Chapter 2 *State Environmental Planning Policy (Planning Systems) 2021*.

Part 4 Division 4.2 Clause 4.5(b) of the *Environmental Planning and Assessment Act 1979* (EPA Act) establishes that the consent authority is the NRPP.

Schedule 2 of the EPA Act constitutes 'planning bodies' (NRPP) and establishes the operational parameters of them.

Part 15 Division 1 of the *Environmental Planning and Assessment Regulation 2021* (EPA Reg 2021) enables the NRPP to exercise the functions of the consent authority (RVC).

#### **4.3 Master Plan**

Clause 18 of *State Environmental Planning Policy No. 71 – Coastal Protection* (SEPP No. 71), now repealed, required at the time the DA was lodged, that a consent authority must not grant consent for (a) subdivision of land within a residential zone, ..., if part of all the land is in a sensitive coastal location, unless (d) the Minister has adopted a master plan for the land, or (e) the Minister, after consulting the Natural Resources Commission, has waived the need for a master plan.

A request to waiver the preparation of a Master Plan was made by the Applicant to the Dept. of Planning and Environment on 25 Oct. 2014.

The Dept. of Planning and Environment on 5 May 2015 advised the Applicant it declined to waiver the preparation of a Master Plan.

A draft Master Plan was lodged with the Department of Planning, Infrastructure and Environment (DoPI&E) on 30 Oct. 2015.

The DoPI&E in email to RVC (19 July 2021) advised

*An update for you on the Iron Gates Masterplan – The applicant has just withdrawn the masterplan from the Department (as per attached correspondence). This was in response to the Department indicating that the masterplan would be refused on the grounds that there were outstanding issues that had not been resolved.*

*In my recent discussions with the applicant, I believe their intent is to seek approval of the DA without the requirement for a masterplan, as per the Coastal Management SEPP 2018. The applicant advised they would be reaching out to council to discuss whether withdrawal of the DA is required, or whether the DA can be progressed as is without the masterplan requirement.*

*Can you please advise if you hear from the applicant regarding next steps on this one? Happy to provide ongoing PDU assistance if needed. Also happy to organise a catch up with the DPIE Northern Region team and Planning Panel team if that would be helpful?*

The draft Master Plan was withdrawn 19 July 2021 at which time the Applicant advised RVC that the DA was to be amended to a Concept DA pursuant to s. 4.23 of the EPA Act.

## 5 Adjoining land

Adjoining land is known as:

- Lot 544 DP 48550 and Lot 545 DP 48550 is located immediately to the north and northeast of the land and is owned by the NSW Aboriginal Land Council
- Lot 546 DP 48550 is located immediately to the north and an easement for electricity lines
- Lot 547 DP 48550 is located immediately to the east is owned by the Crown and
- Lot 162 DP 755624 is located immediately to the northwest is privately owned.

The adjoining lands have no dwellings erected upon them and in general contain environmentally significant vegetation with a high bushfire risk and wetlands.

**Maps No. 1 and No. 2** and the Concept DA plans (refer to **Attachments No. 3a, No. 3b** and **No. 3c**) show the land and adjoining land.

## 6 Land use zones

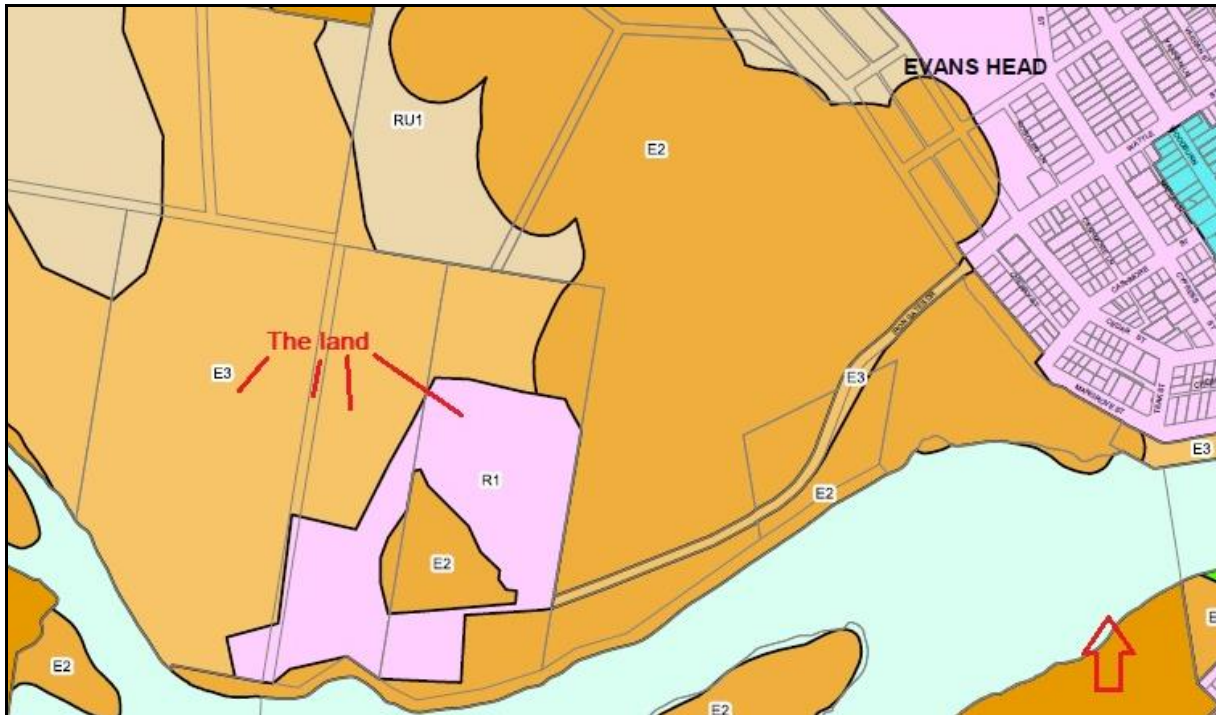
The land proposed to be developed is part zoned:

- RU1-Primary production
  - R1-General residential
  - C2-Environmental conservation (formerly E2- Environmental conservation) and
  - C3-Environmental management (formerly E3- Environmental management)
- under *Richmond Valley Local Environment Plan 2012* (RVLEP 2012).

The Evans River, south of the land, to high water mark is zoned W1-Natural Waterways.

Iron Gates Dr is zoned C3-Environmental management.

**Map No. 3** shows the zoning of the land.



Map No. 3 Land Use Zone Map (RVC LEP 2012)

The Concept DA plans (refer to **Attachments No. 3a, No. 3b** and **No. 3c**) show the proposed development Stages 1 and 2 and land use zones.

## 7 Land Attributes and Constraints

The Survey Plans (refer **Attachment No. 4**) and Development Plans (refer to **Attachments No. 3a, No. 3b** and **No. 3c**) show the land.

### 7.1 Current use

Lot 163 DP 831052 contains an occupied dwelling. The land in general comprises; a mix of cleared areas (which are periodically slashed) and areas of regrowth and remnant native vegetation which are largely unmanaged.

The land previously developed for urban purposes under DA No. 1992/149 includes; roads and water, sewerage and stormwater infrastructure which has not been maintained since c. 1993/94. Some of the stormwater infrastructure has failed and the land is slowly revegetating. There is no agricultural use of the land.

**Photographs No. 11 to 73** of **Attachment No. 5b** in part show the current use of land.

### 7.2 Access

Access to the land from Evans Head is via Iron Gates Dr. Iron Gates Dr connects to Wattle St, which intersects with Woodburn St. Woodburn St is a Main Road (MR 153) connecting Evans Head and Woodburn.

The entrance to the land is approx. 1.6km from the intersection of Woodburn St and Wattle St.



Iron Gates Dr is in a 20m road reserve and comprises a bitumen sealed carriageway approx. 6.6m to 7.0m wide. The road passes through and over (bridged) a wetland area for approx. 170m some 133m from the corner of Mangrove St and Iron Gates Dr.

The carriageway of Iron Gates Dr is not centrally located in the road reserve and 'runs' in sections very close to the southern boundary.

The bridge over the wetland area is approx. 18m long and with a 6.8m wide trafficable concrete deck. Richmond River Shire Council approved the bridge 1/8/1996 constructed in c. 1998 as part of DA No. 1988/111.

There is a 2m wide concrete footpath located on the southern side of the road carriageway from the intersection of Wattle and Cherry Sts to the entrance of the land.

RVC has advised; *that it has not formally taken ownership of the Iron Gates Dr road between the development site and Evans Head nor the bridge as an asset.*

Legal advice from Mills Oakley dated 5 March 2019 to the Landowner notes that; *'the road was given the name Iron Gates Drive by the Council via notice published in the NSW Government Gazette of 2 May 2003' and contends 'the Council has now, as the road authority, been responsible for the upkeep of the road for at least 16 years'.*

**Photographs No. 1 to 8 of Attachment No. 5b** show sections of Iron Gates Dr and the vegetation in the road reserve and on land adjoining it.

### **7.3 Land topography and height**

The height of the land varies from:

- approx. 3.0m(AHD) in the area previously developed for urban purposes under DA No. 1992/149 in the north-eastern part of the land
- approx. 3.0m to 4.0m(AHD) near the Crown Foreshore Reserve and Evans River to
- approx. 22.0m(AHD) on the top of a partially cleared ridgeline and associated sideslopes in the western part of the 'proposed residential footprint'.

Other than the partially cleared ridgeline and sideslopes, which has a slope of approx. 6° (10%) the land is generally flat.

**Photographs No. 11 to 18, 21, 22 and 24 to 31 of Attachment No. 5b** in part show the land previously developed under DA No. 1992/149.

**Photographs No. 43 to 47 and 51 of Attachment No. 5b** in part show the partially cleared ridgeline and associated sideslopes.

**Photographs No. 48 to 50 and 53 to 66 of Attachment No. 5b** in part show the land near the Evans River.

### **7.4 Soils**

The *Revised Engineering Services and Civil Infrastructure* by Arcadis Consulting Pty Ltd includes the results of geotechnical investigations undertaken by Geotech Investigations Pty Ltd in June 2015 at 10 test sites. Eight (8) of the test sites were in the land previously developed under DA No. 1992/149 and 2 in the cleared area near north of the Evans River.

In general the soils at 9 of the 10 test sites comprise; sand and trace silt and fine sands.



### 7.5 Biodiversity

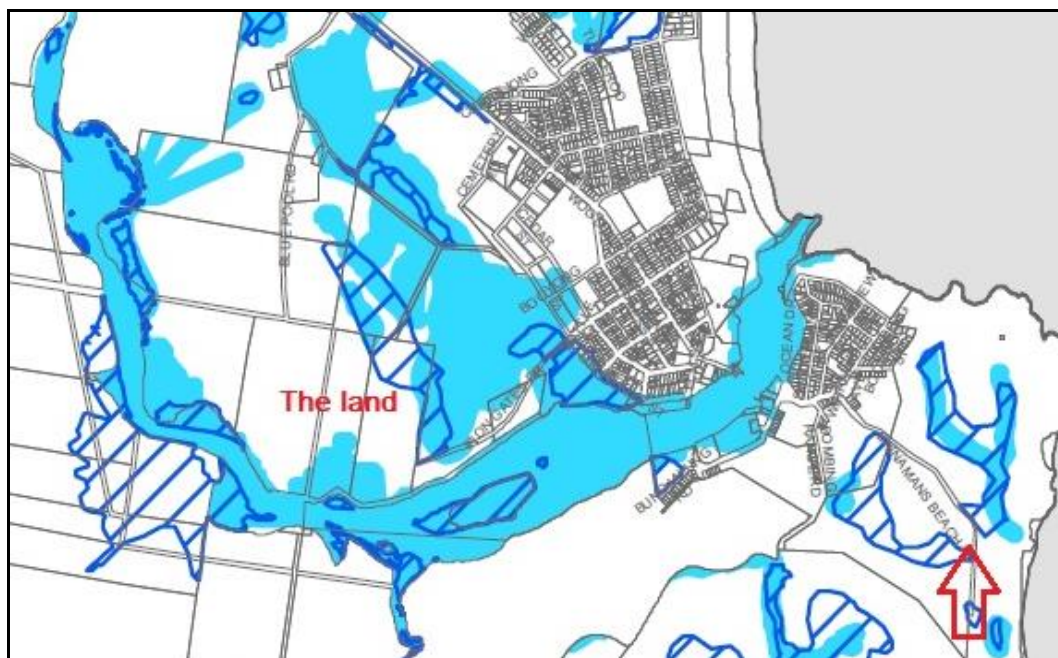
RVC's Development Control Plan 2012 provides information generally explaining the mapping for the RVCLEP 2012. Refer to Section 15.11.

The land is mapped on RVC LEP 2012 Terrestrial Biodiversity Map -Sheet BIO\_010 as having biodiversity values. Refer **Map No. 4**.



**Map No. 4 Terrestrial Biodiversity Map (RVC LEP 2012)**

Part of the land is mapped on RVC LEP 2012 Wetlands Map Riparian Land and Waterways Map Sheet \_CL1\_010 as containing key fish habitat (coloured blue) and wetlands (blue hatched). Refer **Map No. 5**.



**Map No. 5 Wetlands Map Riparian Land and Waterways Map (RVC LEP 2012)**

### Flora

The Concept DA SEE defers to and relies on the flora and fauna assessment titled *Terrestrial Flora and Fauna Assessment Report by Planit Consulting, August 2014 as amended by JWA Pty Ltd, July 2019* provided in the DA SEE.

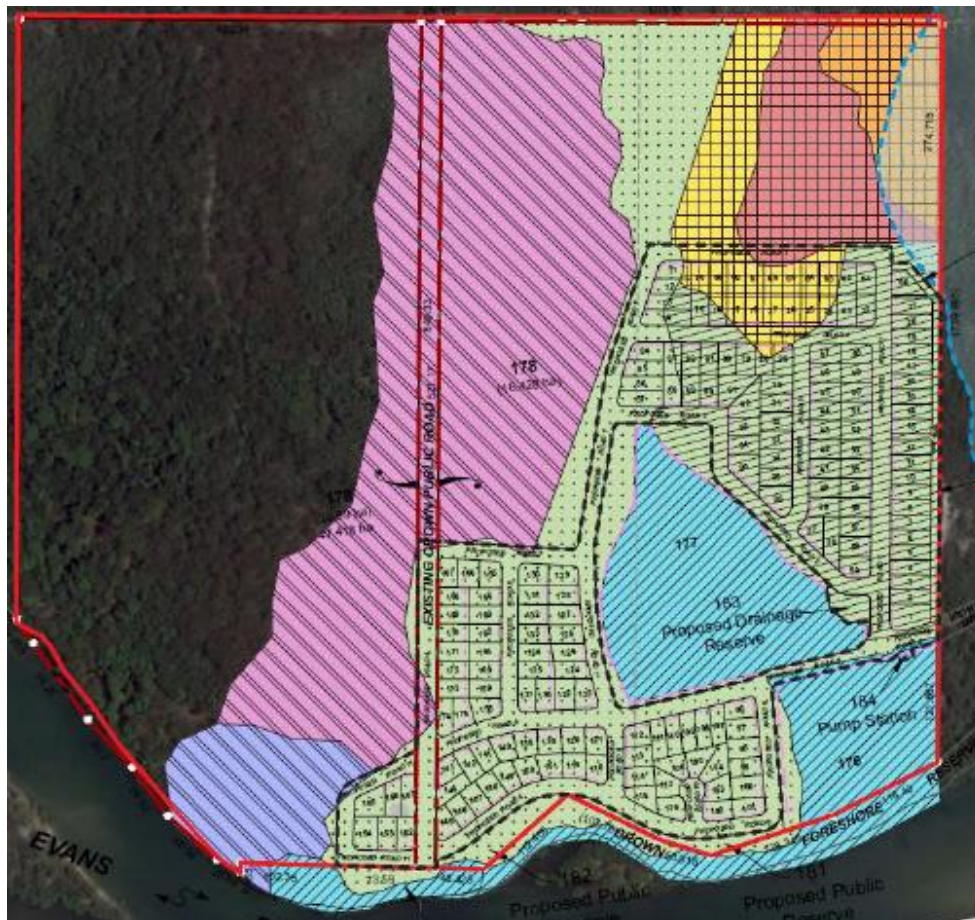
The *Terrestrial Flora and Fauna Assessment Report* identifies 4 broad vegetation categories on the land comprising:

1. *Disturbed*
2. *Heath*
3. *Eucalypt Forest and*
4. *Littoral Rainforest.*

Littoral Rainforest is an 'Endangered Ecological Community' (EEC) under the *Threatened Species Conservation Act 1995* (TSC Act), now repealed and 'Threatened Ecological Community' under the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act). The Littoral rainforest in the land is zoned C2.

The 4 broad vegetation categories were divided into 8 vegetation communities. The vegetation communities are shown on **Map No. 6** (copied from the *Terrestrial Flora and Fauna Assessment Report*) and comprise:

1. *Disturbed communities – open paddock / cleared land* (coloured green dotted)
2. *Disturbed communities – acacia regrowth* (coloured green cross hatched)
3. *Open dry heath with eucalypts / melaleuca open forest* (coloured yellow cross hatched)
4. *Open dry heath* (coloured crimson cross hatched)
5. *Wet heath with melaleuca* (coloured orange cross hatched)
6. *Eucalypt Forest – Corymbia intermedia, Eucalyptus planchoniana, E. tereticornis, E. signata and other Eucalypts* (coloured purple double hatched)
7. *Eucalypt Forest – E. tereticornis* (coloured dark blue double hatched)
8. *Littoral rainforest* (coloured blue cross hatched).



**Map No. 6 Vegetation communities (Planit Consulting, August 2014 as amended by JWA Pty Ltd, July 2019)**



**Photographs No. 11 to 73 of Attachment No. 5b** in part show the vegetation on the land.

The Native Vegetation Regulatory Map for the *Local Land Services Act 2013* shows that the land is 'excluded land' and that the Evans River and immediately adjoining land and vegetation to be 'vulnerable regulated land'.

#### Fauna

The *Terrestrial Flora and Fauna Assessment Report* identified on the land:

- Seventy four (74) species of birds, none of which were scheduled as Endangered or Vulnerable under the TSC Act
- Twenty five (25) species of mammals, 6 of which were scheduled as Vulnerable under the TSC Act
- Eight (8) species of reptiles, none of which were scheduled as Endangered or Vulnerable under the TSC Act and
- Four (4) species of amphibians, 1 of which was scheduled as Vulnerable under the TSC Act.

#### Koala

Investigation and impact assessment in regard Koala is provided in the following reports provided in the DA SEE:

1. *Terrestrial Flora and Fauna Assessment Report by Planit Consulting, August 2014 as amended by JWA Pty Ltd, July 2019*
2. *Koala Assessment Utilising the Regularised Grid-based Spot Assessment Technique by JWA Pty Ltd, April 2019 and*
3. *Amended Ecological Assessment (Iron Gates Drive) by JWA Pty Ltd, April 2019.*

The report *Koala Assessment Utilising the Regularised Grid-based Spot Assessment Technique by JWA Pty Ltd, April 2019* concluded:

*The assessment of current levels of Koala activity/usage over the site utilising the RGbSAT has identified areas of "low" level usage outside of the proposed development footprint (i.e. adjacent to the south-western corner). A small number of Koala faecal pellets were recorded under a total of three (3) trees in this portion of the site. As noted by Phillips and Callaghan (2011), where the results of a SAT site returns an activity level within the low use range, the level of use by the Koala is likely to be transitory. It is also noted that none of the faecal pellets recorded were considered to be fresh.*

*Based on the results of this assessment it is considered that the south-western portion of the subject site may be utilised occasionally by Koalas as they traverse the locality. The results indicate that a resident/sedentary population is not currently present on the site.*

#### Biodiversity values

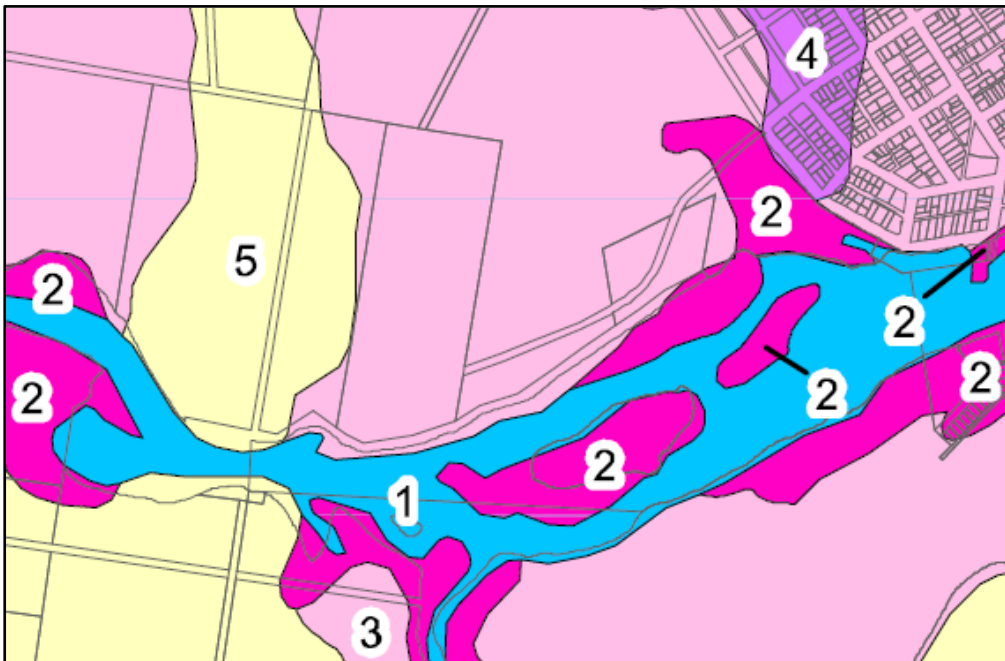
The Biodiversity Values Map and Threshold Tool for *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (now Chapter 2 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021*) and *Biodiversity Conservation Regulation 2017* shows that a north-eastern part of Lot 277 DP 755624 is mapped as having 'biodiversity value'. Refer to **Map No. 7**.



**Map No. 7 Biodiversity Values Map (Biodiversity Values Map and Threshold Tool)**

#### **7.6 Acid sulfate soils**

The land is mapped on RVC LEP 2012 Acid Sulfate Soils Map – Sheet ASS\_010 has having Classes 3 and 5 probability occurrence of containing acid sulfate soils. Refer to **Map No. 8**.



**Map No. 8 Acid Sulfate Soils Map (RVC LEP 2012)**

The *Revised Engineering Services and Civil Infrastructure Report* by Arcadis Consulting Pty Ltd includes a report of *Acid Sulfate Investigation and Soil Management Plan* by Arcadis Consulting Pty Ltd for the development of the 'proposed residential footprint'.

The report of the *Acid Sulfate Investigation and Soil Management Plan* relies upon and includes:

- the results of the geotechnical investigations undertaken by Geotech Investigations Pty Ltd

- a geotechnical investigation for a proposed drain (**NB** there is no plan provided showing location of test bores or drain) by Coffey Partners International Pty Ltd (12 Jan. 1995) and
- an extract of a report prepared by Outline Planning Consultants referring to investigations undertaken by Morse McVey & Assoc and D.J. Douglas & Partners Pty Ltd (1991) (**NB** there is no plan showing location of test bores provided).

The report of the *Acid Sulfate Investigation and Soil Management Plan* notes the absence of any actual or potential acid sulfate soils in the reports by Coffey Partners International Pty Ltd and Morse McVey & Assoc and D.J. Douglas & Partners Pty Ltd and that as construction involves substantial filling and minimal disturbance of the existing soils an acid sulfate management plan is not required.

The *Soil Management Plan* recommends that prior to placement of fill additional acid sulfate soils testing be undertaken to determine whether liming should occur over fill areas and that liming of the surface of the fill may also be required.

The *Soil Management Plan* states that should any potential acid sulfate soils be excavated during construction the material be placed in a containment area for treatment, that where necessary lime material shall be placed to intercept surface water infiltration to groundwater and that any leachate detected during excavation and earthworks be treated by liming prior to disposal or use on site as engineered fill.

The *Revised Engineering Services and Civil Infrastructure Report* includes a *Dewatering Management Plan* by Arcadis Consulting Pty Ltd for the installation of sewer and stormwater services. The *Dewatering Management Plan* identifies discharge water quality criteria and recommends establishment of background monitoring and monthly reporting to RVC.

RVC's Environmental Health Officer has provided the following comments:

- *the Acid Sulfate Investigation and Soil Management Plan has followed the Acid Sulphate Soil Assessment Guidelines issued by NSW Acid Sulfate Soils Management Advisory Committee August 1998*
- *The Assessment Guidelines state; "If based on the indicators in Table 2.3 and 2.4, it is clear that acid sulfate soils are not present, proponents can proceed with the works without further consideration of acid sulfate soil management considerations.*
- *If the works are of the type that are identified in the ASS Planning Maps as requiring preliminary investigation, a copy of the preliminary assessment and a letter from Council agreeing with the conclusion must be obtained prior to undertaking the works."*
- *Council has not issued a letter concurring with the preliminary assessment.*

## **7.7 Heritage**

### Aboriginal heritage

The Concept DA SEE includes an Aboriginal cultural heritage assessment report titled *Iron Gates Residential Subdivision Evans Head Revised Aboriginal Cultural Heritage Assessment by Everick Heritage Consultants, July 2019.*

The results of the assessment were:

- *Three (3) Aboriginal cultural heritage sites were identified within the Project Area comprising a shell midden and two lithic artefacts.*
- *The Project Area has seen significant ground disturbance. There is evidence that the entire proposed development footprint of the Project Area is highly disturbed (Sections 9 and 10).*
- *The adjoining E2 Environment Zone surrounded by the development footprint contains old growth forest of sufficient age for Aboriginal Modified Trees, although none were*

*found. There is the potential for undisturbed sub surface archaeological sites within the Environment Zone due to its apparent relatively undisturbed state.*

- There are no historic (non-Indigenous) listed cultural heritage sites or relics within the Project Area.*
- One historic place of local heritage significance (Thomas Paddon's Grave) was identified within the Project Area but outside of the area to be impacted by the proposed subdivision works.*

The shell midden is located partially within and 2 lithic artefacts are located just outside the land proposed to be developed.

The report makes the following Statement of Cultural Significance:

*Consultation with the Aboriginal community is ongoing. The following represents a preliminary statement of significance, to be confirmed with the Traditional Owners in the near future.*

*Through the course of community consultation, a picture has developed of the significance of the Project Area and surrounds to the Bandjalang and Aboriginal people of the wider Richmond Valley region. The following statement on cultural significance has been developed through telephone communications, community meetings and field surveys involving the Richmond Valley Aboriginal community. Their involvement provided the socio-cultural context of the area, encompassing past and present activities and sets the archaeological research into a broader cultural landscape (Ross et al. 2003:80).*

*The Iron Gates Project Area is situated within a greater, significant cultural landscape of the Bandjalang and the Aboriginal people of the Bundjalung region. The region was intensively occupied, and contained a number of important occupations, ceremonial and spiritual places. Historic sites of the Evans Head massacre of Bandjalang people are close by, as is the Iron Gates crossing point, stated to be a traditional route between either bank of the Evans River.*

*The Project Area contained or abutted a number of important resource areas, including wetlands, open woodland, closed rainforest and the marine resources of the Evans River. Sites IG01, IG02 and IG03 have been identified as being of moderate to high cultural significance. Site IG01 is a midden that is considered to be part of the Gumigudah campsite complex. Although relatively small and disturbed, the Traditional Owners have stated that this does not diminish the significance of the midden. Likewise, sites IG02 and IG03 have been identified as being of moderate to heritage significance due to their association with past lifeways of their people and the broader significance of the cultural landscape.*

The report makes the following Statement of Heritage Impact:

*Consultation with the Aboriginal community is ongoing. The following represents a preliminary statement of impact, to be confirmed with the Traditional Owners in the near future.*

*There have been conflicting views put forward by members of the Aboriginal community over the suitability of the development plans. Members of the Wilson family have generally raised substantial concerns over the development plans to date. Other Directors and knowledge holders of the Bandjalang have also acknowledged the impact of the Project on the cultural landscape, but are of the preliminary opinion that these impacts can be appropriately mitigated. Discussions with the Proponent over appropriate mitigation are ongoing; however, it is of note that there have been no suggestions that any negotiated outcomes would require an amendment of the proposed Lot layout.*



*Based on the research undertaken to date and the preliminary results of the consultation with the Aboriginal community, it is the Consultants opinion that there are no places of particular intangible heritage significance that will be impacted by the Project. The consultation process confirmed that there was a nearby known intangible cultural heritage within the surrounding cultural landscape but not within the immediate Project Area. The proposed environmental buffer along the Evans River bank appears to provide sufficient mitigation to heritage impacts associated with development in relatively close proximity to the Gumigudah campsite complex.*

*Traditional Owner representatives and Everick Archaeologists Tim Robins and Adrian Piper undertook a detailed inspection of the Project Area. This inspection identified three archaeological sites in highly disturbed contexts. Sites IG02 and IG03 will not be impacted by any activities associated with the Project. Likewise, the subsurface midden concentration in Site IG01 will be left undisturbed, while the surface expression will be subject to negotiated management practises as part of the proposed Aboriginal Heritage Impact Permit Application (AHIP). The shell scatter created by mechanical clearing around IG01 will be partially impacted under the current Development Application (Figure 8 Figure 9). This too will be managed through an AHIP.*

The report concludes that there are ‘*no cultural heritage constraints to the proposed subdivision*’, that however the land ‘*is situated within an important cultural landscape to the Bandjalang and the Aboriginal people of the Bundjalung region*’ and recommends 7 impact mitigation strategies ‘*to mitigate any impacts to the cultural significance of the region*’. Refer to Section 14.4.

#### European heritage

Lot 163 DP 831052 contains a heritage item, been the grave site of Thomas Paddon. The report by Everick Heritage Consultants, July 2019 contains a Conservation Management Plan for the grave.

No heritage items exist within Lot 276 DP 755624 or Lot 277 DP 755624 and the land is not in a heritage conservation area.

### **7.8 Land contamination**

The land historically has been used for agriculture (grazing or crops) including growing of bananas, referred to be Everick Heritage Pty Ltd (statement from Mr T McCormack 1991) in their response (23 Nov. 2021) to Master Plan issues raised by DoPI&E.

The *Revised Engineering Services and Civil Infrastructure Report* by Arcadis Consulting Pty Ltd includes a *Stage 1 Preliminary Contamination Assessment* by Arcadis Consulting Pty Ltd of the ‘proposed residential footprint’.

The *Stage 1 Preliminary Contamination Assessment* identifies that during the 1970’s and 1980’s sand mining took place on the land and as a result tailings dams may have concentrated monazite separated out as part of the mining process.

The *Stage 1 Preliminary Contamination Assessment* report includes a *Preliminary Radiation Site Assessment* by Arcadis Consulting Pty Ltd. The *Preliminary Radiation Site Assessment* included transects over the land previously mined and developed under DA No. 1992/149. Radiation levels (generally 0.0uSv/Hr to 0.3uSv/Hr) were all equivalent to background levels at 3 off-site background control locations. Some discrete areas had levels at 0.4uSv/Hr to 0.5uSv/Hr which are below Action Level Criteria for dwellings.

The *Stage 1 Preliminary Contamination Assessment* report recommends further surface monitoring in areas where works are more than 1m deep below current surface levels.

The *Acid Sulfate Investigation and Soil Management Plan* indicates that excavation and construction of sewer and stormwater services were expected at a maximum depth of 1.5m.

The land is not within the 200m investigation buffer of any former cattle tick dip site. However the land has historically been used for agricultural purposes and the assessment does not include any systematic soil or groundwater sampling for potential contamination.

RVC's Environmental Health Officer has advised the following:

*The Stage 1 Preliminary Contamination Assessment focused on the development area being Lots 276 and 277. There are 6 parcels proposed on Lot 163 where the existing dwelling is sited. This portion of the development was not included in the Preliminary Contamination Assessment prepared by Arcadis, but given the age of the dwelling and the potential use of lead paint, hazardous building materials, termite control etc, a detailed site investigation should be required for that portion of the development.*

*A review of historical imagery was conducted and the image below from 11/7/1958 revealed a clearing and some type of cropping activity on Lot 163, the topography and aspect of the land suggest bananas could have been grown here.*



*The identified activity is outside the proposed development and there is no proposal to disturb the land in that area.*

## **7.9 Watercourses and wetlands**

### **Watercourses**

The Crown Foreshore Reserve separates the land from the Evans River. The distances between the southern boundary of the land and Crown Foreshore Reserve to the Evans River are variable as the river bank has eroded over time.

Three (3) previously constructed drains (2 on the eastern boundary and 1 through the centre of the land) direct surface water from the central and north-eastern parts of the land to the Evans River. These drains were constructed as part of the works for DA No. 1992/149.

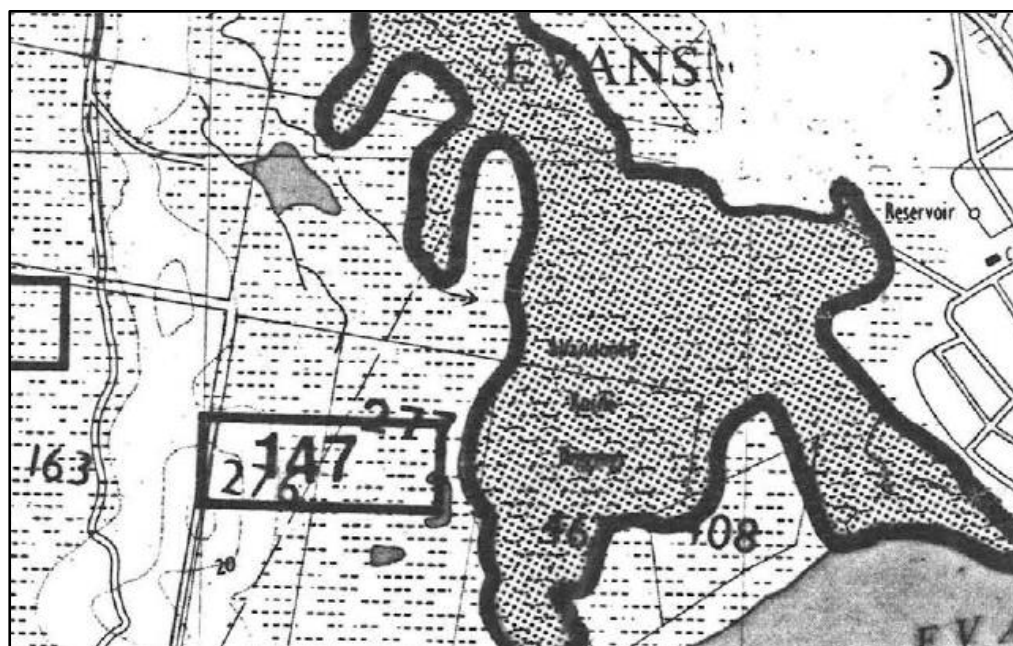
**Photographs No. 9, 19, 20, 32 and 33 of Attachment No. 5b** in part show the drain on the eastern boundary proposed to be filled.

**Photographs No. 10 and 74 of Attachment No. 5b** in part show the drain on the eastern boundary from the entrance of the land to the Evans River proposed to be retained as an open structure.

**Photographs No. 15 and 23 of Attachment No. 5b** in part show the southern and northern ends of the drain in the centre of the land proposed to be filled.

### **Wetlands**

The mapping for the now repealed *State Environmental Planning Policy No. 14 - Wetlands* (SEPP No. 14), shows that a north-eastern part of Lot 277 DP 755624 is a wetland area. Refer to **Map No. 9**.



**Map No. 9 Wetlands Map (SEPP No. 14)**

The mapping for the *State Environmental Planning Policy (Coastal Management) 2018* (CM-SEPP 2018) (now Chapter 2 *State Environmental Planning Policy (Biodiversity and Conservation) 2021*) shows that a north-eastern part of Lot 277 DP 755624 is mapped as a wetland and that the north-eastern part of the Lot is within a 'proximity area for coastal wetlands'.

The recent mapping (refer to **Map No. 10**) is for comparative purposes and shows the wetland areas in better detail in relation to Iron Gates Dr. .



## 7.10 Flooding

The *Revised Engineering Services and Civil Infrastructure Report* by Arcadis Consulting Pty Ltd includes a copy of the flood study titled *'Evans River Flood Study – Final report' by BMT WBM November 2014*, together with a *letter report prepared by BMT WBM dated 22 Aug. 2014* providing an assessment of runoff from the development to determine whether on-site detention of runoff is required to protect downstream properties.

RVC's Development Engineer has advised *that all flood events should use % AEP*, therefore:

- the 1 in 20 year ARI flood event = 5% AEP
- the 1 in 50 year ARI flood event = 2% AEP
- the 1 in 100 year ARI flood event = 1% AEP and
- the 1 in 500 year ARI flood event = 0.2% AEP.

The Evans River Flood Study was undertaken by RVC and is not specific to the land and shows it is not subject to the 1 in 100 year ARI (1% AEP) flood event. However the Evans River Flood Study shows that sections of Iron Gates Dr (particularly near wetland areas), without climate change, are in a 'high hazard' area, with flood levels between 2.4m(AHD) and 2.5m(AHD), likely to cause inundation to depths of 0.5m to 0.75m.

The Evans River Flood Study shows lower sections of the land including internal roads constructed under DA No. 1992/149 and all of Iron Gates Dr is subject to inundation in the 0.2% AEP flood event.

The Evans River Flood Study shows that all of Iron Gates Dr will be subject to inundation in the climate change 1% AEP flood event to be 3.0m(AHD).

Allotments are proposed to be filled to a minimum of 3.3m(AHD) to enable dwelling finished floor levels above the 'flood planning level' of 3.6m(AHD). The majority of allotments are filled or excavated to a height greater than 3.6m(AHD). Refer to Section 10.4.3 and **Table No. 3**.



**Photographs No. 84 to 87 of Attachment No. 5b** in part show the flooding of the Iron Gates Dr bridge over the wetland and drain on the eastern boundary because of the Feb. / March 2022 flood event.

#### **7.11 Groundwater**

The *Geotechnical Investigation Results by Geotech Investigations Pty Ltd* at 9 of the 10 test sites record a standing water table occurring between 0.5m and 2.7m below surface level.

The test pit P10 in the cleared area near north of the Evans River could not be completed due to the occurrence of a perched water table. The test pit P6, also in the cleared area near north of the Evans River, showed a water table occurring at 2.7m below surface level.

No specialist groundwater investigation of the proposed 16ha 'proposed residential footprint' has been undertaken.

#### **7.12 Bushfire**

The mapping of bush fire prone vegetation identifies that the land contains Category 1 and Category 2 bushfire prone vegetation and is within the 30m and 100m 'buffers' to mapped Category 1 and Category 2 vegetation. **Map No. 11** shows the mapping of bush fire prone vegetation.



**Map No. 11 Bushfire Vegetation Map (NSW planning portal 2021)**

The Concept DA SEE includes 2 bushfire assessments by Bushfire Risk Pty Ltd titled:

1. *Revised Consolidated Bushfire Report, Version 3, 12 July 2019* and
2. *Bushfire Assessment – Additional Information Response, Iron Gates Drive, Version 1, 8 March 2017.*

#### **7.13 Coastline**

The entrance to the land at Iron Gates Dr is approx. 2.2km south-west and landward of the nearest coastline at the mouth of the Evans River.

#### **7.14 Visual character**

Parts of the land are visible from the Iron Gates Dr entrance, from sections of the Evans River to the south immediately adjoining it and higher sections of land further south of the river.

#### **7.15 Services**

##### *Water supply*

There is a reticulated water service to the land previously developed under No. 1992/149.

##### *Wastewater disposal*

There is sewerage infrastructure within the land previously developed under DA No. 1992/149.

The existing dwelling on the land has an on-site wastewater management system.

##### *Stormwater disposal*

The land previously developed under DA No. 1992/149 contains some stormwater drainage infrastructure (some of which is collapsing / failing) which drains surface to the 2 constructed open drains and ultimately to the Evans River.

##### *Electricity*

The existing dwelling on the land is connected to the electricity grid. A transmission line traverses the land.

## **8 Town Planning Land Use History**

The town planning / land use history of the land is described in Section 14 (page 21-24) of my 2 Feb. 2019 review report. Refer to **Attachment No. 1**.

## **9 Changes and amendments to the DA and Additional Information Requests**

### **9.1 Amendments to the DA**

Originally the DA was for:

- 178 residential allotments
- 3 public reserve allotments
- 2 fire trail allotments and
- 3 residual allotments.

There have been a number of amendments to the layout of the proposed subdivision and supporting documentation.

The amendments up to 2 Feb. 2019 are described in Section 9 (page 8-11) of my review report. Refer to **Attachment No. 1**.

The 1<sup>st</sup> amendment was lodged with RVC on 29 Oct. 2015. There were a number of changes to the configuration of roads and allotments and several specialist supporting reports were amended.

The engineering report and plans provided as Attachment C of the 1<sup>st</sup> amendment were again amended 20 May 2016.



A proposed change to the DA was lodged with RVC on 10 Sept. 2018 as an addendum to the 1<sup>st</sup> amendment. There were again several changes to the configuration of roads and allotments and to the numbering of allotments.

The proposed 10 Sept. 2018 change to the DA sought to include the upgrade of Iron Gates Dr as part of the DA. A s. 138 application under the *Roads Act 1993* was included in the requested amendment. The s. 138 application was not accepted and required to be withdrawn by RVC and to be submitted following determination of the DA.

The proposed 10 Sept. 2018 change to the DA was not accepted and RVC required (7 Nov 2018) that the application be consolidated into a comprehensive single bundle of documents.

Another proposed change was lodged with RVC on 17 Jan. 2019. An amended DA Form and landowners consent was provided and again several changes made to the configuration of roads, allotments and to the numbering of allotments. The upgrade of Iron Gates Dr was included as part of the DA.

The proposed 17 Jan. 2019 change to the DA was not accepted and RVC and on 17 Sept. 2019 a revised SEE (July 2019) was lodged with RVC (2<sup>nd</sup> amendment) and further amendments made to it on 16 July 2020 and 27 July 2020.

RVC were advised of the final amendment to the DA on 19 July 2021. The final amendment followed the withdrawal of the draft Master Plan and amended the DA to a Concept DA to be undertaken in 2 stages. As there were minor changes to the numbering of allotments.

## **9.2 Additional information requests**

RVC's requests for additional information are described in Section 10 (page 13) of my review report. Refer to ***Attachment No. 1***.

No further information requests have been made by RVC and the Concept DA is to be assessed having regard to the current documentation identified in Section 10.2 and issues raised by submitters during the periods of exhibition of the DA and Concept DA.

# **10 General Description of Concept DA, Plans showing Concept DA, Documentation and Summary of Key Works**

## **10.1 General Description of Concept DA**

The amended Concept DA is for a 2 staged urban residential subdivision / development of the 'proposed residential footprint' within the land.

### **Stage 1**

The Concept DA Stage 1 generally comprises:

- removal of all vegetation within the 16ha 'proposed residential footprint'
- removal of the previously developed road and sewerage and drainage infrastructure
- bulk earthworks to create level allotments
- provision of internal roadworks and drainage
- re-use and provision of new water and sewer infrastructure including service connections to the Stage 2 allotments
- provision of electricity and communications infrastructure including service connections to the Stage 2 allotments
- provision of street tree planting

- removal of all vegetation within the Iron Gates Dr road reserve other than on land within the 2 designated wetland areas
- roadworks in Iron Gates Dr
- creation of 135 residential allotments (Lot 1 to Lot 135) with areas between 600m<sup>2</sup> and 959m<sup>2</sup>
- creation of 2 allotments (Lot 136, 2.19ha and Lot 137, 4.86ha) over land zoned C2 to be retained by the Landowner
- creation of a residual allotment (Lot 138) of 47.42ha
- creation of 2 allotments (Lot 139, 570m<sup>2</sup> and Lot 140, 2,842m<sup>2</sup>) for the purposes of bushfire trails to be dedicated to RVC as public reserves
- creation of 2 allotments (Lot 141, 1,990m<sup>2</sup> and Lot 142, 2,969m<sup>2</sup> and) for recreation / open space purposes to be dedicated to RVC as public reserves adjoining the Crown Foreshore Reserve beside the Evans River
- creation of 1 allotment (Lot 143, 1,124m<sup>2</sup>) for stormwater drainage purposes
- creation of 1 allotment (Lot 144, 127m<sup>2</sup>) for a sewer pump station and
- creation of 3 allotments (Lot 145, Lot 146 and Lot 147) to be subdivided in Stage 2.

### Stage 2

The Concept DA Stage 2 will comprise the subdivision of Stage 1 Lot 145, Lot 146 and Lot 147 to create 40 allotments (Lots 148 to 187). No works will be required as subdivision infrastructure will be provided within Stage 1.

The residual allotment (Lot 138) will have a dwelling entitlement. The DA SEE provides no detail in regard potential location of a future dwelling, assessment of bushfire threat, assessment for potential land contamination or provision for on-site disposal of wastewater.

## **10.2 Plans showing the Concept DA**

The plans showing Stage 1 of the proposed subdivision development include:

1. *'Concept proposals for subdivision, clearing, earthwork, roadworks, drainage, upgrading of Iron Gates Drive, infrastructure and embellishment of proposed public reserves – DA 2015/0096 Stage 1 & 2 Iron Gates – Evans Head'* and comprise the following plans prepared by Landpartners:
  - a. *BRJD6396.100-55 Sheet 1 of 2 Revision 1 dated 19.07.2021 (zone overlay)*
  - b. *BRJD6396.100-55 Sheet 2 of 2 Revision 1 dated 19.07.2021 (zone overlay)*
  - c. *BRJD6396.100-55 Sheet 1 of 2 Revision 1 dated 19.07.2021*
  - d. *BRJD6396.100-55 Sheet 2 of 2 Revision 1 dated 19.07.2021*
2. *'Plan of proposed subdivision – DA 2015/0096 Stage 1 Iron Gates – Evans Head'* and comprise the following plans prepared by Landpartners:
  - a. *BRJD6396.100-014 Sheet 1 of 2 Revision T dated 19.07.2021 (zone overlay)*
  - b. *BRJD6396.100-014 Sheet 2 of 2 Revision T dated 19.07.2021 (zone overlay)*
  - c. *BRJD6396.100-015 Sheet 1 of 2 Revision Q dated 19.07.2021*
  - d. *BRJD6396.100-015 Sheet 2 of 2 Revision Q dated 19.07.2021*

DAC Planning Pty Ltd (27 July 2021) advised that Stage 2 is only shown as concept proposals and that they are identical to the layout shown on the following amended plans prepared by Landpartners provided to RVC on 27 July 2020:

- a) *BRJD6396.100-014 Sheet 1 of 2 Revision P dated 23.03.2020 (zone overlay)*
- b) *BRJD6396.100-014 Sheet 2 of 2 Revision P dated 23.03.2020 (zone overlay)*
- c) *BRJD6396.100-015 Sheet 1 of 2 Revision N dated 23.03.2020*
- d) *BRJD6396.100-015 Sheet 2 of 2 Revision N dated 23.03.2020*
- e) *BRJD6396-100-45-2 Sheet 1 of 1 dated 23.03.2020 (showing building envelopes and bushfire setbacks)*

**Attachment No. 3a** is copy of the Stage 1 and Stage 2 subdivision plans and **Attachment No. 3b** is copy of the concept proposal Stage 2 subdivision plans.

### **10.3 Concept DA documentation**

The Concept DA is supported by the following specialist assessments and documentation:

1. *Revised Statement of Environmental Effects (SEE)* prepared by DAC Planning Pty Ltd (July 2019) which was lodged with RVC on 17 Sept. 2019 and included the following appendices:
  - Appendix 1:
    - a) *Proposed Subdivision Plans (Sheets 1 of 2 and 2 of 2), Revision M, 27 June 2019* – LandPartners **(NB these plans were amended 27 July 2020 to Revision N and are in part relied upon to show Stage 2 of the Concept DA)**
    - b) *Proposed Subdivision Plans (Sheets 1 of 2 and 2 of 2) with Air Photo Overlay, Revision H, 27 June 2019* – LandPartners **(NB these plans were amended 27 July 2020 to Revision i and are in part relied upon to show Stage 2 of the Concept DA)**
    - c) *Proposed Subdivision Plans (Sheets 1 of 2 and 2 of 2) with Zone Overlay, Revision O, 27 June 2019* – LandPartners **(NB these plans are superseded by those provided 26 July 2021 for the Concept DA)**
    - d) Engineering Plans, Iron Gates Drive Upgrade Work, Revision 02 – Arcadis, 21 August 2017
  - Appendix 2: *Iron Gates Residential Development Revised Engineering Services and Civil Infrastructure Report* - Arcadis Consulting Pty Ltd, 23 July 2019. **(NB the report has not been revised / up-dated to reflect the Concept DA)**

The report contains the following:

    - Appendix A - Engineering drawings **(NB The engineering plans general, earthwork, roadworks and stormwater and combined services dated 18.07.2019 have not been revised / up-dated to reflect the Concept DA subdivision plans)**
    - Appendix B - Dial before you dig search results
    - Appendix C - BMT WBM Flood report and OSD study
    - Appendix D - Geotechnical investigation results
    - Appendix E - Additional RFI response 11/5/2016
    - Appendix F - Amended subdivision plans **(NB these plans are superseded by those provided 26 July 2021 for the Concept DA)**
    - Appendix G - Water network capability assessment
    - Appendix H - Sewer network capability assessment
    - Appendix I - Traffic report **(NB The report has not been revised / up-dated to reflect the Concept DA subdivision plans)**
    - Appendix J - Stage 1 preliminary contamination assessment
    - Appendix K - Acid sulfate investigation and soil management plan
    - Appendix L - Dewatering management plan
    - Appendix M - Electrical and communications supply availability
    - Appendix N - Site Analysis Plan and Design Response Plan, Issue 01, 17 July 2019
  - Appendix 3: *Revised Consolidated Bushfire Report – Bushfire Risk Pty Ltd, Version 3 - 12 July 2019* **(NB the report provides a bushfire assessment having regard to the guidelines *Planning for Bushfire Protection 2006* and has not been revised / up-dated to reflect the Concept DA. *Planning for Bushfire Protection 2019* is the current guideline.)**

- Appendix 4: *Bushfire Assessment – Additional Information Response, Iron Gates Drive – Bushfire Risk, Version 1 - 8 March 2017* (NB the report provides a bushfire assessment having regard to the guidelines *Planning for Bushfire Protection 2006*. *Planning for Bushfire Protection 2019* is the current guideline.)
- Appendix 5: *Terrestrial Flora and Fauna Assessment – Planit Consulting, August 2014 as amended by JWA Pty Ltd, July 2019* (NB the report has not been revised / up-dated to reflect the Concept DA)  
The report contains the following:
  - Attachment 1 - Subdivision plans
  - Attachment 2 - Response to information requests
  - Attachment 3 - Summary of amendments to the Planit (2014) report
  - Attachment 4 - Koala assessment utilising the regularised grid-based spot assessment technique (JWA 2019)
  - Attachment 5 - Iron Gates crib wall landscape details (Planit 2016)
  - Attachment 6 - Biodiversity offset calculations and relevant correspondence
  - Attachment 7 - OEH confirmation of proposed biodiversity offset package
- Appendix 6: *Amended Ecological Assessment (Iron Gates Drive) – JWA Pty Ltd, April 2019*  
The report contains the following:
  - Appendix 1 - Response to relevant information requests
  - Appendix 2 - Summary of amendments to report
  - Appendix 3 - Plant species list
  - Appendix 4 - Fauna species list
  - Appendix 5 - Likelihood of occurrence of threatened fauna species in the study area
  - Appendix 6 - Biodiversity offset calculations and relevant correspondence
  - Appendix 7 - OEH confirmation of proposed biodiversity offset package
  - Appendix 8 - Key threatening processes
- Appendix 7: *Statement of Landscape Intent – Plummer & Smith, Issue D - 17 July 2019* (NB Page 9 showing the Riverfront Park Layout of the Statement of Landscape Intent was withdrawn with the 27 July 2020 amendment due to potential riparian vegetation impacts raised by Crown Lands)  
The Riverfront Park Layout was replaced by the following *Landscape Plans* prepared by Landpartners:
  - a) BRJD6396.100-050 Sheet 1 of 4 Revision 2 dated 19.03.2020
  - b) BRJD6396.100-050 Sheet 2 of 4 Revision 2 dated 19.03.2020
  - c) BRJD6396.100-050 Sheet 3 of 4 Revision 2 dated 19.03.2020
  - d) BRJD6396.100-050 Sheet 4 of 4 Revision 2 dated 19.03.2020

**Attachment No. 3c** is copy of the landscape plans.

- Appendix 8: *Revised Aboriginal Cultural Heritage Assessment – Everick Heritage Consultants, July 2019* (NB the report has not been revised / up-dated to reflect the Concept DA)  
The assessment report contains the following:
  - Appendix A - Public notice
  - Appendix B - AHIMS search results
  - Appendix C - Iron Gates community consultation brief
  - Appendix D - Iron Gates proposed mitigation strategy
  - Appendix E – Iron Gates AHIP application
  - Appendix F – Paddon grave conservation management plan

- Appendix 9: *Letters of Advice – Mills Oakley, 16 October 2016, 23 October 2016 and 5 March 2019*
  - Appendix 10: *Contour Level & Detail Survey (Iron Gates Drive) – Robert A Harries, 23 July 2014*
  - Appendix 11: *SEPP14 Coastal Wetlands Map – JWA Pty Ltd, 31 October 2016*
  - Appendix 12: *Revised Biting Insect Impact Assessment – Mosquito Consulting Services Pty Ltd, 10 July 2019 (NB The report has not been revised / up-dated to reflect the Concept DA)*
  - Appendix 13: *Demolition Plan – Planit Consulting, Undated* (Annexure H of 23 October 2015 RFI Response)
  - Appendix 14: *Authority for DAC Planning Pty Ltd to Act on Behalf of Goldcoral Pty Ltd dated 22 February 2019*
  - Appendix 15: *Email from Crown Lands* dated 29 March 2019 in Relation to the Status of Existing Road Reserves and the Evans River Foreshore Reserve and Letter from Crown Lands dated 24 February 2014
  - Appendix 16: *Email from Richmond Valley Council* dated 6 June 2019 in Relation to the Status of Water Reserve WR28105
  - Appendix 17: *Original Planit Consulting Plan of Subdivision and Zoning Plan, Rev 3, 7 October 2014*
  - Appendix 18: *Social & Economic Impact Assessment, Hill PDA, July 2019 (NB The report has not been revised / up-dated to reflect the Concept DA)*
  - Appendix 19: *Evans Head Airport OSL Plan, Rev B – GHD, 12 April 2005*
  - Appendix 20: *Evans Head Airport ANEF Contours, Rev C – GHD, 21 April 2005*
  - Appendix 21: *Crime Prevention Through Environmental Design Assessment, Stuart Crawford, 29 June 2019 (NB The report is for a formerly proposed 184 lot subdivision has not been revised / up-dated to reflect the Concept DA)*
  - Appendix 22: *Iron Gates Waterfront Layout – Planit Consulting, Undated (Annexure G of 23 October 2015 RFI Response) (NB The plan has not been withdrawn or revised to reflect the Riverfront Park Layout was replaced by the landscape plans prepared by Landpartners)*
  - Appendix 23: *Revised Development Application Form dated 23 July 2019*
2. DAC Planning Pty Ltd in letter dated 27 July 2020 made amendment to the DA to include the following:
- *A stormwater management plan for Iron Gates Dr* prepared by Arcadis 20 March 2020



- Revised subdivision plans comprising:
  - a) *BRJD6396. 100-013 Proposed Subdivision Plans (Sheets 1 of 2 and 2 of 2) with Air Photo Overlay, Revision i, 23.03.2020 by LandPartners* **(NB These plans are superseded by those provided 26 July 2021 for the Concept DA)**
  - b) *BRJD6396. 100-014 Proposed Subdivision Plans (Sheets 1 of 2 and 2 of 2) with Zone Overlay, Revision P, 23.03.2020 by LandPartners* **(NB These plans are superseded by those provided 26 July 2021 for the Concept DA)**
  - c) *BRJD6396. 100-015 Proposed Subdivision Plans (Sheets 1 of 2 and 2 of 2), Revision N, 23.03.2020 by LandPartners* **(NB These plans are in part relied upon to show Stage 2 of the Concept DA)**
- Amended plans showing the *Riverfront Park Layout* by Landpartners:
  - a) *BRJD6396.100-050 Sheet 1 of 4 Revision 2 dated 19.03.2020*
  - b) *BRJD6396.100-050 Sheet 2 of 4 Revision 2 dated 19.03.2020*
  - c) *BRJD6396.100-050 Sheet 3 of 4 Revision 2 dated 19.03.2020*
  - d) *BRJD6396.100-050 Sheet 4 of 4 Revision 2 dated 19.03.2020*

3. DAC Planning Pty Ltd, with letter dated 26 July 2021 provided additional information for the amendment of the DA to a Concept DA in a report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021).

The report describes the proposed Concept DA and contains the following:

- Appendix 1 - *Concept proposal for staged subdivision DA2015/0096, Stages 1 and 2, BRJD6396.100-55 (2 sheets), Rev 1 by LandPartners, 19.07.2021*
- Appendix 2 - *Plan of proposed subdivision DA2015/0096 Stage 1 with Zone Overlay, BRJD6396.100-014 (2 sheets), Revision T and plan of proposed subdivision DA2015/0096 Stage 1, BRJD6396.100-015 (2 sheets), Rev Q by LandPartners, 19.07.2021*
- Appendix 3 - *Response to submissions SEPP 71 Coastal Protection Master Plan by DAC Planning Pty Ltd, March 2020*
- Appendix 4 - *Revised draft Master Plan 100-015, Revision F by LandPartners, 6 April 2018*
- Appendix 5 - *Email from Crown Lands dated 29 March 2019* in relation to the status of existing road reserves and the Evans River Foreshore Reserve and letter from Crown Lands dated 24 February 2014
- Appendix 6 - *Plan of proposed subdivision with building envelopes BRJD6396.100-38-5 and BRJD6396.100-45-2 by LandPartners, 23.03.2020*
- Appendix 7 - *Legal advice from Mills Oakley dated 14 July 2021 in regard amendment of the DA to a Concept DA.*

4. DAC Planning Pty Ltd, provided a report titled '*Response to submission varied Concept DA2015/0096*' November 2021.

The report provided the following documentation:

- Appendix 1 – Government agency submissions received
- Appendix 2 – SEPP 71 Master plan response to submissions report DAC Planning Pty Ltd March 2020
- Appendix 3 - Advice from Mills Oakley dated 23 November 2021
- Appendix 4 - Advice from Everick Consulting dated 23 November 2021



## **10.4 Summary description of key works**

### **10.4.1 Iron Gates Dr**

The Concept DA proposes the following works in Iron Gates Dr:

- removal of all trees and shrubs in the 20m road reserve, other than where the road traverses and/or adjoins the SEPP No. 14 wetlands
- trimming tree branches which overhang the road where the road traverses and/or adjoins SEPP No. 14 wetlands
- widening the pavement and shoulders both sides of the carriageway  
(NB the:
  - *Revised Engineering Services and Civil Infrastructure Report* indicates an 8m carriageway with 1m gravel shoulders for the full length of the road,
  - the bushfire assessment for Iron Gates Dr indicates 8m carriageway with 0.5m shoulders outside the SEPP No. 14 wetlands and
  - the amended ecological assessment report for Iron Gates Dr refers only to widening the pavement from 6m and 6.5m to 8m)
- installing 2 traffic 'slow points' (chicanes) with speed signposted to 50km/hr and
- provision of traffic signage.

*The Stormwater Management Plan* by Arcadis Consulting Pty Ltd 20 March 2020 (provided to RVC 27 July 2020) for the road widening indicates that it will be for approx. 460m of road length with an area of approx. 7,000-7,500m<sup>2</sup>.

*The Stormwater Management Plan* provides 2 swale drain planting areas approx. at CH820 and CH660 and construction of sediment trap forebays upstream of a culvert headwall discharging underneath Iron Gates Dr.

### **10.4.2 Vegetation removal**

The development of the subdivision will involve the removal of all vegetation within the 16ha 'proposed development footprint'.

The *Terrestrial Flora and Fauna Assessment Report* identifies the following vegetation communities to be removed because of the proposal.

**Table No. 1 Summary vegetation removal**

<b>Vegetation communities</b>	<b>Ares (ha)</b>
Disturbed communities – open paddock / cleared land and Disturbed communities – acacia regrowth	16.37
Eucalypt Forest – <i>Corymbia intermedia</i> , <i>E. Planchoniana</i> , <i>E. tereticornis</i> , <i>E. Signata</i> and other Eucalypts	0.14
Wet heath with melaleuca	1.27
Littoral rainforest	0.01
Total	17.79

The areas of Littoral rainforest [Endangered Ecological Community (EEC)] within the 'total development footprint' are to be retained within 2 private allotments (Lot 136, 2.19ha and Lot 137, 4.86ha), which are zoned C2.

### **10.4.3 Earthworks**

The subdivision will involve substantial bulk earthworks.

The *Revised Engineering Services and Civil Infrastructure Report* indicates that to enable the erection of future dwellings on the allotments with finished floor levels above the 'flood planning level' of 3.6m(AHD), the allotments are proposed to have a minimum

level of 3.3m(AHD). The report assumes future dwellings will have a 300mm thick house slab.

The *Revised Engineering Services and Civil Infrastructure Report* provides the estimation of earthworks volumes shown in **Table No. 2**.

**Table No. 2 Summary bulk earthworks**

Cut volume m <sup>3</sup>	Fill volume m <sup>3</sup>	Balance volume m <sup>3</sup>
130,103	194,672	64,569

The earthworks are to be undertaken in Stage 1 and will involve the excavation of approx. 130,103m<sup>3</sup> from the ridgeline / hillslope and simultaneously placing the excavated material together with an additional approx. 64,569m<sup>3</sup> of additional imported fill over the cleared proposed residential areas.

The excavation of the ridgeline / hill is variable in depth to approx. 8.8m deep is proposed to be battered and retained by a landscaped crib wall approx. 6.25m - 7m high.

RVC's Development Engineer has advised the following in regard the crib wall:

- *the vegetation will result in an increase in maintenance from RVC which is not ideal, as such, the crib retaining wall should not be vegetated and*
- *a Structural Engineer will need to design and certify the retaining structure, any inspection will require the Structural Engineer to be present to inspect.*

The earthworks include filling the existing open drain and erection of retaining walls in part along the eastern boundary between proposed Lots 1 and 20 (to be used as a fire trail) and filling the open drain and erection of retaining walls on the eastern edge of the land zoned C2 and proposed Lot 137 on which Proposed Road 2 will be located.

Table No. 3 identifies approx. existing and proposed levels and depth of excavation or filling from the bulk earthworks plans provided in the *Revised Engineering Services and Civil Infrastructure Report* for a range of locations in the subdivision.

**Table No. 3 Excavation and fill depths (approx.)**

Lot No.	Existing land level m	Proposed land level m	Excavation / fill depth m
60	3	5	Fill 2m
21	1 – 3	5.0 - 5.9	Fill 2m – 3m
13	3	4.8 - 5	Fill 1.8m – 2m
71	3	5	Fill 2m
86	4	5.6 - 6	Fill 1.6m – 2m
95	3	4.5	Fill 1.5m
38	3	4	Fill 1m
1	3	3.25	Fill 0.25m
127	15-17	12.5	Cut 2.5m – 4.5m
130	21-22	11.3 - 12.4	Cut 9.7m – 9.6m
159	7.5	7	Cut 0.5m
153	4	5	Fill 1m
170	5	8 - 9.6	Fill 3m – 4.6m
151	3.5	5.7	Fill 2.2m
110	3	4.6	Fill 1.6m
102	3	4	Fill 1m

<b>Section B</b>			
Lot 6	1-3	4	Fill 1m – 3m
Road 2	1	3.5	Fill 2.5m
<b>Section C</b>			
Road 2	1	3.5	Fill 2.5m
Lot 170	22	12.3	Cut 9.7m
Lot 162	10	9 - 10	Cut 1m – om
Lot 132	14	7 - 8	Cut 6m – 7m
Lot 125	4 - 5	5 - 6	Fill 1m

The *Revised Engineering Services and Civil Infrastructure Report* identifies that imported fill, comprising sand fill and road bases and aggregates, will be sourced from local quarries, and hauled to the land via Woodburn-Evans Head Rd, Woodburn St, Wattle St, and Iron Gates Dr.

The report indicates that earthworks is likely to occur over a 16 week period and be undertaken to Aust. Standard 3798.

Assuming a typical haulage truck will be a 28T rigid bodied vehicle with 3 axle trailer having a payload equivalent to 19m<sup>3</sup> the importation of 64,569m<sup>3</sup> of fill is likely to generate in the order of 6,800 truck movements, excluding removal of unsuitable material in the 16 week period.

The *Revised Engineering Services and Civil Infrastructure Report* includes a *Traffic Report* by TTM Consulting Pty Ltd (17 July 2019). The *Traffic Report* indicates that during a 16 week import duration, 6 days per week for 9 hours per day the process is likely to generate 36 truck trips each way per day or on average 4 trucks in per hour and 4 trucks out.

The earthworks will significantly alter the existing natural landform (ridge and side slopes) and the land previously developed under DA No. 1992/149.

The Concept DA does not demonstrate that the source of the majority of the fill (from excavated ridgeline / hill) is suitable for the purpose as no specialist geotechnical assessment of it has been provided.

The Concept DA does not provide detail in regard the bulk earthworks / construction process matters such as; site preparation, stripping and stockpiling of topsoils, removal and disposal of former road bitumen and other infrastructure, use / re-use of cleared vegetation, placement, and compaction of fill layers, finishing and site stabilisation.

#### 10.4.4 Roads and traffic generation

##### Roads

The road network from the entrance roundabout provides a circular 'loop' connecting the allotments located in the north-eastern corner of the land (previously developed under DA No. 1992/149) to the allotments located in the southwestern corner of the land.

Table No. 4 is a summarise of internal road characteristics.

**Table No. 4 Internal road characteristics**

Road name	Road type	Reserve width (m)	Pavement width (m)
Road 1	Local street	Variable 16.5 -19.5	11.0 CH0-320 9.0 CH320+
Road 2	Local street	16.5	9.0
Road 3	Local street	16.5	9.0
Road 4	Local street	16.5	9.0
Road 5	Collector road	15 Variable 16.6 -18.5	7.0 CH20-140 11.0 CH0-20; 140+
Road 6	Local street	Variable 12.9 - 16.5 -18.3	9.0
Road 7	Local street	16.5	9.0
Road 8	Local street	16.5	9.0
Road 9	Local street	16.5	9.0
Road 10	Local street	16.5	9.0
Road 11	Local street	16.5	9.0

The proposed road reserve for Proposed Road 5 (CH20-140) has a width of approx. 15m and will include existing vegetation either within or immediately adjoining land zoned C2.

Proposed Road 5 (CH20-140) has a reduced pavement width of 7m, with guard / safety rails, as it passes between the proposed Lots 136 and 137 zoned C2.

No parking is proposed in this section. There is no verge on the northern side of the road carriageway. Along the southern side of the road carriageway there is an elevated pedestrian boardwalk proposed to provide for pedestrian access. The section of road is elevated above existing ground level of Lots 136 and 137 are retained, by presumably masonry block walls.

Presently the existing access is 10m-12m wide between the stands of Littoral rainforest proposed within Lots 136 and 137.

**Photographs No. 68, 69, 70, 71, 72 and 73 of Attachment No. 5b** shows the vegetation

All roads are to be provided with a mountable layback kerb and channel, except for the road that adjoin Lots 136 and 137, where "barrier" style upright kerb and gutter will be used with a reduced verge width.

Proposed Road 2 has retaining walls up to 1.5m high adjoining Lot 137 and is provided with guard / safety rails. Proposed Road 1 adjoining Lot 137 has retaining walls of variable height up to 1.6m high. Proposed Road 5 adjoining Lot 137 has retaining walls of variable height up to 1.5m high.

The construction of the roads on retained fill will result in the construction of a dam like structure that will likely retain large volumes of water for extended periods of time.

The road pavements are proposed to be finished with asphaltic concrete.

RVC's Development Engineer has advised the following:

- *A 7.0m pavement width for collector road 5 is not ideal, however there is reason. It is to minimise impact on environmental areas. Furthermore there is no parking provided and the road will be fixed with guardrails to improve safety. The 7.0m wide pavement is fine over a short distance, however there will be heavily vegetated areas adjacent to the roadway that could be an issue.*

- *The road reserve width of 12.9m on Road 6 when minimum width is 15m, I cannot find where this is shown or has been discussed within design or report?*
- *In regard Road 5 between CH20-140, there will need to be a road reserve width for this as there will be RVC assets.*

### Footpaths

The *Landscape Statement of Intent* by Plummer & Smith shows the provision of:

- a 2m wide footpath adjoining Lot 137 for its full perimeter and along the southern side of Proposed Road 6 adjoining the open space / public reserves (Lots 141 and 142) and
- 1.5m wide paths provided to all other proposed roads.

The *Revised Engineering Services and Civil Infrastructure Report* indicates shared footpaths for the collector road (Road 5) are intended to be provided at the time of construction.

The *Revised Engineering Services and Civil Infrastructure Report* indicates that the construction of all footpaths within local roads are proposed to be postponed until most of the houses are constructed and occupied. No estimated time frame is provided nor arrangements suggested to ensure the footpaths are built.

RVC's Development Engineer has advised the following:

- *that all footpaths will need to be completed prior to the issue of the Subdivision Certificate*
- *all internal shared paths are to be a minimum of 2.5m in width and*
- *if there is potential to widen footpath in Iron Gates Drive then this should be completed prior to the issue of the Subdivision Certificate, and the path should 'generally' be constructed to a minimum width of 2.5m.*

### Buses

A potential bus route is identified in the *Traffic Report* by TTM Consulting Pty Ltd. The suggested route is around Lot 137 commencing at the entrance roundabout in a clockwise direction along Proposed Road 2, down Proposed Road 1 and along Proposed Road 5 to the entrance roundabout. Three (3) options are identified along the route for bus stops.

No detail is provided how bus stops might be designed given provision of; guard / safety rails, reduced verge widths and retaining walls.

There appears to have been no consultation with local bus services in regard the location of potential bus stops.

### Traffic generation

The *Traffic Report* by TTM Consulting Pty Ltd indicates that the overall development (Stages 1 and 2), assuming 105 dwellings and 70 dual occupancies, will generate in the order of 1,685 daily vehicle trips.

RVC's Development Engineer has advised; *it is unclear how 1,685 daily vehicle trips was calculated and estimates it will generate in the order of 1,890AADT.*

### External roads in Evans Head

The *Traffic Report* by TTM Consulting Pty Ltd recommends line marking at the intersection of Wattle St and Woodburn Rd to improve turning movements at the intersection.



#### 10.4.5 Residential allotments

Stage 1 comprises 135 residential allotments (Lot 1 to Lot 135). **Table No. 5** generally identifies the lot areas.

**Table No. 5 Stage 1 allotments**

Lot area (m <sup>2</sup> )	No. of lots
600-610	89
611-630	29
631-700	8
710-800	5
800+	4
Total	135

One hundred and eighteen (118) or 87% of the allotments in Stage `1 have an area less than 630m<sup>2</sup>.

Stage 2 comprises 40 residential allotments (Lot 148 to Lot 187). **Table No. 6** generally identifies the lot areas.

**Table No. 6 Stage 2 allotments**

Lot area (m <sup>2</sup> )	No. of lots
600-610	27
611-630	6
631-700	5
710-800	1
800+	1
Total	40

Thirty three (33) or 82% of the allotments in Stage `2 have an area less than 630m<sup>2</sup>.

The majority of allotments (86%) in the overall development have an area less than 630m<sup>2</sup>.

Forty three (43) of the allotments (25%) in the overall development have a general north-south orientation the remainder (132 - 75%) have an east-west orientation.

Each allotment provides for a 10m x 15m (150m<sup>2</sup>) dwelling envelope setback 6m from the proposed internal road reserves.

No allotments are specifically identified for dual occupancy development.

#### 10.4.6 Utility services

##### Water

The *Revised Engineering Services and Civil Infrastructure Report* indicates that the development will be connected to the existing RVC 300mm main located in Iron Gates Dr and where appropriate the water reticulation network provided under DA No. 1992/149 will be utilised, if adequate.

RVC's Water and Sewer and Development Engineers have advised the following:

*The proposed development was modelled as part of the existing water network to verify the impact of the proposed development on the existing water network. No non compliances were caused by the proposed development with the development only causing minor diminished in the surrounding water network. Existing infrastructure will require appropriate testing/inspection (pressure testing, flow rate testing etc) prior to utilisation in development. Any cost for repairs/replacement are to be carried out at the developers cost.*

### *Sewerage*

The *Revised Engineering Services and Civil Infrastructure Report* indicates that the development will be connected from the existing pump station to the existing RVC DN100 rising main and pumped along Iron Gates Dr to a connection point in Mangrove St.

It is proposed to remove vegetation to enable up-grading and servicing of the existing sewer pump station and to create an allotment for that purposed (Lot 144) which is partially located in the land zoned C2.

Most of the sewerage infrastructure provided under DA No. 1992/149 will be removed.

RVC's Water and Sewer and Development Engineers are satisfied there is sufficient capacity existing in the network to service the proposed number of allotments and have advised the following:

*Have reviewed the downstream impact from the proposed development. The downstream pump stations and network have sufficient capacity for the proposed development. Existing infrastructure will require appropriate testing/inspection (pressure testing, inverse pressure testing, ovality, CCTV etc) prior to utilisation in development. Any cost for repairs/replacement are to be carried out at the developers cost.*

### *Electricity and communications*

The *Revised Engineering Services and Civil Infrastructure Report* provides advice from Preferred Energy Pty Ltd (12 July 2019) that it will be necessary to make connection to the existing electricity and communications infrastructure in Wattle St near the corner of Cherry St.

Neither the report or letter of advice indicate whether the electrical supply is proposed above or below ground.

It is therefore not possible to determine whether the provisions of SEPP No. 14 may be triggered in regard potential for clearing work in the wetland areas.

Neither the *Revised Engineering Services and Civil Infrastructure Report* or advice from Preferred Energy Pty Ltd mention what is proposed with the transmission line traversing the land.

#### *10.4.7 Stormwater management*

The *Revised Engineering Services and Civil Infrastructure Report* proposes the filling of the open drain east of Lots 1 to 21, erection of retaining walls and creation of an 8m wide fire trail over it from the entrance roundabout to the north-eastern corner of the residential area (Lot 60).

The open drain on the north-eastern and eastern edge of the land zoned C2 and proposed Lot 137 will also be filled.

Existing stormwater infrastructure provided under DA No. 1992/149 is proposed to be removed.

The design of the road stormwater is a pit and piped system to cater for minor flows in the 5 years ARI rainfall events and overland flow system within the proposed road network to cater for the 100 year ARI rainfall event.

The *Revised Engineering Services and Civil Infrastructure Report* proposes no on-site detention, as that would not achieve the desirable outcome in regard impact from flooding.

The DA proposes a 'rapid disposal method' which enables the discharge of stormwater run-off into the river where the water drains with the receding tide.

The existing stormwater infrastructure located in the land zoned C2 and proposed Lot 136 will be removed and replaced with new piping from the retention basin to the existing open drain.

The system proposed uses bio-retention areas and use of gross pollutant traps. The existing drain / bio-retention area near the entrance roundabout constructed under DA No. 1992/149 (refer to **Photograph No. 15** of **Attachment No. 5b**) is proposed to be augmented to provide for the drainage of the roads and allotments in the north-eastern section of the subdivision.

A grass 'bio-swale' within the open space areas (Lot 141 and Lot 142) is proposed to provide for the drainage of the roads and allotments in the south-western section of the subdivision.

RVC's Development Engineer does not support the use of the 'bio-swale' for retention and treatment purposes and is of the opinion that a 2<sup>nd</sup> bio-retention basin is required to service the catchment.

Four (4) gross pollutant traps are to be located though the location of these is not shown on the engineering plans. RVC's Development Engineer comments that 3 would be provided to the stormwater outflow entering 'bio-swale' and 1 prior to stormwater entering the bio-retention basin.

The 'bio-swale' is likely to have steep embankments (1 in 4 grade) making it difficult for RVC to maintain. The drain could retain pools of water for extended periods making it a mosquito breeding area, and a risk for young children especially given it will be adjacent to playground equipment.

The bio-swale will not be adequate to hold large stormwater events. It will therefore, discharge stormwater across the Crown Foreshore Reserve and over the embankment of the Evans River. The uncontrolled discharge of stormwater from the bio-swale has the potential to cause erosion in the Crown Foreshore Reserve and at the banks of the Evans River, and discharge untreated stormwater directly into the Evans River.

The system proposes that each allotment and dwelling provide an infiltration pit to supplement the bio-retention area and 'bio-swale'. The pits will have to be designed for the 1 in 3 month ARI rainfall event.

The maintenance of the pits will be the responsibility of the individual landowner and not RVC yet are proposed as an integral part of the stormwater management system for the development.

The *Revised Engineering Services and Civil Infrastructure Report* identifies that it is proposed to dedicate open space between Lots 108, 104, 118 & 103 (old plan lot numbers) to convey overland flow but no dedicated open space is shown on either the engineering or DA or Concept DA subdivision plans.

RVC's Development Engineer made the following comments in regard the proposed stormwater management plan:

- *that an infiltration pit providing for a 1 in 3 month event could be installed provided the soil type permitted, though all allotments are to be filled*

- *there could be implications with prolonged saturated soils around houses in the future*
- *the retention of water on proposed allotments is not necessary as there is direct discharge to the river (refer below)*
- *reliance on home owners to maintain small infiltration systems that has been included in the stormwater calculations is difficult and on-going maintenance and repair would need to be written into a covenant or Section 88b instrument on the land title*
- *typically RVC does not permit infiltration pits in urban areas where there are other adequate means of discharge are possible, such as direct treated discharge to the river*
- *onsite detention (OSD) could be proposed in ways of rainwater tanks with a low flow outlet halfway up or similar, this achieves a similar outcome with minimal/no maintenance.*

*BMT WBM in letter report 22 Aug. 2014* provided an assessment of whether on-site detention of runoff is required to protect downstream properties from flood impact.

*BMT WBM conclude:*

*The use of on-site detention (OSD) to mitigate post development peak discharge to pre-development rates is well considered best management practice. However, in some scenarios, the application of OSD is counter-productive. In such cases, consideration must be given on a merit based approach, as recommended in the NSW Floodplain Development Manual.*

*The Iron Gates development is a good example for not using OSD to manage discharge rates. The proximity of the development to the river mouth means that the traditional 'rapid disposal' method is more applicable. By directly discharging runoff into the river, the water can be drained from the Evans River system with the receding tide. Most runoff will then be drained prior to the larger, regional flows passing through the Evans River, either from Upper Evans River catchment runoff or from Richmond River overflow.*

*Therefore, BMT WBM recommends against using OSD to delay the release of floodwaters from the proposed development site.*

#### 10.4.8 Landscaping

The *Landscape Statement of Intent* by Plummer & Smith proposed provision of open space and landscaping in the Crown Foreshore Reserve adjoining the Evans River. The embellishment of the Crown Foreshore Reserve has been withdrawn and open space / public reserves now comprise 2 allotments (Lot 141 and lot 142) immediately adjoining it.

The *Landscape Statement of Intent* proposes street tree planting with 'native species to link the estate to the bush' which are identified in the following table.

**Table No. 7 Proposed street trees**

<b>Road name</b>	<b>Tree type</b>	<b>Location</b>
Road 1	<i>Cupaniopsis anacardioides</i> – Tuckeroo	North-south section from entrance roundabout to east-west section
	<i>Backhousia citriodora</i> – Lemon Scented Ironwood	East-west section
	<i>Lophostemon confertus</i> – Brush Box	East-west section to Proposed Road 5
Road 2	<i>Backhousia citriodora</i> – Lemon Scented Ironwood	Whole length northern verge adjoining allotments
Road 3	<i>Cupaniopsis anacardioides</i> – Tuckeroo	Whole length both verges adjoining allotments

Road 4	<i>Harpulia pendula</i> - Tulipwood	Whole length both verges adjoining allotments
Road 5	<i>Lophostemon confertus</i> – Brush Box	Whole length, southern verge opposite Lot 137 (Littoral rainforest) and both northern and southern verges from Proposed Road 1
Road 6	<i>Cupaniopsis anacardioides</i> – Tuckeroo  <i>Lophostemon confertus</i> – Brush Box	Whole length western verge from Proposed Road 5, northern verge opposite the open space to south-western corner  Whole length both eastern and western verge to Proposed Road 5 and eastern verge to Proposed Road 7
Road 7	<i>Backhousia citriodora</i> – Lemon Scented Ironwood	Whole length southern verge adjoining allotments
Road 8	<i>Harpulia pendula</i> - Tulipwood	Whole length eastern and western verges adjoining allotments
Road 9	<i>Lophostemon confertus</i> – Brush Box	Whole length eastern and western verges adjoining allotments
Road 10	<i>Cupaniopsis anacardioides</i> – Tuckeroo	Whole length eastern and western verges adjoining allotments
Road 11	<i>Lophostemon confertus</i> – Brush Box	Whole length adjoining allotments from south-western corner

The landscaping described in [Revised Engineering Services and Civil Infrastructure Report](#) of the crib retaining wall adjoining a section of Proposed Road 6 is not mentioned in the [Landscape Statement of Intent](#).

#### 10.4.9 Open space / public reserves

Approx. 16ha is proposed to be developed for residential purposes ('proposed residential footprint').

The total area of public reserve / open space provided for both Stage 1 and 2 is 4,159m<sup>2</sup>, comprising; Lot 141, 1,990m<sup>2</sup> and Lot 142, 2,969m<sup>2</sup>.

The allotments are irregular in shape and width and immediately adjoin the Crown Foreshore Reserve beside the Evans River.

Proposed Lot 142 in part includes the shell midden identified in the Aboriginal cultural assessment. An Aboriginal Heritage Impact Permit (AHIP) application was made to remove that part of the shell midden in Proposed Lot 142 and is approved.

A footpath is located in the reserve of Proposed Road 6 adjoining Lot 141 and Lot 142.

The turfed 'bio-swale' forming the final stormwater treatment for 40 Stage 1 allotments (Lot 96 to Lot 117 and Lot 118 to Lot 135), 40 Stage 2 allotments (Stage 1 Lots 145, 146 and 147) and Proposed Roads 5, 6, 7, 8 and 11 is in the open space / public reserve allotments (Lot 141 and Lot 142).

The [Landscape Plans](#) prepared by Landpartners show the facilities proposed to be provided in Lot 141 as; 2 boardwalks over the turfed 'bio-swale', a 'shelter and picnic area' and playground.



Facilities proposed to be provided in Lot 142 are; 1 boardwalk over the turfed 'bio-swale', a 'shelter and picnic area' and playground.

No management or protective protocols are identified in the Concept DA to prevent damage to the vegetation or riverbank in the Crown Foreshore Reserve or Evans River.

#### 10.4.10 C2 allotments

Two (2) private allotments (Lot 136, 2.19ha and Lot 137, 4.86ha) are proposed to be created to include the land containing the Littoral rainforest zoned C2.

The engineering plans show the provision of a combined fauna crossing and stormwater culvert between Lot 137 and land to the north-west. No similar facility is provided between Lot 137 and Lot 136.

The *Terrestrial Flora and Fauna Assessment Report* in regard Lot 136 and lot 137 states;

- *The proponent proposes to rehabilitate the littoral rainforest patches and associated buffers (including site preparation, weed control and planting locally endemic species) at an estimated cost of \$80,000 in accordance with an approved Management Plan.*
- *Fencing will be installed (post and rail/bollards) on the periphery of the Littoral rainforest patches to reduce potential impacts to the area at an estimated cost of \$48,000.*
- *The rehabilitated Littoral rainforest patches (totalling 8.83 ha) will be secured and managed under a stewardship agreement (under the Biodiversity Conservation Act 2016) entered into by the proponent.*

The DA SEE indicates that Lot 136 and Lot 137 will be held in ownership of Goldcoral Pty Ltd.

#### 10.4.11 Bushfire management

The following bushfire safety measures are identified in the *Revised Consolidated Bushfire Report* by Bushfire Risk Pty Ltd:

- use of the internal road system perimeter roads and fire trail as asset protection zones combined with separation distances from potential fire hazards provided by setbacks of building envelopes within proposed allotments
- the perimeter roads and fire trail shall be the responsibility of RVC in perpetuity to be maintained as inner protection areas
- a reticulated water supply installed to the requirements of Australian Standard 2419-2005 and
- provision of inner protection areas outside building envelopes within allotments to be maintained by future landowners.

The report states that construction requirements for future dwellings of BAL-29 or lower can be achieved for each building envelope, other than on Lot 174 (now Lot 134 on the amended Concept DA plans).

The *Revised Consolidated Bushfire Report* identifies the internal road standards as:

##### 1. Proposed perimeter road (excluding road 3):

- *Two-way, 9m wide paved carriageway (kerb to kerb);*
- *14m wide cleared road reserve;*

##### 2. Proposed road 3 – Environmental protection zone (south-east locality):

- *Two way, 7m wide paved carriageway (kerb to kerb), 3.5m each way;*
- *Various width road reserve, clear of vegetation (min. 2.75m each side – nontrafficable);*

##### 3. Fire trail – public reserve (north-east locality – east of lots 1 to 21 & 60):

- *5m wide (min.), gravel carriageway; &*

- *8m cleared width / reserve, to be maintained by Council in perpetuity.*

The *Revised Consolidated Bushfire Report* identifies 3 matters of non-compliance with *Planning for Bushfire Protection 2006* been:

1. The single access road (Iron Gates Dr) to and from the development
2. Proposed Road 5 as it passes between Lot 137 and Lot 136 containing the Littoral rainforest and land zoned C2 and
3. The proposed fire trail east of Lots 1 to 20 and 60 in lieu of providing a perimeter road.

The *Revised Consolidated Bushfire Report* identifies that Proposed Road 5 between CH20 and CH140 will be retained above the existing ground level of the Littoral rainforest and has a reduced pavement width of 7m, with either side a min. 2.75m clear of vegetation and guard / safety rails.

A separate bushfire assessment of Iron Gates Dr was undertaken for the DA.

The report titled *Bushfire Assessment – Additional Information Response, Iron Gates Drive Version 1 - 8 March 2017* relies upon the works to Iron Gates Dr proposed shown on the *Engineering Plans, Iron Gates Drive Upgrade Work, Revision 02 – Arcadis, 21 August 2017* and ecological assessment, *Amended Ecological Assessment (Iron Gates Drive) by JWA Pty Ltd, April 2019*.

In summary the works in the Iron Gates Dr road reserve comprise:

- removal of all trees and shrubs in the 20m road reserve, other than where the road traverses and/or adjoins the SEPP No. 14 wetlands
- trimming tree branches which overhang the road where the road traverses and/or adjoins SEPP No. 14 wetlands
- widening the pavement and shoulders both sides of the carriageway (**NB** the *Revised Engineering Services and Civil Infrastructure Report* indicates an 8m carriageway with 1m gravel shoulders for the full length of the road, the bushfire report indicates 8m carriageway with 0.5m shoulders outside the SEPP No. 14 wetlands and amended ecological assessment report refers only to widening the pavement from 6m and 6.5m to 8m)
- installing 2 traffic 'slow points' (chicanes) with speed signposted to 50km/hr and
- provision of traffic signage.

The report seeks that alternative solutions be recognised for the 3 matters of non-compliance.

## 11 DA Legislative Planning Controls

The following state planning policies and local planning controls apply to the land and Concept DA:

- *Environmental Protection and Biodiversity Conservation Act 1999*
- *Threatened Species Conservation Act 1995*
- s. 1.7 *Environmental Planning and Assessment Act 1979*
- s. 4.15 *Environmental Planning and Assessment Act 1979*
- Part 4 Division 4.4 *Environmental Planning and Assessment Act 1979*
- Part 4 Division 4.8 *Environmental Planning and Assessment Act 1979*
- *Environmental Planning and Assessment Regulation 2000*
- State Planning Environmental Planning Policies
  - SEPP No. 14 - Coastal Wetlands
  - SEPP No. 26 - Littoral Rainforest (does not apply to RVC lga)

- SEPP No. 44 - Koala Habitat Protection
- SEPP No. 55 - Remediation of Land (now Chapter 4 *State Environmental Planning Policy (Resilience and Hazards) 2021*)
- SEPP No. 71 - Coastal Protection (saved)
- SEPP - Infrastructure 2007 (now Chapter 2 *State Environmental Planning Policy (Transport and Infrastructure) 2021*)
- SEPP – Primary Production and Rural Development 2019 (now Chapter 2 *State Environmental Planning Policy (Primary Production) 2021*)
- SEPP - State and Regional Development 2011 (now Chapter 2 *State Environmental Planning Policy (Planning Systems) 2021*)
- SEPP - Vegetation in Non Rural Areas 2017 (now Chapter 2 *State Environmental Planning Policy (Biodiversity and Conservation) 2021*)
- *North Coast Regional Plan 2036*
- *Richmond Valley Local Environmental Plan 2012*
- NSW Government Coastal Policy 1997
- *Richmond Valley Development Control Plan 2012*
  - Part A-Residential Development
  - Part G-Subdivisions
  - Part H-Natural Resources and Hazards
  - Part I-Other Considerations including;
    - I1 Heritage
    - I2 Development in on over or under a public road
    - I5 Landscaping guidelines
    - I8 Social impact assessment
    - I9 Water sensitive urban design
    - I10 Crime prevention through environment design
    - I11 Land use conflict risk assessment
    - I12 Context and site analysis and
    - I15 Advertising and advertise development
- Ecologically Sustainable Development *Protection of the Environment Administration Act 1991*

The Concept DA is 'integrated' development as the General Terms of Approval (GTA) of the following are required to be issued prior to determination of it:

- NSW Rural Fire Service - s.100B *Rural Fires Act 1997*, relating to bushfire safety
- NSW Dept of Premier and Cabinet, Heritage NSW, Aboriginal Cultural Heritage Regulation - s. 90 *National Parks & Wildlife Act 1974*, relating to an application for a Aboriginal Heritage Impact Permit for approval of an Aboriginal Heritage Impact Permit to partially remove a shell midden
- NSW Office of Water - s. 90 of the *Water Management Act 2000*, relating to water management work approval to dewater during construction and
- Natural Resources Access Regulator (NRAR) - s. 91 of the *Water Management Act 2000* relating to activity within 40m of the Evans River.

Though no works of the following nature are proposed in the Evans River:

- carrying out dredging or reclamation work
  - cutting, removing, damaging, or destroying marine vegetation on public water land or on the foreshore of any such land
  - constructing or altering a dam, floodgate, causeway, or weir, or otherwise creating an obstruction across or within a bay, inlet, river, or creek, or across or around a flat
- the Concept DA was referred to Dept of Primary Industries–Fisheries for comment.

The Concept DA was also referred to for comment to the following Federal and State

agencies:

- Dept of Defence
- NSW Police Force
- NSW Dept of Planning Infrastructure and Environment
- NSW Dept of Planning Infrastructure and Environment - Biodiversity and Conservation Division of the Environment Energy and Science Group
- NSW Dept. of Primary Industries - Agriculture
- Transport for NSW (Roads and Maritime Services – RMS)
- North Coast Local Land Services and
- Dept of Planning Industry and Environment - Crown Lands.

The Concept DA was also referred to the following Aboriginal land councils:

- NSW Aboriginal Land Council
- Bogal Local Aboriginal Land Council - Coraki
- Birrigan Gargle Local Aboriginal Land Council - Yamba
- Ngulingah Local Aboriginal Land Council - Lismore
- Jali Local Aboriginal Land Council - Ballina and
- Bandjalang Aboriginal Corporation.

## **12 Public Notification and Exhibition of the DA**

The public notification and exhibition of the DA up to 2 Feb. 2019 is described in Section 12 (page 18-19) of my review report. Refer to **Attachment No. 1**.

### **12.1 First exhibition - DA**

The 1<sup>st</sup> public notification and exhibition period was from 3 Nov. 2014 to 8 Dec. 2014.

The following Federal and State government agencies made comments:

- Dept of Defence
- NSW Police
- NSW Rural Fire Service
- NSW Office of Environment and Heritage
- North Coast Local Land Services
- NSW Office of Water
- NSW Fisheries and
- Crown Lands.

Number of public submissions in objection: 53

Number of public submissions in support: 1

### **12.2 Second exhibition - DA**

The 2<sup>nd</sup> public notification and exhibition period was from 4 Nov. 2015 to 7 Dec. 2015.

The following State government agencies made comments:

- NSW RFS
- NSW OE&H
- NSW Fisheries (advised comments to be co-ordinated by DPI) and
- NSW Dept of Planning.

Number of public submissions in objection: 25

Number of public submissions in support: 6

### **12.3 Third exhibition - DA**

The 3<sup>rd</sup> public notification and exhibition period was from 3 Oct. 2019 to 18 Nov. 2019.

The following State and Federal government agencies made comments:

- Planning Industry and Environment, Biodiversity and Conservation (13 Nov. 2019)
- Dept of Planning Industry and Environment, Biodiversity and Conservation Division (28 Jan. 2020) – supplied General Terms of Approval (s. 90 *National Parks and Wildlife Act 1974*)
- Dept. of Primary Industries – Agriculture (18 Nov. 2019)
- NSW Rural Fire Service (11 March 2020)
- Dept of Planning Industry and Environment, Crown Lands (16 Sept. 2019) – copy of Crown consent to lodge DA including Crown land
- NSW Roads and Maritime Services (18 Oct. 2019)
- NSW Police (3 Oct 2019) and
- Dept of Defence (19 Nov. 2019).

Number of public submissions in objection: 348 + petition of 235

Number of public submissions in support: 183

### **12.4 Fourth exhibition – Concept DA**

The 4<sup>th</sup> public notification and exhibition period was from 24 Sept. 2021 to 24 Oct. 2021.

The following Federal and State government agencies made comments:

- Dept. of Defence – Estate and Infrastructure Group (19 Nov. 2019)
- Dept. of Primary Industries – Agriculture (7 Oct 2021)
- Dept. of Premier and Cabinet, Heritage NSW, Aboriginal Cultural Heritage Regulation (1 Nov 2021) supplied General Terms of Approval (*National Parks and Wildlife Act 1974*). The General Terms of Approval are required to be included in a consent notice.
- Natural Resources Access Regulator (NRAR) (17 Jan. 2022) advised:
  - *for the purposes of the Water Management Act 2000 (WM Act), a controlled activity approval is not required for the proposed works and no further assessment by this agency is necessary*
  - *the proposed works are not located on waterfront land as defined by the WM Act - The proposed works are greater than 40m from top of bank of the watercourse.*

**Comment** – Waterfront land in the Dictionary of the WM Act is defined as:

*(a) the bed of any river, together with any land lying between the bed of the river and a line drawn parallel to, and the prescribed distance inland of, the highest bank of the river, or*  
*(a1) the bed of any lake, together with any land lying between the bed of the lake and a line drawn parallel to, and the prescribed distance inland of, the shore of the lake, or*  
*(a2) the bed of any estuary, together with any land lying between the bed of the estuary and a line drawn parallel to, and the prescribed distance inland of, the mean high water mark of the estuary, or*  
*(b) if the regulations so provide, the bed of the coastal waters of the State, and any land lying between the shoreline of the coastal waters and a line drawn parallel to, and the prescribed distance inland of, the mean high water mark of the coastal waters, where the prescribed distance is 40 metres or (if the regulations prescribe a lesser distance, either generally or in relation to a particular location or class of locations) that lesser distance.*



*Land that falls into 2 or more of the categories referred to in paragraphs (a), (a1) and (a2) may be waterfront land by virtue of any of the paragraphs relevant to that land.*

NRAR is incorrect as works are proposed within 40m of the highest bank and bed of the Evans River and the letter from NRAR does not explain why it has formed that opinion.

NRAR guidelines titled 'Guidelines for controlled activities on waterfront land – riparian corridors' (May 2018) contain 'averaging' provisions which state:

*Non-riparian corridor works and activities can be authorised within the outer riparian corridor, so long as the average width of the vegetated riparian zone can be achieved over the length of the watercourse within the development site. That is, where appropriate, 50 per cent of the outer vegetated riparian zone width may be used for non-riparian uses including asset protection zones, recreational areas, roads, development lots and infrastructure. However, an equivalent area connected to the riparian corridor must be offset on the site (see Figure 3) and the inner 50 per cent of the vegetated riparian zone must be fully protected and vegetated with native, endemic, riparian plant species.*

Setback from the riparian zone of the Evans River was raised by the NSW Office of Water in Jan. 2015. Planit Consulting proposed off-set areas outside the 40m setback and Crown Foreshore Reserve which included part of what is now proposed as Lot 142 to be used as a public reserve and the majority within proposed Lot 136 which is zoned C2. The C2 zone prohibits development other than:

*Environmental facilities; Environmental protection works; Information and education facilities; Jetties; Oyster aquaculture Roads*

It does not seem appropriate to be enabling off-sets for 'developable' land over land which has no 'developable' potential!

- NSW Police Force (8 Oct 2021) – The Police Force made recommendations which can be made conditions of consent.
- NSW Rural Fire Service (9 Nov. 2021) supplied General Terms of Approval pursuant to s. 4.8 of the EPA Act and Bushfire Safety Authority pursuant to s. 100B of the *Rural Fires Act 1997*. The General Terms of Approval are required to be included in a consent notice for approval.
- Transport for NSW (13 Oct 2021) – Transport for NSW (TfNSW) made recommendations which can be made conditions of consent.
- Dept. of Primary Industries–Fisheries (18 Nov. 2021) made the following recommendations:

***Key Fish Habitat***

*DPI Fisheries notes development activities will be located within close proximity to KFH. To ensure that KFH will not be impacted as a result of the development, environmental impact mitigation and management plans (i.e. sediment and erosion control plan, stormwater management plan, construction management plan etc.) should be prepared, approved and implemented when and where necessary.*

*With regard to the proposed foreshore embellishment works, foreshore access points should be minimised in number and located in suitable locations such as at existing informal access points or other areas that are devoid of marine vegetation. All other areas that do not provide foreshore access should be retained as foreshore buffer zones and include/retain sufficient riparian vegetation.*

### **Buffers to Key Fish Habitat**

*The protection and rehabilitation of the vegetated riparian corridor between the Evans River and the development footprint is important for maintaining the shape, stability and ecological functions of the river. DPI Fisheries recommends that developments, including embellishment of foreshore areas, incorporate foreshore buffer zones of 50-100m width adjacent to TYPE 1 marine vegetation and at least 50 m width adjacent to TYPE 2 marine vegetation. Where a buffer zone of at least 50m is physically unachievable due to land availability constraints, the available buffer width must be maximised to achieve protection of TYPE 1 and 2 marine vegetation (i.e. from edge effects, changes to water quality, flood protection and to allow for climate change adaptation). The buffer zone should not be used for other asset protection purposes (e.g. as a bushfire or mosquito buffer). It should be noted that foreshore buffer zones are measured from the outer edge of tidal areas (e.g. highest astronomical tide level - generally 1.0m AHD). DPI Fisheries recommends that the design of riparian buffer zones incorporates the maintenance of lateral connectivity between aquatic and riparian habitat. The installation of infrastructure, terraces, retaining walls, cycle ways, pathways and grass verges within the riparian buffer zone that interrupt lateral connectivity should be avoided.*

### **Threatened Species:**

*Areas representing known or potential habitat for the threatened fish species Oxleyan Pygmy Perch (OPP) may be indirectly impacted by the proposed development. DPI Fisheries encourages the proponent to consider whether any development works would involve indirect impacts to OPP habitat, and if so, ensure that such works include best management practice environmental impact mitigation measures, such as sediment and erosion control measures, to ensure that any foreseeable indirect impacts are avoided.*

*It should be noted that any development works that are likely to have an impact on threatened species listed under the FM Act, either directly or indirectly, must be preceded by an assessment of significance. Further information on threatened species impact assessments under the FM Act can be found here: [www.dpi.nsw.gov.au/fishing/species-protection/legislation-and-approvals/impact-assessment](http://www.dpi.nsw.gov.au/fishing/species-protection/legislation-and-approvals/impact-assessment).*

**Comment – Map No. 5** from the RVC LEP 2012 Wetlands Map Riparian Land and Waterways Map Sheet \_CL1\_010 shows key fish habitat.

The NSW Dept of Primary Industries guidelines titled '*Policy and guidelines for fish habitat conservation and management*' (June 2013 update) identifies the Type 1 – highly sensitive key fish habitat and Type 2 – moderately sensitive key fish habitat. Type 1 key fish habitat includes SEPP 14 coastal wetlands and Type 2 key fish habitat includes 'stable intertidal sand/mud flats, coastal and estuarine sandy beaches with large population of in-fauna'.

The maps titled 'Impact and Revegetation Areas' and 'Revised Impact on Vegetation Communities' from the *Amended Terrestrial Flora and Fauna Assessment Report* and *Amended Ecological Assessment (Iron Gates Drive)* report show sections of roads and a number of allotments within 50m of key fish habitat, riparian vegetation and wetlands Refer to **Attachment No. 9**.

The design of the subdivision does not provide the riparian buffer zones recommended by NSW Dept of Primary Industries–Fisheries.

**Attachment No. 7a** is copy of the advice from Federal and State agencies to the 4<sup>th</sup> exhibition period.

Number of public submissions in objection: 191 + petition of 712 + 23 'postcards'.

Number of public submissions in support: 50.

### **12.5 Fifth exhibition – Concept DA**

The 5<sup>th</sup> public notification and exhibition period was from 18 Feb. 2022 to 19 March 2022 and was undertaken to rectify a clerical mistake in the public notices. The notices referred to Natural Resources Access Regulator (NRAR) as the 'integrated authority' when it should have been the NSW Office of Water.

The following Federal and State government agencies made comments:

- Dept. of Defence – Estate and Infrastructure Group (22 March 2022). The Dept. reiterated and supplied its comments made 19 Nov. 2019. Refer above and to **Attachment No. 7a.**
- Dept. of Primary Industries – Agriculture (undated). The Dept. referred to its advice of 7 Oct 2021 and advised it has no further comments to make. Refer above and to **Attachment No. 7a.**
- NRAR (23 Feb. 2022) advised same as it did to the 4<sup>th</sup> exhibition. Refer above and to **Attachment No. 7a.**

- NSW Office of Water (6 April 2022) made a 'stop the clock' request of RVC and sought the following information:

*In relation to Construction Dewatering:*

- 1. Geotechnical Report*
- 2. Volume of water to be extracted during construction*
- 3. Duration of the water take for dewatering*
- 4. Method of measuring the water take and recording*
- 5. Provide documents updated with the above information*

*In relation to Flooding:*

- 1. A current Flood Study*
- 2. Design and Construction Plans of the Subdivision (this would include the access roads and lots). This would need to include on the design and construction plans, AHD with the height above natural surface level and a known AHD height for the 1:100 Flood height.*

*Note in relation to flooding once the information requested has been supplied. WaterNSW will refer your application to our internal flood modelers for consideration.*

NSW Office of Water (9 May 2022) sought additional information and advised the following:

*Reference is made to CNR-35578.*

*WaterNSW has reviewed the additional information provided as a result of the first additional information request.*

*Unfortunately the additional information that was supplied to WaterNSW in relation to Dewatering is dated 1994 and 1995 and does not meet today's assessment criteria. WaterNSW must refer Dewatering Applications to DPE Hydrogeologist for assessment. The assessment report is what helps WaterNSW generate GTA. As you can appreciate legislation and ground water changes over time. To enable WaterNSW to progress the Dewatering Application, updated studies are required.*

*WaterNSW needs to establish what dewatering will occur, at what locations Lot & DP, the potential volumes, what is the potential mix of salt water v's groundwater given the location. WaterNSW needs an update Geotechnical Report and other supporting documentation as outlined on the WaterNSW website regarding Dewatering. Please refer to the links below.*  
<https://www.waternsw.com.au/customer-service/water-licensing/dewatering>  
[https://www.waternsw.com.au/\\_\\_data/assets/pdf\\_file/0005/167279/Geotechnical-Investigation-Reports-Minimum-Requirements-fact-sheet.pdf](https://www.waternsw.com.au/__data/assets/pdf_file/0005/167279/Geotechnical-Investigation-Reports-Minimum-Requirements-fact-sheet.pdf)

*In relation to Construction Dewatering:*

*1. Geotechnical Report as per the Geotechnical Investigations Report Minimum Requirements fact sheet.*

*2. Lot and DP the Dewatering will take place*

*3. Potential Volumes to be extracted*

*Please arrange to provide this information within 28 days from the date of this document.*

DAC Planning Pty Ltd have advised RVC that the Applicant has engaged Martens & Associates to do the WaterNSW investigations and that they will take 3 months to do the work and report. RVC requested an extension from WaterNSW.

- NSW Police Force (21 April 2022) – The Police Force made the following recommendations:

*Due to the nature of this development, we understand that the proposal does not involve the construction of any buildings and therefore the specific outcomes are not known. We also understand that this review refers to a Concept proposal that may change in the future. As with all new developments, Police recommend the following considerations in relation to CPTED principles:*

*1. Surveillance – Consideration of lighting along roadways, pathways and throughout recreation areas. Ensure private fencing does not obstruct sightlines between residential lots and recreation or environmental areas. Reduce the likelihood of concealment areas, by planting low lying shrubs along pathways and other areas used by pedestrians.*

*2. Access control and Territorial Reinforcement – Ensure Legible internal roadways and pathways. Consider associated way finding signage to direct traffic and define use of space.*

*\*\*Amended recommendation. Refer to **Attachment No. 7b**.*

- Dept. of Premier and Cabinet, Heritage NSW, Aboriginal Cultural Heritage Regulation advised 21 Feb. 2022 via the portal that no Heritage NSW comment is required on this occasion as the same proposal has been re-notified. The General Terms of Approval (*National Parks and Wildlife Act 1974*) are therefore the same as supplied 1 Nov. 2021. The General Terms of Approval are required to be included in a consent notice. Refer above and to **Attachment No. 7b**.
- Dept. of Primary Industries–Fisheries (28 March 2022) commented:  
*It is understood that the development application was re-notified due to an omission within the previous exhibition notice and that there have been no further amendments to the application since it was previously referred to DPI Fisheries in September 2021.*  
*Given no further amendments have been made, the advice provided by DPI Fisheries in our letter dated 18 November 2021 (ref: IDA21/127) is still relevant.*  
Refer above and to **Attachment No. 7a**.

- NSW Rural Fire Service (16 June 2022) supplied General Terms of Approval pursuant to s. 4.8 of the EPA Act and Bushfire Safety Authority pursuant to s. 100B of the *Rural Fires Act 1997*. The General Terms of Approval are required to be included in a consent notice for approval. Refer to **Attachment No. 7b**.
- TfNSW (17 Feb. 2022) advised that there appears to be no change to the proposal from a traffic perspective and it declined the opportunity for referral and that the referral should go to RMS for comment. Therefore the TfNSW advice of 13 Oct. 2021 remains current and unchanged. Refer above and to **Attachment No. 7a**.

**Attachment No. 7b** is copy of the advice from Federal and State agencies to the 5<sup>th</sup> exhibition period.

Number of public submissions in objection: 16

Number of public submissions in support: 3 + 6 (received outside 19 March 2022)

## **12.6 Issues raised in submissions from the public**

### *12.6.1 Total number of submissions*

The total number of objections to the DA and Concept DA were:

- 656 public submissions
- 947 petition signatories and
- 23 'postcards'.

The total number of public submissions in support of the DA and Concept DA was 249.

### *12.6.2 Summary of submission issues*

All submissions made during the 5 periods of public exhibition have been reviewed.

The majority of the submissions both against and for the DA and Concept DA have been prepared by residents of Evans Head and/or the Richmond Valley local government area.

A number of the submissions of objection are either very detailed and/or have been supported and/or prepared by professionals with particular specialist expertise. These include:

#### *Exhibition 1*

- Alan Oshlack (8 Dec. 2014), the submission included:
  - a review of the flora and fauna assessment with particular regard to threatened species and communities by David Milledge (4 Dec. 2014) and
  - copy of *Independent Expert Review Aboriginal Cultural Heritage Assessment Draft Master Plan for the Iron Gates Residential Release Evans Head* (March 2016) by Inge Riege
- Evans Head Residents for Sustainable Development Inc (8 Dec. 2014)
- Evans Head Memorial Aerodrome Committee Inc (8 Dec. 2014)
- Dr Peter Ashley (8 Dec. 2014)
- Friends of the Koala (7 Dec. 2014)
- Elaine Saunders (24 Nov. 2014)

#### *Exhibition 2*

- Confidential (7 Dec 2015)
- Evans Head Residents for Sustainable Development Inc (5 Dec. 2015)
- Alan Oshlack (4 Dec. 2015)
- Elaine Saunders (1 Dec. 2015)



### Exhibition 3

- Friends of the Koala (14 Nov. 2019)
- Evans Head Memorial Aerodrome Committee Inc (19 Nov. 2019)
- Chris Gillespie (17 Nov. 2019)
- Coastal Defenders Network Inc (18 Nov. 2019)
- Elaine Saunders (15 Nov. 2019)
- Ian Rankin (18 Nov. 2019) engaged State Planning Services to review DA
- Mitch Scotcher (4 Nov. 2019)
- Dr Peter Ashley (18 Nov. 2019)
- State Planning Services (18 Nov. 2019)
- Rowena McGeary (17 Nov. 2019)
- Evans Head Residents for Sustainable Development Inc (17 Nov. 2019)
- Allyson Cuskelly (18 Nov. 2019)
- Dr Beverley Henry (16 Nov. 2019)
- Mid Richmond Neighbourhood Centre Inc (18 Nov. 2019)
- Katrina Geering (17 Nov. 2019)
- Harmony Walsh (19 Nov. 2019)
- Marcelle Burns (18 Nov. 2019)
- Simone Barker (16 Dec. 2019), the submission included;
  - copy of the report by Inge Riege Anthropologist titled '*Independent Expert Review of Revised Aboriginal Cultural Heritage Assessment Iron Gates Residential Release Evans Head*' (Dec. 2019).

### Exhibition 4

- Tim Smith (23 Oct. 2021)
- Dr Hanabeth Luke-O'Reilly (23 Oct. 2021)
- Gabriel Roxburgh (24 Oct. 2021)
- S Grame (26 Oct. 2021)
- Matthew Rees (24 Oct. 2021)
- Leanne Clarkson (24 Oct. 2021)
- Evans Head Memorial Aerodrome Committee Inc (24 Oct. 2021)
- North Coast Environment Council (24 Oct. 2021)
- Evans Head Residents for Sustainable Development Inc (24 Oct. 2021)
- Rowena McGeary (24 Oct. 2021)
- Elaine Saunders (25 Oct. 2021), the submission included;
  - copy of the L&EC Judgement No. 40152 of 1996 (4 July 1997)
- Jo Kijas (24 Oct. 2021)
- Dr Peter Ashley (25 Oct. 2021), the submission included;
  - copy of a report by Dr Stephen Phillips of Biolink Pty Ltd (9 Dec. 2019) in regard assessment for impact on threatened species and in particular Koala,
  - NSW Architect advice (19 Oct. 2020) to Gold Coral Pty Ltd,
  - report to the NRPP (24 Aug. 2021), RVC letter (24 Aug. 2021) to NRPP,
  - report by Inge Riege Anthropologist titled '*Independent Expert Review of Revised Aboriginal Cultural Heritage Assessment Iron Gates Residential Release Evans Head*' (Dec. 2019)
- Ian Rankin (24 Oct. 2021), the submission included;
  - NSW Architect advice (19 Oct. 2020) to Gold Coral Pty Ltd,
  - copy Joint report of bush fire and ecological issues Supreme Court of Queensland No. S9495 of 1999,
  - *Independent Expert Review Aboriginal Cultural Heritage Assessment Draft Master Plan for the Iron Gates Residential Release Evans Head*' (March 2016) by Inge Riege,
  - report to the NRPP (24 Aug. 2021),

- publication titled '*The Impact of the law on consultation practices and purposes: A case study of Aboriginal cultural heritage consultation in NSW*' by Kylie Anne Lingard (2012) and
- copies of a flood map (Fig 6-16 Evans Head Flood Study by BMT WBM) and Koala Habitat Atlas Evans Head.

Mills Oakley (23 Nov. 2021) have provided comments to the Applicant in regard to the submission by Dr Ashley. Refer to Section 14.1 and **Attachments No. 6** and **No. 9**.

#### *Exhibition 5*

- Dr Peter Ashley (18 March 2022), the submission included;
  - a report by Dr Stephen Phillips of Biolink Pty Ltd (9 Dec. 2019) in regard assessment for impact on threatened species and in particular Koala
- Evans Head Memorial Aerodrome Committee Inc (19 March 2022)
- Tim Smith (3 March 2022) and
- Evans Head Residents for Sustainable Development Inc (13 March 2022).

Of interest, 1 submission raised the Judgement of the NSW Land and Environment Court in the appeal *White v Ballina Shire Council* [2021] NSWLEC 1468 for RVC's attention. The case relates to an application for a house that relied upon, and sought to retrospectively upgrade, an unlawfully constructed access road through a creek and rainforest area. The Judgement provides that the DA needs to include assessment of the site as it was before the unlawful construction work had taken place.

The following is a summary of the key issues raised in the submissions made in regard each of the exhibitions of the DA and Concept DA.

**Table No. 8 Summary of issues of objection**

<b>Key issues</b>	<b>Exhibit 1</b>	<b>Exhibit 2</b>	<b>Exhibit 3</b>	<b>Exhibit 4</b>	<b>Exhibit 5</b>
Aboriginal cultural heritage	11	2	196	135	6
Impact on river	13	3	187	101	6
Impact on town	9	3	110	25	3
Environment / plants / animals / endangered species	36	9	235	112	10
Court orders / developer	42	7	148	75	4
Bushfire	11	4	89	67	6
Visual / small village amenity	8	1	83	64	3
Lack of and impact on infrastructure	18	7	164	75	4
Traffic and roads	10	5	88	44	4
Flood and groundwater	12	2	28	44	10
Koala	10	1	39	60	7
Cats and dogs	5	1	35	20	-
Climate change	7	1	22	14	4
Acid sulfate soils	8	1	8	5	-
Biting insects	2	1	9	6	1
Evans Head airport	1	3	3	5	3
Health	1	1	5	-	-
Limited / inadequate information	38	6	19	19	2
Subdivision design	3	-	2	16	-
Affordable housing	5	-	5	9	-

Legal, public interest & Master Plan	7	-	-	-	5
Contributions	4	-	-	-	2
Contamination	2	-	-	-	1
Community / social impact					2

**Table No. 9 Summary of issues of support**

Key issues	Exhibit 1	Exhibit 2	Exhibit 3	Exhibit 4	Exhibit 5
Economic benefits and sustainability to business sector and town	1	5	171	36	7
Businesses struggling	-	-	4	2	-
Create employment during construction	-	-	2	7	7
After construction improve businesses and increase job opportunities	-	4	157	24	-
Increase population to maintain essential services – police, ambulance, fire emergency & medical professions, sport facilities and school	1	3	15	7	-
Lack of land for residential development / housing supply	1	5	169	31	7
People who are objecting – minority, recently moved to town & environmentalists	1	-	1	1	-
1Area to developed is not pristine land	-	-	1	1	-
Freehold land	-	-	-	2	-
Sewerage treatment works up-graded to cater for subdivision	-	-	-	1	-
Positive move approve / get on with it	-	-	1	6	-
Holiday letting many homes empty / need resident locals	-	-	2	2	-
Bring in new and young families	-	-	4	8	-
Diversifies and supports tourism	-	-	1	1	-
Supports decentralisation from city	-	-	-	1	-
Flow on to other towns	-	-	-	1	-
Agree subject to compliance with environmental and cultural concerns	-	-	1	-	-
Supports housing affordability	-	-	2	-	1
Revenue from additional rates	-	-	2	-	-
Culturally significant sites protected	-	-	2	-	-

Available town infrastructure	-	-	2	-	-
Amenity not spoilt	-	-	1	-	-
Traffic not an issue	-	-	1	-	-

**Attachment No. 6** includes a summary of each of the submissions made to Exhibitions #1 and #2 and the identification of the key issues / concerns made in submissions to Exhibitions #3, #4 and #5.

Hard copy of all submissions has been made and are available for review.

The Assessment Briefing Report (24 Aug. 2021) prepared by the DoPI&E to the NRPP identifies the number of objections to the draft Master Plan. Refer to **Attachment No. 2**.

RVC was supplied with copy of the EDO NSW (7 March 2016) submission lodged on behalf of Alan Oshlack, which included:

- a submission by Mr Oshlack
- copy of the report review of the flora and fauna assessment with particular regard to threatened species and communities by David Milledge (4 Dec. 2014) and
- report titled '*Independent Expert Review Aboriginal Cultural Heritage Assessment Draft Master Plan for the Iron Gates Residential Release Evans Head*' by Inge Riege Anthropologist (March 2016).

RVC has also received copies of 31 pro-forma submissions supporting the draft Master Plan.

## **12.7 Richmond Valley Council Staff Comments**

The Concept DA was referred to the following sections of RVC:

- Town planning
- Engineering – roads & drainage
- Engineering – water & sewer
- Environmental health and
- Building.

RVC does not employ an Ecologist and relies on the advice of NSW Office of Environment and Heritage now DoPI&E Biodiversity and Conservation Division.

RVC does not employ a social planner or community development officer.

### *Response town planning*

Town planning made comments to the Feb 2022 and June 2022 drafts of this report.

### *Response engineering – roads & drainage*

The Development Engineer made comments to the Feb 2022 and June 2022 drafts of this report

### *Response engineering – water & sewer*

The Water and Sewer Engineer made comments to the Feb 2022 draft of this report

### *Response environmental health*

The Environmental Health Officer made comments to the Feb 2022 draft of this report.

## 13 Context of the Concept DA and Population Outcomes

The context and population outcomes of the DA are described in Section 15 (page 24) of my review report. Refer to **Attachment No. 1**.

The subdivision proposes 175 residential allotments. Adopting the 2021 'projected' average household size of 2.36 people per dwelling (*Social & Economic Impact Assessment, Hill PDA, July 2019*), the future resident population living in the developed subdivision may be approx. 413 people (175 dwellings x 2.36 people / dwelling).

The *Richmond Valley Local Environmental Plan 2012* permits attached dual occupancy on allotments with a minimum area of 400m<sup>2</sup> and detached dual occupancy on allotments with a minimum area of 600m<sup>2</sup>.

*State Environmental Planning Policy (Housing) 2021* permits attached and detached secondary dwellings in the R1-General residential zone provided an allotment has a minimum area of 450m<sup>2</sup>.

Potentially all allotments may be developed with a dwelling, a dwelling and secondary dwelling or a dwelling and attached second dwelling (dual occupancy). However this is considered highly unlikely, given in particular the bushfire constraint to the land.

The *Revised Engineering Services and Civil Infrastructure Report* for the purposes of calculating demand and loading on water and sewer services, assumes that 105 allotments might be developed for a dwelling and 70 allotments developed for dual occupancy, the equivalent of 245 dwellings.

In this scenario the future resident population living in the developed subdivision may be approx. 578 people (245 dwellings x 2.36 people / dwelling).

The current estimated permanent population of Evans Head is 2,843 people. A potential resident population of 578 in the subdivision is an approx. 20% increase in the existing population of Evans Head.

The economic impact assessment prepared by Hill PDA suggests the future resident population living in the developed subdivision may be approx. 477 people at 2.58 per detached dwelling, 1.78 people per dual occupancy and 5% vacancy rate). This represents an approx. 17% increase in the existing population of Evans Head.

## 14 Concept DA Key Issues

In Section 16 (pages 24-39) of my review report I identified a range of issues relating to the DA at 2 Feb. 2019. Refer to **Attachment No. 1**.

The Assessment Briefing Report (24 Aug. 2021) prepared by the DoPI&E to the NRPP identifies the key issues that were outstanding in regard the draft Master Plan which relate directly to the proposed amendment of the DA to a Concept DA. Refer to **Attachment No. 2**.

The following provides a commentary in regard the key important issues relating to the amended Concept DA. Many of the submissions of objection have raised the issues together with other concerns.



DAC Planning Pty Ltd have provided a report titled '*Response to submission varied concept DA2015/0096*' November 2021. The report included:

- a summary response to government agency submissions
- a copy of the response to submissions made to the draft Master Plan
- advice from Mills Oakley, 23 Nov. 2021 (refer to Section 14.1 and **Attachment No. 8**) and
- advice from Everick Consulting (23 Nov. 2021).

DAC Planning Pty Ltd in response to the submissions made to the Concept DA in general largely relied upon the response to submissions made to the draft Master Plan.

#### **14.1 Legal matters**

Numerous submissions of objection raised issues in regard:

- compliance with the outstanding remediation orders (4 July 1997) of the NSW Land & Environment Court in Judgement No. 40152 of 1996 and
- the matter of legal access given the orders of the NSW Land & Environment Court in Judgement No. 40172 of 1996.

Refer to **Attachment No. 6**.

Both RVC and the Applicant / Landowner have obtained legal advice in relation to various aspects of the land, DA as lodged, Concept DA and Iron Gates Dr.

The advice of Mills Oakley to the Landowner, 1 May 2016, is in regard the provision of offsets as sought by the Office of Environment and Heritage in letters dated 1 March 2016 and 22 March 2016.

The advice of Mills Oakley to the Landowner, 16 Oct. 2016, is in regard approval for the carrying out works within the road reserve for Iron Gates Drive as part of the existing DA and whether or not there is any relevance, in planning law, to the fact that the construction of the existing road within the road reserve has never been formally 'accepted' by RVC as an asset.

The advice of Mills Oakley to the Landowner, 23 Oct. 2016, is in regard trimming overhanging vegetation over the road reserve in the SEPP 14 areas.

The advice of Mills Oakley to the Landowner, 26 Dec. 2016, is in regard the query by the Office of Environment and Heritage and the remediation order of the NSW Land & Environment Court.

The advice of Mills Oakley to the Landowner, 5 March 2019, is in regard whether or not the current location of Iron Gates Drive (in the deviated area) is unlawful.

The advice of Mills Oakley to the Landowner, 14 July 2021, is in regard amendment of the DA to a Concept DA.

The advice of Moray and Agnew, 22 July 2019 to RVC is in regard the advice of Mills Oakley, 16 Oct. 2016, 23 Oct. 2016, 26 Dec. 2016 and 5 March 2019.

The advice of Mills Oakley to the Landowner, 23 Nov. 2020, is in regard submissions made by the NSW Aboriginal Land Council (27 Sept. 2021) and Dr P Ashley (25 Oct. 2021).

**Attachment No. 8** are copies of the legal advice identified above.

The legal advice is that Iron Gates Dr is lawful and there is no legal impediment to the merit assessment and determination of the Concept DA.

The recent Judgement of the NSW Land and Environment Court in the appeal *White v Ballina Shire Council* [2021] NSWLEC 1468 would appear to 'cloud' and complicate the legal issue in regard to the following appeals to and Judgements of the NSW Land & Environment Court which I summarised in my review report 2 Feb. 2019 (refer to **Attachment No. 1**).

*Oshlack v Iron Gates Pty Ltd & Richmond River Shire Council* (NSW Land & Environment Court No. 40152 of 1996) – appeal against the subdivision and breaches of conditions of development consent.

- 6 March 1997 the Court determined that Iron Gates Pty Ltd had carried out earthworks and clearing of vegetation in breach of s. 76(2) of the *Environmental Planning & Assessment Act 1979*, breached certain conditions of consent and caused damage to the habitat of threatened species (Koala) in breach of s. 118D of the *National Parks & Wildlife Act 1974*.
- The Court issued orders restraining:
  - any further development of DA No. 1992/149.
  - from carrying out further works of and incidental to the clearing, formation and construction of an access road on any part of Lots 1, 2 & 3 DP 823583 in so far as any such works are outside the boundaries of Lot 1 DP 47879 without first obtaining approval in accordance with the *Environmental Planning & Assessment Act 1979*.
  - Iron Gates Pty Ltd from using as an access road to and from Portions 276 & 277 any parts of Lots 1, 2 & 3 DP 823583.
- 4 July 1994 the Court ordered that Iron Gates Pty Ltd remediate the land (Lot 276 DP 755624 and Lot 277 DP 755624) in accordance with the agreed remediation plan, that the work commence immediately, be pursued as quickly as reasonably practical and completed within 2 years.

Iron Gates Pty Ltd appealed the decisions but the appeal was dismissed.

*Wilson v Iron Gates Pty Ltd & Richmond River Council* (NSW Land & Environment Court No. 40172 of 1996) – appeal against the access road.

2 Dec 1996 the Court ordered that:

- Carrying out further works on the access road on Lots 1, 2 & 3 DP 823583 in so far as any such work is outside the boundaries of Lot 1 DP 47879 unless approvals under the *Environmental Planning & Assessment Act 1979* are obtained. The approvals nominated were either an application to modify consent or a new DA.
- That construction of the access road on any part of Lots 1, 2 & 3 DP 823583 in so far as any such construction is outside Lot 1 DP 47879 is unlawful.
- That no subsisting consent has been granted under the Act in respect of any road construction on those parts of Lots 1, 2 & 3 DP 823583 as fall outside Lot 1 DP 47879.
- That carrying out of construction works on any part of Lots 1, 2 & 3 DP 823583 as fall outside Lot 1 DP 47879 is in breach of DA No. 1988/110.

Iron Gates Dr was gazetted as a public road 4 June 1993 before the *Wilson v Iron Gates Pty Ltd & Richmond River Council* (40172 of 1996) appeal.

The *White v Ballina Shire Council* [NSW LEC] 2021 appeal appears to look beyond what is on (or the condition) of the land now and that development assessment cannot rely upon previously undertaken illegal or unauthorised works.

White v Ballina Shire Council sought that DA assessment was required of pre-construction environmental conditions.

The question that arises is whether or not there can be reliance upon clearing undertaken as part of DA No. 1992/149 given DA No. 2015/96 has assessed the ecological value of the regrowth vegetation when the 'original' vegetation was cleared and land partially developed.

The legal issue is well outside my experience and qualification and I make no further comment other than it would be prudent that RVC (or NRPP) to seek an opinion on the possible implications of White v Ballina Shire Council and the Concept DA.

#### **14.2 Social impact**

A range of social issues have been raised in numerous submissions of objection. Refer to Section 12.6.2 and **Attachment No. 6**.

The key social concerns raised related to:

- impact on the town
- visual / small village amenity
- lack of civil and social / community infrastructure
- no consultation with local services
- impact on health
- limited availability of doctors and allied medical
- school at capacity
- impact on parking in commercial area of town
- no hospital ambulance services
- impact on limited policing and
- no public transport.

The key concerns raised relating to impact on the town included:

- impact on unique town (Jewel in Crown)
- loss of village amenity and laid back lifestyle
- crowding particularly at holiday time
- does not enhance character of town
- excessive and over development
- division with community – negative impacts
- local community not supportive and
- increased traffic.

A *Social and Economic Impact Assessment by Hill PDA (July 2019)* was provided in the Revised SEE lodged with RVC on 17 Sept. 2019.

The social impact assessment is limited in scope and is largely a desktop analysis. There is no evidence in the assessment report that consultation with the following service sectors in Evans Head was undertaken:

- education (school / pre-school / childcare) providers
- emergency services (police, ambulance, fire, SES, or lifesaving)
- community health or
- community based services (neighbourhood centre, housing providers).

The former General Manager of the Mid Richmond Neighbourhood Centre Inc raised a number of issues in regard the social impact assessment and DA in a submission (18 Nov. 2019). These included:

- Contrary to statements in the social impact assessment there has been no consultation with the Neighbourhood Centre who is a provider of aged care, transport, and other services
- Contrary to statements in the social impact assessment there is no community transport service in Evans Head and the report is inaccurate in relation to public and community transport
- Concern that the development is isolated from town and potential for social disconnection for isolated individuals
- The report is inaccurate in regard the provision of community health services and medical services in Evans Head and
- Lack of consultation with Bundjalung Elders.

As the submission was over 2 years old and there had been a change in staffing, the current General Manager of the Centre was queried whether or not anything of substance had changed.

As the current General Manager was on leave the President of the Management Committee provided comments (23 Dec. 2020) which in summary included:

1. Withdrawal of the 18 Nov. 2019 submission
2. Advice that the Centre is unaware of any community consultation taking place for the DA and although it is the primary community based service it has not been contacted
3. Advice that the proposed development is some kilometre from the shopping hub and the Centre provides the only community based public transport service in Evans Head. Funding is limited and increase in demand for the service will have a negative impact on it and
4. Comments that the existing car parking in the shopping hub will be insufficient to meet increase parking demand should the development proceed, making it difficult for clients and customers to access the Centre.

The proposed development if approved and developed will:

- provide additional housing in Evans Head
- substantially change the existing character and amenity of the town and
- will increase pressure on existing local government civil / infrastructure services (water supply, load to sewerage work, traffic on roads, provision of car parking in the business area, stormwater maintenance, fire trail maintenance, public reserve maintenance) and community, health and welfare services should they remain funded and staffed at current levels.

In my opinion the social impact assessment of the proposal is inadequate because no consultation with key service providers was undertaken. Refer also to comments made in Section 15.11 in regard Part I8 (Social Impact Assessment) of RVCDP 2012.

### **14.3 Economic impact**

The economic impact section of the *Social and Economic Impact Assessment by Hill PDA (July 2019)* assumes 75% of the 175 allotments developed for detached dwellings and 25% dual occupancies yielding an estimated 222 dwellings.

Construction cost including land development, external works and home building is estimated to be \$98M. This based on the DA development cost by Arcadis Consulting Pty Ltd of \$19.9M for land development and future residential development, \$78M for dwellings (assuming \$350,000 per dwelling).

Hill PDA estimate the \$98M would generate a further \$128M of activity and production induced effect and \$92M in consumption induced effects. Total economic activity generated

by construction is estimated to be around \$317M. Though Hill PDA indicate the multiplier effects are national and not necessarily local.

Hill PDA state that for every \$1M of construction work 2.15 job years are directly created. Construction cost of \$98M would directly generate 221 job years, which would equate to 21 direct jobs per year working on the site.

Hill PDA estimate retail spending in Evans Head generated by each worker to be \$50 per week, which is equivalent to \$385,000 from construction workers during the construction period.

Hill PDA estimates the future resident population to be around 477 people and assuming completion and occupation by 2030 and an average spend of \$13,730 retail spending approx. \$6.6M will be spent by residents of which 50% to 60% would be captured in Evans Head (\$3.3M to \$3.9M per annum).

Hill PDA estimate that a resident population of 382 people will generate a demand for an additional 1,050m<sup>2</sup> retail floor space, though not of it would be direct to Evans Head.

Hill PDA estimate that the development could increase local employment by 63 jobs upon completion and whole of government revenue (GST, stamp duty, developer contributions and payroll tax) of \$41.1M.

The potential positive economic impact of the proposed development is substantial.

Several submissions of objection raised issues that have an 'adverse' economic effect including:

- the potential for impact on the local housing market and that the cost of land and too build will exclude locals
- current lack of employment opportunities / further reduced
- negative impact on tourism
- rate increases
- increased cost of insurance in flood and bushfire areas and
- economic cost of resilience.

#### **14.4 Aboriginal cultural heritage**

The direct and intangible impacts on Aboriginal cultural heritage have been raised in numerous submissions of objection both from non-indigenous and indigenous people. Refer to Section 12.6.2 and **Attachment No. 6**.

The key concerns raised which related to Aboriginal cultural heritage included:

- lack of consultation – general and women – only 1 women / consultants male
- birthplace of Bundjalung nation / impact on cultural landscape / regional considerations
- sacred site, artifacts
- scared trees
- massacre site, burial ground
- impact on Gummigadah (National Park) – noise & visual
- independent review required
- lack of consideration of intangible values
- lack of respect of culture and environment and
- correct people not consulted.

The *Revised Aboriginal Cultural Heritage Assessment* recommended the following 7 strategies to mitigate any impacts to the cultural significance of the region.



- 1 **Aboriginal Heritage Impact Permit** – *the midden consists of isolated pieces of shell that have been previously distributed over a large area of the river bank by machinery. Subject to the successful determination of the existing AHIP application, submitted 06 July 2015, by OEH, it is recommended that this surface expression of shell material is collected and placed in a safe area to be nominated by the Traditional Owners.*
- 2 **Cultural Interpretation** - *the Project Area is situated within a significant cultural landscape to the Traditional Owners. The Project presents several opportunities to acknowledge this significance through cultural interpretation. It is recommended that the Proponent continue to engage with the Traditional Owners over how to incorporate Aboriginal knowledge, story and history (as appropriate) into the landscaping plans for the Project open space. This should include:*
  - a) *Cultural signage of the midden and reference to the significance of the nearby Gumigadah site.*
  - b) *Discussions over a cultural walk through the central environmental protection zones, including use of traditional knowledge and plant names in signage and design.*
  - c) *Use of appropriate plant species in any revegetation works.*
- 3 **Cultural Inductions** - *the Proponent engage representatives of the Traditional Owners to provide a cultural heritage induction to all plant operators undertaking initial ground disturbance within the Project Area.*

*The induction should, as a minimum, cover:*

  - a) *basic legislative requirements, including fines for the destruction of Aboriginal cultural heritage;*
  - b) *a discussion on traditional Aboriginal culture, and why the management of Aboriginal cultural heritage is important to Aboriginal peoples;*
  - c) *an introduction on how to identify Aboriginal objects,*
  - d) *a description of portions of the Project Area considered likely to contain Aboriginal Objects; and*
  - e) *a review of the Find Procedures for the Project (See Recommendation 2).*
- 4 **Aboriginal Cultural Material – Find Procedure** - *if it is suspected that Aboriginal material has been uncovered as a result of earth working activities within the Project Area:*
  - a) *work in the surrounding area is to stop immediately;*
  - b) *a temporary fence is to be erected around the site, with a buffer zone of at least 10 metres around the known edge of the site;*
  - c) *an appropriately qualified archaeological consultant is to be engaged to identify the material; and*
  - d) *if the material is found to be of Aboriginal origin, the Aboriginal community is to be consulted in a manner as outlined in the OEH guidelines: Aboriginal Cultural Heritage Consultation Requirements for Proponents (2010).*
- 5 **Notifying the OEH** - *if Aboriginal cultural materials are uncovered as a result of development activities within the Project Area, they are to be registered as Sites in the Aboriginal Heritage Information Management System ('AHIMS') managed by the OEH. Any management outcomes for the site will be included in the information provided to the AHIMS.*
- 6 **Aboriginal Human Remains** - *No evidence indicating the likely existence of human remains within the Project Area could be identified. As a cautionary recommendation, it is recommended that if human remains are located at any stage during earthworks within the Project Area, all works must halt in the immediate area to prevent any further impacts to the remains.*

*The location where they were found should be cordoned off and the remains themselves should be left untouched. The nearest police station, the Traditional Owners and the OEH*

*Regional Office (Coffs Harbour) are to be notified as soon as possible. If the remains are found to be of Aboriginal origin and the police release the scene, the Aboriginal community and the OEH should be consulted as to how the remains should be dealt with. Work may only resume after agreement is reached between all notified parties, provided it is in accordance with all parties' statutory obligations.*

*It is also recommended that in all dealings with Aboriginal human remains, the Proponent should use respectful language, bearing in mind that they are the remains of Aboriginal people rather than scientific specimens.*

7 Conservation Principles - *all effort must be taken to avoid any impacts on Aboriginal Cultural Heritage values at all stages during the development works. If impacts are unavoidable, mitigation measures should be negotiated between the Proponent, OEH and the Aboriginal Community.*

The Bandjalang Custodians; Mr A Wilson, Mr D Wilson, Mr D Wilson, and Ms S Barker made a submission to RVC (7 Dec. 2014) expressing a number of concerns in regard the preparation of the cultural heritage assessment (particularly in regard consultation) and the DA.

The Bandjalang Aboriginal Corporation Ltd (14 Nov. 2019) provided a letter of support for the development. The letter was not under letterhead.

On 21 Jan. 2020 Ms S Ferguson CEO of the Bandjalang Aboriginal Corporation Prescribed Body Corporate RNTBC advised RVC *'by unanimous resolution the directors of the Bandjalang Aboriginal Corporation wish to formally withdraw the 14 Nov. 2019 letter'*. Ms S Ferguson requested RVC to ensure all documentation from the Corporation was under letterhead.

The Bandjalang Aboriginal Corporation Prescribed Body Corporate RNTBC submitted an objection (22 Oct. 2021). The submission advises that the Corporation opposes the DA *'on the basis of the significant tangible and intangible cultural heritage in both the project area and the surrounding area'*.

The Corporation raised issues with the *Aboriginal Cultural Heritage Assessment* including that it:

- does not accurately reflect Aboriginal oral history not the full record of site recorded on the Aboriginal Heritage Information Management System
- does not provide adequate consideration of the impact on nor protection of Aboriginal cultural heritage in the Iron Gates area
- does not reflect the presence of a traditional wedding ceremony site or burials in the project area and
- does not provide adequate consideration of the impact on nor protection of Aboriginal sites identified by Mr L Wilson's descendants.

A memo prepared by the Applicant included in the Everick Consulting response to submissions (Revision 2, 24 March 2020) to the draft Master Plan, records an on-site meeting (13 Nov. 2019) with the Applicant, Mr B Drew, Mr T Wilson, and Mr J Roberts. Mr Roberts advised; *there is no way burials would have occurred on the hill and that there were no known burials at the Iron Gates property.*

Since the DA was lodged in Dec. 1994, Everick Consulting Pty Ltd have re-issued once and made 4 amendments to the cultural heritage assessment (31 Sept 2015, 7 Nov. 2018, 18 April 2019, 25 May 2019, and 18 July 2019) and have prepared a response (23 Nov. 2021)

to issues raised by Dept. of Planning Infrastructure and Environment (DoPI&E) in regard the draft Master Plan.

Inge Riege Anthropologist prepared the reports:

1. *'Independent Expert Review Aboriginal Cultural Heritage Assessment Draft Master Plan for the Iron Gates Residential Release Evans Head'* (March 2016) and
2. *'Independent Expert Review Aboriginal Cultural Heritage Assessment Iron Gates Residential Subdivision Evans Head'* (Dec. 2019).

Both these reports have been provided to RVC with submissions to the DA and Concept DA. Ms Riege in her Dec. 2019 reports re-iterates her 4 key concerns:

- *the lack of researchers competent to assess cultural heritage as opposed to archaeological heritage;*
- *the incompleteness of consultation with relevant knowledge holders;*
- *the lack of coverage of that part of the literature concerned with cultural significance; and*
- *the failure to assess impact on intangible cultural heritage.*

The following people identified themselves as Aboriginal and made submissions of objection.

#### *Exhibition #3*

- Gugin Gudduba Local Aboriginal Land Council (13 Nov. 2019)
- Ms S Barker (18 Nov. 2019) – traditional owner and Custodian of Bandjalang country
- Ms Mikayla (17 Nov. 2019) – Kamilroi and Wiradjuri woman
- Mr A Ashman (27 Oct. 2019) – Aboriginal resident of Evans Head

#### *Exhibition #4*

- Ms S Barker (19 Oct. 2021) – traditional owner and Custodian of Bandjalang country
- Mr T Reese (25 Oct. 2021) – descendant of the Midjunbal, Ungumbir (Yugambeh) clans of the Bundjalung Nation
- Ms K Barker (24 Oct. 2021) – traditional owner a of Bandjalang country
- Ms J Frater (nee Bylerley) (23 Oct. 2021) – descendant of the Midjunbal, Ungumbir (Yugambeh) clans of the Bundjalung Nation
- Ms J Reese (23 Oct. 2021) – descendant of the Midjunbal, Ungumbir (Yugambeh) clans of the Bundjalung Nation

Ms J Owens (1 Nov. 2019) in a submission indicated she had been told that the marked 'Aboriginal tree' at Iron Gates were marks made by a Surveyor.

The following people identified themselves as Aboriginal and made submissions of support of the Concept DA.

#### *Exhibition #5*

- Mr Anthony Wilson (24 Feb. 2022)
- Mr William Harvey Drew-Murphy (24 Feb. 2022)

Mr Wilson advised the following:

- Elder of the Bandjalang People and current Director of the Bandjalang Aboriginal Corporation
- Eldest son of the Late Uncle Laurie Wilson custodian of Aboriginal knowledge for the Bandjalang people
- Has held extensive consultations with the developer and inspections of the site
- With other members of the Bandjalang Aboriginal Corporation have met with and have had extensive consultations with the Archaeologist examining the site on behalf of the developer

- Believes the iron Gate development will help protect and promote our cultural and heritage
- Satisfied with the way the developer and Archaeologist are planning to protect the scattered remains of a midden identified on the site
- Applauds the way the developer, Goldcoral and its Director Graeme Ingles for level of consultation undertaken with the Bandjalang people
- Project has my complete support

Mr Drew-Murphy advised the following:

- Elder of the Bandjalang People and a former Chairman of the Bandjalang Aboriginal Corporation
- Has held extensive consultations with the developer and inspections of the site
- With other members of the Bandjalang Aboriginal Corporation have met with and have had extensive consultations with the Archaeologist examining the site on behalf of the developer
- Believes the iron Gate development will help protect and promote our cultural and heritage
- Satisfied with the way the developer and Archaeologist are planning to protect the scattered remains of a midden identified on the site
- Applauds the way the developer, Goldcoral and its Director Graeme Ingles for level of consultation undertaken with the Bandjalang people
- Project has my complete support

The Dept. of Premier and Cabinet, Heritage NSW, Aboriginal Cultural Heritage Regulation (1 Nov. 2021 and 21 Feb. 2022) has supplied General Terms of Approval pursuant to s. 90 of the *National Parks and Wildlife Act 1974* for the partial destruction of the shell midden only. Refer to **Attachment No. 7b**.

The letter supplying the General Terms of Approval states:

*Please note the General Terms of Approval we are issuing only relate to harm arising from the movement of certain Aboriginal objects and community collection in the midden area along the foreshore of the Evans River as described in the supporting documentation. Consistent with previous correspondence we have received and responded to on this matter, approval has not been sought for any harm to Aboriginal objects from the proposed subdivision and road upgrading works. Therefore, our General Terms of Approval do not authorise any harm to Aboriginal objects arising from those works.*

The copy of the Aboriginal Heritage Impact Permit (AHIP) provided in the *Revised Aboriginal Cultural Heritage Assessment* identifies 'the land to which this application applies' as; 'Part Lot 163 DP 831052, Lots 276 and 277 DP 755624 – located off Iron Gates Road Evans Head NSW'. The application did not include the Crown Foreshore Reserve.

The General Terms of Approval do not identify the land that they apply too. Embellishment works in the Crown Foreshore Reserve has been withdrawn from the Concept DA. The General Terms of Approval could now only apply to the part of the shell midden in Proposed Lot 142 (currently Lot 276 DP 755624).

The *Revised Aboriginal Cultural Heritage Assessment* does not make any recommendations in regard the future conservation / protection or management or preservation and prevention of damage to the part of the shell midden to remain in the Crown Foreshore Reserve immediately adjoining the proposed open space / public reserves Lot 141 and Lot 142.

The 2 lithic artefacts identified in the *Revised Aboriginal Cultural Heritage Assessment* are located just outside the 'proposed residential footprint' and no recommendation is made in regard their on-going protection and conservation.

The *Revised Aboriginal Cultural Heritage Assessment* proposes to incorporate cultural trails into the open space of the development, either in the centre of the development or along the banks of the Evans River. Embellishment work in the Crown Foreshore Reserve is no longer part of the Concept DA and neither the *Landscape Statement of Intent* refer to or *Landscape Plans* make provision for a cultural trail.

An assessment of the clearing of vegetation in the Iron Gates Dr road reserve for fire safety and the potential for impact on Aboriginal cultural heritage has not occurred.

The NSW Aboriginal Land Council (27 Sept. 2021) made representations to RVC that in the proposed upgrade works of Iron Gates Dr any physical impact on the physical condition of land council owned land (Lot 544 and Lot 545 DP 4855) was not permitted without the consent of the NSW Aboriginal Land Council.

The Land Council also advised RVC that Lot 408 DP 755624, Lot 547 DP 48550, and Lot 7016 DP 1112989 were subject to Aboriginal Land Claims #50090, #50093 and #50094.

The Concept DA does not propose any works in either Lot 544 DP 4855, Lot 545 DP 4855, Lot 408 DP 755624, Lot 547 DP 48550, or Lot 7016 DP 1112989. Although vegetation removal is proposed to the boundary of the Iron Gates Dr road reserve (excluding the SEPP No. 14 wetlands) adjoining these allotments. There has been no ecological assessment of potential 'edge effect' onto vegetation within the allotments as a consequence of the vegetation removal in the road reserve.

A 2m wide 'bio swale' is proposed in the Iron Gates Dr road reserve adjoining Lot 544 DP 48550 and another adjoining Portion 408.

Mills Oakley (23 Nov. 2021) provided advice to the Applicant in regard the submission from NSW Aboriginal Land Council. Refer to Section 14.1 and **Attachment No. 8**.

In my opinion the Aboriginal stakeholder consultation and mitigation of potential impacts on Aboriginal cultural heritage has not been satisfactorily resolved.

The on-going protection and conservation of the remaining part of the shell midden located in the Crown Foreshore Reserve has not been satisfactorily resolved.

There has been no Aboriginal cultural heritage assessment for the removal of vegetation and ground disturbance in Iron Gates Dr for bushfire safety.

#### **14.5 Acid sulfate soils and groundwater**

Groundwater, potential occurrence of acid sulfate soils and potential for impact on the Evans River has been raised in a number of submissions of objection. Refer to Section 12.6.2 and **Attachment No. 6**.

There has been no geotechnical investigation of the ridgeline and sideslope from which the majority of fill (130,103m<sup>3</sup>) for the development is proposed to be sourced.

The report of the *Acid Sulfate Investigation and Soil Management Plan* relies upon and



includes:

- the results of the geotechnical investigations undertaken by Geotech Investigations Pty Ltd for the DA (Appendix D of the *Revised Engineering Services and Civil Infrastructure Report*)
- a geotechnical investigation without any plan showing the location of test bores or drain by Coffey Partners International Pty Ltd (12 Jan. 1995) and
- an extract of a report (plan showing location of test bores provided) prepared by Outline Planning Consultants referring to investigations undertaken by Morse McVey & Assoc and D.J. Douglas & Partners Pty Ltd (1991).

There have been no sampling investigations for acid sulfate soils in the 'proposed residential footprint'.

There has been no groundwater investigation of the 'proposed residential footprint' and assessment of the potential for movement of groundwater and contact with potential acid sulfate soils having regard to the extent of filling and potential for pollution of the Evans River.

In my opinion the geotechnical, acid sulfate soils and groundwater assessments of the 'proposed residential footprint' are inadequate given the constraints of the land and nature of the proposed development.

#### **14.6 Biodiversity**

Section 16.10 of my 2 Feb. 2019 review report (refer to **Attachment No. 1**) provides a detailed commentary in regard the flora and fauna impact assessment for the DA prior to that date.

The impact on the biodiversity (flora and fauna) values of the land and to adjoining land has been raised in numerous submissions of objection. Refer to Section 12.6.2 and **Attachment No. 6**.

The key concerns related to:

- loss of fauna / impact of cats on native animals
- land part of important wildlife corridor – Bundjalung & Broadwater National Parks
- impact on threatened plants and animals
- edge effect on Littoral rainforest
- isolate Littoral rainforest / EEC
- incompatible with conservation zoning of land
- alteration to natural drainage systems
- no on-site stormwater detention
- age of assessment / extent of field work inadequate
- extent of vegetation removal
- loss of water quality and
- impact of artificial street and other lights.

The key concerns in regard Koala related to:

- independent review needed – insufficient survey
- existing corridor – land and Iron Gates Dr
- SAT analysis limited
- loss of koala food trees
- increased risk of Koala kills
- cats and dogs
- mitigation measures insufficient

- site part of Evans Head-Doonbah-Riley Hill-Broadwater population – only surviving population
- biobanking does not replace lost trees and
- previous tree removal.

Investigation and impact assessment in regard the Concept DA flora and fauna is provided in 2 reports:

1. *Terrestrial Flora and Fauna Assessment Report* by Planit (Aug 2014) and amended by JWA Pty Ltd (July 2019) and
2. *Amended Ecological Assessment (Iron Gates Drive)* by JWA Pty Ltd, April 2019.

Amendments to the *Terrestrial Flora and Fauna Assessment* report by Planit Consulting (Aug. 2014) are described by JWA Pty Ltd in letter dated 16 April 2019.

#### 14.6.1 The land and 'total development footprint'

The land subject to the 'total development footprint' contains threatened fauna species and provides habitat for a range of fauna and flora threatened species.

The environmental significance of the land is reflected by the C2 and C3 zones within it and the C1-Environmental national parks and nature reserves, C2 and C3 zones on adjoining land and land in the locality.

Other than additional site investigations to confirm the species of an orchid and undertake additional Koala surveys on the 19<sup>th</sup> and 20<sup>th</sup> March 2019, the *Terrestrial Flora and Fauna Assessment Report* by Planit (Aug 2014) and amended by JWA Pty Ltd (July 2019) report relies upon field work undertaken between 20<sup>th</sup> and 25<sup>th</sup> May 2014 following land clearing of the ridgeline and the associated sideslopes in April / May 2014.

Flora and fauna site investigations relied upon for the Concept DA flora and fauna assessment are now approx. 7 years old and site investigations for Koala approx. 3 years old.

The submission by Mr D Milledge in particular raised issue with the adequacy and rigor of the *Terrestrial Flora and Fauna Assessment Report (Aug. 2014)*. Mr Milledge who is a highly regarded and qualified local ecologist has undertaken investigations on-site; 19 and 20 Sept. 1996, 27 March 1997, 19 March 1998 and who viewed the site from its eastern boundary on 28 Nov. 2014, made comments in relation to:

- threatened species known or likely to occur in the site
- adequacy of the fauna survey methods and reporting
- likely damage to threatened fauna species, communities, and their habitats from the development proposal and
- harm to threatened species and their habitats resulting from previous works.

Mr Milledge concluded that a Species Impact Statement (SIS) in accordance with the TSC Act may be required.

It is highly likely that in the 7 years since the site investigations were undertaken for the *Amended Terrestrial Flora and Fauna Assessment Report* that the area previously developed under DA No. 1992/149 is any longer likely to constitute regrowth wattle.

The TSC Act which applied to the DA when it was lodged in Dec 2014 has since been repealed by the *Biodiversity Conservation Act 2016*.

The *Amended Terrestrial Flora and Fauna Assessment Report* identifies that the development involves clearing of approx.:

- 127m<sup>2</sup> of degraded vegetation adjoining the Littoral rainforest for the sewer pump station
- 6.83ha of regrowth wattle and other species from within the area previously developed under DA No. 1992/149
- 1,175m<sup>2</sup> of open dry heath
- 1.16ha of open dry heath with mixed Eucalypt and
- 1,195m<sup>2</sup> of heathy Scribbly Gum.

The *Amended Terrestrial Flora and Fauna Assessment Report* identified on the land:

- Seventy four (74) species of birds, none of which was scheduled as Endangered or Vulnerable under the TSC Act
- Twenty five (25) species of mammals, 6 of which was scheduled as Vulnerable under the TSC Act
- Eight (8) species of reptiles, none of which was scheduled as Endangered or Vulnerable under the TSC Act and
- Four (4) species of amphibians, 1 of which was scheduled as Vulnerable under the TSC Act.

The *Amended Terrestrial Flora and Fauna Assessment Report* considered the following site impacts:

1 *Significance of impacts of action to the following threatened species, communities and populations*

An assessment of significance of impacts to the following threatened species, communities, and populations (Table No. 14 of the *Amended Terrestrial Flora and Fauna Assessment Report*):

- Littoral rainforest – listed under the TSC Act as Endangered and
- Grey-headed flying-fox
- Hoary wattled bat
- Little Bent-winged bat
- Southern myotis
- Koala
- Squirrel glider and
- Wallum froglet, all listed as Vulnerable under the TSC Act.

The *Amended Terrestrial Flora and Fauna Assessment Report* concluded that there is not *'likely to be significantly affected by proposed action'* on those threatened species, communities, and populations

The submission by Mr Milledge indicates the following additional threatened fauna species have been recorded in the Iron Gates site:

- Black-necked stork
  - Square-tailed kite and
  - White eared monarch
  - Brush-tailed phascogale
  - Eastern blossom-bat and
  - Greater broad-nosed bat,
- all listed as Vulnerable under the TSC Act.

2 *Impact due to vegetation clearing*

The *Amended Terrestrial Flora and Fauna Assessment Report* concludes that vegetation clearing *'will not have a significant environmental impact due to the highly modified areas to*

*be affected' and that 'the clearing does not result in fragmentation or increased edge effects given the existing configuration of the remnants'.*

The submission by Mr Milledge indicates that the claim is erroneous.

### *3 Impacts to fauna habitat*

The *Amended Terrestrial Flora and Fauna Assessment Report* concludes that; *'the proposal involves minor clearing of vegetation which it is considered does not constitute core or critical habitat for threatened species recorded in the locality'.*

The report states; minor forage area lost is insignificant to that found in the locality and is offset by revegetation works.

The submission by Mr Milledge indicates that the claim is invalid.

### *4 Fauna mortality / injury*

The *Amended Terrestrial Flora and Fauna Assessment Report* concludes that; the *'surveying work has identified that the majority of species recorded are highly mobile' and 'with an appropriate fauna management plan it is unlikely impacts would arise'.*

This appears to conflict with the contention that if species are highly mobile then there is more likelihood of mortality / injury from road strike / kill.

### *5 Habitat fragmentation, barrier effects and edge effects*

The *Amended Terrestrial Flora and Fauna Assessment Report* discusses generally the impacts of habitat fragmentation, barrier effects and edge effects and concludes: *'It is considered that the works are of a minor nature in the context of the regional terrestrial corridors in the locality and will remove modified/cleared areas which does not represent significant fauna habitats.'*

Whilst the physical works of the proposed development in a regional context maybe minor, they are not on the land or 'proposed residential footprint'.

The *Amended Terrestrial Flora and Fauna Assessment Report* states:

- *The proposal including revegetation ensures that the existing vegetation remnants will not be further fragmented.*
- *Additionally, it is considered that the proposal will not introduce a new terrestrial fauna dispersal barrier or intensify an existing barrier as the works proposed are not constructing barriers such as fences between vegetation communities. The existing corridor value of the locality is therefore unlikely to be reduced by the proposal.'*

and that *the proposal will not introduce a new terrestrial fauna dispersal barrier or intensify an existing barrier.* This is contradicted by the construction of retaining walls adjoining the Littoral rainforest (proposed Lot 136 and Lot 137).

The *Amended Terrestrial Flora and Fauna Assessment Report* does not assess the provision of retaining walls (barriers) for Proposed Road 5 between the 2 Littoral rainforest communities.

### *6 Mortality associate with roadway / vehicle strike*

The *Amended Terrestrial Flora and Fauna Assessment Report* indicates that roads and traffic are widely accepted as having impacts upon terrestrial wildlife as they cut across landscape features and divide wildlife habitats and are one of the main obstacles to the movement of land vertebrates.

The report further indicates that:

- *The implications of movement barriers to wildlife populations are considerable as barriers tend to create metapopulations (subpopulations) where a road divides a large continuous population into smaller, partially isolated local populations.*
- *Small populations fluctuate in size more widely and have a higher probability of extinction than do large populations. In addition, disruption of population dispersal and recolonisation may result from the barrier-effect of roads.*
- *Roads also result in vehicle collisions with wildlife (road-kill) and can represent a significant source of mortality for declining populations of some wildlife species.*

The *Amended Terrestrial Flora and Fauna Assessment Report* concludes:

*In this instance it is considered that whilst additional daily vehicle movements will occur on the site. It is recommended that speed limits within the developmental site should not exceed 50 km/h and wildlife road signs are to be erected to warn drivers of their presence in the locality.*

It is noted that the current daily vehicle movements are virtually nil.

#### *7 Establishment of weeds*

The *Amended Terrestrial Flora and Fauna Assessment Report* indicates; 'weed invasion occurs when unwanted or exotic plants become established in native bushland via natural dispersal vectors such as wind, water, insects, birds and other animals, however, humans are by far the most effective and efficient vector of plants. Humans may facilitate the direct introduction weeds by inappropriate garden dumping, via vehicles, imported agricultural products and stock rotation/movement'.

#### *8 Predation / disruption by cats and dogs*

The *Amended Terrestrial Flora and Fauna Assessment Report* notes that pest / domestic animals (foxes, dogs, and cats) are established in the locality and that mortality of fauna (especially Koalas) as a result of dog attack is a key conservation concern.

The report notes that cats kill vertebrates weighing as much as 3kg but preferably kill mammals less than 220gm and birds less than 200gm and that they kill reptiles, amphibians and invertebrates and can carry disease.

The report concludes in relation to predation / disruption by cats and dogs the following:

*The development proposal will introduce the incremental risk of domestic fauna impact upon native fauna species although such risks are well established within the locality and an isolated ban on domestic animals at this location would be unreasonable. It is noted that dogs and cats would not be permitted to free roam within the proposed open space areas to be an on-leash area only to minimise harassment of residual fauna.*

The open space areas comprise Lot 142 and Lot 141 which have a total area of approx. 4,159m<sup>2</sup> and which provide both subdivision drainage infrastructure and park furniture and facilities.

The *Amended Terrestrial Flora and Fauna Assessment Report* identifies the following measures to mitigate potential impacts of the development:

##### *8.2.1 Impact on Vegetation and Habitat Clearing*

*Disturbance to areas of native and exotic vegetation as described in this report will be unavoidable to deliver the proposal. In total, 92% of the land to be impacted is comprised of either disturbed/cleared areas or regrowth vegetation. To ensure that clearing impacts do not occur outside of the designated construction zone it will be necessary to clearly identify and*



*mark the boundaries the works zones onsite prior to construction. Such boundaries are to be protected via high visibility fencing, sediment fencing and/or signage identifying that no construction activities (including temporary storage, stockpiling, vehicle movement etc) are permitted beyond.*

*Any areas to be cleared are to be pre-assessed by an experienced ecologist and wildlife spotter/catcher. This pre-assessment shall allow for an inventory of trees bearing bird nests and/or other trees representing fauna habitat to be undertaken prior to felling works. A wildlife spotter catcher is to be utilised during all phases of clearing of the site to ensure safe dispersal and relocation of native fauna.*

The employment of a *wildlife spotter catcher* is an animal welfare measure and would not appear to have a benefit to on-going biodiversity conservation.

*Salvageable habitat components such as hollow stems or ground logs shall also be stockpiled and randomly dispersed throughout the retained bushland external to the proposal site.*

*Any pruning works to be supervised by a suitably qualified arborist.*

#### *8.2.2 Impacts Associated With Edge Effects & Weed Management*

*The following design and management initiatives are proposed in association with site development to progressively reduce the impact of 'edge effects' on the retained, interconnected native vegetation remnants:*

There were no design and management initiatives identified in the report under section 8.2.2.

#### *8.2.3 Terrestrial Fauna Dispersal Barriers, Barrier Effects*

*As discussed in the previous sections the following measures are proposed to reduce the potential impact of the proposal on continued terrestrial fauna dispersal within the locality:*

- Limited clearing of habitat which represents low ecological values to a to a small area at the edge of the existing semi-contiguous remnant.*

#### *8.2.4 Protection of wetlands, riparian land and watercourses*

*There will be no direct impacts on wetlands, riparian land or watercourses (or associated key fish habitats) as a result of the proposed development. The proposed subdivision layout seeks to maintain the natural stormwater drainage regime across the site. The drainage feature in the north east of the site and occurring within the mapped wetland designation is retained and buffered from development. Bio-retention areas, ponds and gross pollutant traps are proposed to collect and manage stormwater before leaving the site. The Engineering Impact Assessment prepared to accompany the development application includes plans and commentary regarding the proposed stormwater management strategy for the site. It is understood that further detail will form part of the future Construction Certification applications.*

The proposed subdivision layout does not maintain the natural drainage regime across the site. The natural drainage regimes are significantly altered by the excavation and filling.

The provision of *bio-retention areas, ponds and gross pollutant traps* is likely to exacerbate or increase Cane Toad populations and there are no measures proposed in the *Amended Terrestrial Flora and Fauna Assessment Report* to properly manage these facilities to minimise Cane Toads.

*A Stormwater Management Plan should be prepared prior to commencement of construction to ensure that there are no indirect impacts on nearby riparian land and waterways as a result of the proposed development.*

RVC's Development Engineer and Environmental Health Officer have raised concerns in regard to the plan for stormwater management and potential for adverse impact on the Evans River.

### **8.3 ENHANCEMENT & RESTORATION**

*The following actions are aimed at providing a level of enhancement to retained habitats and restoration of degraded areas of the site. These actions focus upon bush regeneration activities, replacing fauna habitats and restoring native vegetation biomass following construction:*

#### **8.3.1 Revegetation & Restoration of Disturbed Areas**

*A 6.25 m high crib wall will be constructed as part of the proposed development. To minimise the visual impact and use the wall as a feature, it is proposed to create a green wall. The open web construction and use of free draining material will allow planting of the following native plant species, many of which are suitable for the Richmond Birdwing Butterfly:*

- *Richmond Birdwing vine (Pararistolochia praevenosa)*
- *Headache vine (Clematis glycinoides)*
- *Slender grape (Cayratia clematidea)*
- *Mountain aristolochia (Pararistolochia laheyana)*
- *Wonga vine (Pandorea pandorana)*
- *Boobialla (Myoporum elipticum)*
- *Barbed-wire vine (Smilax australis)*

*Further details are provided in the Iron Gates Cribb Wall Landscape Details (Planit 2016) provided as Attachment 5.*

The proposed landscaping of the crib retaining wall is not mentioned in the *Landscape Statement of Intent*.

RVC's Development Engineer has advised the following in regard the crib wall; *the vegetation will result in an increase in maintenance from RVC which is not ideal, as such, the crib retaining wall should not be vegetated.*

*Additional revegetation and regeneration works are proposed as part of the biodiversity offset strategy for the project endorsed by OEH (refer Section 8.4).*

#### **8.3.2 Weed Management**

*It is recommended that treatment of weeds within the site (in particular within the retained vegetation) be undertaken.*

*Control techniques will vary depending upon the species being targeted and its location. In areas of low significance (i.e. weed thickets external to bushland or drainage lines etc) broad scale application of herbicide or mechanical removal will be appropriate. Within the proximity to areas of native floral species dominance more selective removal techniques (i.e. cut stump, stem application, hand removal etc) and spot application of a non-residual herbicide (i.e. roundup bioactive) would be necessary.*

*In addition, a general weed propagule protocol should also be applied whereby vehicles and machinery is checked for vegetative material (particularly in tyres or chassis) prior to entry to*

*the site. An exit inspection should also be undertaken to ensure material is not removed from the site to an external bushland location.*

#### **8.4 BIODIVERSITY OFFSETS**

*It should be noted that the proposed development does not specifically require offsets under the (now superseded) TSC Act the (current) Biodiversity Conservation Act 2016 (BC Act).*

*However, in addition to the above proposed measures to avoid and minimise ecological impacts, direct and potential indirect impacts of the development on the retained Littoral rainforest (including minor pruning/clearing works) and other native vegetation communities will be offset in accordance with requirements of the Biodiversity Offsets Scheme (i.e. under the current Biodiversity Conservation Act 2016).*

*The Biodiversity Offset Package will include:*

##### *Rehabilitation works*

- The proponent proposes to rehabilitate the littoral rainforest patches and associated buffers (including site preparation, weed control and planting locally endemic species) at an estimated cost of \$80,000 in accordance with an approved Management Plan.*
- Fencing will be installed (post and rail/bollards) on the periphery of the Littoral rainforest patches to reduce potential impacts to the area at an estimated cost of \$48,000.*

##### *Protection in Perpetuity*

- The rehabilitated Littoral rainforest patches (totalling 8.83 ha) will be secured and managed under a stewardship agreement (under the Biodiversity Conservation Act 2016) entered into by the proponent.*
- This will include a Total Fund Deposit of \$371,538.*

##### *Acquittal of additional offset credits*

- The rehabilitation works, and stewardship agreement discussed above will acquit 86 credits.*
- The remaining 157 credits (243 credits - 86 credits) will be acquitted via payment to the Biodiversity Conservation Trust Fund by the proponent in an amount of \$274,593.*

The Biodiversity and Conservation Division of the Environment Energy and Science Group in DoPI&E in email dated 16 Aug. 2019 advised RVC of the following in regard 'biodiversity certification' and 'biobanking statements':

*I understand that the development application for Iron Gates (DA2015/0096) has not been determined yet and is being considered under the previous Threatened Species Conservation Act 1995.*

*We have not had a statutory role in considering the development application however we appreciate the opportunity to assist the council in reviewing and providing advice on the proposal. We would only have a statutory role if it was determined (by the council) that the proposal was likely to significantly affect threatened species, populations or ecological communities or their habitats, and as such require a Species Impact Statement to be prepared.*

*In reviewing the proposal, we recommended that the applicant consider the 'avoid, mitigate and offset' approach. Our previous correspondence over the years provides a record of our position, particularly in relation to using the biobanking credit calculator as a guide to determine a suitable offset for the remaining biodiversity impacts.*

*The applicant has not formally entered into the biobanking scheme and as such we are not able to issue a biobanking statement. However it is envisaged that the negotiated offset package (retirement of biodiversity credits and other conservation works) would form part of the conditions of consent if the proposal is to be approved.*

The *Amended Terrestrial Flora and Fauna Assessment* report contains the following correspondence (refer to **Attachment No. 9**) relating to the calculation of credits for direct and indirect impacts and proposed biodiversity offsets package for the subdivision and works in Iron Gates Dr for the DA before it was amended to a Concept DA:

1. Ingles Group of Companies (29 March 2018) to NSW OE&H
2. NSW OE&H (2 May 2018) to Mr G Ingles Director Goldcoral Pty Ltd
3. Ingles Group of Companies (14 May 2018) to Mr D Young, Senior team Leader Planning, North East Region (NSW OE&H)
4. NSW OE&H (29 May 2018) to Dept of Planning and Environment (Mr J Stone) and
5. NSW OE&H (8 March 2019) to JWA Ecological Consultants.

Also included in **Attachment No. 9** is copy of:

- correspondence from DoPI&E Biodiversity and Conservation Division (13 Nov. 2019) to RVC in regard the biodiversity offsets and
- the map titled 'Impact and Revegetation Areas' (Attachment 2 of the letter dated 8 Jan. 2018) from JWA Ecological Consultants.

Having regard to advice of Biodiversity and Conservation Division of the Environment Energy and Science Group in DoPI&E the calculation of credits for direct and indirect impacts and proposed biodiversity offsets package for the subdivision and works in Iron Gates Dr is a guide only in determining a suitable offset for remaining biodiversity impacts.

The map titled 'Impact and Revegetation Areas' (Attachment 2 of the letter dated 8 Jan. 2018) from JWA Ecological Consultants to the Senior Team Leader Planning, North East Region, Regional Operations Office of Environment and Heritage showing polygons and calculations of areas assessed shows for the length of the eastern boundary adjoining proposed Lots 1 to 21 and Lot 60 '*indirect impacts on other vegetation based on 50m buffer to Evans River, 30m buffer to other EEC's and 20m buffer to native vegetation*' onto land known as Lot 546 DP 48550.

Lot 546 DP 48550 is not land subject of the Concept DA and is owned by the Crown and subject to Aboriginal Land Claims #50090, #50093 and #50094. Refer to Section 14.4.

The *Amended Terrestrial Flora and Fauna Assessment Report* is stale and it cannot be assumed that it now accurately accounts for and can be relied upon to adequately identify the flora and fauna within the 'total development footprint' and 'proposed residential footprint'.

The Judgement in *White v Ballina Shire Council* [NSW LEC] 2021 raises the question whether or not there can be reliance upon the unauthorised / illegal clearing (refer the outcomes of *Oshlack v Iron Gates Pty Ltd & Richmond River Shire Council* (NSW Land & Environment Court No. 40152 of 1996) undertaken as part of DA No. 1992/149 given DA No. 2015/96 has assessed the ecological value of the regrowth vegetation that was cleared and partially developed.

The field assessment is 7 years old and it is highly likely that the extent and condition of vegetation has changed, concerns have been raised in submissions by highly regarded experts in regard the adequacy of the survey methodology and additional threatened species have been added to the schedules of the *Biodiversity Conservation Act 2016*.

The *Amended Terrestrial Flora and Fauna Assessment Report* does not contain an

assessment of:

- the potential impacts of earthworks, filling, and construction of retaining walls and earthen batters on the Littoral rainforest within proposed Lot 136 and Lot 137 or riparian vegetation in the Crown Foreshore Reserve
- the potential changes to the hydrologic / drainage regime to the Littoral rainforest in proposed Lot 137 because of earthworks, filling, and construction of retaining walls and earthen batters supporting roads surrounding it
- the impact of wind-throw
- the indirect impacts on threatened species, populations caused by human disturbance and noise on sensitive threatened fauna species
- the impacts on threatened species, populations of exposure to bright lights (street and from occupation of future dwellings)
- the large number of houses and how that is likely to interrupt any connectivity of vegetation or
- cumulative impacts.

The *Amended Terrestrial Flora and Fauna Assessment Report* does not propose the provision of buffers to the riparian vegetation in the Crown Foreshore Reserve along the Evans River, the Littoral rainforest within the 'total development footprint' (proposed Lot 136 and Lot 137) which are zoned C2 or key fish habitat recommended by the Dept of Primary Industries–Fisheries. The RVC LEP 2012 Wetlands Map Riparian Land and Waterways Map Sheet \_CL1\_010 (refer **Map No. 5**) shows wetlands and key fish habitat.

The *Amended Terrestrial Flora and Fauna Assessment Report* does not propose the prohibition of cats and dogs in the subdivision, when it acknowledges they have a potential to cause adverse ecological / conservation impacts.

No detail is provided in the *Amended Terrestrial Flora and Fauna Assessment Report* in regard the on-going prevention of weeds in the Littoral rainforest (proposed Lot 136 and Lot 137) likely to be generated by occupation of 175 allotments.

Other than advisory signage no other measures are proposed along Iron Gates Dr to minimise potential for fauna road kill as a consequence of the traffic generated by the development, estimated by TMM Consulting Pty Ltd to be in the order of 1,685 daily vehicle trips (and RVC's Development Engineer at 1,890 AADT).

The engineering plans in the *Revised Engineering Services and Civil Infrastructure Report* do not provide for any wildlife crossing under (or above) Proposed Road 5 between the areas of Littoral rainforest (proposed Lot 136 and Lot 137) or for stormwater drainage.

Stormwater culverts are inappropriate as fauna crossings, if a fauna crossing is required it should be designed as a dedicated structure to perform this purpose.

The width of the proposed road reserve for Proposed Road 5 between (the Littoral rainforest communities zoned C2), proposed Lot 136 and Lot 137 zoned R1 is approx. 15m.

Currently the clearing for the existing driveway track between proposed Lot 136 and Lot 137 is approx. 10m to 12m wide between trees and other vegetation. Refer to **Photographs No. 68, 69, 70, 71, 72 and 73** of **Attachment No. 5b**.

The *Amended Terrestrial Flora and Fauna Assessment* report does not acknowledge that vegetation and tree removal will be required to provide Proposed Road 5 between proposed Lot 136 and Lot 137 and within or immediately adjoining the land zoned C2 and containing the Littoral rainforest.



No detail is provided in the *Amended Terrestrial Flora and Fauna Assessment* report regarding the proposed ownership and stewardship agreement for the Littoral rainforest (proposed Lot 136 and Lot 137) to demonstrate the rainforest will be properly managed to protect and enhance its biodiversity values in perpetuity.

It is unknown whether or not the NSW Biodiversity Conservation Trust would enter into a stewardship agreement for the management of the Littoral rainforest due to the likely degradation of it from the potential detrimental impacts.

The use of the internal road system for bushfire management is inappropriate due to the narrow width of roads and which may in future necessitate wider widths and clearance of existing native vegetation which also includes the Littoral rainforest and other habitat of threatened fauna species.

The SEPP No. 44 assessment by Planit (Aug. 2014) states:

*The area to be cleared is approximately 1,400 m<sup>2</sup> and would require the removal of approximately 10 - 15 trees. These are offset through plantings in the open space and or street trees.*

There are no Koala food trees identified in the *Landscape Statement of Intent* (refer to Table No. 7) or identified or shown on the *Landscape Plans* for the proposed open space (Lot 141 and Lot 142). There is insufficient area in the proposed open space areas to undertake adequate offset planting.

It is not considered best practice to provide koala habitat trees as street trees because of increased potential for road strike and kill.

The *Amended Terrestrial Flora and Fauna Assessment Report* where Proposed Road 5 passes between proposed Lot 136 and Lot 137 and Littoral rainforest zone C2 does not make an assessment of the recommendation in the *Crime Prevention Through Environmental Design Assessment* that a 3m to 5m cleared space be provided either side of residential pathways and cycle routes.

#### 14.6.2 Iron Gates Dr

Investigation and impact assessment in regard the Concept DA works in Iron Gates Dr is provided in the *Amended Ecological Assessment (Iron Gates Drive)* by JWA Pty Ltd, April 2019 report.

The *Amended Ecological Assessment (Iron Gates Drive)* report describes the work in Iron Gates Dr road reserve as:

*Iron Gates Drive is required to be upgraded as shown in **FIGURE 5** to obtain a Bush Fire Safety Authority (BFSA) issued under Section 100B of the Rural Fires Act 1997 by the Commissioner of the NSW Rural Fire Service (NSW RFS). The work will involve (along the whole stretch of Iron Gates Drive, other than the mapped SEPP 14 wetland areas) the following:*

- *Clearing the full road width (20m) of vegetation/trees (generally native plants);*
- *Widening the existing 6m to 6.5m pavement (i.e. the carriageway for vehicles) to 8m; and*
- *Installing traffic management devices such as reflective road markers and (in some locations) signage.*

*The trimming of branches overhanging the road reserve in the SEPP 14 areas will also be completed where necessary. No mangroves or Saltmarsh vegetation is proposed to be cleared or trimmed.*



The *Amended Ecological Assessment (Iron Gates Drive)* report identifies the following ecological attributes in the Iron Gates Dr road reserve:

- Seven (7) broad vegetation communities;
- Three (3) Endangered Ecological Communities:
  - Swamp sclerophyll forest on coastal floodplains of the NSW North Coast Bioregion;
  - Littoral Rainforest in the New South Wales North Coast, Sydney Basin and South East Corner Bioregions; and
  - Coastal Saltmarsh in the New South Wales North Coast, Sydney Basin and South East Corner Bioregions;
- Two (2) communities protected under the Fisheries Management Act 1994 (FM Act):
  - Mangrove forest; and
  - Saltmarsh
- Eighty-two (82) flora species; and
- No threatened flora species were recorded.

The *Amended Ecological Assessment (Iron Gates Drive)* report indicates that; *it is expected that only a limited number of mature trees would need to be removed to accommodate the proposed road widening* and the direct impact of works in the road reserve will be:

1. Clearing 0.24ha and pruning 0.07ha of Tall closed/open forest (*Acacia disparrima* +/- *Cupaniopsis anacardioides*, *Lophostemon confertus*, *Endiandra sieberi*, *Corymbia intermedia*) which has a total area of 1.07ha
  2. Clearing 0.48ha and pruning 0.13ha of Tall closed forest (*Melaleuca quinquenervia*) which has a total area of 2.68ha
  3. Clearing 0.12ha and pruning 0ha of Tall shrubland/heathland (*Leptospermum polygalifolium*) which has a total area of 0.89ha
  4. Clearing 0.03ha and pruning 0ha of Tall closed/open forest (*Melaleuca quinquenervia* / *Eucalyptus robusta*) which has a total area of 0.2ha
  5. Clearing 0ha and pruning 0ha of Low closed/open mangrove forest (*Avicennia marina*) which has a total area of 0.47ha
  6. Clearing 0ha and pruning 0ha of Low closed/open saltmarsh (*Avicennia marina*) which has a total area of 0.18ha
  7. Clearing 0ha and pruning 0.15ha of Acacia regrowth (*Acacia disparrima*) which has a total area of 0.16ha
- Clearing 0.64ha and pruning 0ha in the existing road which has a total area of 0.92ha and
- Clearing 0.23ha and pruning 0ha in the eastern end which has a total area of 0.7ha.

The total area proposed to be cleared is 0.89ha and pruned 0.39ha.

The *Amended Ecological Assessment (Iron Gates Drive)* report states:

- No mangroves will be removed.
- *It should be noted that some trimming of branches overhanging the road reserve within the SEPP 14 areas is also likely to be required. However, there will be no destruction or removal of trees within the mapped SEPP 14 land.*
- *The proposed works are not considered to represent an impact to the corridor values of the site, due to the minor nature of the works and occurrence within an existing road reserve.*

The indirect impacts of the works onto adjoining land are stated in the *Amended Ecological Assessment (Iron Gates Drive)* as:

*The proposed road widening may contribute to the following potential indirect impacts on the study area and adjacent SEPP 14 wetlands:*

- *Increased opportunity for weeds to become established in adjacent vegetation communities as disturbance creates opportunities for weeds to colonise. Weeds may be introduced in construction materials or by vehicles; and*
- *During the construction phase of the development, the required earthworks have the potential to increase sediment loads entering downstream vegetation communities/watercourses.*

The *Amended Ecological Assessment (Iron Gates Drive)* report recommends the following measures to mitigate the indirect impacts:

- *Ensure appropriate weed hygiene protocols are in place in order to prevent the accidental spread of weeds (e.g. clean down protocols for vehicles and machinery entering the site, ensuring that no soil/gravel/plant material contaminated with weed propagules are imported into the site);*
- *It is recommended that a Vegetation Management Plan (VMP) is prepared for the site to direct vegetation clearing and pruning works;*
- *The VMP should also include details of any revegetation works that may be required to replace cleared native trees/shrubs/groundcovers;*
- *Appropriate sediment and erosion controls shall be in place prior to the commencement of any earthworks in accordance with a Sediment and Erosion Control Plan prepared by a suitably qualified firm. This is particularly important to protect the values of the adjacent SEPP 14 wetlands; and*
- *OEHL have indicated that offsets will be applicable to the proposed vegetation clearing works. In this regard, an assessment of the subject site in accordance with the Biodiversity Assessment Methodology (BAM) has been completed and determined that the following credit obligation must be satisfied:*
  - *Swamp Sclerophyll Forest on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions = 20 credits;*
  - *Littoral rainforest in the NSW North Coast, Sydney Basin and South East Corner bioregions = 8 credits;*
  - *PCT 785 - Coastal heath on sands of the NSW North Coast Bioregion = 3 credits; and*
  - *An additional credit of Swamp Sclerophyll Forest on Coastal Floodplains of the New South Wales North Coast, Sydney Basin and South East Corner Bioregions to account for the trimming of branches overhanging the road within SEPP 14 mapped areas = 1 credit.*

The indirect impacts within the study area of the *Amended Ecological Assessment (Iron Gates Drive)* report includes land owned by the Crown and subject to Aboriginal Land Claims #50090, #50093 and #50094, which is not land the subject of the Concept DA. Refer to Section 14.4.

Included in **Attachment No. 9** is copy of the following in regard the calculation of offset credits for the works in Iron Gates Dr:

- email dated 15 Feb. 2019 from Mr A McArthur to Mr K Waern
- email dated 14 Dec. 2018 from Mr A McArthur to Mr K Waern
- letter dated 8 March 2019 from Mr D Young Senior team Leader Planning, North East Region (NSW OE&H) to Mr A McArthur JWA Ecological Consultants
- the map titled 'Revised Impact on Vegetation Communities' (12 Feb. 2019) prepared by JWA Ecological Consultants Pty Ltd.

The *Amended Ecological Assessment (Iron Gates Drive)* report where Iron Gates Dr traverses wetland areas and where sections of the carriageway and footpath within Iron Gates Dr 'run' close to the southern boundary make an assessment of the recommendation

in the *Crime Prevention Through Environmental Design Assessment* that a 3m to 5m cleared space be provided either side of residential pathways and cycle routes.

The *Crime Prevention Through Environmental Design Assessment* recommends with the upgrade of Iron Gates Dr, that a shared cycle/pedestrian path be included. Given that the shared cycle/pedestrian path in Iron Gates Dr is the only connection of that type to Evans Head it is appropriate from the crime prevention perspective that it should also be provided with a 3m - 5m cleared space.

Notwithstanding that NSW OE&H / DoPI&E Biodiversity and Conservation Division have agreed to a biodiversity offsets package for the development and works in the Iron Gates Dr road reserve, in my opinion, the assessment of potential impacts of the development on the biodiversity values of:

- the 'total development footprint' and 'proposed residential footprint'
- Iron Gates Dr road reserve
- vegetation clearing onto the Littoral rainforest (Lot 136 and Lot 137) and land adjoining Iron Gates Dr zoned C2 and
- the wetland areas

is not satisfactorily assessed and nor have appropriate mitigation measures been identified and that a Species Impact Statement should have been lodged with the DA and Concept DA.

#### **14.7 Bushfire**

The bushfire hazard of and risk to the land and the subdivision is in my opinion the key important land use issue in regard the Concept DA.

The bushfire hazard and risk of the land, access and evacuation and the effect of climate change has been raised in numerous submissions of objection. Refer to Section 12.6.2 and **Attachment No. 6.**

The key concerns related to:

- emergency evacuation / 2019 bushfires
- lack of alternative access
- building envelopes do not account for dual occupancy
- asset protection zones insufficient / incorrect – 100m
- pinch points & bottlenecks along Iron Gates Dr & internal road
- no recognition of climate change
- Council on-going cost of maintaining asset protection zones
- potential for further vegetation clearance and backburning
- lack of local fire & emergency services in village
- assessment does not account properly for future population and
- design of roads as protection zones.

##### *14.7.1 History summary*

The following summary from RVC's file shows that the bushfire issue has been problematic in preparation of the DA:

- DA lodged in 1994 without a specialist bushfire assessment and an application for a bushfire safety authority.
- Plans lodged with DA show a fire trail / access road to Blue Pool Rd.

- NSW Rural Fire Service (9 Dec. 2014) advising RVC that the road system external and internal DA does not comply with '*Planning for Bushfire Protection 2006*'.
- NSW Rural Fire Service advising (26 May 2015) of a meeting with the proponent (8 May 2015) discussing a through road and it traversing sensitive vegetation. The Service advising a through road is an acceptable solution alternative that can be considered and that what is proposed so far is not satisfactory for the size of the development.
- Planit Consulting (16 June 2015) providing to RVC more detailed plans showing a 6m wide (where permitted) fire trail / property access road to Blue Pool Rd for emergency evacuation and access, advising RFS requires it is to be dedicated to RVC and maintained in perpetuity as a public road, that RVC representatives at a meeting 22 Jan. 2015 verbally agreed and seeking RVC's written support.
- The request by Planit Consulting was forwarded to RVC management c. 22 June 2015.
- RVC advising Planit Consulting (26 June 2015) that RVC in principle would be prepared to accept it once constructed and provided the was open to the public at all times and be sealed 6m x 150m past any dwelling.
- *Bushfire Assessment – Additional Information Response, Iron Gates Drive (12 Aug. 2015)* by Bushfire Risk Pty Ltd provided to RVC by Planit Consulting (13 Aug. 2015).
- *Bushfire Threat Assessment* report prepared by Bushfire Certifiers Pty Ltd and *Bushfire Assessment – Additional Information Response, Iron Gates Drive (12 Aug. 2015)* by Bushfire Risk Pty Ltd provided with amendment to DA by Planit Consulting (23 Oct. 2015). The Iron Gates Dr report recommending widening the pavement to 8m by combining the existing 6m - 6.5m pavement with the 2m footpath and locating the footpath on the northern edge of the pavement. Planit advised no vegetation removal was required and works in the SEPP No. 14 wetland were emergency or routine maintenance under the Infrastructure SEPP.
- NSW Rural Fire Service (25 Feb. 2016) advising RVC that RFS was not in a position to properly assess the application on the basis of information provided. RFS requiring that Iron Gates Dr comply with the performance criteria of '*Planning for Bushfire Protection 2006*' and information identifying vegetation communities, species height and separation distances to the proposed road formation and potential for road blockage, potential for road blockage and fire flame length and potential visibility issues together with vegetation management strategies for the SEPP No. 14 wetland areas, be provided.
- NSW Rural Fire Service (11 Oct. 2016) advising RVC that it had further discussions and a site inspection, that it understood RVC would not support a new road from Woodburn Rd, that the Applicant had surveyed the vegetation and modelled flame length to determine potential blockage and proposed to clear all vegetation within the 20m road reserve (which was acceptable to RFS), though the Applicant was unwilling to clear vegetation in the SEPP No. 14 wetland areas and is proposing only to clear vegetation outside the wetland areas and that RFS had requested a vegetation clearing plan.

The DA SEE states;

*Since submission of the Development Application in October 2014, the Iron Gates project team have been working closely with the NSW RFS to ensure the objectives and provisions of Planning for Bushfire Protection 2006 have been addressed in the reporting and revised design layout.*

*A BPAD Certified Bushfire Threat Practitioner has been commissioned to review the development proposal and to guide any required changes to the proposed layout to ensure that bushfire risk is appropriately managed on the site. A copy of the Bushfire Impact Assessment is attached at **Appendix 3**.*

*Changes which have occurred to the proposed development layout to improve bushfire safety onsite include, incorporating perimeter roads around the development site to reduce APZ widths within residential blocks and improve emergency access throughout the site, increased widths to proposed fire trails to improve access and reduce APZs within residential blocks and an upgrade to the western trail into the site for emergency access / evacuation purposes.*

*The Bushfire Impact Assessment confirms that the proposal complies with the requirements for bushfire management and protection as required under Planning for Bushfire Protection 2006.*

#### **14.7.2 Circumstances**

The bushfire assessment for the Concept DA comprises the 2 reports by Bushfire Risk Pty Ltd:

1. *Revised Consolidated Bushfire Report, Version 3, 12 July 2019 and*
2. *Bushfire Assessment – Additional Information Response, Iron Gates Drive, Version 1, 8 March 2017.*

Neither of the reports have been revised to reflect the plans for the Concept DA or *Planning for Bushfire Protection 2019* which is the current guideline.

The NSW Rural Fire Service (9 Nov. 2021) have issued its General Terms of Approval pursuant to s. 4.8 of the EPA Act and a Bushfire Safety Authority pursuant to s. 100B of the *Rural Fires Act 1997*. Refer to **Attachment No. 7b**.

Notwithstanding that the NSW Rural Fire Service have issued General Terms of Approval and a Bushfire Safety Authority I maintain serious concerns in regard bushfire risk having regard to the following circumstances and reasons.

The land is mapped as containing Category 1 and Category 2 bushfire prone vegetation and is within the 30m and 100m 'buffers' to those categories of vegetation. **Map No. 11** shows the mapping of bush fire prone vegetation.

The land is immediately surrounded by Eucalypt forest, heath, melaleuca forest and Littoral rainforest. Located in the centre of the proposed subdivision are 2 allotments (Lot 136, 2.19ha and Lot 137, 4.86ha) containing Littoral rainforest zoned C2. The Bundjalung National Park is approx. 160m, across the Evans River, from the south-western residential allotments and proposed Road 11.

My partner and I were staying in Evans Head 8<sup>th</sup> to 10<sup>th</sup> Nov. 2019 at the time of the Myall Creek fire. At Evans Head the maximum temperature on 8 Nov. 2019 was 41.5<sup>o</sup> and the wind from the north recorded at 52km/hr at 12.37pm (BOM daily weather observations Nov. 2019).

The Bundjalung National Park was very dry because of the drought and the town blanketed in smoke from the Myall Creek fire. The 'glow' of the Myall Creek fire was very evident on the horizon viewed west from our accommodation. **Photograph No. 83 of Attachment No. 5b** shows part of Evans Head and the smoke.



I have been advised by RVC's Director of Community Service Delivery that; *the NSW Rural Fire Service emergency operations centre during the 2019 bushfires, was poised to evacuate Evans Head if the fire front advanced further towards Evans Head from the south as there was a real risk the fire front could jump the river and burn towards the township.*

Ms Catherine Ryland (Planning Institute of Aust.) in submissions to the recent Commission into Natural Disaster Arrangements stated that there were "a lot of legacy communities which haven't been planned with risk avoidance in mind", including houses located too close to bushfire zones, towns without adequate evacuation routes or houses too close together". (Sydney Morning Herald 9 July 2020)

**Attachment No. 10** is a copy of the article from the Sydney Morning Herald 9 July 2020.

The *Revised Consolidated Bushfire Report* identifies 3 matters of non-compliance with *Planning for Bushfire Protection 2006* been:

1. The single access road (Iron Gates Dr) to and from the development
2. Proposed Road 5 as it passes between Lot 137 and Lot 136 containing the Littoral rainforest and land zoned C2 and
3. The proposed fire trail east of Lots 1 to 20 and 60 in lieu of providing a perimeter road.

The following provides commentary in regard each of the 3 matters of non-compliance.

#### Single access road (Iron Gates Dr)

The results of the *Bushfire Assessment – Additional Information Response, Iron Gates Drive* report in regard the single access road (Iron Gates Dr) to and from the development were:

- *The proposed vegetation clearing width outside of the SEPP 14 mapped areas along Iron Gates Drive shall be 20m wide;*
- *The road width outside of the mapped SEPP 14 wetland shall be constructed with an 8m wide carriageway with a 0.5m gravel verge on either side (total 9m);*
- *Current sealed width within the SEPP 14 wetland is 6.6 – 7.1m wide contained within a 9m wide gravel base (Ref. Appendix A (Arcadis 2017));*
- *The southern side of the road also contains a 1.5m wide shoulder with an existing concrete footpath within the shoulder;*
- *In total a 10.5m wide cleared trafficable surface shall be present;*
- *The cleared widths inside the SEPP 14 mapped wetland areas along Iron Gates Drive is App. 14m-15.8m wide (West Zone) and 15m wide (East Zone);*
- *The flame length of the vegetation types within the investigation area is 11.76m (Forested Wetlands) and 11.63 (Tall Heath);*
- *Where the vegetation width is less than 20 metres in the SEPP 14 area (unable to be removed) the total number of standing trees with potential to fall and block Iron Gates road and any other trees that are likely to impact on the road reserve as a result of the SEPP 14 constraints are limited and unlikely to impact on the road reserve.*

Excluding where Iron Gates Dr traverses the SEPP No. 14 wetlands, the existing and proposed widening of the road carriageway is currently and will not be centrally located in the 20m road reserve for the full length of the road from the subdivision to Evans Head.

Between Chainage 350 and 450, where a chicane / 'slow point' is proposed, the footpath and road pavement almost adjoin the southern boundary of the road reserve (adjoining Lot 544 DP 48550 and Portion 408) and the opportunity for vegetation removal to provide necessary clearances very limited. **Photographs No. 5, 6 and 7 of Attachment No. 5b** show the vegetation and trees.



Similarly, between Chainage 750 and 950, the footpath and road pavement are very close to the southern boundary of the road reserve.

The *Bushfire Assessment – Additional Information Response, Iron Gates Drive* report does not describe or identify the location of the existing and proposed road carriageway in relation to the boundaries of the Iron Gates Dr road reserve.

The *Bushfire Assessment – Additional Information Response, Iron Gates Drive* report does not; describe for the length of Iron Gates Dr identify the height of trees that are within and immediately adjoin the road reserve, the separation distances to the proposed road formation, potential for road blockage, fire flame length and potential visibility issues together with vegetation management strategies for the SEPP No. 14 wetland areas.

The calculation of fuel loads and flame length in regard clearing along Iron Gates Dr should be undertaken in accordance with contemporary guidelines provided in *Planning for Bushfire Protection 2019*.

The structural integrity and weight of loads capacity of the bridge in Iron Gates Dr over the wetland is unknown.

*Proposed Road 5 as it passes between Lot 136 and Lot 137*

The *Revised Consolidated Bushfire Report* states the following in relation to the section of Proposed Road 5 passing between Lot 136 and lot 137:

*Bushfire corridors are minimal by incorporating perimeter roads compliant with the requirements of s4.1.3 [1] PBP 2006. The exception being part of 'Road 5' being approx. 100m long, and 7m wide, traverses via an existing area of ecological significance near the southeast corner of the subject site. In order to negate additional clearing of significant ecological communities, the road incorporates an existing road width of 7m (3.5m each way). This stretch of road forms part of a perimeter road system around proposed lot 177, providing the option to bypass this stretch of road if required.*

*Either side of the road reserve are 2.75m (min.) verges clear of vegetation. Despite being nontrafficable the verges provide a suitable area for fire fighters working about their vehicles. Thus negating the requirement for a full 4m wide trafficable (one-way) width having additional room on the verges to work about the vehicle, which is otherwise afforded on the recommended road width of (4m either side).*

*I understand this area of road was recommended for closure for ecological purposes i.e. for wildlife connectivity (corridor), having potential to impact on safe access / egress for fire fighters and occupants in an emergency. The compromise in order to negate further clearing of vegetation was to maintain the existing road, with a 7m wide carriageway with min. 2.75m wide verges either side, in lieu of an 8m wide carriageway.*

The width of the existing gap / corridor between the 2 stands of Littoral rainforest zoned C2 and proposed road reserve for Proposed Road 5 zoned R1 between proposed Lot 136 and Lot 137 (the Littoral rainforest zoned C2) is approx. 15m.

Currently the clearing for the existing driveway track / the existing gap / corridor between the 2 stands of Littoral rainforest is approx. 10m to 12m wide between trees and other vegetation. Refer to **Photographs No. 68, 69, 70, 71, 72 and 73 of Attachment No. 5b**.

The trees within Lot 136 and Lot 137 adjoining the existing driveway track are estimated to be approx. 12m to 15+m high.

The engineering plans supporting the *Revised Engineering Services and Civil Infrastructure Report* indicate the:

- distance between the edges of vegetation either side of the proposed road to be approx. 12m and
- the Section for Proposed Road 5 (approx. 100m in length) between CH 0 to CH 110 and Lot 136 and Lot 137 shows the road will be built on retained (approx. 0.8m - 1m high) fill approx. 8.5m wide with a carriageway 7m wide between upright kerb and gutter and 'armaguard railings' with a 2.5m wide boardwalk adjoining Lot 136 under which water and electrical services will be attached.

There are no 2.75m wide verges either side of the road carriageway for Proposed Road 5 between Lot 136 and Lot 137.

#### Proposed fire trail east of Lots 1 to 20 and 60

*Planning for Bushfire Protection 2006* clearly and explicitly states; *perimeter roads should be the normal arrangement for urban areas and not perimeter fire trails.*

The proposed fire trail east of Lots 1 to 20 and 60 will be located on the filled drain and is immediately adjoined by tall closed / open forest (*Melaleuca quinquenervia*) vegetation within Lot 544 DP 48550 with trees approx. 8m to 10+m high. Refer to **Photographs No. 19, 20 and 33 of Attachment No. 5b.**

The fire trail is proposed to be constructed of gravel 5m wide in an 8m wide reserve. A water main and hydrants are proposed the length of the reserve. The reserve is to be dedicated to RVC as a public reserve and secured by locked RFS approved gates (presumably at the 3 entrances to the proposed public road system).

Retaining walls of variable height are proposed to be erected the full length of the fire trail adjoining the eastern boundary of Lots 1 to 20 and 60. Retaining walls are also proposed to be erected both sides of the fire trail access points between Lots 12 and 13 and to the north and north-east of Lot 60. A retaining wall of variable height is also proposed along the eastern boundary of the land adjoining Lot 544 DP 48550 (owned by others) from Lot 14 to Lot 60.

The nominated asset protection (no build) zone from vegetation to the east for Lots 1 to 20 and 60 is 21m. The asset protection zone extends to approximately half of the allotments. The height of retaining walls adjoining the fire trail is unknown as the residential land is to be filled. It is highly likely in the future that each of the allotments will be fenced.

The integrity of the asset protection zone relies upon 21 unrelated landowners complying with Conditions 1 and 2 of the NSW Rural Fire Service General Terms of Approval and not erecting structures, not densely landscaping, and maintaining landscaping in the asset protection zone and RVC ensuring compliance in perpetuity.

Having regard to the proximity of the high hazard Category 1 bushfire vegetation to the proposed Lots 1 to 21 and Lot 60 in my opinion the asset protection zone should be cleared grassed unrestrained land and not contain encumbrances such as retaining walls, fences, non-habitable buildings (garage / shed) or landscaping.

#### Concluding comments in regard the 3 matters of non-compliance

Neither the *Revised Consolidated Bushfire Report* nor the report, *Bushfire Assessment – Additional Information Response, Iron Gates Drive* appear to have considered the full range of 'most credible worst case scenarios' in regard bushfire attack to fully justify variation of the 3 matters of non-compliance. Some 'most credible worst case scenarios' include the following:

- Dense thick smoke darkening and limiting visibility, though the *Bushfire Assessment – Additional Information Response, Iron Gates Drive* report recommends use of reflectors with no road obstructions and reflective ‘fog’ lines it does not account for the 2 proposed chicanes / ‘slow points’ in Iron Gates Dr.
- A vehicle accident in Iron Gates Dr.
- A vehicle accident in the subdivision internal perimeter and collector road system.
- Fallen trees (and direction of the fall) in the section where the collector road (Proposed Road 5) is located between Lot 136 and Lot 137.
- The proximity of vegetation on land immediately east of the fire trail east of Lots 1 to 20 and 60 and potential for fallen trees (and direction of the fall) to block access in the fire trail.
- The safety implications for fire crews working in the fire trail east of Lots 1 to 20 and 60 when the fire given the retaining walls immediately adjoining the trail.
- The occurrence and strength of winds from the west, north and south.
- Wind behaviour and ember attack having regard to the Eucalypt forest to the west and proposed excavated hill west of the south-western allotments.
- The ability of fire crews to protect property below the excavated area and 7m high crib wall when no fire trails are proposed to the west of the south-western allotments.
- Human behaviour (fear, panic and poor decision making) in emergency and risk situations.
- The proximity and closeness of future dwellings as shown by the ‘building envelopes’ and potential for house-to-house ignition.
- Maintaining the integrity in perpetuity the asset protection zone within the fire trail and Lots 1 to 20 and 60.
- Potential for evacuation of Evans Head.
- Timing of evacuation and potential for closure of the wider public road network, e.g. the Evans Head – Woodburn Rd.

#### Other issues

##### *Asset protection zones*

The asset protection zones shown in the *Revised Consolidated Bushfire Report* are adopted from an earlier bushfire assessment report prepared by Bushfire Certifiers Pty Ltd. The assessment by Bushfire Certifiers Pty Ltd on Figures 4, 6 and 7 and Appendix A showed the asset protection zones and the provision of an access road from the south-western corner of the subdivision to Blue Pools Rd, although the report states only 1 access road (Iron Gates Dr) was proposed.

The assessment report by Bushfire Certifiers Pty Ltd indicates that asset protection zones should be maintained as inner protection areas.

In general the *Revised Consolidated Bushfire Report* indicates 21m wide asset protection zones will be provided to adjoining vegetation in the north-eastern residential area and eastern edge of the south-western residential area. The width of the asset protection zones to the west of the allotments in the south-western residential area is 27m.

The asset protection zones are primarily located in the proposed roads and include part of the setback between the road reserve and shown building envelopes. The asset protection zones to Lots 1 to 20 and 60 includes approximately half the depth of the allotments and adjoining fire trail. This is a substantial impost and restriction upon future landowners who will not be able to develop approx. half the allotment.

The cleared and traversable part asset protection zone in the fire trail to the east of Lots 1 to 20 and 60 in effect will be only 8m wide. Retaining walls are required to retain the filled

allotments and it is highly likely the eastern boundaries of the allotments will be fenced for security reasons as the fire trail is proposed to be dedicated to RVC as a 'public reserve'.

No asset protection zones are wholly located in either public reserves or road reserves. There is no fire trail proposed in land immediately to the west of the south-western section of the proposed subdivision (west of the asset protection zone within Proposed Road 6), above the proposed 6.25m - 7m high crib wall.

For purposes of comparison the following identifies the approx. widths of existing cleared asset protection zones outside adjoining residential development in a number of locations around Evans Head.

- Carrabeen Court – 15m to 20m mown grass
- Evans Head cemetery – 20m to 30m mown grass
- Wattle St – powerlines – 50m mown grass
- Wattle St – 25m to 40m mown grass
- Bundjalung St – 25m to 30m mown grass
- Ocean Dr – 15m to 30m mown grass and
- Boomerang St – 30m to 45m mown grass.

**Photographs No. 76 to No. 82 of Attachment No. 5b** show asset protection zones at Wattle St. Rosolen Lane, Bundjalung St, Carrabeen Court and the Evans Head cemetery.

#### Internal public roads

The *Revised Consolidated Bushfire Report* in its assessment of the 'acceptable solutions' for roads between 6.5m and 8.0m wide (with parking restricted to 1 side) and roads up to 6.5m wide (with parking bays) indicates that 'no on-street parking is proposed', which is an unrealistic expectation in perpetuity and potential on-going compliance issue for RVC and the NSW Police.

The *Revised Engineering Services and Civil Infrastructure Report* indicates road geometry design has generally been undertaken in accordance with the Northern Rivers Local Government's *Development and Subdivision of Land, 2006* which provides for parking on the carriageway. The report does not refer to either prohibiting on-street car parking on 1 side with services (water main and hydrants) or to 'no on-street parking'.

Having regard to the distance to Evans Head, the subdivision layout and density, that approx. 30% of the allotments may contain dual occupancies (and an unknown number of allotments developed to include a secondary dwelling) car ownership and usage will be high and the demand and use of both sides of the carriageway pavement for on-street car parking is very likely to be also high.

Condition 3 of the NSW Rural Fire Service General Terms of Approval in regard restricted street parking in public roads 6.5m and 8m wide will require RVC and/or the NSW Police Service to ensure on-going compliance in perpetuity.

#### Landscaping

The *Revised Consolidated Bushfire Report* appears not to have any regard to the street planting proposed in the *Landscape Statement of Intent*.

#### Planning for Bushfire Protection 2006 – subdivision objectives

In regard the 'specific objectives for subdivision' (Clause 4.1.2 of *Planning for Bushfire Protection 2006*), in my opinion the Concept DA:

- does not minimise perimeters of the subdivision exposed to the bush fire hazard which is evidenced by the fire trail adjoining Lots 1 to 20 and 60 as opposed to a perimeter road

- does not minimise bushland corridors that permit the passage of bush fire which is evidenced by retention of the 2 areas of Littoral rainforest (Lot 136 and Lot 137) in the centre of the subdivision. The vegetation within Lot 136 is contiguous with the vegetation to the east within Lot 547 DP 48550.
- does not provide open space and public recreation areas as accessible public refuge areas or buffers and
- cannot ensure the ongoing maintenance of asset protection zones as there will be multiple landowners whose properties are in the asset protection zones.

#### 14.7.3 Conclusion

Neither of the 2 bushfire assessment reports for the Concept DA mention or consider climate change trends. Whilst the reports were prepared prior to 2019-2020 bushfires, it is accepted science that a consequence of climate change bushfires of similar magnitude as those in 2019-2020 are unlikely to be a one-off event.

The NSW Government Architect (refer to **Attachment No. 2**) raised as key issues; bushfire hazard and risk, adequacy of the road network and asset protection zones in regard to the draft Master Plan.

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) in regard to the amendment of the DA to a Concept DA states that the bushfire issue has not been adequately addressed.

The *Final Report of the NSW Bushfire Inquiry July 2020* highlights the importance of ensuring an adequate and resilient road network and for asset protection zones.

In my opinion the Concept DA does not reasonably satisfy:

- the following 'specific objectives for subdivisions' of *Planning for Bushfire Protection 2006*:
  - *minimise perimeters of the subdivision exposed to the bush fire hazard. Hourglass shapes, which maximise perimeters and create bottlenecks, should be avoided.*
  - *minimise bushland corridors that permit the passage of bush fire*
  - *provide and locate, where the scale of development permits, open space and public recreation areas as accessible public refuge areas or buffers (APZs)*
  - *ensure the ongoing maintenance of asset protection zones*
  - *provide clear and ready access from all properties to the public road system for residents and emergency services*
- the performance criteria and acceptable solutions in regard:
  - asset protection zones and
  - public road access

and that the precautionary principle of ecological sustainable development to assess the risk-weighted consequences of bushfire threat have not been fully considered and properly addressed.

## 14.8 Flooding

There have been numerous submissions of objection in regard to current flooding issues on the land and Iron Gates Dr and increase in flood depth and risk due to climate change. Refer to Section 12.6.2 and **Attachment No. 6**.

The key concerns related to:

- road through wetland flood prone
- stormwater proposal inadequate
- no consideration of tidal surge

- no consideration of sea level rise
- no groundwater assessment – impact & acid sulfate soils and
- climate change significant rain events.

RVC's Development Engineer commented in relation to the key issues that; *tidal surge, sea level rise and increase in rainfall intensity as a consequence of climate change (900mm sea level rise and 10% rainfall intensity) has been considered in the flood modelling undertaken in RVC's 'Evans River Flood Study – Final report' by BMT WBM November 2014.*

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that limited consideration has been given to flooding and that the issue has not been adequately addressed.

The filling of the land is proposed to a minimum of 3.3m(AHD) which with the 300mm height of a 'slab' on ground enables the dwelling to have a floor level at the flood planning level of 3.6m(AHD).

The *BMT WBM letter report 22 Aug. 2014* provides only an assessment of whether on-site detention of runoff is required to protect downstream properties from flood impact.

There is no specific assessment of flood impacts on Iron Gates Dr including; which ARI flood event is likely to cause flooding, flood depths, flood velocities and duration.

There is no specific assessment of flood impacts of the filling of the land in regard potential for displacement of floodwaters onto adjoining land including; flood depths, flood velocities and duration.

RVC's Development Engineer advised the following:

- *The land filling is likely occurring due to knowledge of the current Evans River Flood Study modelling, particularly the 1% AEP design flood event with climate change.*
- *There is no specific assessment of offsite impacts from the filling of land and if substantial filling is to occur the assessment is required.*

#### **14.9 Land contamination**

The land historically has been used for agriculture (grazing or crops) including growing of bananas (quoted statement from Mr T McCormack 1991 provided in the Everick Heritage Pty Ltd response (23 Nov. 2021) to draft Master Plan issues raised by DoPI&E.

RVC's Environmental Health Officer has indicated that a contaminated land assessment has not been undertaken in accordance with NSW EPA *Consultants Reporting on Contaminated Land - Contaminated Land Guidelines*, SEPP No. 55 *Remediation of Land* or RVC Policy 15.7 *Management of Contaminated Land* which defers to the *Regional Policy for the Management of Contaminated Land*, May 2006 (now June 2019) for land upon which the existing dwelling is located (Lot 163 DP 831052).

There has been no systematic soil sampling for potential land contamination.

The Concept DA does not provide detail in regard the removal and disposal of former road bitumen and other infrastructure and use / re-use of cleared vegetation.

#### **14.10 Riparian zone and fishery – Evans River**

Potential for impact on the water quality of the Evans River has been raised in numerous submissions of objection. Refer to Section 12.6.2 and **Attachment No. 6**.



The key concerns related to:

- potential for pollution from run-off, lack of on-site stormwater detention
- lack of riparian buffers
- river bank erosion and damage, unauthorised development on / near riverbank
- impact on natural beauty and
- impact on fishery – impact on fish breeding.

Refer also to Section 14.5.

In my opinion the geotechnical, acid sulfate soils and groundwater assessments of the 'proposed residential footprint' are inadequate given the mapped constraints of the land, known groundwater heights and extent of earthworks for the proposed development.

RVC Development Engineer advised the following in regard the stormwater management system and potential for impact on the Evans River:

- *a 'bio-swale' is proposed prior to stormwater entering the river*
- *while the stormwater design likely meets standard for quality and quantity from current practice the 'bio-swale' and infiltration pits within individual private allotments are not ideal*
- *there is potential for river bank erosion downstream of the 'bio-swale' and there are no works proposed to mitigate this*
- *the 'bio-swale' needs to be changed to a bio-retention basin of similar capacity with outflow and weir overflow construction*
- *there are a multitude of un-answered questions and concerns regarding the infiltration pits including;*
  - *when will they be installed, at subdivision or during house construction?*
  - *are they required to be fenced to mitigate disturbance?*
  - *how will owners be made to maintain them?*
  - *is there potential for adverse impact on nearby structures i.e. houses, sheds*
  - *will there be planting and the like around the pits to lessen the visual impact*
- *given these concerns with the use of infiltration pits should be removed and the stormwater management plan be amended to show this, however, would likely result in increasing the size of the bio-retention basins downstream.*

#### **14.11 Roads and traffic generation**

Potential for impact on the road network and adequacy of Iron Gates Dr has been raised in numerous submissions of objection. Refer to Section 12.6.2 and **Attachment No. 6**.

The key concerns related to:

- impact on roads / increased traffic
- impact on Wattle St – major thoroughfare
- increased danger to school and churches
- road too narrow near wetland areas
- one access road only
- Iron Gates Dr will not achieve min. requirements
- impact on wildlife / speed limits and
- no public transport.

#### **Roads – Iron Gates Dr**

Table D.1.5 Characteristics of Roads in Residential Subdivision Road Networks in the *Northern Rivers Local Government's Development and Subdivision of Land, 2019* indicates for local streets that the carriageway should be 7m to 9m wide.

It is proposed to widen the pavement and shoulders both sides of the carriageway of Iron Gates Dr (other than where it traverses the wetland areas).

There is a lack of consistency and contradiction between the *Revised Engineering Services and Civil Infrastructure Report*, bushfire report and amended ecological assessment report in regard the carriageway width of Iron Gates Dr.

The:

- *Revised Engineering Services and Civil Infrastructure Report* indicates an 8m carriageway with 1m gravel shoulders for the full length of the road,
- the bushfire assessment indicates 8m carriageway with 0.5m shoulders outside the SEPP No. 14 wetlands and
- the amended ecological assessment report refers only to widening the pavement from 6m and 6.5m to 8m.

Iron Gates Dr for its length is currently approx. 6.6m to 7.0m wide. The bridge over the wetland area is approx. 18m long and with a 6.8m wide trafficable concrete deck.

The carriageway of Iron Gates Dr where it traverses the wetland areas will not strictly achieve the standards of Table D.1.5.

RVC's Development Engineer advised the following:

- *Iron Gates Dr should be widened to the current standard of the Northern Rivers Local Government's Development and Subdivision of Land, 2019 i.e. 10.5m wide with a 7.5m seal and 1.5m shoulders as per Table D1.27 for a major roads over 1000AADT and*
- *that bridge narrowness and new chicane will mitigate speeding and is a safety control due to road being 50km/h.*

In relation to the footpath in Iron Gates Dr RVC's Development Engineer advised that; *there is an approx. 2m wide pathway in the Iron Gates Rd road reserve connecting the land to the corner of Wattle St and Cheery St and that it would need to be widened to 2.5m to provide a shared pedestrian footpath / cycleway.*

#### Roads – internal

Refer to Section 10.4.4.

RVC's Development Engineer raises no particularly issue in regard to the design of internal roads.

#### Traffic generation

Table D.1.5 Characteristics of Roads in Residential Subdivision Road Networks in the *Northern Rivers Local Government's Development and Subdivision of Land, 2019* indicates for single dwelling allotments a traffic generation rate of 10 vehicles per day (vpd) / allotment (equivalent to approximately one vehicle per hour (vph) in the peak hour) unless a lower rate can be demonstrated.

The 175 allotments, if developed for single dwellings, would generate in the order of 1,750 daily vehicle trips.

The *Traffic Report* by TTM Consulting Pty Ltd assuming 105 dwellings and 70 dual occupancies, indicates that the subdivision will generate in the order of 1,685 daily vehicle trips along Iron Gates Dr.

Overall the traffic generated by the development is below the threshold (2,000 vpd) of Table D.1.5 for a local street.

Transport for NSW (13 Oct. 2021) made the following recommendations in regard to traffic facilities:

*2. A functional layout plan identified in drawing no. 19GCT0119-01 of the Traffic Report demonstrates a proposed upgrade of the Woodburn and Wattle Streets intersection. Prior to the approval of road works, TfNSW recommends that the layout plan should be further developed to incorporate suitable pedestrian facilities on Woodburn Street.*

*TfNSW recommends the intersection plan be updated to incorporate additional facilities in Woodburn Street to improve pedestrian safety at the intersection.*

*3. The final development will generate an increase in demand for active transport users travelling along Iron Gate Drive between the development site and Evans Head. Council should consider the scope and timing of infrastructure needed to connect the development to the existing active transport infrastructure and public transport services.*

#### **14.12 Infrastructure - water supply and sewerage**

The availability and adequacy of water supply particularly at time of peak or high demand (tourist season and in the event of fire) has been raised in numerous submissions of objection. Refer to Section 12.6.2 and **Attachment No. 6**.

The capacity and adequacy of sewerage infrastructure and the treatment works particularly at time of peak or high demand (tourist season) has been raised in numerous submissions of objection. Refer to Section 12.6.2 and **Attachment No. 6**.

The key concerns related to:

- capacity of sewerage system limited esp. holidays
- impact on water and sewer services
- Impact on water and sewer services holiday time
- costs to council to date and
- ongoing costs to council – foreshore areas / bushfire.

RVC's Water and Sewer Engineer has advised the following:

*The water network was modelled for peak daily demands and fire flows with a 40% dual occupancy ratio. Although a holiday loading was not modelled the 40% dual occupancy loading does to some extent account for this. Fire flows were the largest demand and therefore sufficient water supply should be available during peak holiday demand.*

*The sewerage network was reviewed from average day loading, peak dry weather loading and peak wet weather loading to ensure that the existing network has sufficient downstream capacity. Although no holiday loading was applied a 40% dual occupancy ratio was applied across the development, this to account for holiday loading to an extent. Peak sewage flows occur during wet weather events due to inflow and infiltration, a 7 x ADWF ratio was applied to ensure that the downstream sewage network has sufficient capacity for wet weather events.*

#### **14.13 Infrastructure - stormwater drainage**

The adequacy of the proposed means of stormwater management, particularly in regard protection of the water quality of the Evans River has been raised in numerous submissions of objection. Refer to Section 12.6.2 and **Attachment No. 6**.

Refer also to Sections 14.5 and 14.9.

The existing open drain on the eastern boundary between Lot 1 and Lot 21 is proposed to be filled and will form part of the allotments and for a fire trail. The drain appears to

permanently have water in it and carries considerable water in heavy rain events. Refer to **Photographs No.9, 19, 20 and 85 of Attachment No. 5b.**

Retaining walls of variable height are proposed to be erected the full length of the fire trail adjoining the eastern boundary of Lots 1 to 20 and 60. Retaining walls are also proposed to be erected both sides of the fire trail access points between Lots 12 and 13 and to the north and north-east of Lot 60. A retaining wall of variable height is also proposed along the eastern boundary of the land adjoining Lot 544 DP 48550 (owned by others) from Lot 14 to Lot 60.

The *Revised Engineering Services and Civil Infrastructure Report* does not describe how the water will be managed nor is there an assessment of the potential flood impacts onto Lot 544 DP 48550 as a consequence of removing the drain.

RVC's Development Engineer has advised the following:

*Stormwater retention basin and bio-swale are only designed to a 5 year rainfall event (20% AEP) and any overflow will be directed to the river with no form of treatment. The bio-retention basin is still controlled at outlet by downstream stormwater infrastructure and open drain to the river, with a downstream open drain there is still minor treatment (not to standard) if overflow does occur in the basin. The bio-swale is designed to overflow directly to the river with no form of low-flow situation, depending largely on infiltration and transpiration. This is not ideal for treatment and retention purposes. Furthermore, the stormwater that overflows is largely untreated with outflow directly to the river through a section of un-developed land that likely will result in major erosion issues.*

*It is not clear how the C2 zone bounded by the development will be able to drain to the river. It is believed bio-retention weir overflow is to the C2 zone, it also looks as though the C2 zone may have some form of outflow entering the stormwater system designed for the development. If so it should also be included within the stormwater design of the downstream infrastructure to mitigate overflow, it is uncertain whether or not this is the case as the detailed stormwater design is not available for assessment.*

RVC's Environmental Health Officer has advised the following:

*Detail of stormwater controls are deficient; in effect we cannot make an assessment without adequate engineering controls.*

#### **14.14 Infrastructure - electricity and telecommunications**

The *Revised Engineering Services and Civil Infrastructure Report* provides advice from Preferred Energy Pty Ltd (12 July 2019) in regard the provision of reticulated electricity.

Neither the report or letter of advice indicate whether the electrical supply is proposed above or below ground.

Neither the *Revised Engineering Services and Civil Infrastructure Report* or advice from Preferred Energy Pty Ltd mention what is proposed with the transmission line traversing the land.

It is not possible to determine whether or not the provisions of SEPP No. 14 may be triggered if clearing work is required in the wetland areas.

#### **14.15 Land use planning – design of subdivision**

The design of the subdivision has been raised in several submissions of objection. Refer to Section 12.6.2 and **Attachment No. 6.**

DoPI&E (refer to **Attachment No. 2**) states that the proposed subdivision lacks clear design principles which arise from a thorough site analysis. The NSW Government Architect (GANSW) raised a number of unresolved issues and commented that the subdivision presented in the draft Master Plan as a 'generic subdivision'.

The key concerns related to:

- poor design / layout
- lack of open space
- extent of earthworks and retaining walls in development
- lack of setback to vegetation and river
- large scale
- satellite town
- construction run-off
- not ecological sustainable development and
- lack of parking in street design.

The site analysis plan provided in the *Revised Engineering Services and Civil Infrastructure Report* does not provide the information and analysis identified in Part I12 Context and site analysis of RVC's Development Control Plan (refer to Section 15.11) or The *North Coast Design Guidelines (1989)* (refer to Section 15.11.)

Neither the DA SEE nor the *Revised Engineering Services and Civil Infrastructure Report* provides a commentary or information how the site analysis undertaken informs, provides, or justifies the overall design of the subdivision having regard to accepted urban design principles which may include for example:

- Climate responsiveness
- Creation of local place character form and culture
- Working with and enhancing natural systems, landscape character and biodiversity
- Well define, legible and connected streets
- Creation of great places for people to live, variety and choice in housing
- Diversity of development and density and
- Adaption and change.

The proposed excavation and filling of the land will create a flat homogenous residential estate, surrounded by forest, which will not be subject to or 'capture' prevailing coastal breezes and which will be subject to high levels of humidity.

The Concept DA does not provide detail in regard the bulk earthworks / construction process matters such as; site preparation, stripping and stockpiling of topsoils, removal and disposal of former road bitumen and other infrastructure, use / re-use of cleared vegetation, placement, and compaction of fill layers, finishing and site stabilisation.

Both the *Revised Engineering Services and Civil Infrastructure Report* and the *Amended Terrestrial Flora and Fauna Assessment* report recommend the 7m (approx.) high crib wall be landscaped with the following species of native plants:

- Richmond Birdwing vine (*Pararistolochia praevenosa*)
- Headache vine (*Clematis glycinoides*)
- Mountain aristolochia (*Pararistolochia laheyana*)
- Wonga vine (*Pandorea pandorana*)
- Boobialla (*Myoporum elipticum*) and
- Barbed-wire vine (*Smilax australis*) Slender grape (*Cayratia clematidea*) to soften its visual impact.

The *Landscape Statement of Intent* is silent in regard the landscaping of the crib wall, which may in any case be difficult to establish and maintain in perpetuity given the usual practice of placing gravel fill (as opposed to topsoil) behind the wall for drainage and to ensure its structural integrity.

#### **14.16 Land use planning – physical impact to land**

The substantial excavation and filling within the land will destroy the hill / ridgeline (a natural feature), remove the regrowth and other vegetation within the ‘proposed residential footprint’.

In my opinion the proposed development will have a substantial transformative and irreversible adverse impact on the landform, topography, existing drainage systems and vegetation within the ‘proposed residential footprint’.

#### **14.17 Land use planning - buffers**

The NSW Dept. of Primary Industries has published guidelines for identifying and managing land use conflict issues on the NSW North Coast.

The ‘land use conflict resolution assessment’ guidelines (LUCRA guidelines), prepared in 2007 by Learmonth, Whitehead & Fletcher at the Centre of Coastal Agricultural Landscapes in partnership with the Northern River Catchment Management Authority are titled; *Living and Working in Rural Areas A Handbook for Managing Land Use Conflict Issues on the NSW North Coast*.

The LUCRA guidelines:

- identify a range of most common issues and situations that can result in neighbourhood disputes
- recommend buffer separation distances between residential development and sensitive environments and
- a process of land use conflict risk assessment.

The minimum buffer separation distances between environmentally sensitive land and ‘residential areas and urban development’ recommended in the guidelines are identified below:

Native vegetation / habitat	50m
Ecosystem and wildlife corridors	50m
Estuaries and major waterways	100m
Wetlands	100m
SEPP No. 26 Littoral rainforest	100m

No land use conflict risk assessment has been undertaken for either the DA or Concept DA. The DA relies on the streets, fire trails and asset protection zones to buffer sensitive areas from the adjoining development footprint.

The Concept DA does not achieve compliance with the recommended buffer distances and no information by way of justification to vary the distances or measures to mitigate potential for adverse environmental impact identified is provided.

The buffer distances recommended by the Dept of Primary Industries–Fisheries to key fish habitat and riparian areas are not achieved.



## **14.18 Miscellaneous**

### **14.18.1 Climate change**

The impact of climate change has been raised in several submissions of objection. Refer to Section 12.7 and **Attachment No. 6**.

The key concerns related to:

- Not sufficiently considered
- Increased flood events
- Increased bushfire events
- Sea level rise
- Need to minimise vulnerability not increased and
- Land clearing.

The potential of climate change induced impacts has not been satisfactorily addressed in the reports undertaken to assess impacts on biodiversity or threat of bushfire.

### **14.18.2 Evans Head airport**

The potential impact on the operation of the Evans Head airport and aircraft noise and proximity to the weapons bombing range has been raised in several submissions of objection. Refer to Section 12.7 and **Attachment No. 6**.

The key concerns related to:

- noise
- defence use of airport
- proximity to weapons range
- under flight path and
- interference with RAAF planes.

The Dept. of Defence – Estate and Infrastructure Group (19 Nov. 2019) made comments in regard the Concept DA.

The Dept advised:

- *The proposed site is located in close proximity to Evans Head Air Weapons Range (Evans Head AWR).*
- *AWR is the primary air weapons training range for 82 Wing Super Hornets, based at RAAF Base Amberley.*
- *The range is also used infrequently by F/A-18 Hornets and Hawk Lead-In-Fighters from RAAF Base Williamtown.*
- *The introduction of the Super Hornet are likely to generate range of noise levels in the vicinity of the subject site in the range of 70-93 dB(A).*
- *With RAAF aircraft operations increasing in scale and intensity over time, residents located in close proximity to Evans Head AWR are likely to be exposed to greater amounts of aircraft noise.*
- *Council would need to be satisfied that the proposed residential development of the subject site, and building design can comply with relevant aircraft noise reduction standards consistent with Australian Standard 2021:2015 “Acoustics – Aircraft Noise Intrusion – Building Siting and Construction” (AS 2021), in terms of the specified indoor noise level.*
- *Incorporating noise attenuating features into residential accommodation will not totally remove the impact that aircraft noise has on the visitors’ overall amenity, particularly their ability to enjoy the outdoor environment.*
- *If Council determines that the proposal warrants approval, Defence recommends a condition of consent to ensure that all buildings are designed and constructed to be compliant with indoor design sound levels for determination of aircraft noise reduction as*

*outlined in AS2021-2015 Acoustics – Aircraft noise intrusion – Building siting and construction.*

- Defence requests that a property notation be placed on any S10.7 certificate that may be issued by Council for the property advising that the property is subject to high levels of aircraft noise generated by activities at Evans Head AWR.*
- Glare from reflective surfaces can affect the visibility of pilots during daylight hours. Defence requests that any future residential developments are to be comprised of non-reflective building materials.*

The DA and Concept DA SEE was supported by:

- Evans Head Airport OSL Plan, Rev B by GHD, 12 April 2005 and
- Evans Head Airport ANEF Contours, Rev C by GHD, 21 April 2005.

RVC Town Planning has advised; *these are the plans referred to in Clauses 6.11 and 6.12 of the RVLEP 2012.*

#### **14.18.3      *Biting insects***

The potential impact of biting insects has been raised in several submissions of objection. Refer to Section 12.7 and **Attachment No. 6.**

The key issue raised was that the field work for the assessment was not undertaken when biting insects are most prevalent.

The Concept DA is supported by a report titled '*Revised Biting Insect Impact Assessment*' by Mosquito Consulting Services Pty Ltd.

Mosquito Consulting Services Pty Ltd made the following recommendations:

##### ***7.1 Biting Insects Buffer***

*Residential allotments within the development will be physically separated from biting insect breeding habitat by open space buffers as provided by APZ offset requirements. The open space required for biting midge suppression is relatively narrow and it is considered that the proposed APZ setbacks will be adequate for that purpose also. Plate 4 provides details of the proposed APZ setbacks.*

*It is recommended that the APZ setbacks be accepted as also providing adequate biting insect buffer separations.*

##### ***7.2 Street Lighting Considerations***

*The previous biting insect impact assessment (25 March 2015) commented on minimising street lighting as a method of reducing attraction of biting insects at night into residential areas of the development. This advice is now withdrawn due to it being redundant. Civil engineering specifications on streetlighting are consistent with AS/NZS 1158 series for Lighting for Roads and Public Spaces. The standards include consideration of providing effective targeted illumination while minimising light pollution and glare.*

*Therefore, the intent of the 2015 biting insect advice on streetlighting will be achieved through application of existing civil engineering standards.*

##### ***7.3 Biting Insect Management Information and Conditions***

*Stormwater management systems should be engineered to prevent them acting as mosquito breeding sites. Detention basins should be designed to drain within 72 hrs of filling. Building Approvals should include conditions regarding installation of insect screening to dwellings and anti-mosquito screens to any rainwater storage tanks.*

*Biting Insect advisory information should be accessible by future residents and provide advice on general knowledge regarding presence of and changing abundance of biting insects, personal protection measures and advice on potential health impacts.*

RVC Development Engineer advised the following:

- *It is uncertain whether or not the bio-retention basin will drain in 72hrs. This would be dependent on the inflow to the basin within the time period i.e. will heavy rainfall be falling over 2-3 days if this period, if so then it is unlikely that the basin will drain in 3 days.*
- *It is detailed that the bio-retention basin is 0.3 metres in depth prior to outflow, if there is an evapotranspiration rate totalling a minimum of 4.17mm/hr then the basin will drain within 3 days given there is no additional inflow. Any increase in depth will be result in outflow, in larger events the bio-retention basin will overtop the weir.*

## 15 Assessment Statutory Town Planning Controls

The following provides a statutory assessment of the Concept DA having regard to:

- my inspections of the site
- the documentation lodged and general description of the proposed development – see Section 10
- the issues raised in submissions of objection and support – see Section 12 and **Attachment No. 6** and
- my commentary in regard the key issues – See Section 14.

The town planning legislation and controls are identified in *italics* in this section.

### **15.1 Environmental Protection and Biodiversity Conservation Act 1999**

Assessment commentary

Refer to comments made in Section 14.6.

The *Terrestrial Flora and Fauna Assessment Report* identifies that 'Littoral rainforest and coastal vine thickets of eastern Australia', which occurs in the 'total development footprint' as a threatened ecological community under the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The *Terrestrial Flora and Fauna Assessment Report* indicates that a commonwealth assessment is required for proposed activities if they affect a matter of 'National Environmental Significance' (NES).

In regard threatened and vulnerable species listed under the EPBA Act the *Terrestrial Flora and Fauna Assessment Report* states:

*No Commonwealth Threatened flora species were recorded in the Study Area.*

*Seven (7) species of threatened fauna listed within schedules of the EPBC Act were either recorded on the site or are considered potential occurrences within the area based upon available habitat components:*

- *Grey-headed Flying-fox (Pteropus poliocephalus)*
- *Koala (Phascolarctos cinereus)*
- *Wallum Sedge-frog (Litoria olongburensis)*
- *Red Goshawk (Erythrorhynchus radiatus)*
- *Regent Honeyeater (Anthochaera phrygia)*
- *Spotted-tailed Quoll (Dasyurus maculatus)*
- *Large-eared Pied Bat (Chalinolobus dwyeri)*

*One (1) Commonwealth Threatened Ecological Communities was recorded on the Subject site - Littoral Rainforest and Coastal Vine Thickets of Eastern Australia.*

'Littoral rainforest and coastal vine thickets of eastern Australia' are listed as Critically Endangered under the EPBC Act.

Koalas are now threatened species under the EPBC Act.

The *Terrestrial Flora and Fauna Assessment Report* assessment concludes:  
*Whilst the Koala and Grey-headed flying fox have been recorded from the site, and a number of other listed species are considered "possible" occurrences based on the availability of potentially suitable habitat, the proposed development is considered highly unlikely to result in any of the above listed impacts on any Commonwealth listed threatened species.*

*Furthermore, it is considered that the Study Area does not support an "important population" of any species (as defined within the EPBC Act) and a significant impact on these species will not be incurred.*

*With regards to the Littoral Rainforest and Coastal Vine Thickets of Eastern Australia Ecological Community, very minor impacts are proposed which relate to the pruning of limbs adjacent to an existing access road, and the clearing of approximately 127 m<sup>2</sup> (0.15%) of highly degraded vegetation surrounding an existing sewer pump station well (refer **Section 7.2**) for the construction of a sewer pump station. The retained community will be rehabilitated in accordance with an appropriate plan of management and protected in perpetuity under a stewardship agreement (under the Biodiversity Conservation Act 2016) entered into by the proponent.*

*It is considered that although a number of listed migratory species are known or likely to occur occasionally in the Study Area, no area of important habitat occurs in the Study Area for listed migratory species.*

The 'total development footprint' appears also to provide habitat for:

- White-throated Needletail
- Rufous Fantail and
- Spectacled Monarch

which are migratory bird species.

In Section 14.6 I identify a number of substantial outstanding and unresolved biodiversity issues which in my opinion hinder a determination whether or not as a consequence of the proposed development there is likely to be a significant effect on threatened and vulnerable species listed under the EPBA Act which have been identified in or having the potential to occur in the 'total development footprint'.

In my opinion the Concept DA does not reasonably demonstrate that the preparation of a referral to the Commonwealth under the EPBC Act should not have been undertaken prior to when the DA was lodged.

## **15.2 Threatened Species Conservation Act 1995 (TSC Act)**

### **Assessment commentary**

Refer to comments made in Sections 12.6.2 and 14.6.

The DA was lodged at the time the TSC Act was operative. The Act has since been repealed and replaced by the *Biodiversity Conservation Act 2016*.

The following comments draw upon the Judgement of Justice Pain in the Class 4 Appeal *Ryan vs Northern Regional Planning Panel* (2020 [NSWLEC 55]) 14 May 2020.

At the time DA was lodged on 27 Oct. 2014, s. 5A and s. 78A of the EPA Act were in force which referred in turn to the TSC Act.

Section 78A(8)(b) of the EPA Act required that a SIS be prepared in accordance with Division 2 Part 6 of the TSC Act to accompany a DA if development on land was likely to significantly affect threatened species, populations, or their habitats.

Threatened species is defined in s. 4 of the TSC Act and includes; Endangered Ecological Communities listed in Part 3 of Schedule 1 and Vulnerable species listed in Part 1 of Schedule 2.

Part 3 of Schedule 1 lists the Littoral rainforest , which occurs in the 'total development footprint' as an Endangered Ecological Community.

The:

- Grey-headed flying fox
- Hoary wattled bat
- Little bentwing-bat
- Southern myotis
- Koala
- Squirrel glider and
- Wallum froglet
- Black-necked stork
- Square-tailed kite and
- White eared monarch
- Brush-tailed phascogale
- Eastern blossom-bat and
- Greater broad-nosed bat

are each listed as Vulnerable species in Part 1 Schedule 2 of the TSC Act.

No SIS accompanied the DA. The [\*Terrestrial Flora and Fauna Assessment Report\*](#) prepared was lodged with the 17 Sept. 2019, 3<sup>rd</sup> amendment of the DA. It stated the development was not likely to cause a significant impact on threatened species.

The likelihood of significance is determined by reference to the seven-part test in s. 5A of the EPA Act.

Section 78A(8)(b) of the EPA Act requires; if the application is in respect of development on land that is, or is a part of, critical habitat or is likely to significantly affect threatened species, populations or ecological communities, or their habitat, an SIS prepared in accordance with Division 2 of Part 6 of the TSC Act is to be lodged with the DA.

If a SIS is required but does not accompany the DA, development consent cannot be granted.

Ameliorative measures proposed as part of the DA can be considered, but not measures imposed as conditions of consent.

In Section 14.6 I identify a number of substantial outstanding and unresolved biodiversity issues which hinder a determination whether or not as a consequence of the proposed

development there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats.

In my opinion a Species Impact Statement should have been prepared and lodged with the DA (and Concept DA) as there is likely to be a significant impact under s. 5A of the TSC Act on Endangered and Vulnerable fauna and the Littoral rainforest.

### **15.3 s. 1.7 Environmental Planning & Assessment Act 1979 (EPA Act)**

The provisions of Part 1 Clause 1.7 of the EPA Act are identified below in *italics*.

*Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994*

*This Act has effect subject to the provisions of Part 7 of the Biodiversity Conservation Act 2016 and Part 7A of the Fisheries Management Act 1994 that relate to the operation of this Act in connection with the terrestrial and aquatic environment.*

#### **Assessment commentary**

At the time DA was lodged on 27 Oct. 2014, s. 5C of the EPA Act was in force.

The provisions of s. 5C of the *EPA Act* are identified below in *italics*.

*5C Application of Act with respect to threatened species conservation—fish and marine vegetation*

*(1) A reference in this Act to the Threatened Species Conservation Act 1995, in connection with critical habitat, or threatened species, populations or ecological communities, or their habitats, is to be construed in accordance with this section.*

*(2) To the extent that the matter concerns critical habitat of fish or marine vegetation, or threatened species, populations or ecological communities of fish or marine vegetation, or their habitats:*

*(a) a reference to the Threatened Species Conservation Act 1995 is taken to be a reference to Part 7A of the Fisheries Management Act 1994, and*

*(b) a reference to the Minister administering the Threatened Species Conservation Act 1995 is taken to be a reference to the Minister administering the Fisheries Management Act 1994, and*

*(c) a reference to the Director-General of the Department of Environment, Climate Change and Water is taken to be a reference to the Director-General of the Department of Industry and Investment.*

*(3) In this section:*

*fish has the same meaning as in Part 7A of the Fisheries Management Act 1994.*

*marine vegetation has the same meaning as in Part 7A of the Fisheries Management Act 1994.*

#### **Assessment commentary**

The provisions of the TSC Act and FM Act apply to the terrestrial and aquatic environments of the land and adjoining land.

### **15.4 s. 4.15 Environmental Planning & Assessment Act 1979 - evaluation**

The general matters for consideration of Part 4 Division 4.3 Clause 4.15(1) of the EPA Act are identified below in *italics*.

*(1) Matters for consideration—general*

*In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—*

*(a) the provisions of—*

*(i) any environmental planning instrument, and*

#### **Assessment commentary**

An assessment of the Concept DA in regard relevant State Environmental Planning Policies is provided in Section 15.7.



In my opinion the Concept DA fails to satisfactorily address matters for consideration in a number of State Policies.

An assessment of the Concept DA in regard the *Richmond Valley Local Environmental Plan 2012* (RVLEP 2012) is provided in Section 15.10.

In my opinion the Concept DA fails to satisfactorily address a number of development standards and local provisions of the RVLEP 2012.

*(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*

Assessment commentary

No proposed environmental planning instruments are known to apply to the Concept DA.

*(iii) any development control plan, and*

Assessment commentary

An assessment of the Concept DA in regard the *Richmond Valley Development Control Plan 2012* (RVDCP 2012) is provided in Section 15.12.

In my opinion the Concept DA fails to comply with number of Parts of the RVDCP 2012.

*(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*

Assessment commentary

Not applicable to the Concept DA.

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

Assessment commentary

At the time the DA was lodged Clause 92(1)(a) of the EPA Reg referred to the NSW Coastal Policy 1997. An assessment of the Concept DA in regard the *NSW Coastal Policy 1997* is provided in Section 15.11.

In my opinion the Concept DA is not consistent with a number of strategic directions and DA considerations of the *NSW Coastal Policy 1997*.

*(v) (Repealed)*

Assessment commentary

The repealed clause related to Coastal Zone Management Plans (within the meaning of the *Coastal Protection Act 1979* – now repealed). RVC have advised a draft Coastal Zone Management Plan was not endorsed by the Minister within the savings period of the Coastal Management Act 2016, therefore there is no Coastal Zone Management Plan.

*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,*

Assessment commentary

Refer to Section 14.

In my opinion the Concept DA is likely to have a substantial adverse impact on the natural environment of the 'total development footprint' and potential for adverse social impacts in the locality.

*(c) the suitability of the site for the development,*

Assessment commentary

Refer to Section 14.

In my opinion the site is not suitable for the development proposed by the Concept DA.

*(d) any submissions made in accordance with this Act or the regulations,*

Assessment commentary

Refer to Section 12.6 and **Attachment No. 6**.

Approx. 1,470 submissions of objection and support have been made to RVC and DoPI&E in regard the DA, Concept DA, and draft Master Plan.

Of the 905 submissions lodged with RVC, 656 were in objection and 249 in support. Two (2) petitions of objection containing 947 signatures and 23 'postcards' of objection were received by RVC.

Of the 565 submissions received by DoPI&E to the draft Master Plan, the number in opposition and support is unknown.

In my opinion many of the issues raised by the submitters making objections to the DA and Concept DA are valid, cannot be addressed by conditions of consent and the submissions should be given weight in the determination of the DA.

*(e) the public interest.*

Assessment commentary

In my opinion the Concept DA is not in the public interest as it fails to demonstrate reasonable compliance with environmental and town planning legislation and development controls applying to the land and proposed development.

#### **11.5 Part 4 Division 4.4 Environmental Planning & Assessment Act 1979 – concept DAs**

The Applicant advised RVC (19 July 2021) that the DA was to be amended to a Concept DA pursuant to s. 4.23 of the EPA Act.

The NRPP as the determining / consent authority on 13 Sept. 2021 resolved to accept the amendment. Refer to **Attachment No. 2**.

The sections of Part 4 Division 4.4 of the EPA Act are identified below in *italics*.

##### *4.21 Application of this Division*

*This Division applies to concept development applications and to consents granted on the determination of those applications.*

Assessment commentary

The application is for a Concept DA.

##### *4.22 Concept development applications*

*(1) For the purposes of this Act, a concept development application is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for*

*the site or for separate parts of the site are to be the subject of a subsequent development application or applications.*

Assessment commentary

The Concept DA proposed 2 stages. Stage 1 is for all works associated with the subdivision and creation of:

- 135 residential allotments (Lot 1 to Lot 135) with areas between 600m<sup>2</sup> and 959m<sup>2</sup>
- 2 environmental / rainforest allotments (Lot 136, 2.19ha and Lot 137, 4.86ha) to be retained by the Landowner
- a residual allotment (Lot 138) of 47.42ha
- 2 allotments (Lot 139, 570m<sup>2</sup> and Lot 140, 2,842m<sup>2</sup>) for the purposes of bushfire trails to be dedicated to RVC as public reserves
- 2 allotments (Lot 141, 1,990m<sup>2</sup> and Lot 142, 2,969m<sup>2</sup> and) for recreation / open space purposes to be dedicated to RVC as public reserves adjoining the Crown Foreshore Reserve beside the Evans River
- 1 allotment (Lot 143, 1,124m<sup>2</sup>) for stormwater drainage purposes
- 1 allotment (Lot 144, 127m<sup>2</sup>) for a sewer pump station and
- 3 allotments (Lot 145, Lot 146, and Lot 147) to be subdivided in Stage 2.

Stage 2 is subject to a future DA and is for; the subdivision of the Stage 1 Lot 145, Lot 146 and Lot 147 to create 40 allotments (Lots 148 to 187). No works will be required as subdivision infrastructure will be provided within Stage 1.

*(2) In the case of a staged development, the application may set out detailed proposals for the first stage of development.*

Assessment commentary

The Concept DA details the proposals for Stage 1.

*(3) A development application is not to be treated as a concept development application unless the applicant requests it to be treated as a concept development application.*

Assessment commentary

On 26 July 2021 application was made to RVC pursuant to Clause 55 of the EPA Reg 2000 to amend the application to a Concept DA.

The NRPP as the determining / consent authority received 2 Assessment Briefing Reports (17 August 2021 and 24 August 2021) prepared by the DoPI&E in regard amendment of the DA to a Concept DA and on 13 Sept. 2021 resolved to accept the amendment.

The amended Concept DA was uploaded to the DoPI&E portal on 10 Sept 2021 and exhibited by RVC for the period 24 Sept. 2021 to 24 Oct 2021.

Due to a clerical error in the exhibition notices the amended Concept DA was re-exhibited by RVC for the period 18 Feb. 2022 to 19 March 2022.

*(4) If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site concerned unless—  
(a) consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or*

Assessment commentary

The NRPP is to determine the Concept DA. The consent (if issued) can only apply to Stage 1.

*(b) the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.*

*The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.*

Assessment commentary

The documentation for the Concept DA details both Stage 1 and Stage 2. Consent is sought for Stage 1 only.

*(5) The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.*

*Note—*

*The proposals for detailed development of the site will require further consideration under section 4.15 when a subsequent development application is lodged (subject to subsection (2)).*

Assessment commentary

This assessment considers only the likely impact of Stage 1 of the Concept DA.

*4.23 Concept development applications as alternative to DCP required by environmental planning instruments*

*(1) An environmental planning instrument cannot require the making of a concept development application before development is carried out.*

Assessment commentary

No environmental planning instrument relevant to the land or application requires a Concept DA.

*(2) However, if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a concept development application in respect of that land.*

*Note—*

*Section 3.44(5) also authorises the making of a development application where the relevant planning authority refuses to make, or delays making, a development control plan.*

Assessment commentary

Mills Oakley (14 July 2021) provided advice to the Landowner which states:

- ‘The requirement for a ‘master plan’ is now (as a matter of law), a requirement for a development control plan that deals with the matters as set out in clause 20(2) of SEPP 71’ and
- ‘The requirement for a development control plan under clause 18(1) of SEPP 71 (as modified by the transitional provisions) may be satisfied by the grant of a development consent for concept proposals’.

Mills Oakley (14 July 2021) provides detail advice in regard the withdrawal of the draft Master Plan and amendment of the DA to a Concept DA. Refer to **Attachment No. 8**.

*(3) Any such concept development application is to contain the information required to be included in the development control plan by the environmental planning instrument or the regulations.*

Assessment commentary

In regard Clause 20(2) of SEPP No. 71 the documentation for the Concept DA provides very limited information which in substance appears no different to that provided to DoPI&E in regard to the draft Master Plan. DoPI&E advised RVC that the draft Master Plan was to be refused that there were outstanding issues that had not been resolved. Refer to Sections 4.3 and 15.8.5.

#### 4.24 Status of concept development applications and consents

*(1) The provisions of or made under this or any other Act relating to development applications and development consents apply, except as otherwise provided by or under this or any other Act, to a concept development application and a development consent granted on the determination of any such application.*

##### Assessment commentary

The NRPP is to determine Stage 1 of the Concept DA.

*(2) While any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site.*

##### Assessment commentary

A future DA for Stage 2 cannot be inconsistent with the overall concept and any Stage 1 consent.

*(3) Subsection (2) does not prevent the modification in accordance with this Act of a consent granted on the determination of a concept development application.*

##### Assessment commentary

No applicable to the determination of the Concept DA.

### **15.6 Part 4 Division 4.8 Environmental Planning & Assessment Act 1979 – integrated DAs**

The relevant Sections (4.6 and 4.7) of Part 4 Division 4.8 of the EPA Act are identified below in *italics*.

#### 4.46 What is “integrated development”?

*(cf previous s 91)*

*(1) Integrated development is development (not being State significant development or complying development) that, in order for it to be carried out, requires development consent and one or more of the following approvals—*

##### Assessment commentary

The Concept DA is ‘integrated’ development as the General Terms of Approval (GTA) of the following are required prior to determination of it:

- NSW Rural Fire Service - s.100B *Rural Fires Act 1997*, relating to bushfire safety
- NSW Dept of Premier and Cabinet, Heritage NSW, Aboriginal Cultural Heritage Regulation - s. 90 *National Parks & Wildlife Act 1974*, relating to an application for a Aboriginal Heritage Impact Permit for approval of an Aboriginal Heritage Impact Permit to partially remove a shell midden
- NSW Office of Water - s. 90 of the *Water Management Act 2000*, relating to water management work approval to dewater during construction and
- Natural Resources Access Regulator (NRAR) - s. 91 of the *Water Management Act 2000* relating to activity within 40m of the Evans River.

#### 4.47 Development that is integrated development

*(cf previous s 91A)*

*(1) This section applies to the determination of a development application for development that is integrated development.*

*(2) Before granting development consent to an application for consent to carry out the development, the consent authority must, in accordance with the regulations, obtain from each relevant approval body the general terms of any approval proposed to be granted by the approval body in relation to*

*the development. Nothing in this section requires the consent authority to obtain the general terms of any such approval if the consent authority determines to refuse to grant development consent.*

Assessment commentary

The NSW Rural Fire Service and NSW Dept of Premier and Cabinet, Heritage NSW, Aboriginal Cultural Heritage Regulation have provided their General Terms of Approval (GTA's). Refer to Section 12.5 and **Attachment No. 7b**.

The NRAR provided comments in regard to the Concept DA and the NSW Office of Water has not provided its GTA's because it is waiting to assess provision of additional information.

*(3) A consent granted by the consent authority must be consistent with the general terms of any approval proposed to be granted by the approval body in relation to the development and of which the consent authority is informed. For the purposes of this Part, the consent authority is taken to have power under this Act to impose any condition that the approval body could impose as a condition of its approval.*

Assessment commentary

A consent must contain the GTA's of NSW Rural Fire Service, NSW Dept of Premier and Cabinet, Heritage NSW, Aboriginal Cultural Heritage Regulation and NSW Office of Water. Refer to **Attachment No. 7b**.

*(4) If the approval body informs the consent authority that it will not grant an approval that is required in order for the development to be lawfully carried out, the consent authority must refuse consent to the application.*

Assessment commentary

The NSW Rural Fire Service and NSW Dept of Premier and Cabinet, Heritage NSW, Aboriginal Cultural Heritage Regulation have provided their General Terms of Approval (GTA's). Refer to Section 12.5 and **Attachment No. 7b**.

The NRAR provided comments in regard to the Concept DA and the NSW Office of Water has not provided its GTA's because it is waiting to assess provision of additional information.

*(4A) The Planning Secretary may act on behalf of an approval body for the purposes of informing the consent authority under this section whether or not the approval body will grant the approval, or of the general terms of its approval, if—*

*(a) the Planning Secretary is authorised to do so by the regulations because of the failure of the approval body to do so or because of an inconsistency in the general terms of approval of 2 or more approval bodies, and*

*(b) the Planning Secretary has taken into consideration assessment requirements prescribed by the regulations as State assessment requirements.*

*The decision of the Planning Secretary is taken, for the purposes of this Division, to be the decision of the approval body, unless the approval body has informed the consent authority of its own decision on the matter.*

Assessment commentary

The NSW Rural Fire Service and NSW Dept of Premier and Cabinet, Heritage NSW, Aboriginal Cultural Heritage Regulation have provided their General Terms of Approval (GTA's). Refer to Section 12.5 and **Attachment No. 7b**.

Whether or not the Planning Secretary may make a decision for NSW Office of Water when it has requested the provision of additional information in regard the Concept DA is unclear.

*(5) If the approval body and the Planning Secretary fail to inform the consent authority, in accordance with the regulations, whether or not it will grant the approval, or of the general terms of its approval—*



- (a) the consent authority may determine the development application, and
- (b) if the consent authority determines the development application by granting consent—
  - (i) the approval body cannot refuse to grant approval to an application for approval in respect of the development, and
  - (ii) an approval granted by the approval body must not be inconsistent with the development consent, and
  - (iii) section 4.50 applies to an approval so granted as if it were an approval the general terms of which had been provided to the consent authority, despite any other Act or law.

Assessment commentary

Whether or not the NRPP can determine the Concept DA when the NSW Office of Water has requested the provision of additional information in regard the Concept DA is unclear.

- (6) If a development application is determined, whether or not by the granting of development consent, the consent authority must notify all relevant approval bodies of the determination.

Assessment commentary

RVC will notify the Federal and State agencies it has consulted with of the determination of the Concept DA of the NRPP.

## **15.7 Environmental Planning and Assessment Regulation 2000**

Clause 92 *'Additional matters that consent authority must consider'* applies to determination of DAs. There are no relevant Clause 94 matters applying to the determination of the DA.

## **15.8 State Environmental Planning Policies**

### **15.8.1 SEPP No. 14 – Coastal Wetlands**

Assessment commentary

The DA was lodged at the time the SEPP No. 14 was operative. SEPP No. 14 has since been repealed and replaced by *State Environmental Planning Policy (Coastal Management) 2018* (CM-SEPP 2018) and more recently that Policy by *State Environmental Planning Policy (Resilience and Hazards) 2021*.

As a consequence of Clause 21 (Savings and transitional provisions) of CM-SEPP 2018, SEPP No. 14 still applies to the Concept DA.

Clause 7(3) SEPP No. 14 requires that the works (in *italics*) in a SEPP No. 14 mapped wetland including:

- (a) *clear that land,*
  - (b) *construct a levee on that land,*
  - (c) *drain that land, or*
  - (d) *fill that land,*
- be designated development.

Clearing in the SEPP is defined in the following manner:

*clearing, in relation to land, means the destruction or removal in any manner of native plants growing on the land, but does not include:*

- (a) *the destruction or removal of a plant declared to be a noxious weed within the meaning of the Noxious Weeds Act 1993, by means not likely to be significantly detrimental to the native ecosystem, or*
- (b) *the incidental destruction or removal of native plants lying adjacent to any such noxious plants occurring unavoidably during the process of destroying or removing those noxious plants, or*
- (c) *the destruction or removal of native plants, within 3 metres of the boundary between the lands owned or occupied by different persons, for the purpose of erecting or maintaining a dividing fence between those lands, or*

*(d) the destruction or removal of native plants, within 0.5 metres of the boundary between the lands owned or occupied by different persons, for the purpose of enabling a survey to be carried out along that boundary by a surveyor registered under the Surveyors Act 1929.*

Mills Oakley (16 Oct. 2016 and 23 Oct. 2016) have provided advice to the Landowner in regard to:

- approval for the carrying out works within the road reserve for Iron Gates Drive as part of the existing development application
- whether or not there any relevance, in planning law, to the fact that the construction of the existing road within the road reserve has never been formally 'accepted' by the Council as an asset and
- trimming overhanging vegetation over the road reserve in the SEPP 14 areas.

Mills Oakley advised the Landowner:

*If your trimming does not involve the destruction or removal of any native plants, we do not consider that SEPP 14 will be triggered.*

*Furthermore, reinforcing our view, we consider that such trimming would be 'routine maintenance works' under clause 94(2)(b) of State Environmental Planning Policy (Infrastructure) 2007 (the Infrastructure SEPP). This means that, if:*

- *it is carried by on behalf of the Council; and*
  - *the extent of the activity (and any associated adverse impacts) is kept to the minimum possible to allow safe use of the road,*
- development consent will not be required.*

The [Crime Prevention Through Environmental Design Assessment](#) that a 3m - 5m cleared space be provided either side of residential pathways and cycle routes.

The [Crime Prevention Through Environmental Design Assessment](#) recommends with the upgrade of Iron Gates Dr, that a shared cycle/pedestrian path be included. Given that the shared cycle/pedestrian path in Iron Gates Dr is the only connection of that type to Evans Head it is appropriate from the crime prevention perspective that it should also be provided with a 3m - 5m cleared space.

The [Amended Ecological Assessment \(Iron Gates Drive\)](#) report for Iron Gates Dr and in particular where it traverses wetland areas does not sufficiently account for or address the recommendation in the [Crime Prevention Through Environmental Design Assessment](#).

RVC's Design Engineer has advised that; *the pathway should be a minimum 2.5m wide.*

Whether or not the upgrading of Iron Gates Dr is designated development is not clearly established as Clause 7(3) would appear to be triggered as a consequence of achieving requirements for crime prevention.

### **15.8.2 SEPP No. 26 – Littoral rainforests**

#### Assessment commentary

SEPP No. 26 has since been repealed and replaced by *State Environmental Planning Policy (Coastal Management) 2018* (CM-SEPP 2018) and more recently that Policy by *State Environmental Planning Policy (Resilience and Hazards) 2021*.

SEPP No. 26 has not applied to RVC local government area.

### **15.8.3 SEPP No. 44 – Koala Habitat Protection**

#### Assessment commentary

Refer to Section 15.2.

The DA was lodged at the time the SEPP No. 14 was operative. SEPP No. 14 has since been repealed and replaced by *State Environmental Planning Policy (Koala Habitat Protection) 2021* and more recently that Policy by *State Environmental Planning Policy (Biodiversity and Conservation) 2021*.

Clause 18 (Existing development applications) of *State Environmental Planning Policy (Koala Habitat Protection) 2021* states the following:

*A development application made in relation to land, but not finally determined before this Policy applied to the land, must be determined as if this Policy had not commenced in its application to the land.*

*State Environmental Planning Policy (Koala Habitat Protection) 2021* has been repealed and replaced by *State Environmental Planning Policy (Biodiversity and Conservation) 2021* and the Clause 1.4 Transferred Provisions apply to in effect continue the provisions of SEPP No. 44.

The *Terrestrial Flora and Fauna Assessment Report* includes a report titled '*Koala Assessment Utilising the Regularised Grid-based Spot Assessment Technique*' by JWA Pty Ltd, April 2019.

An assessment of the 'steps' outlined in SEPP No. 44 is provided in the *Terrestrial Flora and Fauna Assessment Report*.

No assessment of the 'steps' outlined in SEPP No. 44 is provided in the report titled '*Koala Assessment Utilising the Regularised Grid-based Spot Assessment Technique*' by JWA Pty Ltd, April 2019.

An assessment of the 'steps' outlined in SEPP No. 44 is provided in the *Amended Ecological Assessment (Iron Gates Drive)* by JWA Pty Ltd, April 2019.

The report titled '*Koala Assessment Utilising the Regularised Grid-based Spot Assessment Technique*' by JWA Pty Ltd, April 2019 concluded:

*The assessment of current levels of Koala activity/usage over the site utilising the RgbSAT has identified areas of "low" level usage outside of the proposed development footprint (i.e. adjacent to the south-western corner). A small number of Koala faecal pellets were recorded under a total of three (3) trees in this portion of the site. As noted by Phillips and Callaghan (2011), where the results of a SAT site returns an activity level within the low use range, the level of use by the Koala is likely to be transitory. It is also noted that none of the faecal pellets recorded were considered to be fresh.*

*Based on the results of this assessment it is considered that the south-western portion of the subject site may be utilised occasionally by Koalas as they traverse the locality. The results indicate that a resident/sedentary population is not currently present on the site.*

The Friends of the Koala have made 2 submissions in regard the DA and Concept DA. Those submissions and others expressed concern in regard to potential impact on Koala and raised the following issues:

- Independent review needed – insufficient survey
- Existing corridor – land and Iron Gates Dr
- SAT analysis limited

- Loss of Koala food trees
- Increased risk of Koala kills
- Mitigation measures insufficient
- Site part of Evans Head-Doonbah-Riley Hill-Broadwater population – only surviving population
- Biobanking does not replace lost trees and
- Previous tree removal.

Dr S Phillips of Biolink Ecological Consultants (6 Dec. 2019) raised the following issues / concerns:

- General comments:
  - minimal survey effort with references to Qld fauna and flora studies
  - inadequate survey for Brush-tailed phascogales and Squirrel gliders identified in Atlas of NSW Wildlife has having potential presence – cannot rely on assessment and the 7-point test
  - inadequate survey extent of hollow-bearing trees – removal a key threatening process
- Koala
  - assessment understates the extent to which Koalas are using the site
  - regularised Grid-based Spot Assessment Technique (SAT/R-bSAT) survey inadequate
  - report fails to mention the 2014 Koala Habitat and Population Assessment which recommends the site as an area of long term generational persistence (core habitat under the SEPP)
  - disagrees with the recommendation not to prohibit cats and dogs in the subdivision – particularly given proximity of national parks

The subdivision requires the removal of approx. 28 trees identified as Eucalypt Forest – *Corymbia intermedia*, *Eucalyptus planchoniana*, *E. tereticornis*, *E. Signata* and other Eucalypts in the 2 Eucalypt vegetation associations identified in the ‘total development footprint’.

The relevant Clauses of SEPP No. 44 are identified below in *italics*.

*SEPP No. 44 – Koala Habitat Protection* when it was gazetted was supported by the Dept. of Planning Circular No. B25 (22 March 1995).

*Clause 3 Aims, objectives etc*

*This Policy aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline:*

*(a) by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and*

*(b) by encouraging the identification of areas of core koala habitat, and*

*(c) by encouraging the inclusion of areas of core koala habitat in environment protection zones.*

Assessment commentary

The Koala and SEPP No. 44 assessment by Planit (Aug. 2014) concludes that core Koala habitat does not occur on the site.

The SEPP No. 44 assessment by JWA Pty Ltd (July 2019) in relation to vegetation clearing works in Iron Gates Dr concludes that core Koala habitat does not occur in the road reserve.

Dr S Phillips does not agree with those conclusions.

## *Part 2 Development control of koala habitats*

### *Clause 6 Land to which this Part applies*

*This Part applies to land:*

- (a) that is land to which this Policy applies, and*
- (b) that is land in relation to which a development application has been made, and*
- (c) that:*
  - (i) has an area of more than 1 hectare, or*
  - (ii) has, together with any adjoining land in the same ownership, an area of more than 1 hectare, whether or not the development application applies to the whole, or only part, of the land.*

#### Assessment commentary

The Richmond River local government area is subject to the provisions of the Policy. The land, 'total development footprint' and proposed residential footprint' all have an area exceeding 1ha.

### *Clause 7 Step 1—Is the land potential koala habitat?*

- (1) Before a council may grant consent to an application for consent to carry out development on land to which this Part applies, it must satisfy itself whether or not the land is a potential koala habitat.*
- (2) A council may satisfy itself as to whether or not land is a potential koala habitat only on information obtained by it, or by the applicant, from a person who is qualified and experienced in tree identification.*
- (3) If the council is satisfied:*
  - (a) that the land is not a potential koala habitat, it is not prevented, because of this Policy, from granting consent to the development application, or*
  - (b) that the land is a potential koala habitat, it must comply with clause 8.*

#### Assessment commentary

The *SEPP No. 44 assessment by Planit (Aug. 2014)* states:

*The SEPP defines 'potential koala habitat' as 'areas of native vegetation where the trees of the types listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.' The trees within Schedule 2 are tabulated below:*

<b>Scientific Name</b>	<b>Common Name</b>
<i>Eucalyptus tereticornis</i>	Forest red gum
<i>Eucalyptus microcorys</i>	Tallowwood
<i>Eucalyptus punctata</i>	Grey Gum
<i>Eucalyptus viminalis</i>	Ribbon or manna gum
<i>Eucalyptus camaldulensis</i>	River red gum
<i>Eucalyptus haemastoma</i>	Broad leaved scribbly gum
<i>Eucalyptus signata</i>	Scribbly gum
<i>Eucalyptus albens</i>	White box
<i>Eucalyptus populnea</i>	Bimble box or poplar box
<i>Eucalyptus robusta</i>	Swamp mahogany

*Although eucalypt forest in association with Vegetation Community 3 contains koala trees as listed in the above table, and these trees constitute at least 15% of the total number of trees in the upper or lower strata of the tree component, the extent of clearing is minimal. The area to be cleared is approximately 1,400 m<sup>2</sup> and would require the removal of approximately 10 - 15 trees. These are offset through plantings in the open space and or street trees.*

There are no Koala food trees (as listed above) identified in the *Landscape Statement of Intent* by Plummer & Smith. There are no Koala food trees (as listed above) identified or



shown on the *Landscape Plans* prepared by Landpartners for the proposed open space (Lot 141 and Lot 142).

The *SEPP No. 44 assessment by JWA Pty Ltd (July 2019)* in relation to vegetation clearing works in Iron Gates Dr states the following in relation to the SEPP No. 44 provisions (highlighted in red):

*Does the site contain areas of native vegetation where the trees of types listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component?*

*Yes. The Schedule 2 species Swamp mahogany (Eucalyptus robusta) occurs on the subject site. Swamp mahogany constitutes > 15% of the total number of trees in the upper strata of vegetation community 4. These areas are therefore considered to represent potential Koala habitat.*

*Clause 8 Step 2—Is the land core koala habitat?*

*(1) Before a council may grant consent to an application for consent to carry out development on land to which this Part applies that it is satisfied is a potential koala habitat, it must satisfy itself whether or not the land is a core koala habitat.*

*(2) A council may satisfy itself as to whether or not land is a core koala habitat only on information obtained by it, or by the applicant, from a person with appropriate qualifications and experience in biological science and fauna survey and management.*

*(3) If the council is satisfied:*

*(a) that the land is not a core koala habitat, it is not prevented, because of this Policy, from granting consent to the development application, or*

*(b) that the land is a core koala habitat, it must comply with clause 9.*

#### Assessment commentary

The SEPP No. 44 assessment by Planit (Aug. 2014) states:

*The SEPP defines ‘core koala habitat’ means ‘an area of land with a resident population of koalas, evidenced by attributes such as breeding females (that is, females with young) and recent sightings of and historical records of a population.’*

*Whilst the Koala is noted to be present in the locality and scratch marks were present on several eucalypts immediately external to the development footprint, no individuals were recorded within the works zone. With the exception of the scratch marks recorded from the site in 2014, two (2) other records occur from the vicinity of the development footprint (BioNet Atlas of NSW Wildlife 2019):*

- 1. A record to the north of the development footprint from 1990, however this record has a listed accuracy of +/- 1,000 m; and*
- 2. A record to the west of the development footprint from 1989, however this record also has a listed accuracy of +/- 1,000 m.*

*The assessment of current levels of Koala activity/usage over the site utilising the RG-bSAT in March 2019 (Attachment 4) identified areas of “low” level usage outside of the proposed development footprint (i.e. adjacent to the south-western corner). A small number of Koala faecal pellets were recorded under a total of three (3) trees in this portion of the site. As noted by Phillips and Callaghan (2011), where the results of a SAT site returns an activity level within the low use range, the level of use by the Koala is likely to be transitory. It is also noted that none of the faecal pellets recorded were considered to be fresh. The results indicate that a resident/sedentary population is not currently present on the site.*

*It is considered that koalas may occasionally traverse the site as they move or disperse through the broader locality. However, there are no recent sightings of koalas from the subject site, and the historical records are not considered likely to suggest that a “resident*



*population” of koalas occurs. As such, it is considered that the proposal with respect to its definition under SEPP 44 is not located within land that is core koala habitat.*

The *SEPP No. 44 assessment by JWA Pty Ltd (July 2019)* in relation to vegetation clearing works in Iron Gates Dr states:

*Under SEPP 44 core Koala habitat is defined as ‘an area of land with a resident population of Koalas, evidenced by attributes such as breeding females (that is females with young) and recent sightings of and historical records of a population’.*

*No. Koala populations are known to occur in the locality. However, no evidence of recent Koala activity was recorded in the study area. No females with back young have been recorded within the Study Area. Core Koala habitat is not considered to occur on the site.*

The submission from Dr S Phillips (6 Dec. 2019) makes the following comments in regard the assessment of Koala:

*In my opinion, the RG-bSAT Assessment undertaken by JWA Ecological Consultants (Attachment 4 of the Planit Report) has significantly understated the extent to which koalas are using the site. While the design concept outlined in their report is acceptable (and looks impressive at first glance), when it comes down to it, only 10 field sites were formally assessed. Interestingly, the report states that the assessment of these 10 sites was completed by 1 ecologist over 2 days. What this confirms to me is that the effort of physically surveying the 10 sites has been perfunctory at best. As the designer and foremost practitioner / trainer of the SAT/RG-bSAT method, I can unequivocally state that, if trained SAT practitioners were to have been undertaking this particular assessment, it would also have taken at least 2 days to do the ten sites with 3 people doing the work. Hence the 2 ecologist days of survey effort described in the report is only a third of what it should have taken (6 ecologist days) to do the site-based SAT assessments diligently. This leads me to advise with some confidence that both the distribution and extent of koala activity across the site has been significantly underestimated, and therefore cannot be relied upon.*

*The koala assessment also fails to recognise there are two activity thresholds to be applied across this site – alluvial soils and associated stands of Forest Red gum areas warrant ‘east coast med-high’ activity thresholds to be applied (as defined in Table 2 of Phillips and Callaghan 2011), while remainder of site (typified by Scribbly Gums and Needlebarks) clearly warrants ‘east coast low’ activity thresholds to be applied (as defined in Table 2 of Phillips and Callaghan 2011). The potential for ‘low’ koala activity to occur across the majority of the Iron Gates site could have been reliably predicted on the basis of underlying soil landscape and associated vegetation type, thus flagging the need for the assessment to have been undertaken with even greater diligence given the lower probability of finding a koala faecal pellet. This clearly did not occur.*

*I also note that the Planit Report (as amended by JWA in 2019) has failed to acknowledge and reference the 2014 Koala Habitat and Population Assessment that was prepared for Richmond Valley Council. Importantly, this report clearly identifies the Iron Gates site as an area of long-term generational persistence (visive Core Koala Habitat as defined by SEPP 44), while also providing other important conservation metrics / assessment that run contrary to the conclusions of the 7-part tests presented in the Planit Report. Because long-term generational persistence by koalas is reliant upon records for each of the preceding 3 koala generations (i.e. at least 1 koala record for each of the 3 consecutive 6 year periods that constitute a single koala generation), and that the records are an unbiased informer of presence, they are a more reliable indicator of the land’s importance to koalas than a cursory field assessment. Given this consideration, the Iron Gates site is clearly Core Koala Habitat as defined by State Environmental Planning Policy No 44—Koala Habitat Protection (SEPP 44) and this knowledge mandates that a Koala Plan of Management (KPOM) should have been prepared to accompany the development application.*

*It is also my view, supported by objective assessment, that the Iron Gates site is Core Koala Habitat for the purposes of SEPP 44 thus requiring a KPoM to have been prepared in support of the development application.*

Having regard to his experience and qualification in my opinion the submission from Dr S Phillips should be given determinative weight.

*Clause 9 Step 3—Can development consent be granted in relation to core koala habitat?*

*(1) Before a council may grant consent to a development application for consent to carry out development on land to which this Part applies that it is satisfied is a core koala habitat, there must be a plan of management prepared in accordance with Part 3 that applies to the land.*

*(2) The council's determination of the development application must not be inconsistent with the plan of management.*

Assessment commentary

The *SEPP No. 44 assessment by Planit (Aug. 2014)* states:

*No. It is considered that the site does not contain core Koala habitat as described.*

Dr S Phillips does not agree with that conclusion.

The *SEPP No. 44 assessment by JWA Pty Ltd (July 2019)* in relation to vegetation clearing works in Iron Gates Dr states:

*No. In accordance with this SEPP 44 assessment, a KPoM is not required for the subject site.*

*Clause 10 Guidelines—matters for consideration*

*Without limiting clause 17, a council must take the guidelines into consideration in determining an application for consent to carry out development on land to which this Part applies.*

Assessment commentary

*SEPP No. 44 – Koala Habitat Protection* when it was gazetted was supported by the Dept. of Planning Circular No. B25 (22 March 1995).

Section 2 of the Dept. of Planning Circular No. B25 (22 March 1995) are the guidelines which must be considered.

Neither the:

1. *Terrestrial Flora and Fauna Assessment Report by Planit*
  2. *'Koala Assessment Utilising the Regularised Grid-based Spot Assessment Technique' by JWA Pty Ltd, April 2019* or
  3. *Amended Ecological Assessment (Iron Gates Drive) by JWA Pty Ltd, April 2019*
- indicate that the guidelines in the Dept. of Planning Circular No. B25 have been followed.

A vegetation map, which identifies the components of the tree layer and a description of the shrub layer, of the part of the site in which the Koala habitat trees are proposed to be removed is not provided in reports.

In my opinion the Concept DA does not satisfactorily assess the potential for the impact of the development on local Koala populations or adequately provide for the mitigation of the removal of the koala habitat.

#### **15.8.4 SEPP No. 55 – Remediation of Land**

##### Assessment commentary

SEPP No. 55 has been repealed and replaced by *State Environmental Planning Policy (Resilience and Hazards) 2021* and Clause 1.4 Transferred Provisions of that Policy apply to and in effect continue the provisions of SEPP No. 55.

No contaminated land assessment has been undertaken in accordance with NSW EPA *Consultants Reporting on Contaminated Land - Contaminated Land Guidelines, SEPP No. 55 Remediation of Land* or RVC Policy 15.7 Management of Contaminated Land which defers to the *Regional Policy for the Management of Contaminated Land, May 2006* (now June 2019) in regard to Lot 163 DP 831052.

No systematic soil sampling for possible contamination as a consequence of the previous agricultural use of the land has occurred.

In my opinion the Concept DA does not satisfactorily demonstrate that the land is not contaminated as a consequence of its previous use.

#### **15.8.5 SEPP No. 71 – Coastal Protection**

##### Assessment commentary

The DA was lodged prior to the commencement of *SEPP – Coastal Management 2018* (CM-SEPP). As a consequence of the savings provisions of Clause 21(1) of CM-SEPP, Clause 95 of Schedule 1 of the *Environmental Planning and Assessment (Savings Transitional and Other provisions) Regulation 2017* and Clause 289(7) of the EPA Reg, the DA (and now Concept DA) is still subject to the provisions of SEPP No. 71. Refer to **Attachment No. 8** and the advice of Mills Oakley (14 July 2021).

The CM-SEPP has been repealed and replaced by *State Environmental Planning Policy (Resilience and Hazards) 2021* and Clause 1.4 Transferred Provisions apply and in effect continue the provisions of SEPP No. 71.

The land is a 'sensitive coastal location' as defined under SEPP No. 71 as parts of it are within 100m of high water, within 100m of a national park and a SEPP No. 14 wetland. The DA is defined as 'significant coastal development' under SEPP No. 71.

Prior to amendment of the DA to a Concept DA it could not be determined until the draft Master Plan was approved in accordance with Part 5 of SEPP No. 71. A Master Plan was required to be prepared as the land is in a 'sensitive coastal location'. The withdrawal of the draft Master Plan and the amendment of the DA to a Concept DA requires it to contain the information to be included in a development control plan by an environmental planning instrument.

DoPI&E advised; *The applicant has just withdrawn the masterplan from the Department (as per attached correspondence). This was in response to the Department indicating that the masterplan would be refused on the grounds that there were outstanding issues that had not been resolved.*

DoPI&E also advised; (refer to **Attachment No. 2**) that the proposed subdivision lacks clear design principles which arise from a thorough site analysis. The NSW Government Architect (GANSW) raised a number of unresolved issues and commented that the subdivision presented in the draft Master Plan as a 'generic subdivision'.

SEPP No. 71 requires that a draft Master Plan is to illustrate and demonstrate, where relevant to the proposal, the matters identified in Clause 20(2).

Refer to **Attachment No. 8** and the advice from Mills Oakley dated 14 July 2021.

The considerations of SEPP No. 71 are identified below in *italics*.

*Part 2 Development control*

*Clause 8 Matters for consideration*

*The matters for consideration are the following:*

*Clause 8(a) the aims of this Policy set out in clause 2,*

Assessment commentary

The aims of the Policy follow in *italics*.

*(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and*

Assessment commentary

Refer to Sections 10.4.2, 10.4.3, 10.4.8, 10.4.9, 10.4.10, 12.6.2, 14.3, 14.4, 14.5, 14.6, 14.7, 14.8, 14.10, 14.13, 14.15, 14.16, 14.17 and 15.2.

In my opinion the management and protection of the intrinsic biodiversity and Aboriginal cultural heritage values of the Littoral rainforest communities, shell midden remaining in the Crown Foreshore Reserve and Evans River is not satisfactorily resolved.

*(b) to protect and improve existing public access to and along coastal foreshores to the extent that this is compatible with the natural attributes of the coastal foreshore, and*

Assessment commentary

Refer to Sections 3.1, 10.4.9, 12.6.2 and 14.15.

Whilst arguably there is no existing constructed public access to the Crown Foreshore Reserve and Evans River in the land the subject of the Concept DA in my opinion access to and the ownership and management of the Crown Foreshore Reserve adjoining the subdivision is not satisfactorily resolved.

*(c) to ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and*

Assessment commentary

Refer to Sections 3.1, 10.4.9, 12.6.2 and 14.15.

As embellishment works are removed and the ownership and/or management of the Crown Foreshore Reserve in 'limbo' it would appear that opportunities for new planned public access through the Crown Foreshore Reserve to the Evans River limited. It is highly likely future residents will create informal pathways to the river and over time there will be damage and removal of vegetation.

In my opinion access to and the ownership and management of the Crown Foreshore Reserve adjoining the subdivision and Evans River is not satisfactorily resolved.

*(d) to protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and*

Assessment commentary

Refer to Sections 7.7, 10.4.4, 12.6.2 and 14.4.

In my opinion the management and protection of Aboriginal cultural heritage values (both tangible and non-tangible) within the land is not satisfactorily resolved.

*(e) to ensure that the visual amenity of the coast is protected, and*

Assessment commentary

Refer to Sections 10.4.3, 12.6.2 and 14.15.

The proposal will remove the ridgeline and associated sideslopes within the land, though the vegetation in the Crown Foreshore Reserve will largely screen the development from the Evans River and land further to the south. The development will not be readily visible from Iron Gates Dr, though the removal of all vegetation within the road reserve will have a substantial visual impact which cannot be mitigated.

*(f) to protect and preserve beach environments and beach amenity, and*

Assessment commentary

Not applicable to the Concept DA.

*(g) to protect and preserve native coastal vegetation, and*

Assessment commentary

Refer to Sections 10.4.2, 12.6.2, 14.6 and 15.2.

The proposal removes all vegetation in the 'proposed residential footprint' and the potential for adverse impact on the Littoral rainforest in the land (an Endangered Ecological Community) in my opinion is not satisfactorily resolved.

In my opinion the management and protection of the intrinsic biodiversity values of the Crown Foreshore Reserve is not satisfactorily resolved.

*(h) to protect and preserve the marine environment of New South Wales, and*

Assessment commentary

Refer to Sections 7.6, 12.6.2 and 14.5.

In my opinion whether or not acid sulfate soils occur within the land and the potential for impact on groundwater as a consequence of filling the 'proposed residential footprint' is not satisfactorily resolved.

RVC's Development Engineer and Environmental Health Officer have reservations in regard the effectiveness of the stormwater management plan for the proposed development.

Refer to RVC's Development Engineer comments in Section 15.12 and RVC DCP 2012 Part I9-Water sensitive urban design.

*(i) to protect and preserve rock platforms, and*

Assessment commentary

Not applicable to the Concept DA.

*(j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the Protection of the Environment*

*Administration Act 1991), and*

Assessment commentary

Refer to Section 15.14.

In my opinion the Concept DA does not satisfactorily demonstrate that the principle of ecological sustainable development will be achieved.

*(k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and*

Assessment commentary

The proposed concept DA creates an urban / residential subdivision which is in effect a 'satellite', isolated from Evans Head township. In my opinion the scale and size of the development is not appropriate for the location and the constraints of the land and it will not protect and improve the natural scenic qualities of the surrounding area.

*(l) to encourage a strategic approach to coastal management.*

Assessment commentary

The land within the 'proposed residential footprint' has generally been zoned for residential development since 1993, though zone boundaries and land uses have changed since then.

The land is identified as an urban growth area in the *North Coast Regional Plan 2036*.

*Clause 8(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,*

Assessment commentary

Refer to Sections 3.1, 10.4.9, 12.6.2 and 14.15.

There is no existing public access (abled or disabled) along the foreshore of the Evans River from the Crown Foreshore Reserve and subject land.

*Clause 8(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,*

Assessment commentary

Having regard to the status of the Crown Foreshore Reserve in my opinion the Concept DA does not provide for public access (abled or disabled) along the foreshore of the Evans River.

*Clause 8(d) the suitability of development given its type, location and design and its relationship with the surrounding area,*

Assessment commentary

Refer to Sections 12.6.2 and 14.15.

In my opinion the layout and design of the development does not relate to the intrinsic qualities of the surrounding area.

*Clause 8(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,*

Assessment commentary

Not applicable to the Concept DA.

*Clause 8(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,*

Assessment commentary

Not applicable to the Concept DA.

*Clause 8(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,*

Assessment commentary

Refer to Sections 7.5, 10.4.2, 12.6.2, 14.6, 15.2 and 15.8.3.



In my opinion the conservation and protection of the animal and plant species identified as occurring on the land and listed as Endangered and Vulnerable under the TSC Act is not satisfactorily resolved and that a Species Impact Statement should have been lodged with the DA.

*Clause 8(h) measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats*

Assessment commentary

Refer to Sections 7.9, 12.4, 12.5, 12.6.2 and 14.10.

In my opinion whether or not acid sulfate soils occur within the land and the potential for impact on groundwater and water quality of the Evans River as a consequence of filling the 'proposed residential footprint' is not satisfactorily resolved.

The buffer distances recommended by Dept of Primary Industries–Fisheries are not achieved.

*Clause 8(i) existing wildlife corridors and the impact of development on these corridors,*

Assessment commentary

Refer to Sections 7.5, 10.4.2, 12.6.2, 14.6, 15.2 and 15.8.3.

In my opinion the existing fragmentation of the areas of littoral rainforest within the land will be exacerbated.

*Clause 8(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,*

Assessment commentary

The land is not subject to coastal processes or erosion.

*Clause 8(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,*

Assessment commentary

Refer to Section 14.15.

The Concept DA does not propose the embellishment or use of the Crown Foreshore Reserve, though plans still show that some works are proposed within it.

*Clause 8(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,*

Assessment commentary

Refer to Sections 7.7, 12.6.2 and 14.4.

Proposed Lot 142 includes in part the shell midden identified in the Aboriginal cultural assessment. An Aboriginal Heritage Impact Permit (AHIP) application was made to remove that part of the shell midden in Proposed Lot 142 and is approved.

In my opinion the Aboriginal stakeholder consultation and assessment of Aboriginal cultural heritage for the Concept DA has not been satisfactorily resolved.

In my opinion the on-going protection of the remaining shell midden located partially in proposed Lot 142 and the Crown Foreshore Reserve has not been satisfactorily resolved.

There has been no Aboriginal cultural heritage assessment for the removal of vegetation and ground disturbance in Iron Gates Dr for bushfire safety.

*Clause 8(m) likely impacts of development on the water quality of coastal waterbodies,*

Assessment commentary

Refer to Sections 10.4.7, 12.6.2 and 14.13.

In my opinion the proposed means of stormwater management is inadequate and it is likely that pollution of the Evans River will occur. In regard to the protection of the water quality of the Evans River, the proposed means of stormwater management is for no on-site detention and a 'rapid disposal method' which enables the discharge of stormwater run-off into the river where the water will drain with the receding tide.

*Clause 8(n) the conservation and preservation of items of heritage, archaeological or historic significance,*

Assessment commentary

The conservation and preservation of the grave site of Thomas Paddon is satisfactorily addressed.

*Clause 8(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,*

Assessment commentary

Not applicable to the Concept DA.

*Clause 8(p) only in cases in which a development application in relation to proposed development is determined:*

*(i) the cumulative impacts of the proposed development on the environment, and*

*(ii) measures to ensure that water and energy usage by the proposed development is efficient.*

Assessment commentary

Not applicable to the Concept DA Stage 1.

*Note—*

*Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires the Government Coastal Policy (as defined in that clause) to be taken into consideration by a consent authority when determining development applications in the local government areas identified in that clause or on land to which the Government Coastal Policy applies.*

Assessment commentary

Refer to Section 15.11.

*Part 4 Development control*

*Clause 12 Application of Part*

*This Part applies to all development on land to which this Policy applies.*

Assessment commentary

Part 4 applies to the Concept DA.

*Clause 13 Flexible zone provisions*

*A provision of an environmental planning instrument that allows development within a zone to be consented to as if it were in a neighbouring zone, or a similar provision, has no effect.*

Assessment commentary

Not applicable to the land or to the Concept DA.

*Clause 14 Public access*

*A consent authority must not consent to an application to carry out development on land to which this Policy applies if, in the opinion of the consent authority, the development will, or is likely to, result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore.*

Assessment commentary

Refer to Sections 3.1, 10.4.9, 12.6.2 and 14.15.

DAC Planning Pty Ltd in the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 14:

*The proposed development will not impact upon or prevent access to the Evans River foreshore reserve as it is wholly contained within private property. The proposed foreshore reserve/open space area (Lots 141 and 142) at the south of the development will be dedicated to Richmond Valley Council and embellished for use. Public access will be available to the Evans River frontage.*

*Despite a road reserve currently fronting the river foreshore, there is no opportunity for public access to the river from within the site. The proposal will establish a new public open space area fronting this foreshore. An average 40m setback is proposed to this foreshore which is consistent with the NSW Office of Water requirements for water front land development.*

In my opinion public access to the Evans River can only be over the Crown Foreshore Reserve which is owned by the Crown. The ownership and management of the Crown Foreshore Reserve is unresolved.

Refer also to Section 12.4 in regard to comments from NRAR and the averaging of setback distances to the Evans River.

*Clause 15 Effluent disposal*

*The consent authority must not consent to a development application to carry out development on land to which this Policy applies in which effluent is proposed to be disposed of by means of a non-reticulated system if the consent authority is satisfied the proposal will, or is likely to, have a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or a rock platform.*

Assessment commentary

Refer to Sections 10.4.6, 12.6.2, 14.12 and 14.14.

RVC's Development and Water and Sewer Engineers are satisfied sufficient capacity in the sewerage network exists to service the proposed number of allotments.

*Clause 16 Stormwater*

*The consent authority must not grant consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.*

Assessment commentary

Refer to Sections 10.4.7, 12.6.2 and 14.13.

The *Revised Engineering Services and Civil Infrastructure Report* proposes a 'rapid disposal method' which enables the discharge of stormwater run-off into the river where the water drains with the receding tide.

In my opinion the development is likely to discharge untreated stormwater into the Evans River.

## Part 5 Master Plans

### Assessment commentary

Refer to the DoPI&E report (24 Aug. 2021) to the NRPP (**Attachment No. 2**).

The Master Plan (Development Control Plan) matters of Clause 20 of SEPP No. 71 are identified below in *italics*.

### *Clause 20 Preparation of master plans*

*(1) A draft master plan may be prepared by or on behalf of the owner or lessee of the land concerned.*

### Assessment commentary

The Master Plan was prepared on behalf of the landowner and subsequently withdrawn by the Landowner.

*(2) A draft master plan is to illustrate and demonstrate, where relevant, proposals for the following:  
(a) design principles drawn from an analysis of the site and its context,*

### Assessment commentary

Refer to Sections 12.6.2 and 14.15.

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that Clause 20(2)(a) is not resolved and that the proposed subdivision lacks clear design principles which arise from a thorough site analysis.

The DoPI&E consulted with and draws upon the comments made by the Government Architect NSW (GANSW) regarding the development proposal. GANSW raised a number of unresolved issues and commented that the subdivision presented in the draft Master Plan as a 'generic subdivision'.

DAC Planning Pty Ltd in Table 1 of the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 20(2)(a):

*Appendix 1 of the revised SEE July 2019– Amended Subdivision Plans and Site Analysis Plan.*

In regard the design of the subdivision and analysis of the land and its context, the site analysis plan provided as Appendix N to the *Revised Engineering Services and Civil Infrastructure Report* is very simplistic and fails to provide the information required by RVC's RVDGP 2012 Part 112 Context and site analysis, which would otherwise inform and determine an environmentally responsive subdivision design.

The urban design principles identified in the *North Coast Design Guidelines (1989)* are not considered and there is no commentary or input from a specialist urban designer.

In my opinion the design of the subdivision simply seeks to maximise the number of allotments within the 'proposed residential footprint' without regard to the natural environment.

In my opinion the Concept DA does not satisfactorily address Clause 20(2)(a).

*(b) desired future locality character,*

### Assessment commentary

Refer to Sections 12.6.2 and 14.15.

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that Clause 20(2)(b) is not resolved and that the proposed subdivision lacks an adequate consideration of the likely built form on the site, which combined with the absence of design principles is unable to achieve a future desired locality character.

DAC Planning Pty Ltd in Table 1 of the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 20(2)(b):

*The revised SEE July 2019 and Appendices and RTS Report at **Appendix 3**.*

High quality design leads to more liveable residential development. Good design is linked to the site and locality, climate and the community's aspirations and needs. There has been no community consultation undertaken as part of the preparation of the Social Impact Assessment and no urban design principles have been adopted in the preparation of the plans for Concept DA.

In my opinion the Concept DA does not satisfactorily address Clause 20(2)(b).

*(c) the location of any development, considering the natural features of the site, including coastal processes and coastal hazards,*

Assessment commentary

Refer to Sections 7.10, 7.12, 12.6.2, 14.7, 14.8 and 14.16.

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that Clause 20(2)(c) is not resolved and that limited consideration has been given to flooding and bushfire threat.

DAC Planning Pty Ltd in Table 1 of the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 20(2)(c):

*The revised SEE July 2019 and Appendices and RTS Report at **Appendix 3**.*

The existing natural features within the 'proposed residential footprint' are removed.

In my opinion the Concept DA does not satisfactorily address Clause 20(2)(c).

*(d) the scale of any development and its integration with the existing landscape,*

Assessment commentary

Refer to Sections 10.4.8, 10.4.9, 12.6.2 and 14.15.

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that Clause 20(2)(d) is not resolved as there is a general lack of an integrated approach to the design of the subdivision with site conditions. The DoPI&E generally draws upon the comments made by the GANSW in its design review.

DAC Planning Pty Ltd in Table 1 of the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 20(2)(d):

*The revised SEE July 2019 and Appendices and RTS Report at **Appendix 3**.*

The scale of the development removes the existing landscape features within the 'proposed residential footprint'.

In my opinion the Concept DA does not satisfactorily address Clause 20(2)(d).

*(e) phasing of development,*

Assessment commentary

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that Clause 20(2)(e) is adequately resolved.

DAC Planning Pty Ltd in Table 1 of the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 20(2)(e):

*See Appendices 1 and 2.*

The proposed staging of the Concept DA is clear.

The Concept DA satisfactorily addresses Clause 20(2)(e).

*(f) public access to and along the coastal foreshore,*

Assessment commentary

Refer to Sections 3.1, 10.4.8, 10.4.9, 12.6.2 and 14.15.

*Coastal foreshore* in the SEPP is defined to mean land with frontage to a beach, estuary, coastal lake, headland, cliff, or rock platform. The Evans River is an estuary.

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that Clause 20(2)(f) is not resolved citing conflicts comments made in the 'concept outline'.

The Crown Foreshore Reserve runs along the foreshore of Evans River on the southern side of boundary Lot 163 DP 831052, Lot 276 DP 7555624 and Lot 277 DP 7555624 and was initially proposed to be embellished / developed as part of the open recreational space for the subdivision.

However, following concerns raised by Crown Lands in regard potential vegetation disturbance embellishment was excluded from the DA by DAC Planning Pty Ltd (27 July 2020).

DAC Planning Pty Ltd have indicated it *is a matter for Council and Crown Lands to determine whether or not the road reserve is transferred to RVC as the land is no longer required by Goldcoral Pty Ltd.*

RVC have advised:

- In letter dated 15 Dec. 2014 to Gold Coral Pty Ltd it stated it was willing to take ownership of the allotment then proposed as a public reserve (Lot 183, 10,472m<sup>2</sup>). RVC did not indicate it would take on ownership of the Crown Foreshore Reserve.*
- Since Dec. 2014 the proposed development has been amended significantly and the proposed public reserve now comprises Lot 141, (1,990m<sup>2</sup>) and Lot 142 (2,969m<sup>2</sup>).*
- The Crown Foreshore Reserve is zoned C2 and RVC is not in the position to accept the transfer and ownership of it.*

No management or protective protocols are identified to prevent damage to the vegetation or riverbank in the Crown Foreshore Reserve or Evans River.



DAC Planning Pty Ltd in Table 1 of the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 20(2)(f):  
*See comments at Sections 5.1 and 6.1.*

In my opinion the Concept DA does not satisfactorily address Clause 20(2)(f).

*(g) pedestrian, cycle and road access and circulation networks,*  
Assessment commentary  
Refer to Sections 10.4.4, 12.6.2 and 14.11.

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that Clause 20(2)(g) is not resolved and that the circulation network is not clearly outlined. The DoPI&E draws upon the comments made by the GANSW regarding the need to include vehicle and pedestrian networks.

The *Landscape Statement of Intent* by Plummer & Smith shows the provision of:

- a 2m wide footpath adjoining Lot 137 for its full perimeter and along the southern side of Proposed Road 6 adjoining the open space / public reserves (Lots 141 and 142) and
- 1.5m wide paths provided to all other proposed roads.

The *Revised Engineering Services and Civil Infrastructure Report* indicates a shared footpath for the collector road (Proposed Road 5) is intended to be provided at the time of construction and that the construction of all footpaths within local roads are proposed to be postponed until the majority of the houses are constructed and occupied.

DAC Planning Pty Ltd in Table 1 of the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 20(2)(g):  
*See revised SEE July 2019.*

In my opinion the Concept DA does not satisfactorily address Clause 20(2)(g).

*(h) subdivision pattern,*  
Assessment commentary  
Refer to Sections 10.4.5, 12.6.2 and 14.15.

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that Clause 20(2)(h) is resolved that however the GANSW considers the subdivision pattern to be unsatisfactory.

DAC Planning Pty Ltd in Table 1 of the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 20(2)(h):  
*See Appendices 1 and 2.*

The pattern of the subdivision seeks to maximise the number of allotments within the 'proposed residential footprint' without regard to the natural environment.

In my opinion the Concept DA does not satisfactorily address Clause 20(2)(h).

*(i) infrastructure provision,*  
Assessment commentary  
Refer to Sections 10.4.6, 12.6.2, 14. 12 and 14.14.

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that Clause 20(2)(i) is resolved and that urban infrastructure can be provided.

DAC Planning Pty Ltd in Table 1 of the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 20(2)(i):

*See revised SEE July 2019.*

RVC's Development Engineer advised the following:

- *All residential developments require design and construction of urban infrastructure, urban infrastructure can definitely be provided for this development however there is uncertainty surrounding current capacity of water and sewer networks.*
- *Currently the design plans submitted in July 2019 show an overview of the proposed construction. There is no intricate detail of design provided for a multitude of infrastructure including stormwater, sewer, water, roads (particularly cross-sections), and bio-retention basin(s).*
- *While detailed design is generally not required prior to development application approval, detailed design would have assisted assessment. Given lack of detail there is uncertainties, some being; is there sufficient fall in gravity sewer and stormwater, is there sufficient capacity in water, sewer and stormwater.*
- *Given this, appropriate conditions will be generated to adequately control this.*

RVC's Water and Sewer Engineer has advised the following:

*Although a detail design would have assisted in the assessment to ensure that there is sufficient fall in the gravity sewer network, the Water Network Memo and Sewer Network Memo provided by Arcadis Consultancy provide sufficient information with regard to the water and sewer network capacity. These memos review and shows that the proposed development has little impact on the existing water and sewer networks with sufficient capacity in the networks*

Other than clearly describing the provision of electricity the Concept DA generally satisfies Clause 20(2)(e).

*(j) building envelopes and built form controls,*

Assessment commentary

Refer to Sections 10.4.5, 12.6.2 and 14.15.

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that Clause 20(2)(j) is not resolved and that built form controls have not been adequately address. The DoPI&E draws upon the comments made by the GANSW to a report by RPS (23 Nov. 2020) which was prepared to address the report issues identified by the GANSW in regard the draft Master Plan.

DAC Planning Pty Ltd in Table 1 of the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 20(2)(j):

*See Appendix 6.*

Building envelopes (10m x 15m) are shown on No. BRJD6396-100-45-2 (20 March 2020) which was provided as Appendix 6 to the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) by DAC Planning Pty Ltd, with letter dated 26 July 2021 amending the DA to a Concept DA.

All building envelopes adjoining perimeter roads that incorporate an asset protection zone show a 6m setback to the proposed road.

No built form guidelines or controls are detailed other than a description that the residential land will be filled to a minimum of 3.3m(AHD) which allowing for a 300mm thick slab will enable future dwellings to have a floor level above the flood planning level.

In my opinion the Concept DA does not satisfactorily address Clause 20(2)(j).

*(k) heritage conservation,*  
Assessment commentary

Refer to Sections 7.7, 12.6.2 and 14.4.

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that Clause 20(2)(k) is resolved and demonstrated.

DAC Planning Pty Ltd in Table 1 of the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 20(2)(k):

*See Section 6.1.1 and revised SEE July 2019.*

The proposed protection and conservation of the grave site of Thomas Paddon (a heritage item) within is satisfactory.

Proposed Lot 142 includes in part the shell midden identified in the Aboriginal cultural assessment. An Aboriginal Heritage Impact Permit (AHIP) application was made to remove that part of the shell midden in Proposed Lot 142 and is approved.

In my opinion the Aboriginal stakeholder consultation and assessment of Aboriginal cultural heritage for the Concept DA has not been satisfactorily resolved.

In my opinion the on-going protection of the remaining shell midden located partially in proposed Lot 142 and the Crown Foreshore Reserve has not been satisfactorily resolved.

There has been no Aboriginal cultural heritage assessment for the removal of vegetation and ground disturbance in Iron Gates Dr for bushfire safety.

In my opinion the Concept DA does not satisfactorily address Clause 20(2)(k).

*(l) remediation of the site,*  
Assessment commentary

Refer to Sections 7.8, 12.6.2 and 14.9.

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that Clause 20(2)(l) is resolved and demonstrated.

DAC Planning Pty Ltd in Table 1 of the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 20(2)(l):

*See revised SEE July 2019.*

RVC's Environmental Health Officer has indicated that a contaminated land assessment has not been undertaken in accordance with NSW EPA *Consultants Reporting on Contaminated Land - Contaminated Land Guidelines*, SEPP No. 55 *Remediation of Land* or RVC Policy 15.7 Management of Contaminated Land which defers to the *Regional Policy for the*

*Management of Contaminated Land, May 2006* (now June 2019) for land upon which the existing dwelling is located (Lot 163 DP 831052).

There has been no systematic soil sampling for potential land contamination.

In my opinion the Concept DA does not satisfactorily address Clause 20(2)(l).

*(m) provision of public facilities and services,*

Assessment commentary

Refer to Sections 10.4.8, 10.4.9, 12.6.2 and 14.15.

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that Clause 20(2)(m) is resolved and demonstrated.

DAC Planning Pty Ltd in Table 1 of the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 20(2)(m):

*See Appendix 3.*

Other than the provision of road and urban utility services the Concept DA proposes the following facilities in the public open space:

- Lot 141; 2 boardwalks over the turfed bio-swale, a 'shelter and picnic area' and playground and
- Lot 142; 1 boardwalk over the turfed bio-swale, a 'shelter and picnic area' and playground.

The cultural heritage assessment proposes to incorporate cultural trails into the open space of the development, either in the centre of the development or along the banks of the Evans River. Embellishment of the Crown Foreshore Reserve is no longer part of the Concept DA and neither the *Landscape Statement of Intent* refer to or *Landscape Plans* make provision for a cultural trail.

In my opinion the Concept DA does not satisfactorily address Clause 20(2)(m).

*(n) provision of open space, its function and landscaping,*

Assessment commentary

Refer to Sections 10.4.8, 10.4.9, 12.6.2 and 14.15.

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that Clause 20(2)(n) is not resolved given the proposed use, embellishment, ownership, and management of the Crown Foreshore Reserve is unknown.

DAC Planning Pty Ltd in Table 1 of the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 20(2)(n):

*See Appendix 3.*

The total area of open space provided for both Stage 1 and 2 is 4,159m<sup>2</sup>, comprising; Lot 141, 1,990m<sup>2</sup> and Lot 142, 2,969m<sup>2</sup>.

The allotments are irregular in shape and width and immediately adjoin the Crown Foreshore Reserve beside the Evans River.

Quantitatively the 2 allotments are providing 23.7m<sup>2</sup> of public open space per allotment or approx. 8m<sup>2</sup> per person if the estate is occupied by 477 people. There is insufficient land area and facilities to provide for a potential subdivision population of 477 or 578 people. The proposed allotments do not provide sufficient area for any form of 'run-around / kick or throw a ball active' children's recreation.

In my opinion the Concept DA does not satisfactorily address Clause 20(2)(n).

*(o) conservation of water quality and use,*

Assessment commentary

Refer to Sections 10.4.7, 12.6.2 and 14.13.

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that Clause 20(2)(o) is resolved and demonstrated.

DAC Planning Pty Ltd in Table 1 of the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 20(2)(o):

*See revised SEE July 2019.*

The adequacy of the proposed means of stormwater management, particularly in regard protection of the water quality of the Evans River has been raised in numerous submissions of objection.

RVC's Development Engineer advised the following:

- Given conceptual design plans, this is uncertainty of many items regarding stormwater infrastructure and means of disposal. A bio-swale construction is not ideal when it is evident that a bio-retention basin of similar scale can be installed, furthermore, there was no downstream control of stormwater that will overflow the bio-swale.*
- The outflow of the C2 zone that will be bounded by raised and retained roads is largely unknown. It is believed weir overflow of the bio-retention basin will be to the C2 zone, while this cannot be confirmed until detailed design is provided where will the C2 outflow be if this is the case?*

RVC's Environmental Health Officer has advised the following:

*The impact of water quality cannot be assessed as sufficient without detailed designs. There is concern that scouring of the river bank may occur at the concentrated discharge points when the swale reaches capacity.*

In my opinion the Concept DA does not satisfactorily address Clause 20(2)(o).

*(p) conservation of animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,*

Assessment commentary

Refer to Sections 7.5, 10.4.2, 12.6.2, 14.6, 15.2 and 15.8.3.

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that Clause 20(2)(p) is resolved and demonstrated.

DAC Planning Pty Ltd in Table 1 of the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 20(2)(p):

*See revised SEE July 2019 and Appendix 3.*

A biodiversity offsets package for the subdivision and works in Iron Gates Dr has been approved by DoPI&E Biodiversity and Conservation Division for the DA before it was amended to a Concept DA. Refer to **Attachment No. 9**.

In my opinion the investigation, assessment of impact on and mitigation of impact Endangered and Vulnerable species and ecological communities (particularly the Littoral rainforest and Koala) are unsatisfactory.

In my opinion the Concept DA does not satisfactorily address Clause 20(2)(p).

*(q) conservation of fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats.*

Assessment commentary

Refer to Sections 7.9, 12.6.2 and 14.10.

DoPI&E in the report (24 Aug. 2021) to the NRPP (refer to **Attachment No. 2**) states that Clause 20(2)(q) is resolved and demonstrated.

DAC Planning Pty Ltd in Table 1 of the report titled '*Concept Proposal Outline – proposed subdivision at Iron Gates Evans Head DA2015/0096*' (July 2021) states the following in regard to Clause 20(2)(q):

*See Appendices 5 and 6 of revised SEE July 2019.*

The land is partially mapped as containing key fish habitat (refer to **Map No. 5**). The Concept DA does not propose works of the following nature in the Evans River:

- carrying out dredging or reclamation work
- cutting, removing, damaging, or destroying marine vegetation on public water land or on the foreshore of any such land or
- constructing or altering a dam, floodgate, causeway, or weir, or otherwise creating an obstruction across or within a bay, inlet, river, or creek, or across or around a flat.

The design of the subdivision does not provide the buffers to key fish habitat and riparian area recommended by the Dept of Primary Industries–Fisheries (18 Nov. 2021). Refer to **Attachment No. 7a**.

The geotechnical, acid sulfate soils and groundwater assessments of the 'proposed residential footprint' are inadequate given the mapped constraints of the land, known groundwater heights and extent of proposed filling for the proposed development.

The potential for release or 'escape' of acidic groundwater into the Evans River would be an unsatisfactory adverse environmental impact.

In my opinion the Concept DA does not satisfactorily address Clause 20(2)(q).

**15.8.6 SEPP – Infrastructure 2007**

Assessment commentary

*SEPP - Infrastructure 2007* has been repealed and replaced by *State Environmental Planning Policy (Transport and Infrastructure) 2021* and Clause 1.4 Transferred Provisions in effect continues the provisions of *SEPP - Infrastructure 2007*.

The following clauses identified in *italics* of *SEPP - Infrastructure 2007* are applicable to the Concept DA.



*Part 3 Division 17 Roads and traffic*

*Clause 104 Traffic-generating development*

*(1) This clause applies to development specified in Column 1 of the Table to Schedule 3 that involves—*

*(a) new premises of the relevant size or capacity, or*

*(b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.*

Assessment commentary

The subdivision comprises 50 or more allotments.

*(2) In this clause, relevant size or capacity means—*

*(a) in relation to development on a site that has direct vehicular or pedestrian access to any road (except as provided by paragraph (b))—the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or*

*(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection—the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.*

Assessment commentary

Column 3 of Schedule 3 applies to the Concept DA.

*(2A) A public authority, or a person acting on behalf of a public authority, must not carry out development to which this clause applies that this Policy provides may be carried out without consent unless the authority or person has—*

*(a) given written notice of the intention to carry out the development to TfNSW in relation to the development, and*

*(b) taken into consideration any response to the notice that is received from TfNSW within 21 days after the notice is given.*

Assessment commentary

RVC referred the Concept DA to Transport for NSW (TfNSW). Copy of the response of TfNSW (13 Oct. 2021) is provided within **Attachment No. 7a**.

The Concept DA was again referred to TfNSW when it was re-exhibited. TfNSW there appears to be no change to the proposal from a traffic perspective and it therefore declined the opportunity for referral. Therefore its advised of 13 Oct. 2021 remains unchanged.

*(3) Before determining a development application for development to which this clause applies, the consent authority must—*

*(a) give written notice of the application to TfNSW within 7 days after the application is made, and*

*(b) take into consideration—*

*(i) any submission that RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, TfNSW advises that it will not be making a submission), and*

*(ii) the accessibility of the site concerned, including—*

*(A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*

*(B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*

*(iii) any potential traffic safety, road congestion or parking implications of the development.*

Assessment commentary

The response of TfNSW 13 Oct. 2021 provided the following comments:

*1. TfNSW notes that the Revised Engineering Services and Civil Infrastructure Report, Appendix I – Traffic Report prepared by TTM Consultants and dated 17 July 2019 has not been updated to specifically address the proposed staging of the development. TfNSW understands that supporting road and transport will be delivered under proposed initial stage.*

*2. A functional layout plan identified in drawing no. 19GCT0119-01 of the Traffic Report demonstrates a proposed upgrade of the Woodburn and Wattle Streets intersection. Prior to the approval of road works, TfNSW recommends that the layout plan should be further developed to incorporate suitable pedestrian facilities on Woodburn Street.*

*TfNSW recommends the intersection plan be updated to incorporate additional facilities in Woodburn Street to improve pedestrian safety at the intersection.*

*3. The final development will generate an increase in demand for active transport users travelling along Iron Gate Drive between the development site and Evans Head. Council should consider the scope and timing of infrastructure needed to connect the development to the existing active transport infrastructure and public transport services.*

*4. Any proposed regulatory signs and/or devices are required to be endorsed by the Local Traffic Committee prior to Council approval. Please refer to A guide to the delegation to councils for the regulation of traffic.*

The designated road speed for the development will be 50km/h which is the same as that applying to Evans Head and along Iron Gates Dr. Signage is proposed on Iron Gates Dr where the road narrows and at the approaches to the bridge.

RVC's Development Engineer advised the following:

- Active transport facilities connection will the existing active transport in Evans Head is important. It will be conditioned that the existing Iron Gates Road shared path meet current requirements (condition, width where possible etc) and shall be extended to the Woodburn Street intersection.*
- These works will need to be detailed by design prior to any form of approval to construct, noted works in the vicinity of Woodburn Street will need to go to TfNSW for concurrence prior to approval due to Woodburn Street being classified. All regulatory signage and decisions must be endorsed by the traffic committee.*
- The chicane and narrowed bridge may need to be endorsed by the traffic committee along with the alteration to the minor/major approaches on the Cypress Street intersection. These will be enforced by ways of consent conditions.*

*(4) The consent authority must give TfNSW a copy of the determination of the application within 7 days after the determination is made.*

Assessment commentary

Copy of the determination of the NRPP will be issued by RVC to TfNSW.

*Part 3 Division 18 Sewerage systems*

*105 Definitions*

*In this Division—*

*biosolids treatment facility, sewage reticulation system, sewage treatment plant, sewerage*

*system and water recycling facility have the same meanings as in the Standard Instrument.*

....

Assessment commentary

A sewage reticulation system is proposed.

*Clause 106 Development permitted with or without consent*

Assessment commentary

The new sewage reticulation system is ancillary to the subdivision development and will be carried out on land zoned R1 and C2.

RVC's Water and Sewer and Development Engineers are satisfied there is sufficient capacity existing in the water supply network to service the proposed number of allotments.

*Clause 107 Exempt development*

Assessment commentary

Not applicable to the Concept DA.

*Part 3 Division 20 Stormwater management systems*

*Clause 110 Definition*

*In this Division—*

*stormwater management system means—*

*(a) works for the collection, detention, harvesting, distribution or discharge of stormwater (such as channels, aqueducts, pipes, drainage works, embankments, detention basins and pumping stations), and*

*(b) stormwater quality control systems (such as waste entrapment facilities, artificial wetlands, sediment ponds and riparian management), and*

*(c) stormwater reuse schemes.*

Assessment commentary

Refer to Sections 10.4.7, 14.14 and 15.8.5.

In my opinion the proposed stormwater management system is inappropriate for the site and proposed development.

*Clause 111 Development permitted without consent*

Assessment commentary

Not applicable to the Concept DA.

*Clause 111A Development permitted with consent*

*Development for the purpose of a stormwater management system may be carried out by any person with consent on any land.*

Assessment commentary

The proposed stormwater management system is to be carried out on land zoned R1 and C2.

*Clause 112 Exempt development*

Assessment commentary

Not applicable to the Concept DA.

*Part 3 Division 24 Water supply systems*

*Clause 124 Definitions*

....

*water reticulation system has the same meaning as in the Standard Instrument but also includes water supply reservoirs.*

*water storage facility, water supply system and water treatment facility have the same meanings as in the Standard Instrument.*

Assessment commentary

A water reticulation system is proposed.

*Clause 125 Development permitted without consent*

Assessment commentary

Not applicable to the Concept DA.

*Clause 126A Development permitted with consent*

*(1) Development for the purpose of water reticulation systems may be carried out by any person with consent on any land.*

Assessment commentary

The new water supply system is ancillary to the subdivision development and will be carried out on land zoned R1.

RVC's Water and Sewer and Development Engineers are satisfied there is sufficient capacity existing in the water supply network to service the proposed number of allotments.

*Clause 127 Exempt development*

Assessment commentary

Not applicable to the Concept DA.

*Division 5 Electricity transmission or distribution*

*Part 3 Subdivision 2 Development likely to affect an electricity transmission or distribution network*

Assessment commentary

It appears RVC did not in accordance with Clause 42(2)(a) *give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks.*

The *Revised Engineering Services and Civil Infrastructure Report* provides advice from Preferred Energy Pty Ltd (12 July 2019) in regard the provision of reticulated electricity.

Neither the report or letter of advice indicate whether the electrical supply is proposed above or below ground.

Neither the *Revised Engineering Services and Civil Infrastructure Report* or advice from Preferred Energy Pty Ltd mention what is proposed with the transmission line traversing the land.

It is not possible to determine whether or not the provisions of SEPP No. 14 may be triggered if clearing work is required in the wetland areas.

**15.8.7 SEPP – Rural Lands 2008**

Assessment commentary

The DA was lodged at the time the SEPP Rural Lands 2008 was operative. It has since been repealed and replaced by *State Environmental Planning Policy (Primary production and rural development) 2019*.

As a consequence of Clause 9 (Savings provision relating to development applications) of *State Environmental Planning Policy (Primary production and rural development) 2019*, SEPP Rural Lands 2008 still applies to the Concept DA.

*State Environmental Planning Policy (Primary production and rural development) 2019* has been repealed and replaced by *State Environmental Planning Policy (Primary Production) 2021* and Clause 1.4 Transferred Provisions in effect continue the provisions of SEPP Rural Lands 2008.

SEPP Rural Lands 2008 applies to the land zoned:

- RU1-Primary production
- C2-Environmental conservation and
- C3-Environmental management

under *Richmond Valley Local Environment Plan 2012* (RVLEP 2012).

The land zoned RU1 and C3 presently in Lot 163 DP 831052 will be in proposed Lot 138 and proposed Lots 136 and 137 will contain the land presently zoned C2.

The matters to be considered when determining a DA for a rural subdivision or rural dwelling in the SEPP are identified below in *italics*.

*10 Matters to be considered in determining development applications for rural subdivisions or rural dwellings*

*(1) This clause applies to land in a rural zone, a rural residential zone or an environment protection zone.*

*(2) A consent authority must take into account the matters specified in subclause (3) when considering whether to grant consent to development on land to which this clause applies for any of the following purposes:*

*(a) subdivision of land proposed to be used for the purposes of a dwelling,*

*(b) erection of a dwelling.*

*(3) The following matters are to be taken into account:*

*(a) the existing uses and approved uses of land in the vicinity of the development,*

*(b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*

*(c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*

*(d) if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,*

*(e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).*

Assessment commentary

In my opinion the Concept DA has not sufficiently demonstrated whether or not a future dwelling (or dual occupancy) on proposed Lot 138 is compatible with the environmental attributes / existing use of the C3 zone.

**15.8.8 SEPP – State and Regional Development 2011**

Assessment commentary

The Concept DA is a 'coastal subdivision' greater than 100 allotments partially located in a 'sensitive coastal location'. The land is located within 100m of; an estuary (Evans River), a national park (Bundjalung National Park) and wetland areas subject to the provisions of SEPP No. 14.

The Concept DA is therefore regionally significant development pursuant to Clause 8 of Schedule 7 to *State Environmental Planning Policy (State and Regional Development) 2011* (SRD-SEPP 2011).

SRD-SEPP 2011 has been repealed and replaced by *State Environmental Planning Policy (Planning Systems) 2021* and Clause 1.4 Transferred Provisions in effect continue the provisions of SRD-SEPP 2011.

Clause 21 of SRD-SEPP 2011 applies to the Concept DA and states (in *italics*):

**21 Concept development applications**

*If—*

*(a) development specified in Schedule 7 is described in that Schedule by reference to a minimum capital investment value, other minimum size or other aspect of the development, and*

*(b) development the subject of a concept development application under Part 4 of the Act is development so specified,*

*any part of the development that is the subject of a separate development application is development specified in Schedule 7, but only if that part of the development exceeds the minimum value or size or other aspect specified in that Schedule for the development.*

Assessment commentary

Stage 2 of the Concept DA comprises 40 residential allotments and would not be regionally significant development.

**15.8.9 SEPP - Vegetation in Non Rural Areas 2017**

SEPP - Vegetation in Non Rural Areas 2017 has been repealed and replaced by *State Environmental Planning Policy (Biodiversity and Conservation) 2021* and Clause 1.4 Transferred Provisions in effect continue the provisions of *SEPP - Vegetation in Non Rural Areas 2017*.

SEPP - Vegetation in Non Rural Areas 2017 applies to land in the following zones:

- R1-General residential
  - C2-Environmental conservation and
  - C3-Environmental management
- under RVLEP 2012.

Clause 8A of the SEPP states:

**8A Clearing permitted without development consent**

*Clearing of vegetation in a non-rural area of the State is permitted without development consent if—*

*(a) the clearing—*

*(i) is not ancillary to the carrying out of other development, and*

*(ii) does not require a permit or approval, and*

*(b) the vegetation is not—*

*(i) a heritage item or an Aboriginal object, or*

*(ii) located in a heritage conservation area or Aboriginal place of heritage significance.*

Assessment commentary

The clearing is ancillary to the subdivision development of the land, therefore the provisions of the SEPP do not apply to the Concept DA.

**15.9 North Coast Regional Plan 2036**

The land is identified on 'Figure 17 Urban Growth area map for Richmond Valley Local Government Area' of the *North Coast Regional Plan 2036* (Regional Plan) as an 'urban growth area'.

Whilst the Regional Plan is focused more on delivery of strategic planning outcomes the following provides a brief commentary in relation to the relevant 'goals', 'directions' and 'actions' of the Regional Plan.



*Goal 1 – the most stunning environment in NSW*

*Principle 1: direct growth to identified urban growth areas*

*Principle 2: manage the sensitive coastal strip*

*Principle 3: provide great places to live and work in a unique environment*

*Direction 1: deliver environmentally sustainable growth*

*Actions 1.1 – focus future urban development to mapped urban growth areas*

Assessment commentary

Refer to Sections 7, 12.6.2, 14.4, 14.5, 14.6, 14.7, 14.8, 14.10, 14.13, 14.15 and 15.8.5.

The land is in a mapped urban growth area. The land is highly constrained and, in my opinion, the proposed subdivision is not designed to sufficiently account for those constraints.

*Direction 2: enhance biodiversity, coastal aquatic habitats and water catchments*

*Actions 2.1 – focus development to areas of least biodiversity sensitivity in the region and implement the ‘avoid, minimise, offset’ hierarchy to biodiversity including areas of high environmental value*

Assessment commentary

Refer to Sections 7, 12.6.2, 14.4, 14.5, 14.6, 14.7, 14.8, 14.10, 14.13, 14.15 and 15.8.5.

In my opinion the Concept DA does not satisfactorily demonstrate that the high environmental / biodiversity values of the land will be enhanced.

*Direction 3: manage natural hazards and climate change*

*Actions 3.1 – reduce the risk from natural hazards including projected effects of climate change, by identifying, avoiding and managing vulnerable areas and hazards*

Assessment commentary

Refer to Sections 7, 12.6.2, 14.5, 14.6, 14.7, 14.8, 14.10, 14.13, 14.15, 14.18.1 and 15.8.5.

In my opinion the Concept DA does not address projected effects of climate change in regard risk of bushfire and flooding or satisfactorily demonstrate that those hazards can be effectively managed.

In my opinion the Concept DA does not satisfactory assess the potential for acid sulfate soils and impact on groundwater and Evans River due to the filling of the land.

*Direction 4: promote renewable energy opportunities*

*Actions 4.2 – enable appropriate smaller-scale renewable energy projects using bio-waste, solar, wind, small-scale hydro, geothermal or other innovative storage technologies*

Assessment commentary

The Concept DA proposes connection to the grid. Potential exists for future landowners to install either grid connect or stand alone solar systems on their dwellings.

*Goal 2 – a thriving, interconnected economy*

Assessment commentary

Not directly applicable to the Concept DA.

*Goal 3 – vibrant and engaged communities*

*Direction 14: provide great places to live and work*

*Actions 14.1 – prepare precinct plans in growth areas ... to guide development and establish appropriate land use zoning, development standards and developer contributions*

Assessment commentary

Refer to Sections 14.15 and 15.8.5.

The Precinct Plan guidelines of the Regional Plan raise the same site analysis and design considerations as Clause 20 of SEPP No. 71, the *North Coast Design Guidelines (1989)* or RVC's RVDGP 2012 Part I12 Context and site analysis.

In my opinion the Concept DA has not demonstrated it satisfactorily addressed and achieves the considerations of Clause 20 of SEPP No. 71, the *North Coast Design Guidelines (1989)* or RVC's RVDGP 2012 Part I12 Context and site analysis.

*Direction 15: provide great places to live and work*

*Actions 15.1 – deliver best-practice guidelines for planning, designing and developing healthy built environmental that respond to the ageing demographic and subtropical climate*

*Actions 15.4 – create socially inclusive communities by establishing social infrastructure benchmarks, minim standards and social impact assessment frameworks within local planning*

*Actions 15.5 – deliver crime prevention through environmental design outcomes through urban design processes*

Assessment commentary

Refer to Sections 10.4.9, 14.15 and 15.8.5.

The majority of the allotments delivered by the Concept DA are between 600m<sup>2</sup> and 630m<sup>2</sup> on contrived land surrounded by forest. Whilst all allotments potentially could be developed to include secondary dwellings and dual occupancy developments, the levels of the subdivision created by the bulk earthworks and filling does not respond to the subtropical climate.

The social impact assessment prepared for the Concept DA did not involve consultation with either key community services in Evans Head or community generally.

In my opinion the open space and facilities provided in the subdivision will not satisfactorily provide for the passive and active recreational needs of future residents.

The *Crime Prevention Through Environmental Design Assessment* makes recommendations in regard safety and footpaths which have not been implemented in the design up-grade of Iron Gates Dr and which may not be able to be delivered as a consequence of environmental constraints.

*Direction 16: collaboration and partner with Aboriginal communities*

Assessment commentary

Refer to Sections 7.7, 12.6.2 and 14.4.

A number of submissions of objection from both Indigenous and Non-indigenous people raised concerns regarding lack of consultation in preparation of the Aboriginal cultural heritage assessment.

*Direction 18: respect and protect the North Coast's Aboriginal heritage*

Assessment commentary

Refer to Sections 7.7, 12.6.2 and 14.4.

The on-going protection and conservation of the shell midden partially in the Crown Foreshore Reserve is in my opinion not satisfactorily resolved.

*Direction 20: maintain the region's distinctive built character*

*Actions 20.1 – deliver new high quality development that projects the distinct character of the North*

*Coast, consistent with the North Coast Urban Design Guidelines (2009)*

Assessment commentary

Refer to Sections 14.15 and 15.8.5.

DoPI&E (refer to **Attachment No. 2**) states that the proposed subdivision lacks clear design principles which arise from a thorough site analysis and contains no guidelines in regard to future built form.

In my opinion the Concept DA will not deliver a new high quality development that projects the distinct character of the North Coast.

*Goal 4 – great housing choice and lifestyle options*

*Direction 22: deliver greater housing supply*

*Direction 23: increase housing diversity and choice*

*Actions 23.1 – encourage housing diversity in the form of dual occupancies, apartments, townhouses, villas or dwellings on lots less than 400 square metres, by 2036*

*Direction 25: deliver more opportunities for affordable housing*

Assessment commentary

The Concept DA will deliver additional housing land. All allotments can potentially be developed to include secondary dwellings and dual occupancy developments. Only 5% of the total number of allotments in the subdivision have an area greater than 710m<sup>2</sup>, which restricts provision of apartments and townhouses.

*Direction 25: deliver more opportunities for affordable housing*

Assessment commentary

The Concept DA delivers more opportunities for housing.

**15.10 Richmond Valley Local Environmental Plan 2012**

The relevant Parts and Clauses of the *Richmond Valley Local Environmental Plan 2012* (RVLEP 2012) are identified below in *italics*.

***Part 2 – permitted or prohibited development***

***2.3 Zone objectives and Land Use Table***

*(1) The Land Use Table at the end of this Part specifies for each zone—*

*(a) the objectives for development, and*

*(b) development that may be carried out without development consent, and*

*(c) development that may be carried out only with development consent, and*

*(d) development that is prohibited.*

*(2) The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone.*

*(3) In the Land Use Table at the end of this Part—*

*(a) a reference to a type of building or other thing is a reference to development for the purposes of that type of building or other thing, and*

*(b) a reference to a type of building or other thing does not include (despite any definition in this Plan) a reference to a type of building or other thing referred to separately in the Land Use Table in relation to the same zone.*

Assessment commentary

Clause 2.3(2) requires that the consent authority must have regard to the objectives for development in a zone when determining a DA.

The land within the 'proposed residential footprint' is part zoned:

- R1-General residential
- C2-Environmental conservation and

- C3-Environmental management under RVLEP 2012.

The land zoned RU1-Primary production is approx. 580m from proposed Lot 127 on the north-western corner of the south-western residential area.

The land is separated by the Crown Foreshore Reserve from the Evans River which is zoned W1-Natural Waterways.

Refer to **Map No. 3** and **Attachments No. 3a** and **3b**.

### **Land use table**

#### Assessment commentary

The land use table for the R1-General residential zone follows.

### **Zone R1 General Residential**

#### **1 Objectives of zone**

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that housing densities are generally concentrated in locations accessible to public transport, employment, services and facilities.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.

#### **2 Permitted without consent**

##### *Home occupations*

#### **3 Permitted with consent**

*Attached dwellings; Boarding houses; Boat launching ramps; Boat sheds; Car parks; Caravan parks; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Emergency services facilities; Environmental facilities; Environmental protection works; Exhibition homes; Exhibition villages; Extensive agriculture; Flood mitigation works; Function centres; Group homes; Highway service centres; Home-based child care; Home businesses; Home industries; Hostels; Information and education facilities; Jetties; Kiosks; Multi dwelling housing; Neighbourhood shops; Office premises; Oyster aquaculture; Passenger transport facilities; Places of public worship; Pond-based aquaculture; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Shop top housing; Signage; Tank-based aquaculture; Tourist and visitor accommodation; Transport depots; Veterinary hospitals; Water recreation structures*

#### **4 Prohibited**

*Advertising structures; Bee keeping; Dairies (pasture-based); Farm stay accommodation; Any other development not specified in item 2 or 3*

The subdivision of the land zoned R1 for future residential purposes is permissible subject to development consent.

Having regard to each of the objectives in my opinion:

- the subdivision development will provide for future housing needs
- the subdivision development will provide for future dwellings, secondary dwellings, and dual occupancy, however potential for medium density development is restricted by the minimal number of allotments with sufficient land area

- there are no allotments with sufficient land area which might provide for a neighbourhood shop or kiosk or café and the proposed open space allotments and facilities are inadequate to provide for the active and passive recreational needs of the future resident population
- the land is not located nor particularly accessible to existing public transport, employment, services, and facilities and
- the Concept DA does not demonstrate that potential adverse environmental impacts onto threatened plants, animals, and ecological communities both as a consequence of the development and the occupation of future residential accommodation within it can be satisfactorily mitigated.

In my opinion the Concept DA does not satisfy the majority of the objectives applying to the R1 zone.

The land use table for the C2 zone follows:

***Zone C2 1 Environmental Conservation***

*Objectives of zone*

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*

*2 Permitted without consent*

*Nil*

*3 Permitted with consent*

*Environmental facilities; Environmental protection works; Information and education facilities; Jetties; Oyster aquaculture Roads*

*4 Prohibited*

*Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Pond-based aquaculture; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Tank-based aquaculture; Warehouse or distribution centres; Any other development not specified in item 2 or 3*

Assessment commentary

In regard to the 2 objectives it is my opinion there are substantive outstanding environmental / biodiversity issues in regard the proposed development and land zoned C2.

It has not been satisfactorily demonstrated that the development and the occupation of future residential accommodation within it facilitates the protection, management and restoration of the land or otherwise have an adverse effect on the land.

The majority of the area of the proposed open space / public reserves (Lot 141 and Lot 142) and facilities are located on land zoned C2. Part of the proposed pump station lot (Lot 144) is located on land zoned C2. Sections of Proposed Road 6, near the Crown Foreshore Reserve are located on land zoned C2. The proposed drainage swale south of Proposed Road 6 is partially located on land zoned C2. The existing stormwater pipes from the proposed drainage reserve and stormwater detention facility (Lot 143) are located in land zoned C2. Those pipes will be removed and replaced / augmented to provide for the hydraulic load of the proposed stormwater detention facility.

Whilst roads and utility infrastructure are ancillary to the subdivision and roads are a permissible development (with consent) in the C2 zone, in my opinion the construction and

use of an urban road and utility infrastructure is not development that protects, manages, and restores areas of high ecological, scientific, cultural, or aesthetic values.

Environmental facilities are a permissible development in the C2 zone and are defined as: *a building or place that provides for the recreational use or scientific study of natural systems, and includes walking tracks, seating, shelters, board walks, observation decks, bird hides or the like, and associated display structures.*

The Concept DA proposes Lot 141 and Lot 142 as public reserves in which the following is to be provided:

- 2 boardwalks over the turfed 'bio-swale', a 'shelter and picnic area' and playground in Lot 141 and.
- 1 boardwalk over the turfed 'bio-swale', a 'shelter and picnic area' and playground in Lot 142.

In my opinion whether or not what is proposed in the public reserve lots plausibly meets the definition of an environmental facility and will provide for the future population of the development and general community is subject to conjecture.

The proposed sewerage pump station lot (Lot 144), proposed drainage 'bio-swale' south of Proposed Road 6 and new stormwater pipes from the retention basin to the existing open drain are permissible developments in the C2 zone as a consequence of *State Environmental Planning Policy (Transport and Infrastructure) 2021*, though the provision is antipathetic to the objectives of the zone.

The sewerage pump station infrastructure and existing stormwater pipes provided under DA No. 1992/149 would not be 'protected' by the 'existing use' provisions of the EP&A Act as the consent for that application was invalidated by the Court.

The land use table for the C3-Environmental management zone follows:

### **Zone C3 Environmental Management**

#### **1 Objectives of zone**

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*

#### **2 Permitted without consent**

*Home occupations*

#### **3 Permitted with consent**

*Agriculture; Animal boarding or training establishments; Bed and breakfast accommodation; Boat launching ramps; Boat sheds; Camping grounds; Cellar door premises; Charter and tourism boating facilities; Centre-based child care facilities; Community facilities; Dual occupancies (attached); Dwelling houses; Eco-tourist facilities; Electricity generating works; Emergency services facilities; Environmental facilities; Environmental protection works; Farm buildings; Farm stay accommodation; Flood mitigation works; Group homes; Health consulting rooms; Home-based child care; Home businesses; Home industries; Home occupations (sex services); Hostels; Information and education facilities; Jetties; Kiosks; Marinas; Mooring pens; Neighbourhood shops; Oyster aquaculture; Pond-based aquaculture; Recreation areas; Recreation facilities (outdoor); Research stations; Respite day care centres; Roads; Roadside stalls; Rural industries; Rural workers' dwellings; Signage; Tank-based aquaculture; Water recreation structures; Water reticulation systems; Water storage facilities*



#### **4 Prohibited**

*Advertising structures; Agricultural produce industries; Industries; Intensive livestock agriculture; Livestock processing industries; Multi dwelling housing; Residential flat buildings; Retail premises; Sawmill or log processing works; Seniors housing; Service stations; Stock and sale yards; Turf farming; Warehouse or distribution centres; Any other development not specified in item 2 or 3*

#### **Assessment commentary**

Sections of Proposed Road 6 and Proposed Road 11 are located on land zoned C3. The *'Bulk Earthworks Cut and Fill Layout Plans' Sheets 4 of 5 and 5 of 5* provided with the *Revised Engineering Services and Civil Infrastructure Report* show earthworks in the C3 zone where it is intended to excavate to a depth of approx. 8m within parts of the road reserve between Lot 276 DP 755624 and Lot 277 DP 755624.

Again whilst roads are ancillary to the subdivision and roads are a permissible development (with consent) in the C3 zone, in my opinion the construction and use of an urban road is not development that protects, manages, and restores areas of high ecological, scientific, cultural, or aesthetic values.

In my opinion the Concept DA is not consistent with the majority of the relevant objectives of the R1, C2 or C3 zones.

The land use table for the W1-Natural waterways zone follows:

#### **Zone W1 Natural Waterways**

##### **1 Objectives of zone**

- To protect the ecological and scenic values of natural waterways.*
- To prevent development that would have an adverse effect on the natural values of waterways in this zone.*
- To provide for sustainable fishing industries and recreational fishing.*

##### **2 Permitted without consent**

*Nil*

##### **3 Permitted with consent**

*Aquaculture Boat launching ramps; Boat sheds; Charter and tourism boating facilities; Emergency services facilities; Environmental facilities; Environmental protection works; Extractive industries; Flood mitigation works; Jetties; Marinas; Mooring pens; Moorings; Passenger transport facilities; Recreation areas; Recreation facilities (outdoor); Roads; Water recreation structures; Water reticulation systems; Water storage facilities; Wharf or boating facilities*

#### **4 Prohibited**

*Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3*

#### **Assessment commentary**

In my opinion the geotechnical, acid sulfate soils and groundwater assessments of the 'proposed residential footprint' are in my opinion inadequate given the mapped constraints of the land, known groundwater heights and extent of proposed filling for the proposed development and do not demonstrate that there is no potential for adverse impact on the Evans River.

Whether or not works for the replacement stormwater pipes from the stormwater retention basin to the existing open drain are in the tidal zone of the Evans River and will required an approval under the *Fisheries Management Act 1994* is unclear.

### **Part 3 – Exempt and complying development**

#### **Assessment commentary**

The Concept DA is not exempt or complying development.

### **Part 4 – Principal development standards**

#### **Clause 4.1 Minimum subdivision lot size**

*(1) The objectives of this clause are as follows—*

*(a) to ensure that lot sizes have a practical and efficient layout to meet their intended use, and*

*(b) to prevent the fragmentation of rural lands.*

#### **Assessment commentary**

The proposed lot sizes are generally satisfactory having regard to the intended future residential use. Objective (1)(a) is achieved. Objective (1)(b) is not applicable to the Concept DA.

*(2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.*

#### **Assessment commentary**

The minimum lot size shown on RCLEP 2012 Lot Size Map - Sheet LSZ\_010A in the R1 zone is 600m<sup>2</sup> and 40ha in the RU2 zone. No minimum allotment sizes are specified for the C2 zone within the land.

The Concept DA complies with Cl. 4.1(2).

*(3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.*

#### **Assessment commentary**

All proposed residential allotments are greater than 600m<sup>2</sup>. The proposed allotment (Lot 138) in the RU1 and C3 zones is greater than 40ha.

The Concept DA complies with Cl. 4.1(3).

#### **4.2B Erection of dual occupancies and dwelling houses on land in Zones RU1, R5 and E3**

*(1) The objectives of this clause are as follows—*

*(a) to minimise unplanned rural residential development,*

*(b) to enable the replacement of lawfully erected dual occupancies or dwelling houses in rural and environmental protection zones,*

*(c) to provide alternative accommodation for rural families and workers,*

*(d) to ensure that development is of a scale and nature that is compatible with the primary production potential, rural character and environmental capabilities of the land,*

*(e) to set out consent considerations for development of dual occupancies (detached) to address matters such as access, siting, land suitability and potential impacts.*

#### **Assessment commentary**

There is no dwelling on the land zoned RU1 / C3 (Lot 138) and no future building envelope is identified in the Concept DA. It is not possible to determine whether or not suitable road access is available and a suitable location for a future dwelling is available.

*(2) Development consent must not be granted for the erection of a dual occupancy or a dwelling house on land in Zone RU1 Primary Production or a dual occupancy (attached) or a dwelling house on land in Zone E3 Environmental Management, and on which no dual occupancy or dwelling house has been erected, unless the land is—*

*(a) a lot that is at least the minimum lot size specified for that land by the Lot Size Map, or*

- (b) a lot resulting from a subdivision for which development consent has been granted under clause 4.6, or*
- (c) a lot created before this Plan commenced and on which the erection of a dual occupancy or a dwelling house was permissible immediately before that commencement, or*
- (d) a lot resulting from a subdivision for which development consent (or equivalent) was granted before this Plan commenced and on which the erection of a dual occupancy or a dwelling house would have been permissible if the plan of subdivision had been registered before that commencement, or*
- (e) a lot on land that is identified as “Dwelling opportunity” on the Dwelling Opportunity Map, or*
- (f) a lot created under clause 4.1 (4A) (b), but only if the erection of a dual occupancy or a dwelling house was permissible for the land from which it was created.*

*Note—*

*A dwelling cannot be erected on a lot created under clause 4.2.*

Assessment commentary

The allotment (Lot 138) proposed on land zoned RU1 / C3 has an area greater than 40ha.

- (3) However, development consent may be granted for the erection of a dual occupancy or a dwelling house on land in Zone RU1 Primary Production or a dual occupancy (attached) or a dwelling house on land in Zone E3 Environmental Management (the relevant dwelling) if—*
- (a) there is a lawfully erected dual occupancy or dwelling house on the land and the relevant dwelling to be erected is intended only to replace the existing dual occupancy or dwelling house, or*
  - (b) the land would have been a lot or a holding referred to in subclause (2) had it not been affected by—*
    - (i) a minor realignment of its boundaries that did not create an additional lot, or*
    - (ii) a subdivision creating or widening a public road or public reserve or for another public purpose, or*
    - (iii) a lot boundary adjustment under clause 4.2C.*

Assessment commentary

There is no dwelling on the land zoned RU1 / C3 (Lot 138) and no future building envelope is identified in the Concept DA.

- (4) Development consent must not be granted to development for the purpose of a dual occupancy (detached) on land in Zone RU1 Primary Production or Zone R5 Large Lot Residential unless the consent authority is satisfied that—*
- (a) the development will not impair the use of the land for agriculture or rural industries in the locality, and*
  - (b) if it is practicable, each dwelling will use the same vehicular access to and from a public road, and*
  - (c) any dwellings will be situated within 100 metres of each other, and*
  - (d) the land is physically suitable for the development, and*
  - (e) the land is capable of accommodating the on-site disposal and management of sewage for the development, and*
  - (f) the development will not have an adverse impact on the scenic amenity or character of the rural environment.*

Assessment commentary

No building envelope is identified in the RU1 / C3 allotment (Lot 138).

- (5) To the extent that subclause (4) applies to development on land in Zone RU1 Primary Production, it applies in addition to any other requirements for development consent that may apply to the development under this clause.*

Assessment commentary

Not applicable to the Concept DA.

## **Part 5 – Miscellaneous provisions**

### **Clause 5.10 Heritage conservation**

*(1) Objectives The objectives of this clause are as follows—*

- (a) to conserve the environmental heritage of Richmond Valley,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

#### Assessment commentary

Refer to Sections 7.7, 12.6.2 and 14.4.

The proposed protection and conservation of the grave site of Thomas Paddon (a heritage item) is satisfactory.

The Concept DA satisfactorily achieves Objective (b).

Proposed Lot 142 includes in part the shell midden identified in the Aboriginal cultural assessment. An Aboriginal Heritage Impact Permit (AHIP) application was made to remove that part of the shell midden in Proposed Lot 142 and is approved. Refer to **Attachment No. 7b**.

In my opinion the Aboriginal stakeholder consultation and assessment of Aboriginal cultural heritage for the Concept DA has not been satisfactorily resolved.

In my opinion the on-going management conservation and protection of the shell midden remaining in the Crown Foreshore Reserve has not been satisfactorily resolved.

There has been no Aboriginal cultural heritage assessment for the removal of vegetation and ground disturbance in Iron Gates Dr for bushfire safety.

In my opinion the Concept DA does not achieve Objective (d).

*(2) Requirement for consent Development consent is required for any of the following—*

- (a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)—*
  - (i) a heritage item,*
  - (ii) an Aboriginal object,*
  - (iii) a building, work, relic or tree within a heritage conservation area,*
- (b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,*
- (c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,*
- (d) disturbing or excavating an Aboriginal place of heritage significance,*
- (e) erecting a building on land—*
  - (i) on which a heritage item is located or that is within a heritage conservation area, or*
  - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,*
- (f) subdividing land—*
  - (i) on which a heritage item is located or that is within a heritage conservation area, or*

*(ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.*

Assessment commentary

Development consent is required to remove / disturb / subdivide land (Lot 276 DP 755624 and the Crown Foreshore Reserve) on which the shell midden is partially located.

The Dept. of Premier and Cabinet, Heritage NSW, Aboriginal Cultural Heritage Regulation (1 Nov. 2021) has supplied General Terms of Approval pursuant to s. 90 of the *National Parks and Wildlife Act 1974* for the partial destruction of the shell midden only. Refer to **Attachment No. 7b.**

It is my opinion that the part of the shell midden remaining in the Crown Foreshore Reserve will be susceptible to damage (wilful and accidental) and its protection and conservation is not properly resolved.

*(3) When consent not required However, development consent under this clause is not required if—  
(a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development—*

*(i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and*

*(ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or*

*(b) the development is in a cemetery or burial ground and the proposed development—*

*(i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and*

*(ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or*

*(c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or*

*(d) the development is exempt development.*

Assessment commentary

Not applicable to the Concept DA.

*(4) Effect of proposed development on heritage significance The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).*

Assessment commentary

The proposed development will not have an effect on the grave site of Thomas Paddon.

*(5) Heritage assessment The consent authority may, before granting consent to any development—*

*(a) on land on which a heritage item is located, or*

*(b) on land that is within a heritage conservation area, or*

*(c) on land that is within the vicinity of land referred to in paragraph (a) or (b),*

*require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.*

Assessment commentary

Not applicable to the Concept DA.

*(6) Heritage conservation management plans The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.*

Assessment commentary

A conservation management plan has been prepared for the grave site of Thomas Paddon.

*(7) Archaeological sites The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the Heritage Act 1977 applies)—*

*(a) notify the Heritage Council of its intention to grant consent, and*

*(b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.*

Assessment commentary

Not applicable to the Concept DA.

*(8) Aboriginal places of heritage significance The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance—*

*(a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and*  
*(b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.*

Assessment commentary

Part I1 of RVC's Development Control Plan 2012 states the following:

*Clause 5.10(8) of the Richmond Valley LEP requires development consent to carry out development within an Aboriginal place of heritage significance. The dictionary defines an Aboriginal place of heritage significance as land identified in an Aboriginal heritage study adopted by Council. At this point Council has not undertaken an Aboriginal heritage study. It is a high priority within Council's Community Strategic Plan but subject to resourcing. As such, and for the purposes of the LEP, clause 5.10(8) will be ineffective until such time as a Study has been prepared, undergone community consultation, been accepted by the Aboriginal community and adopted by Council.*

Refer to Section 12.6.2.

Notwithstanding Clause 5.10(8) RVC advised the following Aboriginal land councils of the Concept DA:

- NSW Aboriginal Land Council
- Bogal Local Aboriginal Land Council - Coraki
- Birrigan Gargle Local Aboriginal Land Council - Yamba
- Ngulingah Local Aboriginal Land Council - Lismore
- Jali Local Aboriginal Land Council - Ballina and
- Bandjalang Aboriginal Corporation.

*(9) Demolition of nominated State heritage items The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item—*

*(a) notify the Heritage Council about the application, and*

*(b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.*

Assessment commentary

Not applicable to the Concept DA.



*(10) Conservation incentives The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that—*

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

Assessment commentary

Not applicable to the Concept DA.

**Clause 5.16 Subdivision of, or dwellings on, land in certain rural, residential or conservation zones**

*(1) The objective of this clause is to minimise potential land use conflict between existing and proposed development on land in the rural, residential or conservation zones concerned (particularly between residential land uses and other rural land uses).*

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

- (a) Zone RU1 Primary Production,*
- (b) Zone RU2 Rural Landscape,*
- (c) Zone RU3 Forestry,*
- (d) Zone RU4 Primary Production Small Lots,*
- (e) Zone RU6 Transition,*
- (f) Zone R5 Large Lot Residential,*
- (g) Zone C2 Environmental Conservation,*
- (h) Zone C3 Environmental Management,*
- (i) Zone C4 Environmental Living.*

Assessment commentary

Refer to Section 14.18.

No land use conflict risk assessment has been undertaken for either the DA or Concept DA. The DA relies on the streets, fire trails and asset protection zones to buffer sensitive areas zoned C2 and C3 from the proposed residential development.

The Concept DA does not achieve compliance with the buffer distances recommended in *Living and Working in Rural Areas A Handbook for Managing Land Use Conflict Issues on the NSW North Coast* between the residential areas and the following; native vegetation / habitat, ecosystem and wildlife corridors, estuaries and major waterways, wetlands, or littoral rainforest (i.e. the land zoned C2 and C3) and no information by way of justification to vary the distances or measures to mitigate potential for adverse environmental impact identified is provided.

*(3) A consent authority must take into account the matters specified in subclause (4) in determining whether to grant development consent to development on land to which this clause applies for either of the following purposes—*

- (a) subdivision of land proposed to be used for the purposes of a dwelling,*

*(b) erection of a dwelling.*

Assessment commentary

The land zoned R1 is to be subdivided for the purposes of residential accommodation (dwellings, secondary dwellings, and dual occupancies).

The Concept DA on the land zoned R1 complies with Cl. 15.6(3).

There is no dwelling on the land zoned RU1 / C3 (Lot 138) and no future building envelope is identified in the Concept DA. It is not possible to determine whether or not suitable road access is available and a suitable location for a future dwelling is available.

The Concept DA on the land zoned RU1 / C3 does not comply with Cl. 15.6(3).

*(4) The following matters are to be taken into account—*

*(a) the existing uses and approved uses of land in the vicinity of the development,*

Assessment commentary

The land in the vicinity is primarily zoned for conservation / environmental protection purposes.

*(b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,*

Assessment commentary

Refer to Sections 14.5, 14.6, 14.7, 14.8, 14.10, 14.18, 15.2, 15.8.1, 15.8.3 and 15.8.5.

In my opinion the full range of potential impacts of the development on the biodiversity values on the 'total development footprint', 'proposed residential footprint' and Iron Gates Dr and adjoining land have not been adequately addressed and are not satisfactorily resolved.

*(c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),*

Assessment commentary

In my opinion the development as proposed is likely to be incompatible with land in the vicinity is primarily zoned for conservation / environmental protection purposes.

*(d) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c).*

Assessment commentary

In my opinion the measures proposed in the Concept DA to avoid or minimise incompatibility, particularly in regard to the Littoral rainforest and Koala are insufficient.

In my opinion the application fails to integrate in a holistic sense into design of the subdivision the various recommendations made in the key specialist assessment reports prepared for it.

**Clause 5.21 Flood planning**

Assessment commentary

Refer to Clause 6.5 below.

**Part 6 – Additional local provisions**

**Clause 6.1 Acid sulfate soils**

*(1) The objective of this clause is to ensure that development does not disturb, expose or drain acid*

*sulfate soils and cause environmental damage.*

Assessment commentary

Refer to Sections 7.6, 12.6.2 and 14.5 and 15.12.

The commentary made in the RVDCP 2012 provides background information in regard acid sulfate soils and Clause 6.1.

There has been no groundwater investigation of the 'proposed residential footprint' and no assessment of the potential for movement of groundwater and contact with acid sulfate soils having regard to the extent of filling and potential for pollution of the Evans River.

RVC's Environmental Health Officer notes the absence of geotechnical investigation of soils for sulfate soils however is satisfied that the sulfate soils investigation of the 'proposed residential footprint' is in accordance with the *Acid Sulfate Soils Manual*.

In my opinion the geotechnical, acid sulfate soils and groundwater assessments of the 'proposed residential footprint' are inadequate and incomplete given the mapped constraints of the land and extent of filling for the proposed development.

In my opinion the Concept DA does not achieve the objective.

*(2) Development consent is required for the carrying out of works described in the Table to this subclause on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.*

<i>Class of land</i>	<i>Works</i>
<i>1</i>	<i>Any works.</i>
<i>2</i>	<i>Works below the natural ground surface. Works by which the watertable is likely to be lowered.</i>
<i>3</i>	<i>Works more than 1 metre below the natural ground surface. Works by which the watertable is likely to be lowered more than 1 metre below the natural ground surface.</i>
<i>4</i>	<i>Works more than 2 metres below the natural ground surface. Works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface.</i>
<i>5</i>	<i>Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.</i>

Assessment commentary

The land is mapped as having Classes 3 and 5 potential for occurrence of acid sulfate soils. There has been no geotechnical investigation of soils in the 'proposed residential footprint' for sulfate soils. There has been no groundwater assessment in the 'proposed residential footprint'. There is no assessment on the filling of the land on groundwater and potential acid sulfate soils. Development consent is required.

*(3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with*

*the Acid Sulfate Soils Manual and has been provided to the consent authority.*

Assessment commentary

RVC's Environmental Health Officer notes the absence of geotechnical investigation of soils for sulfate soils however is satisfied that the sulfate soils investigation of the 'proposed residential footprint' is in accordance with the *Acid Sulfate Soils Manual*.

*(4) Despite subclause (2), development consent is not required under this clause for the carrying out of works if—*

- (a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and*
- (b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.*

Assessment commentary

The report of the *Acid Sulfate Investigation and Soil Management Plan* relies upon and includes:

- the results of the geotechnical investigations undertaken by Geotech Investigations Pty Ltd
- A geotechnical investigation for a proposed drain by Coffey Partners International Pty Ltd (12 Jan. 1995). There is no plan provided showing location of test bores or drain. and
- An extract of a report prepared by Outline Planning Consultants referring to investigations undertaken by Morse McVey & Assoc and D.J. Douglas & Partners Pty Ltd (1991) for which there is no plan showing location of test bores.

In my opinion the acid sulfate soils assessment undertaken for the Concept DA relies on dated and incomplete information.

RVC's Environmental Health Officer has commented that RVC has not yet confirmed the assessment in writing.

*(5) Despite subclause (2), development consent is not required under this clause for the carrying out of any of the following works by a public authority (including ancillary work such as excavation, construction of access ways or the supply of power)—*

- (a) emergency work, being the repair or replacement of the works of the public authority required to be carried out urgently because the works have been damaged, have ceased to function or pose a risk to the environment or to public health and safety,*
- (b) routine maintenance work, being the periodic inspection, cleaning, repair or replacement of the works of the public authority (other than work that involves the disturbance of more than 1 tonne of soil),*
- (c) minor work, being work that costs less than \$20,000 (other than drainage work).*

Assessment commentary

Not applicable to the concept DA.

*(6) Despite subclause (2), development consent is not required under this clause to carry out any works if—*

- (a) the works involve the disturbance of less than 1 tonne of soil, and*
- (b) the works are not likely to lower the watertable.*

Assessment commentary

The works will involve disturbance of more than 1T of soil and no groundwater investigations or groundwater impact assessment has been undertaken.

*(7) Despite subclause (2), development consent is not required under this clause for the carrying out of works on land for the purpose of agriculture if—*

- (a) a production area entitlement is in force in respect of the land when the works are carried out, and
- (b) the works are carried out in accordance with a drainage management plan, and
- (c) the works are not carried out in respect of a major drain identified on the Acid Sulfate Soils Map, and
- (d) the works are not carried out on land within Zone E2 Environmental Conservation or on land identified as “coastal wetlands” on the Coastal Wetlands and Littoral Rainforests Area Map (within the meaning of State Environmental Planning Policy (Coastal Management) 2018).

Assessment commentary

Not applicable to the Concept DA.

(8) In this clause—

*drainage management plan means an irrigation and drainage management plan that—*

(a) *is prepared in accordance with the NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005), and*

(b) *is endorsed by the Sugar Milling Co-operative as being appropriate for the land.*

*NSW Sugar Industry Best Practice Guidelines for Acid Sulfate Soils (2005) means the guidelines approved by the Director-General of the Department of Infrastructure, Planning and Natural Resources on 25 May 2005.*

*production area entitlement means a contractual arrangement between the Sugar Milling Co-operative and a grower member of that Co-operative for the production of sugar cane for milling.*

*Sugar Milling Co-operative means the New South Wales Sugar Milling Co-operative Limited (ACN 051 052 209) or its successor.*

Assessment commentary

Not applicable to the Concept DA.

**Clause 6.2 Essential services**

*Development consent must not be granted for development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required—*

(a) *the supply of water,*

Assessment commentary

RVC's Development Engineer advised the following:

- *There is a 300mm water main part way down Iron Gates Drive. Condition assessment and testing is required prior to utilisation. If utilised, it will be extended to the development site.*

RVC's Water and Sewer Engineer advised the following:

*The development connecting to the 300mm water main were assessed with little impact to the existing water network during peak day demand and fire-flow scenarios.*

Adequate arrangements are proposed for the supply of water.

(b) *the supply of electricity,*

Assessment commentary

The *Revised Engineering Services and Civil Infrastructure Report* provides advice from Preferred Energy Pty Ltd (12 July 2019) in regard the provision of reticulated electricity.

Neither the report or letter of advice indicate whether the electrical supply is proposed above or below ground.

Neither the *Revised Engineering Services and Civil Infrastructure Report* or advice from Preferred Energy Pty Ltd mention what is proposed with the transmission line traversing the land.

RVC's Development Engineer advised; *this is looked after by the developer in consultation with Essential Energy.*

*(c) the disposal and management of sewage,*

Assessment commentary

RVC's Development Engineer advised the following:

- *The development would connect to an existing rising main in Iron Gates Drive, however there is no RVC rising main in the vicinity of the development.*
- *This is likely to be privately owned infrastructure, if so, appropriate testing and a condition assessment is required prior to utilisation. If no rising main exists, it is prudent that the works involve the construction of a new rising main to PS2.*

RVC's Water and Sewer Engineer advised the following:

*The development proposes to utilise the existing Iron Gate sewage pump station and rising main which is not currently council assets. Before these assets can be taken over by Council these assets will need to be assessed and brought up to current relevant standards as part of the detail design.*

Adequate arrangements are proposed for the disposal of sewage.

*(d) stormwater drainage or on-site conservation,*

Assessment commentary

Refer to Sections 10.4.7, 14.13 and 15.8.5.

RVC's Development Engineer advised the following:

*Noted that the C2 zone likely will be damming up due to residential development. Should be worded that the drainage of C2 zone is largely unknown as there may be some outflow provided within design, however unclear due to minimal detail design of stormwater provided.*

RVC's Environmental Health Officer advised the following:

*Agree with engineers comments, concerned about impact on riverbank at outflow points and possible mosquito breeding ground.*

It is my opinion that adequate arrangements have not been made for stormwater drainage or on-site conservation.

*(e) suitable road access.*

Assessment commentary

Refer to Section 14.7.

It is my opinion that the works proposed in Iron Gates Dr will not adequately provide for evacuation in the event of a bushfire emergency.

RVC's Development Engineer advised the following:

- *A road condition assessment and footpath condition assessment and bridge structural assessment need to be undertaken for Iron Gates Dr prior to any acceptance. Widening works of the road and footpath is needed, uncertain if any works are needed on the bridge.*
- *All new work will be inspected and tested to the NRLG.*



- *Noted that t Iron Gates Dr does currently go under water in a 1% AEP Design flood event and 5% AEP design flood event with climate change.*

### **Clause 6.3 Earthworks**

*(1) The objectives of this clause are as follows—*

*(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land,*

*(b) to allow earthworks of a minor nature without requiring separate development consent.*

#### Assessment commentary

The Concept DA proposes substantial cut to fill and importation earthworks. There is no assessment of the potential impact of the filling of the land on groundwater and potentially acid sulfate soils. There is no hydraulic and ecological assessment of the impact of filling and erection of retaining walls on the Littoral rainforest communities in proposed Lot 137 or of land Lot 544 DP 48550) to the east of the existing drain.

In my opinion the concept DA does not achieve Objective (1)(a).

*(2) Development consent is required for earthworks unless—*

*(a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or*

#### Assessment commentary

The earthworks are not exempt development.

*(b) the earthworks are ancillary to other development for which development consent has been given.*

#### Assessment commentary

The earthworks are ancillary to the proposed subdivision of the 'total development footprint'.

*(3) Before granting development consent for earthworks, the consent authority must consider the following matters—*

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

#### Assessment commentary

There has been no assessment of the impact of filling on the Littoral rainforest in proposed Lot 137 and Lot 136.

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

#### Assessment commentary

The filling of the 'proposed residential footprint' is for its future residential use.

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

#### Assessment commentary

The quality of the fill is unknown as there has been no geotechnical assessment of the major source of it.

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

#### Assessment commentary

The flood impacts of the filling of the land onto adjoining land has not been investigated.

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

#### Assessment commentary

The primary source of fill is from the ridgeline and the associated sideslopes within the land.

*(f) the likelihood of disturbing relics,*

Assessment commentary

The likelihood of disturbing relics has been investigated.

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

Assessment commentary

Earthworks will occur within 40m of the Evans River and will with the erection of retaining walls immediately adjoining proposed Lot 137 containing the Littoral rainforest. No hydrologic / groundwater investigations or impact assessment has been undertaken to determine whether or not earthworks have potential to have an adverse impact on the hydrologic regime of the rainforest and potential for disturbance of acid sulfate soils.

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

*Note—*

*The National Parks and Wildlife Act 1974, particularly section 86, deals with disturbing or excavating land and Aboriginal objects.*

Assessment commentary

No hydrologic / groundwater investigations or impact assessment has been undertaken therefore potential impacts are unknown and measures to mitigate impacts unknown.

## **6.5 Flood planning**

*(1) The objectives of this clause are as follows—*

*(a) to minimise the flood risk to life and property associated with the use of land,*

*(b) to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*

*(c) to avoid significant adverse impacts on flood behaviour and the environment.*

Assessment commentary

Clause 6.5 of the RVLEP 2012 applies to the Concept DA as it was lodged prior to the introduction of Clause 5.21.

Refer to Sections 7.10 and 14.8.

Filling of the land and proposed allotments is proposed to a minimum of 3.3m(AHD) which with the 300mm height of a 'slab' on ground enables future residential accommodation to have a floor level at the flood planning level of 3.6m(AHD).

Flood modelling in the 2014 *Evans Head Flood Study* by BMT estimates that a 1%AEP event would reach 2.4m AHD and 3.2m AHD with climate change. Filling the land will achieve a minimum allotment ground level of 3.25m(AHD) (i.e. at proposed Lot 1) and minimum road level of 3.0m(AHD). Filling of the land to provide for stormwater drainage will require some areas (i.e. in the north-east corner) to be filled from approx. 2.1m or to 5.5m(AHD).

The BMT WBM letter report 22 Aug. 2014 provides only an assessment of whether on-site detention of runoff is required to protect downstream properties from flood impact.

There is no specific assessment of flood impacts on Iron Gates Dr including; which ARI flood event is likely to cause flooding, flood depths, flood velocities and duration.

There is no specific assessment of flood impacts of the filling of the land and drain on the eastern boundary in regard potential for displacement of floodwaters onto adjoining land including; flood depths, flood velocities and duration.

RVC's Town Planning section has advised:

- *Iron Gates Dr has a low level of 1.64m(AHD) and a high point of 2.91m(AHD) at the entrance to the property. In a 1%AEP event parts of the road could have up to 0.76m of water over it during the flood peak, were that to coincide with an 'king tide'.*
- *The road would be cut by water for about 6 hours (but equally open for about 6 hours) on a tidal cycle.*
- *In a climate change cycle scenario the depth could be 1.56m and the road would be continuously cut until flood waters subsided.*

RVC's Development Engineer advised:

- *The flood planning level of 3.6m(AHD) is correct, provision of a 300mm thick concrete slab may not be adhered to as this is in excess of the minimum standard, however the FPL will be conditioned for all residential developments.*
- *There is minimal assessment against the 1% AEP climate change event, conclusion was the development would be isolated for extended periods of time due to Irons Gates Dr becoming untrafficable. It is noted that in climate change events, Iron Gates Dr becomes additionally susceptible to design flood events with a higher probability of occurring i.e. 2% & 5% AEP design events. As such, while the final levels of the development itself is above the 1% AEP design flood event (including climate change) of 3.1m AHD, the only ingress/egress road becomes increasingly susceptible to inundation.*
- *It is concluded that adequate assessment of climate change events has not been considered for Iron Gates Dr along with any cumulative / adverse impact offsite due to filling of the development. The development site meets (1)(a), it does not meet (b) (due to road), (c) & (d).*

In my opinion objectives (a) and (d) are not satisfied.

*(2) This clause applies to land at or below the flood planning level.*

Assessment commentary

RVC's Development Engineer advised the following:

- *There has been no consideration given to projected changes to flood behaviour as a result of climate change.*
- *The site will be higher than the 1% AEP design flood with climate change, however only due to filling.*
- *Uncertain if filling (some low areas filled 2 metres) will result in large offsite impacts or not, no assessment has been provided.*

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

*(a) is compatible with the flood hazard of the land, and*

Assessment commentary

RVC's Development Engineer advised the following:

- *While the land in which is being developed does meet compatibility with flood function once earthworks are completed, the entrance road (Iron Gates Dr) does not.*
- *Iron Gates Dr is inundated in the current 1% AEP design flood event and a climate change assessment results in an increase in flood depth and risk in each of the 2% & 5% AEP design events along with an increase in susceptibility of inundation in higher probable design flood events.*

- *It is concluded that adequate assessment of climate change events has not been considered for Iron Gates Dr along with any cumulative / adverse impact offsite due to filling of the development.*

*(b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*

Assessment commentary

The flood study prepared for RVC and supplied with the Concept DA is not specific to the land however shows the land is not subject to the 1 in 100 year ARI flood event.

The flood study shows that sections of Iron Gates Dr (particularly near wetland areas) are in a 'high hazard' area, with flood levels between 2.3m(AHD) and 2.4m(AHD) in the 1% AEP flood event. The low sections of the road (including the bridge over the wetland) is likely to be inundated to depths between 0.66m to 0.76m.

The flood study shows lower sections of the land including internal roads constructed under DA No. 1992/149 and all of Iron Gates Dr is subject to inundation in the 1 in 500 year ARI flood event.

RVC's Development Engineer advised the following:

- *Current 1% AEP design flood event varies 2.4m - 2.5m AHD on Iron Gates Drive. However emergency evacuation of a permanent large scale residential development must take climate change in consideration.*
- *The 1% AEP design flood event with climate change is 3.0m AHD at Iron Gates Drive.*
- *The 2% AEP design flood event with climate change is 2.8m AHD at Iron Gates Drive.*
- *The 5% AEP design flood event with climate change is 2.7m AHD.*
- *It is shown that the 5% AEP design flood with climate change will be in excess to the current 1% AEP design flood event.*

*(c) incorporates appropriate measures to manage risk to life from flood, and*

Assessment commentary

The Concept DA proposes no measures to minimise risk to life and for evacuation of people in the event of flood.

*(d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*

Assessment commentary

RVC's Development Engineer advised the following:

- *The flood water in the vicinity of the development (other than that in the Evans River) is slow moving with minimal velocity. However the proposal does not specifically note design flood velocities nor their impact and has not considered this.*
- *Minimal consideration has been given to the downstream impacts of the bio-swale, it is believed that erosion impacts could be substantial due to the type of material and steepness of downstream overflow to Evans River.*

*(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

Assessment commentary

Iron Gates Dr is the only evacuation route from the proposed development and it is flood prone. Evacuation and supply of essential services during a flood emergency is potentially problematic.

*(4) A word or expression used in this clause has the same meaning as it has in the Floodplain Development Manual (ISBN 0 7347 5476 0), published in 2005 by the NSW Government, unless it is otherwise defined in this clause.*

Assessment commentary

Noted

*(5) In this clause, flood planning level means the level of a 1:100 ARI (average recurrent interval) flood event plus 0.5 metre freeboard.*

Assessment commentary

Noted

#### **Clause 6.6 Terrestrial biodiversity**

Part H4 – Natural resources (NRS) of the RVDCP 2012 provides background information in regard of the rationale for the provisions of the RVLEP 2012 relating to Terrestrial biodiversity, Clause 6.8 Riparian land and watercourses and Clause 6.10 Wetlands.

The introduction in Part H4 of the RVDCP 2012 in part states:

*These NRS layers do not prescribe whether development requires consent or is prohibit. Rather its intent is to identify the need for assessment of additional heads of consideration to determine the level of impact on the mapped natural resource features, and whether there may be mitigation measures employed to reduce those impacts.*

*The mere fact that NRS is mapped over land does not trigger the need for development consent. Rather the need for development consent to do an activity triggers the need for a higher level of assessment under the relevant clause.*

The introduction to Clause H4.2(1)(a) in the RVDCP 2012 states in regard terrestrial biodiversity (natural vegetation and habitat corridors) the following:

*The Terrestrial Biodiversity mapping consists of 2 data sets that have been combined into a single coloured region. This region represents natural vegetation and habitat corridors. It should be noted that not all corridors are vegetated but have been derived from predictive models to link between significant reserves of native vegetation, and to pick up riparian zones.*

##### *(i) Natural Vegetation*

*As a reflection of the ‘precautionary principle’ aligned with ESD principles, all naturally vegetated areas within the Local Governmental Area have been mapped. It is proposed that development will require assessment as to whether the development will significantly impact this natural resource.*

*It is recognised that not all vegetation mapped will actually be ecologically sensitive, and it is accepted that much of it may constitute regrowth or highly be disturbed. It is further accepted that this mapping is a snap shot in time, and that changes in the environment will not be reflected in the mapping until reviewed. It was for this reason that the mapping has been used as an overlay that triggers the need for impact assessment.*

*The requirement for additional assessment will be negated in situations where the vegetation is obviously not naturally occurring or has since been removed.*

##### *(ii) Habitat Corridors*

*Habitat corridors data was supplied by the National Parks and Wildlife Service based upon predictive modelling to strategically link reserved compartments of native vegetation for the passage of fauna. Additional mapping was obtained by Council which identify the need to incorporate riparian zones.*

*It is noted that habitat corridors are not all vegetated but they can still essentially operate effectively. As such an assessment of impact and consideration of mitigation measure need only address how the development might prevent the free passage of fauna through the development site.*

*(1) The objective of this clause is to maintain terrestrial biodiversity by—*

- (a) protecting native fauna and flora, and*
- (b) protecting the ecological processes necessary for their continued existence, and*
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

Assessment commentary

Refer to Sections 7.5, 10.4.10, 14.6, 15.2, 15.8.3, 15.8.5 and 15.12.

In my opinion the Concept DA does not sufficiently:

- provide for the protection of native fauna and flora
- provide for the protection of ecological processes in the Littoral rainforest communities within the 'total development footprint' or riparian vegetation adjoining the Evans River or
- encourage the conservation and recovery of native fauna and flora and their habitats.

*(2) This clause applies to land identified as "Biodiversity" on the Terrestrial Biodiversity Map.*

Assessment commentary

The whole of land is identified as 'biodiversity'. Refer to **Map No. 4**.

*(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider—*

*(a) whether the development—*

*(i) is likely to have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*

Assessment commentary

In my opinion it is likely that the proposed development will have an adverse impact on the condition of the ecological values and fauna and flora of the 'total development footprint' and 'proposed residential footprint'.

There has been no assessment of the full range of potential impacts of the development onto the Littoral rainforest (Lot 136 and Lot 137) or threatened species nor of the Iron Gates Dr upgrade and vegetation clearing on land adjoining Iron Gates Dr zoned C2 and the wetland areas.

Neither the:

- *Amended Ecological Assessment (Iron Gates Drive)* report where Iron Gates Dr traverses wetland areas and where sections of the carriageway and footpath within Iron Gates Dr 'run' close to the southern boundary or
- *Terrestrial Flora and Fauna Assessment Report* where Proposed Road 5 passes between proposed Lot 136 and Lot 137 and Littoral rainforest zone C2 sufficiently account for the recommendation in the *Crime Prevention Through Environmental Design Assessment* that a 3m - 5m cleared space be provided either side of residential pathways and cycle routes of which the pathway in Iron Gates Dr should comply with.

*(ii) is likely to have any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*

Assessment commentary

The following threatened species, communities and populations are known to occur on the and within the 'total development footprint':

- Littoral rainforest – listed under the TSC Act as an 'Endangered Ecological Community' and as a 'Threatened Ecological Community' under the EPBC Act



- Grey-headed flying fox
- Hoary wattled bat
- Little bentwing-bat
- Southern myotis
- Koala
- Squirrel glider
- Wallum froglet
- Black-necked stork
- Square-tailed kite and
- White eared monarch
- Brush-tailed phascogale
- Eastern blossom-bat and
- Greater broad-nosed bat, all listed as Vulnerable under the TSC Act.

*(iii) has any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*

Assessment commentary

In my opinion the proposed development has the potential to disturb and diminish the structure, function, and composition of the areas of the Littoral rainforest communities (proposed Lot 136 and Lot 137) as a consequence of:

- the filling potentially changing the hydrologic / drainage regime and groundwater surrounding Lot 137 and north and west of Lot 136 and adjoining the riparian vegetation in the Crown Foreshore Reserve and
- the potential changes to the hydrologic / drainage regime to the Littoral rainforest in proposed Lot 137 as a consequence of the erection of retaining walls and battered areas supporting roads surrounding it and that no stormwater culvert is proposed under Proposed Road 5 where it passes between the areas of littoral rainforest (proposed Lot 136 and Lot 137).

*(iv) is likely to have any adverse impact on the habitat elements providing connectivity on the land, and*

Assessment commentary

The *Terrestrial Flora and Fauna Assessment Report* identifies the use of a stormwater culvert under Proposed Road 1 between proposed Lot 137 and the forest to the northwest to provide for fauna movements. Irrespective of whether that arrangement is suitable and will function no similar measures are proposed between the vegetation and habitat in proposed Lot 136 and Lot 137.

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

Assessment commentary

The *Terrestrial Flora and Fauna Assessment Report* identifies measures to mitigate the impacts of the development it specifically identified. Refer to Section 14.6.

The *Amended Terrestrial Flora and Fauna Assessment Report* does not contain an assessment of:

- the potential impacts of earthworks, filling, and construction of retaining walls and earthen batters on the Littoral rainforest within proposed Lot 136 and Lot 137 or riparian vegetation in the Crown Foreshore Reserve
- the potential changes to the hydrologic / drainage regime to the Littoral rainforest in proposed Lot 137 because of earthworks, filling, and construction of retaining walls and earthen batters supporting roads surrounding it
- the impact of wind-throw

- the indirect impacts on threatened species, populations caused by human disturbance and noise on sensitive threatened fauna species
- the impacts on threatened species, populations of exposure to bright lights (street and from occupation of future dwellings)
- the large number of houses and how that is likely to interrupt any connectivity of vegetation or
- cumulative impacts.

The *Terrestrial Flora and Fauna Assessment Report* does not propose the prohibition of cats and dogs in the subdivision, when it acknowledges they have a potential to cause adverse ecological / conservation impacts.

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

*(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*

Assessment commentary

In my opinion the development is not designed and sited to avoid significant adverse environmental impacts. No proper and comprehensive site analysis has been undertaken and the specialist assessments in particularly regarding the Littoral rainforest and Koala.

The full range of likely potential impacts are not assessed in a coordinated comprehensive manner. The key engineering, ecological and bushfire reports contain conflicting and contradictory statements and recommendations.

Refer also to the comments made by the DoPI&E and GANSW in **Attachment No. 2**.

*(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*

Assessment commentary

In my opinion it is possible that impacts can be managed by feasible alternatives which are informed / determined by proper site analysis and a comprehensive integrated design process, which has not occurred.

The Concept DA does not identify any feasible alternatives.

*(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Assessment commentary

No detail is provided in the *Terrestrial Flora and Fauna Assessment* report regarding the proposed ownership and stewardship agreement for the Littoral rainforest (proposed Lot 136 and Lot 137) to demonstrate the rainforest communities will be properly managed to protect and enhance their biodiversity values in perpetuity.

In my opinion the on-going protection and management of the Crown Foreshore Reserve is not properly resolved.

In regard impact on Koala habitat the SEPP No. 44 assessment by Planit (Aug. 2014) states: *The area to be cleared is approximately 1,400 m<sup>2</sup> and would require the removal of approximately 10 - 15 trees. These are offset through plantings in the open space and or street trees.*

There are no Koala food trees identified in the *Landscape Statement of Intent* or identified or shown on the Landscape Plans for the proposed open space (Lot 141 and Lot 142). There is insufficient area in the proposed open space areas to undertake adequate offset planting.

In my opinion the measures to offset the removal of Koala food trees is impractical and unsatisfactory.

#### **Clause 6.8 Riparian land and watercourses**

The introduction to Clause H4.2(1)(c) in the RVDCP 2012 states in regard terrestrial biodiversity (natural vegetation and habitat corridors) the following:

*The overlay for riparian lands and watercourses has been mapped from Key Fish Habitat data supplied by the Department of Primary Industries—Fisheries. This mapping represents rivers, creeks, streams, drains and wetlands identified by Fisheries as being strategically important for fish habitat at or down stream from that site. As such works within a key fish habitat requires a Fisheries permit under the Fisheries Management Act 1994. The mapping incorporates a 40 metre riparian zone either side of waterways to ensure that the banks and riparian vegetation are considered along with the waterway.*

*(1) The objective of this clause is to protect and maintain the following—*

- (a) water quality within watercourses,*
- (b) the stability of the bed and banks of watercourses,*
- (c) aquatic and riparian habitats,*
- (d) ecological processes within watercourses and riparian areas.*

#### Assessment commentary

In my opinion the Concept DA does not sufficiently provide for the protection and future maintenance of the:

- water quality in the Evans River
- banks of the Evans River
- riparian vegetation and habitat or
- ecological processes within the riparian area.

*(2) This clause applies to land identified as “Key Fish Habitat” on the Riparian Land and Waterways Map.*

#### Assessment commentary

Part of the land is identified as ‘key fish habitat’. Refer to **Map No. 5**.

*(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider—*

- (a) whether or not the development is likely to have any adverse impact on the following—*
  - (i) the water quality and flows within the watercourse,*
  - (ii) aquatic and riparian species, habitats and ecosystems of the watercourse,*
  - (iii) the stability of the bed and banks of the watercourse,*
  - (iv) the free passage of fish and other aquatic organisms within or along the watercourse,*
  - (v) any future rehabilitation of the watercourse and its riparian areas, and*

#### Assessment commentary

The *Revised Engineering Services and Civil Infrastructure Report* stormwater management plan proposes no on-site detention, as that would not achieve the desirable outcome in regard impact from flooding. The Concept DA proposes a ‘rapid disposal method’ which enables the discharge of stormwater run-off into the river where the water drains with the receding tide.

There has been no groundwater investigation of the ‘proposed residential footprint’ and assessment of the potential for movement of groundwater and contact with acid sulfate soils having regard to the extent of filling and potential for pollution of the Evans River.

RVC's Development Engineer and Environmental Health Officer have expressed concerns in regard to the stormwater management plan and potential for impact on water quality and for riverbank erosion.

Embellishment works and tree removal in the Crown Foreshore Reserve has been withdrawn from the Concept DA. In my opinion the protection of the riparian vegetation (including the Littoral rainforest), the stability of the river banks and aquatic vegetation in the Evans Rivers is unresolved.

The Concept DA involves no works in the Evans River and will not impact on the free passage of fish and other aquatic organisms.

In my opinion the future ownership and management of the Crown Foreshore Reserve is unresolved.

*(b) whether or not the development is likely to increase water extraction from the watercourse, and*  
Assessment commentary

The Concept DA does not propose extraction of water from the Evans River.

*(c) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*  
Assessment commentary

There has been no groundwater investigation of the 'proposed residential footprint' nor assessment of the potential for movement of groundwater and contact with acid sulfate soils having regard to the extent of filling from which measures to mitigate potential impacts can be determined to ensure there is not potential for pollution of the Evans River.

RVC's Development Engineer and Environmental Health Officer have expressed concerns in regard to the stormwater management plan and potential for impact on water quality and for riverbank erosion.

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

*(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*

Assessment commentary

Refer to comments made by the DoPI&E and GANSW in **Attachment No. 2** and Sections 14.6 and 15.8.5.

In my opinion the development is not designed and sited to avoid significant adverse environmental impacts as no proper site analysis has been undertaken and specialist assessments (i.e. groundwater investigations and analysis for acid sulfate soils) undertaken do not consider the full range of likely potential impacts.

*(b) if that impact cannot be avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or*

Assessment commentary

In my opinion it is possible that impacts can be managed by feasible alternatives following:

- appropriate investigation and assessment and
- informed / determined by proper site analysis and a comprehensive integrated design process, which has not occurred.

In my opinion the Concept DA does not identify any feasible alternatives.

*(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Assessment commentary

RVC Environmental Health Officer made the following comments:

- *A groundwater impact assessment should be undertaken, testing for acid sulfate soils shows variable depths to the water table across the site 0.5m – 2.7m.*
- *Detail of water quality controls are deficient; in effect we cannot make an assessment without adequate engineering controls.*

There has been no groundwater investigation of the 'proposed residential footprint' and assessment of the potential for movement of groundwater and contact with potential acid sulfate soils having regard to the extent of filling. Therefore in my opinion the consideration of measures to mitigate potential impacts and pollution of the Evans River cannot be determined.

**Clause 6.10 Wetlands**

The introduction to Clause H4.2(1)(e) in the RVDCP 2012 states in regard wetlands the following:

*Wetland mapping was originally derived from Wetland Care Australia but was subsequently supplied to consultants for updating.*

*The mapping is inclusive of naturally occurring wetlands as well as artificial wetlands such as farm dams. The reason for this wide coverage of wetlands is because it has been used in an overlay.*

*(1) The objective of this clause is to ensure that wetlands are preserved and protected from the impacts of development.*

Assessment commentary

Refer to Sections 7.9, 12.6.2, 14.5, 14.8, 14.10, 14.13, 15.2 and 15.8.1.

In my opinion the Concept DA does not achieve the objective as it does not demonstrate that wetland areas both along Iron Gates Dr and in the Evans River can be satisfactorily preserved and protected.

*(2) This clause applies to land identified as "Wetland" on the Wetlands Map.*

Assessment commentary

Part of the land is identified as 'wetland. Refer to **Map No. 5**.

*(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider—*

*(a) whether or not the development is likely to have any significant adverse impact on the following—*

- (i) the condition and significance of the existing native fauna and flora on the land,*
- (ii) the provision and quality of habitats on the land for indigenous and migratory species,*
- (iii) the surface and groundwater characteristics of the land, including water quality, natural water flows and salinity, and*

Assessment commentary

The development appears to be 'clear' of the designated wetland area in the north-eastern corner of Lot 277 DP 755624.

The *Crime Prevention Through Environmental Design Assessment* recommends with the upgrade of Iron Gates Dr, that a shared cycle/pedestrian path be included. Given that the shared cycle/pedestrian path in Iron Gates Dr is the only connection of that type to Evans

Head it is appropriate from the crime prevention perspective that it should also be provided with a 3m - 5m cleared space.

This is likely to require removal of trees and shrubs on land outside the Iron Gates Dr road reserve and in the wetland areas.

The *Amended Ecological Assessment (Iron Gates Drive)* report for Iron Gates Dr and in particular where it traverses wetland areas does not sufficiently account for or address the recommendation in the *Crime Prevention Through Environmental Design Assessment*.

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

Assessment commentary

In my opinion no measures are proposed in the Concept DA to protect wetland areas having regard to the recommendations of the *Crime Prevention Through Environmental Design Assessment*.

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

*(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*

Assessment commentary

Refer to comments made by the DoPI&E and GANSW in **Attachment No. 2**.

In my opinion the development is not designed and sited to avoid significant adverse environmental impacts as no proper site analysis has been undertaken and the key specialist assessments (engineering, ecological and bushfire) undertaken do not consider the full range of likely potential impacts.

There has been no groundwater investigation of the 'proposed residential footprint' and assessment of the potential for movement of groundwater and contact with potential acid sulfate soils having regard to the extent of filling. Therefore in my opinion the consideration of measures to mitigate potential impacts and pollution of the Evans River cannot be determined.

*(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*

Assessment commentary

In my opinion it is possible that impacts can be managed by feasible alternatives following:

- appropriate investigation and assessment and
- informed / determined by proper site analysis and a comprehensive integrated design process, which has not occurred.

In my opinion the Concept DA does not identify any feasible alternatives.

*(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Assessment commentary

In my opinion there has been no groundwater investigation of the 'proposed residential footprint' and assessment of the potential for movement of groundwater and contact with acid sulfate soils having regard to the extent of filling. Therefore the potential for pollution of the Evans River and adjoining wetland areas cannot be properly determined.

In my opinion it is possible that impacts can be managed by feasible alternatives following:

- appropriate investigation and assessment and



- informed / determined by proper site analysis and a comprehensive integrated design process, which has not occurred.

#### **Clause 6.11 Airspace operations**

*(1) The objectives of this clause are as follows—*

- (a) to provide for the effective and ongoing operation of the Casino and Evans Head Airports by ensuring that such operation is not compromised by proposed development that penetrates the Limitation or Operations Surface for that airport,*
- (b) to protect the community from undue risk from that operation.*

#### Assessment commentary

The DA SEE indicates:

- *that RVC advised that the Limitation of Operations Surface level for runway #36 at the Evans Head airfield is RL 86.5m(AHD) stopping north of the development but with the boundary of Lot 277 DP 755624*
- *the Limitation or Operations Surface level of the land to be developed is RL51.5m(AHD).*

The existing height of the existing ridgeline / sideslope to be excavated is approx. 22m(AHD). The *Revised Engineering Services and Civil Infrastructure Report* plans show that bulk earthworks will reduce of the land levels of the ridgeline / sideslope to approx. 11.3 – 12.4(AHD). Assuming a maximum building height of 8.5m the height of buildings including a 300mm slab would be in the order of 19.8 – 20.9m(AHD) which is well below RL51.5m(AHD).

The development is consistent with objectives of Clause 6.11.

*(2) If a development application is received and the consent authority is satisfied that the proposed development will penetrate the Limitation or Operations Surface, the consent authority must not grant development consent unless it has consulted with the relevant Commonwealth body about the application.*

#### Assessment commentary

The Dept of Defence have raised a number of issues in regard the Concept DA which could be satisfactorily addressed by conditions of consent. Refer to **Attachment No. 7a**.

*(3) The consent authority may grant development consent for the development if the relevant Commonwealth body advises that—*

- (a) the development will penetrate the Limitation or Operations Surface but it has no objection to its construction, or*
- (b) the development will not penetrate the Limitation or Operations Surface.*

#### Assessment commentary

In my opinion the development will not penetrate the Limitation or Operations Surface.

*(4) The consent authority must not grant development consent for the development if the relevant Commonwealth body advises that the development will penetrate the Limitation or Operations Surface and should not be constructed.*

#### Assessment commentary

In my opinion the development will not penetrate the Limitation or Operations Surface.

*(5) In this clause—*

*Limitation or Operations Surface means the Obstacle Limitation Surface or the Procedures for Air Navigation Services Operations Surface as shown on the Obstacle Limitation Surface Map or the Procedures for Air Navigation Services Operations Surface Map for the Casino and Evans Head Airports.*

*relevant Commonwealth body means the body, under Commonwealth legislation, that is responsible for development approvals for development that penetrates the Limitation or Operations Surface for the Casino and Evans Head Airports.*

Assessment commentary

The DA SEE contains as; Appendix 19 a map titled 'Richmond Valley Council Evans Head Aerodrome Evans Head Aerodrome Obstacle Limitation Surface', Dwg 41-14121-100 Rev B by GHD Pty Ltd, 12.4.2005. The plan is marked 'preliminary – for council discussion purposes only'.

The plan is not a map titled *Obstacle Limitation Surface Map* or the *Procedures for Air Navigation Services Operations Surface Map for the Casino and Evans Head Airports*.

Notwithstanding RVC has advised that the map is the correct map.

**Clause 6.12 Development in areas subject to aircraft noise**

*(1) The objectives of this clause are as follows—*

*(a) to prevent certain noise sensitive developments from being located near the Casino and Evans Head Airports and its flight paths,*

*(b) to assist in minimising the impact of aircraft noise from that airport and its flight paths by requiring appropriate noise attenuation measures in noise sensitive buildings,*

*(c) to ensure that land use and development in the vicinity of that airport do not hinder or have any other adverse impacts on the ongoing, safe and efficient operation of that airport.*

Assessment commentary

Though no acoustic assessment has been undertaken the land is well outside the 20 ANEF contour shown on the map identified below.

*(2) This clause applies to development that—*

*(a) is on land that—*

*(i) is near the Casino and Evans Head Airports, and*

*(ii) is in an ANEF contour of 20 or greater, and*

*(b) the consent authority considers is likely to be adversely affected by aircraft noise.*

Assessment commentary

The land is well outside the 20 ANEF contour shown on the map identified below. The Dept of Defence have raised a number of noise related issues which could be satisfactorily addressed by conditions of consent. Refer to **Attachment No. 7a**.

*(3) Before determining a development application for development to which this clause applies, the consent authority—*

*(a) must consider whether the development will result in an increase in the number of dwellings or people affected by aircraft noise, and*

Assessment commentary

In my opinion the land is well outside the 20 ANEF contour shown on the map identified below.

*(b) must consider the location of the development in relation to the criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021—2000, and*

Assessment commentary

In my opinion the land is well outside the 20 ANEF contour shown on the map identified below. The Dept of Defence have raised a number of noise related issues which could be satisfactorily addressed by conditions of consent. Refer to **Attachment No. 7a**.

*(c) must be satisfied the development will meet the indoor design sound levels shown in Table 3.3*

*(Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021—2000.*

Assessment commentary

As above.

*(4) In this clause—*

*ANEF contour means a noise exposure contour shown as an ANEF contour on the Noise Exposure Forecast Contour Map for the Casino and Evans Head Airports prepared by the Department of the Commonwealth responsible for airports.*

*AS 2021—2000 means AS 2021—2000, Acoustics—Aircraft noise intrusion—Building siting and construction.*

Assessment commentary

The DA SEE contains as; Appendix 20 a map titled 'Richmond Valley Council Evans Head Aerodrome Evans Head Aerodrome – 2025 ANEF Draft 2025 ANEF Contours, Dwg 41-14121-02 Rev C by GHD Pty Ltd, 21.4.2005. The plan is marked 'preliminary'.

The plan is not a map titled *Noise Exposure Forecast Contour Map for the Casino and Evans Head Airports prepared by the Department of the Commonwealth responsible for airports.*

Notwithstanding RVC has advised that the map is the correct map.

**15.11 NSW Government Coastal Policy 1997**

RVC has advised it understands the *Coastal Management Act 2016* repealed the Policy, though in 2014 when the DA was lodged cl. 92 of the EPA Reg 2000 required consideration of it as does.

The following (in *italics*) identifies in summary and comments on the strategic actions of the Policy that are relevant to control of development in the coastal zone.

*Natural Environment*

*Clause 1.2.5 Threatened species*

Assessment commentary

Refer to Sections 7.5, 10.4.2, 12.6.1, 14.6 and 15.8.3 and the assessment comments made in regard Clause 20(2)(p) of SEPP No. 71 and Clause 6.6 of the RVLEP 2012.

In my opinion the assessment and proposed mitigation measures in regard to conservation of threatened species is not adequate.

*Clause 1.2.7 Threatening processes*

Assessment commentary

Refer to Sections 7.5, 10.4.2, 12.6.1, 14.6 and 15.8.3 and the assessment comments made in regard Clause 20(2)(p) of SEPP No. 71 and Clause 6.6 of the RVLEP 2012.

In my opinion the assessment and proposed mitigation measures in regard to conservation of threatened species is not adequate.

*Clause 1.3.2 Non-point source of pollution*

Assessment commentary

Refer to Sections 10.4.7 and 14.10 and the assessment comments made in regard Clause 20(2)(o) of SEPP No. 71 and Part I9 of the RVDGP 2012.

In my opinion the assessment and proposed mitigation measures in regard to treatment of stormwater and potential for adverse impact on the water quality of the Evans River is not adequate.

*Clause 1.3.7 Water quality*

Assessment commentary

Refer to Sections 10.4.7 and 14.10 and the assessment comments made in regard Clause 20(2)(o) of SEPP No. 71 and Part I9 of the RVDCP 2012.

In my opinion the assessment and proposed mitigation measures in regard to treatment of stormwater and potential for adverse impact on the water quality of the Evans River is not adequate.

*Clause 1.3.8 Contaminated stormwater*

Assessment commentary

Refer to Sections 10.4.7 and 14.10 and the assessment comments made in regard Clause 20(2)(o) of SEPP No. 71 and Part I9 of the RVDCP 2012.

In my opinion the assessment and proposed mitigation measures in regard to treatment of stormwater and potential for adverse impact on the water quality of the Evans River is not adequate.

*Clauses 1.4.5 & 1.4.7 Assessment of coastline development proposals*

Assessment commentary

Refer to Section 14.8 and the assessment comments made in regard Clause 20(2)(p) of SEPP No. 71 and Clause 6.6 of the RVLEP 2012.

*Natural Processes & climate change*

*Clause 2.1.3 Physical and ecological processes*

Assessment commentary

Refer to Section 14.6 and the assessment comments made in regard Clause 5.21 of the RVLEP 2012.

In my opinion the consideration and assessment of the impacts of climate change, particularly in regard threat of bushfire is not adequate.

*Clause 2.1.4 Acid sulfate soils*

Assessment commentary

Refer to Section 14.5 and the assessment comments made in regard Clause 6.1 of the RVLEP 2012.

In my opinion the assessment of acid sulfate soils is not adequate.

*Clause 2.2.2 Sea level change*

Assessment commentary

The Concept DA does not include any assessment of the impact on sea level change.

*Aesthetic qualities*

*Clause 3.2.1 North Coast design guidelines*

Assessment commentary

The *North Coast Design Guidelines (1989)* in regard to subdivisions suggest the following in regard subdivision:

- *Good subdivision is responsive to the site.*
- *Rather than imposing a rigid patter of lots onto the site, an appropriate layout should be suggested by the natural features and topography.*
- *Using these site analysis principles, the subdivision should be designed to take advantage of the assets and avoid the problem of the site.*

Basic design principles recommended include:

Roads should:

- follow contours or run gently across slopes – the ridgeline and the majority of the associated sideslopes are excavated and majority of the ‘proposed residential footprint’ filled making it generally flat
- not travel to a long dead-end which may become a fire trap; often an alternative entry / exit will be needed – Iron Gates Dr is a dead-end road

Lots should:

- be suitable in size and layout to accommodate the proposed use and vary in size shape and type – the majority of the lots (87%) are less than 630m<sup>2</sup> and rectangular in shape
- be planned in size and shape in relation to existing vegetation and views, wind and the location of service and do not disturb existing trees or rock ‘formations’ unless absolutely necessary – all the trees in the ‘proposed residential footprint’ are removed
- not require expensive construction methods or extensive cut and fill for house sites – the ridgeline and the majority of the associated sideslopes are excavated
- not be completely contained in an area of high erosion, flood, or fire hazard – the land, ‘total development footprint’ and ‘proposed residential footprint’ are surrounded by high risk bushfire prone vegetation and Iron Gates Dr is flood prone.

Reserves and open space

- open space area should be usable, accessible, and attractive rather than remnant land – the proposed open space lots are not usable, accessible, or attractive.

DoPI&E (refer to **Attachment No. 2**) states that the proposed subdivision lacks clear design principles which arise from a thorough site analysis.

Refer also to Section 14.15 and the assessment comments made in regard Clauses 20(2)(a), 20(2)(b), 20(2)(d), 20(2)(f) and 20(2)(h) of SEPP No. 71.

In my opinion the subdivision proposed by the Concept DA does not achieve core design principles of the *North Coast Design Guidelines (1989)*. The site analysis undertaken is simplistic and inadequate and fails to inform, provide, or justify the overall design of the subdivision having regard to accepted urban design principles.

#### *Clauses 3.2.2 & 3.2.4 Design to ensure more compact, human scale towns*

##### Assessment commentary

The land is relatively remote from Evans Head and future residents will be ‘car dependent’.

#### *Cultural heritage*

##### *Clause 4.2.3 Aboriginal heritage*

##### Assessment commentary

Refer to Section 14.4 and the assessment comments made in regard Clause 20(2)(k) of SEPP No. 71 and Clause 5.10 of the RVLEP 2012.

In my opinion the proposed mitigation measures in regard to potential for adverse impacts on Aboriginal cultural heritage are not adequate.

#### **15.12 Richmond Valley Development Control Plan 2012**

The following provides comments in regard the relevant parts and provisions (identified in *italics*) of the *Richmond Valley Development Control Plan 2012* (RVDCP 2012).

#### **Part A-Residential Development**

##### *Part A Density maps*

##### Assessment commentary

The land is shown on Map A4 Evans Head as a M1-Low-medium density residential area.

The effect of the designation is that site coverage of the residential development should not have exceeded a ratio of 0.55:1 and floor space ratio of 0.7:1 if the residential development was 2 storeys and floor space ratio of 0.9:1 if the residential development was a 3 storey dual occupancy or residential flat building.

*(1) Foreshore Building Lines and Buffers*

*A foreshore building line of minimum*

- *15 metres in urban zones, and*
- *40 metres in rural zones*

*must also be observed for developments adjacent to foreshore areas (see Chapter I3 – Setbacks and Building Height).*

*Buffer distances in accordance with Chapter I11- LUCRA must also be observed where applicable.*

Assessment commentary

The proposed allotments are greater than 15m from the foreshore of the Evans River.

In my opinion the buffer distances recommended in Chapter I11 between the residential areas and native vegetation / habitat, ecosystem and wildlife corridors, estuaries and major waterways, wetlands or littoral rainforest are not provided.

**Part G-Subdivisions**

Refer to Sections 7, 10.4, 14.4, 14.5, 14.6, 14.7, 14.8, 14.9, 14.10 14.13, 14.15 14.16, 14.17, 15.2, 15.8.5 and 15.10.

The relevant Clauses of Part G-Subdivisions are identified below in *italics*.

*G3-Design standards / controls*

*Applicants are to comply with the controls unless it can be demonstrated that an alternative solution to all or any of the controls will be a better approach to meeting the objectives of this DCP.*

*(1) Site Analysis*

Assessment commentary

The site analysis plan provided as Appendix N to the *Revised Engineering Services and Civil Infrastructure Report* by Arcadis Consulting Pty Ltd does not provide the information required by Part I12 Context and site analysis.

*(2) Subdivision and road design*

*Subdivisions should be designed having regard to the environmental constraints of the site, having regard to:*

- *Koala Habitat,*
- *Acid Sulfate Soils,*
- *Contaminated Land,*
- *Flood Prone Land,*
- *Landform Modification,*
- *Coastal Hazards, and*
- *Bush Fire Hazard.*

Assessment commentary

The subdivision proposes removal of Koala food trees. The subdivision proposes extensive filling on land mapped as potentially containing acid sulfate soils. There has been no systematic geotechnical sampling and assessment for acid sulfate soils.

RVC's Environmental Health Officer has indicated that a contaminated land assessment has not been undertaken in accordance with NSW EPA *Consultants Reporting on Contaminated*



*Land - Contaminated Land Guidelines, SEPP No. 55 Remediation of Land* or RVC Policy 15.7 Management of Contaminated Land which defers to the *Regional Policy for the Management of Contaminated Land, May 2006* (now June 2019) for land upon which the existing dwelling is located (Lot 163 DP 831052).

There has been no systematic soil sampling for potential land contamination.

The subdivision involves the substantial and irreversible modification to the landform.

The land is mapped as containing Category 1 and Category 2 bushfire prone vegetation together with the 30m and 100m buffer to those categories. Refer to Sections 7.12, 10.4.11 and 14.7.

In my opinion the subdivision is not designed having regard to the constraints of the land. Refer also to **Attachment No. 2** and comments made by DoPI&E and the GANSW in regard to the amendment of the DA to a Concept DA and draft Master Plan.

*The road hierarchy of subdivisions should also reflect road function, and should be designed accordingly.*

*The layout of new roads should be designed so as to:*

- *provide road links to adjoining properties,*
- *facilitate the use of public transport,*
- *achieve efficient access to all lots,*
- *encourage safe levels of vehicle speed,*
- *provide adequate sight distances (particularly at intersections),*
- *provide efficient access for service vehicles (bushfire and garbage trucks),*
- *provide for safe and functional vehicle and pedestrian movement,*
- *adopt CPTED design principles (refer to Chapter 110), and*
- *provide for landscaping, utility services, driveways, mailboxes, street lighting, etc.*

#### Assessment commentary

Refer to Sections 7.2, 10.4.4 and 14.11.

There are no road links to adjoining properties as they are not zoned for urban use.

The *Revised Engineering Services and Civil Infrastructure Report* by Arcadis Consulting Pty Ltd, 23 July 2019 states that the road geometry is generally in accordance with the 'Northern Rivers Local Government's Development and Subdivision of Land, 2006' guidelines.

A bus route is identified in the *Traffic Report* prepared by TTM Consulting Pty Ltd. Options for 3 bus stops are shown, each within 400m of the majority of proposed allotments.

RVC's Development Engineer advised; *the bus route identified has not been in consultation with the local bus companies.*

All allotments have frontage to a proposed road. The design speed environment within the subdivision is max. 50km/hr and adequate sight distances provided.

The *Revised Engineering Services and Civil Infrastructure Report* provides sweep paths for an 8.8m long service vehicle (fire tender) manoeuvring at the northern entrance / exit of the fire trail, a 10.4 garbage truck manoeuvring in the cul-de-sac (Proposed Road 10) and 12.5m bus manoeuvring at the entrance roundabout.

The *Revised Engineering Services and Civil Infrastructure Report* shows provision of water sewer and stormwater drainage. The provision of electricity and street lighting is not detailed, including whether or not it will be an above or underground supply.

A CPTED assessment has been provided with the DA SEE and NSW Police Force have made recommendations which can be made conditions of consent.

Landscaping / tree planting in the road reserves is shown on the plans of the *Landscape Statement of Intent* by Plummer & Smith.

In my opinion the road design generally achieves the DCP guidelines for road hierarchy within subdivisions.

*The layout of main roads should follow a reasonably regular configuration to make the subdivision easy to navigate, and should:*

- *provide memorable places to aid navigation,*
- *provide people with directional choice to enable traffic to run smoothly and not confuse or overtly hinder thoroughfare,*

Assessment commentary

RVC's Development Engineer commented that; *the layout does not seem very confusing and that street naming will need to be undertaken to mitigate confusion.*

*Cul-de-sacs should be avoided, but be short in length if utilised.*

Assessment commentary

One cul-de-sac is proposed (Proposed Road 10). It is short in length and services 5 allotments only.

RVC's Development Engineer advised the following:

*The cul-de-sac will result in a garbage truck requiring to undertake a 3-point turn to adequately manoeuvre. The 'bulb' of the cul-de-sac appears to be approx. 17.5m in diameter. The minimum diameter for an urban residential cul-de-sac is 20.0m.*

*Lots are to be designed to allow the construction of a dwelling which does not involve more than 1 metre cut or fill, measured from natural ground level, outside the dwellings external walls.*

*Geotechnical reports are required for subdividing steep land.*

Assessment commentary

As a consequence of the earthworks all the proposed allotments will be generally level. There has been no geotechnical report undertaken for earthworks on the ridgeline and associated sideslopes.

*Subdivisions should be designed to minimise impacts on the natural environment and retain significant landscape features.*

Assessment commentary

As a consequence of the earthworks the ridgeline and the majority of the associated sideslopes within the 'proposed residential footprint' will be removed. All vegetation in the 'proposed residential footprint' will be removed.

The land containing the Littoral rainforest zoned C2, which cannot be developed for urban purposes is retained within proposed Lot 136 and Lot 137.

In my opinion the subdivision does not minimise impacts on the natural environment nor retain the significant landscape (topographic) features within the 'proposed residential footprint'.

*Subdivisions should incorporate regular sized lots to avoid clashes involving housing character and amenity.*

Assessment commentary

The majority of the allotments are 'regular' sized. Refer also to **Table No. 4**.

*It must be demonstrated that each allotment to be created, that is capable of being used for residential or rural residential development, has at least one suitable building site having regard to:*

- *flooding,*
- *effluent disposal,*
- *bush fire hazard,*
- *safe, practical, access between the building site and a formed public road, and*
- *readily capable of being connected to infrastructure and services.*

Assessment commentary

Building envelopes (10m x 15m) for a dwelling are shown on all allotments.

The allotments are proposed to have a minimum height of 3.3m(AHD). Assuming a slab or floor level height of 300mm the floor level of dwellings will achieve the flood planning level of 3.6m(AHD).

All allotments will be connected to the sewer.

The land is in a high risk bushfire area. Part of the recommended asset protection zones occur within the allotments adjacent to bushfire prone vegetation. In my opinion satisfactory arrangements for bushfire protection have not been made. Refer to Section 14.7.

Allotments can access the proposed public road network and will be able to be connected to services.

*(3) Energy Efficiency – Lot Orientation*

*Subdivisions should be designed to maximise solar access.*

*Where possible roads are to be orientated so that the majority of their length are within the range N20°W to N30°E or E20°N to E30°S.*

Assessment commentary

Forty three (43) of the allotments (25%) in the overall development have a general north-south orientation the remainder (132 - 75%) have an east-west orientation.

*On sloping sites, north-facing slopes improve opportunities for solar access while south facing slopes impose a penalty on solar access.*

*Accordingly, smaller lots should be concentrated on northern slopes and large lots on southern slopes.*

Assessment commentary

All the allotments will be flat.

*(4) Density (Minimum Lot Size) and dimensions*

*Subdivisions are not to produce lots which have areas less than that set out in the Lot Size Map.*

Assessment commentary

All proposed allotments have a size greater than 600m<sup>2</sup>.

*(a) Residential Subdivisions*

*Battle Axe Lots*

Assessment commentary

No 'battle axe' allotments are proposed.

#### *Minimum Frontage*

*Allotments should have a minimum frontage to a public road of 15 metres, to be measured at the front boundary building line.*

#### Assessment commentary

All allotments have a minimum frontage of 15m to the proposed public road network.

#### *Strata/Community Title*

#### Assessment commentary

Not applicable to the proposed Concept DA.

#### *Dual Occupancy*

#### Assessment commentary

Not applicable to the proposed Concept DA.

#### *(5) Services*

##### *(a) Urban Areas*

*Subdivisions in urban areas are generally required to provide infrastructure to all lots including:*

- *road;*
- *footpath;*
- *kerb and gutter;*
- *drainage (including interallotment drainage);*
- *reticulated sewer and water;*
- *telecommunications;*
- *street lighting; and*
- *electricity.*

#### Assessment commentary

Roads, kerb and gutter and stormwater drainage is provided.

The *Revised Engineering Services and Civil Infrastructure Report* indicates shared footpaths for the collector road (Road 5) is intended to be provided at the time of construction.

The construction of all footpaths within local roads are proposed to be postponed until the majority of the houses are constructed and occupied. No estimated time frame is provided nor arrangements suggested to ensure the footpaths are built.

Reticulated water and sewer are proposed to be provided.

No detail is provided in regard telecommunications, street lighting and electricity.

#### *(6) Stormwater Drainage*

*Stormwater drainage shall be designed and provided in accordance with Council's specifications.*

*The design details will need to be certified by Council before the drainage is provided, and will need to be completed to Council's satisfaction prior to the issue of the Subdivision Certificate.*

*Stormwater is to be gravity drained to Council's drainage system. In some circumstances inter-allotment drainage and easements over downstream properties may be required. This will necessitate a letter of consent from the owner(s) of the downstream properties to be submitted with the development application.*

*Drainage from sites should reflect the pre-existing or natural situation in terms of location, quantity, quality and velocity.*

*Water Sensitive Urban Design principles should be employed, particularly with larger subdivisions.*

Assessment commentary

The *Revised Engineering Services and Civil Infrastructure Report* proposes a 'rapid disposal method' which enables the discharge of stormwater run-off into the river where the water drains with the receding tide.

RVC's Development Engineer advised the following:

- *Stormwater, notably the 'bio-swale', has not been designed to Council specifications. Detailed design plans will be conditioned to be submitted to and approved by Council prior to approval for construction. It is likely that Council will require installation of a bio-retention rather than the 'bio-swale', which may alter stormwater management plan.*

In my opinion the stormwater management plan is unsatisfactory and the development is likely to discharge untreated stormwater into the Evans River.

*(7) Utility Services*

*Utility services must be extended to all lots within a subdivision in accordance with the following table (except for common property in community title and strata subdivisions):*

*Conditions on the development consent will outline how, when and to what standard, these services are to be provided.*

Assessment commentary

RVC's Development and Water and Sewer Engineers are satisfied that the Concept DA generally demonstrates that water and sewer utility services as required by the table can be provided to the proposed allotments. Other authorities provide electricity and telecommunications.

*(8) Erosion and Sediment Control*

*Subdivisions should be designed to minimize the disturbance of lands with topographical constraints.*

Assessment commentary

In my opinion the design of and the earthworks for the subdivision do not minimise the disturbance of the land.

*Conditions on the development consent will indicate whether erosion and sediment controls will be necessary, and if so, these controls will need to be in place before site works commence. The controls will need to be provided in accordance with Landcom (2004) Blue Book – Managing Urban Stormwater: Soils and Construction.*

Assessment commentary

RVC Development Engineer advised; *erosion and sediment controls have documented quite well in concept design plans and that controls will need to be in accordance with the "blue book".*

*(9) Street Tree Masterplan*

*A Street Tree Masterplan will be required for subdivisions on greenfield sites. The Masterplan aims to guide street tree planting, providing for a more appealing streetscape which complements its natural setting.*

Assessment commentary

The *Landscape Statement of Intent* by Plummer & Smith proposes street tree planting with 'native species to link the estate to the bush' which are identified in **Table No. 7**.

There is no consideration in the bushfire assessment of the street tree planting using 'native species to link the estate to the bush'.

*Planting proposed by the Masterplan is to be determined having regard to:*

- *site and dwelling boundaries,*
- *location and canopy of existing trees, noting any trees that overhang the site,*
- *adjacent streets and trees,*
- *any connection to open space networks or proposed public reserves,*
- *paving materials and drainage*
- *treatment,*
- *details of any existing fencing and walls, and*
- *location of underground services.*

Assessment commentary

The Concept DA *Landscape Statement of Intent* does not provide the detail required above.

*(10) Developer Contributions*

*Contributions levied on developments may include:*

- *section 64 contributions under the Local Government Act 1993 for such services as water, sewer and drainage, and/or*
- *section 94A contributions under the Environmental Planning and Assessment Act 1979 which consists of a 1% levee on the cost of the development.*

Assessment commentary

RVC's Development and Water and Sewer Engineers have advised developer contributions will be levied for community facilities and water and sewerage infrastructure.

*(11) Adoption of Northern Rivers Local Government Development Design and Construction Manuals*

*The Northern Rivers Local Government Development Design and Construction Manuals are utilised for the design and construction of civil engineering works associated with development approvals. The Manual is contained within 3 volumes being:*

*Development & Design Manual,  
Construction Manual, and  
Standard Drawings.*

Assessment commentary

The *Revised Engineering Services and Civil Infrastructure Report* indicates road geometry design has generally been undertaken in accordance with the *Northern Rivers Local Government's Development and Subdivision of Land, 2006*.

## **Part H - Natural resources and hazards**

Assessment commentary

Refer to Sections 7.5, 7.6, 7.9, 7.10, 7.11, 7.12, 10.4, 14.5, 14.6, 14.7, 14.8, 14.10, 14.15, 15.2, and 15.10.

The following identifies in *italics* the relevant provisions and controls for:

- H1 – Flood prone land
- H2 – Bushfire prone land
- H3 – Acid sulfate soils
- H4 – Natural resources

*H1 – Flood prone land*

*H1.1 Objectives*

*The objectives of this Chapter are:*

- *to align flood planning with the NSW Government's Flood Prone Land Policy.*



- *to reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone property, and to reduce private and public losses resulting from floods, utilising ecologically positive methods wherever possible.*
- *to encourage the use of flood prone land for suitable development types in order to maximise a valuable resource for public and private purposes which might otherwise remain unutilised.*
- *to encourage suitable development compatible with flood hazard. Appropriate land uses may be incorporated into areas that are inundated infrequently, and present minimal impacts resulting from flood water immersion.*
- *to adopt a flood planning approach which takes into account social and environmental considerations alongside economic benefits and approach the most objective balance.*
- *to make allowances for reducing the impact of flooding and flood liability on existing developed areas through flood mitigation works and measures when they are achievable from a financial and engineering perspective.*
- *to implement and regularly review development and building standards to ensure maximum development opportunity is promoted relevant to flood impacts.*

#### Assessment commentary

In my opinion the Concept DA is not consistent with the objectives relating to:

- NSW Government's Flood Prone Land Policy and Flood Planning Manual as Iron Gates Dr is the only means of evacuation and is flood prone or
- reduction of the impact of flooding as a flood study of the impact of filling and retaining the 'proposed residential footprint' has not been undertaken.

#### *H1.2 Design principles*

##### *1 Richmond Valley Local Environmental Plan 2012*

#### Assessment commentary

Clause H1.2 requires the following:

*habitable rooms to be erected above the Flood Planning Level (being the 1 in 100 year ARI flood level plus a freeboard of 500mm).*

**Note1.** *No new residential development is permitted where the depth of the 1 in 100 ARI flood level is greater than 2 metres.*

All allotments are to be filled to a minimum level of 3.3m(AHD), which when assuming a slab 300mm thick will provide for residential accommodation at the flood planning level.

The flood study titled '*Evans River Flood Study – Final report*' by BMT WBM November 2014 is provided in the [\*Revised Engineering Services and Civil Infrastructure Report\*](#).

The flood study was prepared for RVC and supplied with the Concept DA shows the land is not subject to the 1 in 100 year ARI flood event. The study is not specific to the land.

The flood study shows that sections of Iron Gates Dr (particularly near wetland areas) are in a 'high hazard' area, with flood levels between 2.3m(AHD) and 2.4m(AHD), likely to be inundated to depths between 0.66m to 0.76m.

The flood study shows lower sections of the land including internal roads constructed under DA No. 1992/149 and all of Iron Gates Dr is subject to inundation in the 1 in 500 year ARI flood event.

RVC's Development Engineer advised the following:

- *Current 1% AEP design flood event varies 2.4m - 2.5m AHD on Iron Gates Drive. However emergency evacuation of a permanent large scale residential development must take climate change in consideration.*
- *The 1% AEP design flood event with climate change is 3.0m AHD at Iron Gates Drive.*

- *The 2% AEP design flood event with climate change is 2.8m AHD at Iron Gates Drive.*
- *The 5% AEP design flood event with climate change is 2.7m AHD.*
- *It is shown that the 5% AEP design flood with climate change will be in excess to the current 1% AEP design flood event.*

## *2 Development control planning measures*

### Assessment commentary

Not applicable to the Concept DA.

## H2 – Bushfire prone land

### *H2.1 Objectives*

*The objectives of this Chapter are to:*

- *describe bushfire prone land*
- *explain the development assessment process for development applications involving bushfire prone land*

### Assessment commentary

Refer to Section 14.7.

The land is mapped as containing bushfire prone vegetation.

### *H2.2 Design principles*

### Assessment commentary

Clause H2.2(1) sets out legislation and process in regard bushfire assessment.

### *H2.3 Development standards*

### Assessment commentary

Clause H2.3(1) sets out legislation and process in regard bushfire assessment.

## H3 – Acid sulfate soils

The introduction to the clause in part states:

*Acid Sulfate Soil (ASS) normally occurs in low lying coastal areas with a high water table and subject to occasional flooding. The soil may be located at varying depths ranging from the surface to several metres deep. If left undisturbed these soils are relatively harmless, however if exposed to air, through excavation, draining, dredging or dewatering, oxygen reacts with pyrite in the soil to produce sulfuric acid.*

*Sulfuric acid can dissolve metals in soil such as iron and aluminium and contaminate waterways. Acid water also corrodes concrete and aluminium, rusts steel, kills water bugs, causes red spot disease in fish and contributes to fish kills. Plant nutrients are restricted and toxic metals may kill plants or reduce growth.*

*Excavated soil ranges from black gel to dull grey clay to grey sands and peat and may contain yellow or orange streaks. Vegetation may consist of water tolerant species such as sedges, rushes or paperbark or in extreme situations the soil could be scalded bare and coloured red, orange or yellow. Water in drains or creeks may be crystal clear, cloudy white, yellow, orange or blue/green, while orange iron floc, black sediment or green copper may be present across the bed and banks.*

### *H3.1 Objectives*

*The objectives of this Chapter are:*

- *to ensure effective management of areas affected by acid sulfate soils.*
- *provide guidance to landowners, consultants and the general community on the procedures involved in the management of areas affected by acid sulfate soils.*

- *to ensure that activities located within an area of acid sulfate soils risk are identified.*
- *to outline the preliminary assessment process for acid sulfate soils.*
- *assist with the preparation of an acid sulfate soil management plan, where necessary, where the nature of development poses an acid sulfate soil risk.*

Assessment commentary

Refer to Sections 7.6, 14.5 and 15.10.

In my opinion the investigation and assessment for acid sulfate soils undertaken for the Concept DA is not satisfactory.

*H3.2 Design principles*

*1 Richmond Valley Local Environmental Plan 2012*

Assessment commentary

Clause H3.2(1) sets out legislation and process in regard assessment for acid sulfate soils.

Refer to assessment comments made in regard Clause 6.1 of the RVLEP 2012.

*H3.3 Exceptions to requiring development consent*

Assessment commentary

Not applicable to the Concept DA.

*H3.4 Development Application procedure*

Assessment commentary

Clause H3.4 sets out legislation and process in regard assessment for acid sulfate soils.

*H3.5 Soils assessment and/or soil management plan*

Assessment commentary

In my opinion the investigation and assessment for acid sulfate soils undertaken for the Concept DA is not satisfactory.

*H3.6 -3.9 Consultation*

Assessment commentary

Clause H3.6 to H3.9 sets out legislation, process, and consultation in regard assessment for acid sulfate soils.

RVC has referred the Concept DA to DoPI&E Biodiversity and Conservation Division and Dept of Primary Industries – Agriculture and Dept of Primary Industries–Fisheries.

RVC's Environmental health Officers has provided comments in regard to the assessment for acid sulfate soils.

**Part H4 – Natural resources (NRS)**

Refer to Sections 7.5, 7.6, 7.9, 7.10, 7.11, 7.12, 10.4, 14.5, 14.6, 14.7, 14.8 14.10, 14.15 15.2, and 15.10.

The following identifies in *italics* the relevant provisions and controls for the following Clauses of the RVLEP 2012 relating to natural resources:

- clause 6.6 Terrestrial biodiversity
- clause 6.7 Landslide risk
- clause 6.8 Riparian land and watercourses
- clause 6.9 Drinking water catchments
- clause 6.10 Wetlands

#### H4.1 Objectives

The objectives of this Chapter are to:

- *provide protective responses and mitigation measures for sensitive environmental locations throughout Richmond Valley.*
- *provide consistency as to how protection of natural resources are implemented throughout Richmond Valley LGA.*
- *provide easily accessible information and responses as to how important environmental considerations may be managed effectively.*
- *require adequate design considerations to avoid unacceptable adverse impacts upon sensitive environs.*

#### Assessment commentary

In my opinion the Concept DA is not consistent with the objective to 'require adequate design considerations to avoid unacceptable adverse impacts upon sensitive environs', the site analysis and design of the subdivision fails to account for all the constraints of the land.

#### H4.2 Design principles

Clause H4.2 sets out legislation and process in regard natural resources.

##### *(a) Terrestrial Biodiversity*

#### Assessment commentary

Refer to comments made below.

##### *(b) Landslip Risk*

#### Assessment commentary

The land is not mapped as potentially at risk of landslip.

##### *(c) Riparian Land and Watercourses*

#### Assessment commentary

Refer to comments made below.

##### *(d) Drinking Water Catchments*

#### Assessment commentary

The land is not in a drinking water catchment.

##### *(e) Wetlands*

#### H4.4 Design standards

##### *(1) Determine if any Natural Resource is to be affected by the proposal*

#### Assessment commentary

Clause H4.3 requires special consideration and assessment if development is proposed within mapped natural resource areas.

##### *(a) Wetland areas*

#### Assessment commentary

Clause H4.3(1)(a) requires:

*Development within a mapped wetland, or that is within 50 metres and drains into the wetland, will need to assess, shall be required to incorporate within the development a means to isolate the risk, or the means, that pollutants may impact upon the water quality.*

Development is proposed within 50m of wetland areas both within the 'proposed residential footprint' and along Iron Gates Dr. Refer to **Attachment No. 9** and copied maps titled 'Impact and Revegetation Areas' and 'Revised Impact on Vegetation Communities'.

In my opinion the potential for adverse impact on wetland areas has not been satisfactorily resolved.

In my opinion the Concept DA does not include a sufficiently detail acid sulfate soils assessment and groundwater assessment having regard to the filling of the land. The stormwater management plan proposes no on-site detention and a 'rapid disposal method' which enables the discharge of floodwater run-off into the river where the water drains with the receding tide.

*(b) Riparian lands and watercourses*

Assessment commentary

Clause H4.3(1)(b) requires:

*Development within 50 metres of a watercourse is likely to result in removal of vegetation, destabilisation of banks, polluting of the waterway, increase recreational activities, increase water removal or any number of similar increased impact.*

- *Harmful elements of the development should be resited away from sensitive areas. Stormwater may be required to be redirected in a way where concentrated flows cannot erode stream or river banks.*

Assessment commentary

Refer to Section 14.17.

Development is proposed within 50m of vegetation of conservation significance. The impacts of the development on the biodiversity values of the 'total development footprint', 'proposed residential footprint' and Iron Gates Dr and adjoining land is not satisfactorily resolved.

*(c) Steep lands and associated land slide risk*

Assessment commentary

Not applicable to the land.

*(d) Terrestrial biodiversity—habitat corridors*

Assessment commentary

Clause H4.3(1)(d) states:

*Habitat corridors are identified within the LEP mapping as the likely pathways for fauna to move between important conservation areas. An example is where a proposal may seek to remove large tracts of vegetation which will disrupt the likelihood of fauna utilising these pathways. In this circumstance, the proponent may be required to:*

- *relocate the proposal elsewhere on the allotment away from the denser areas of vegetation and wildlife corridor, or*
- *be required to revegetate compensatory areas of vegetation which will provide a continuation of the corridor around the development.*

Assessment commentary

In my opinion the impacts of the development on the biodiversity values of the 'total development footprint', 'proposed residential footprint' and Iron Gates Dr and adjoining land is not satisfactorily resolved.\

The existing fragmentation of the areas of littoral rainforest communities within the land will be exacerbated.

*(e) Biodiversity—vegetation*

Assessment commentary

Clause H4.3(1)(e) sets out consultation process in regard vegetation with a high environmental value.

## Part I-Other Considerations

The following identifies in *italics* a summary the relevant provisions and controls for:

- I1 – Heritage
- I2 – Development in on over or under a public road
- I5 – Landscaping guidelines
- I8 – Social impact assessment
- I9 – Water sensitive urban design
- I10 – Crime prevention through environment design
- I11 – Land use conflict risk assessment
- I12 – Context and site analysis
- I15 – Notification and Advertising

### Part I1 Heritage

#### *I1.1 Objectives*

*The objectives of this Chapter are to:*

- *recognise the heritage of Richmond Valley Council area,*
- *provide guidance on the implementation of the heritage provisions of the LEP,*
- *recognise the people of the Bundjalung Nation as the first inhabitants of this area and that the area is rich in cultural heritage,*
- *acknowledge the Due Diligence Code of Conduct for the Protection of Aboriginal Objects and encourage all applicants and land owners to follow these guidelines.*

#### Assessment commentary

Refer to Section 14.4 and assessment comments made in regard Clause 5.10 of the RLEP 2012. In my opinion the potential for adverse impact on Aboriginal cultural heritage is unresolved.

#### *I1.2 General principles*

#### Assessment commentary

As above.

#### *I1.3 Development standards – heritage general*

#### Assessment commentary

Adequate arrangements are proposed for the protection of the grave site of Thomas Paddon.

#### *I1.3 Development standards – Aboriginal cultural heritage*

*Clause 5.10(8) of the Richmond Valley LEP requires development consent to carry out development within an Aboriginal place of heritage significance. The dictionary defines an Aboriginal place of heritage significance as land identified in an Aboriginal heritage study adopted by Council. At this point Council has not undertaken an Aboriginal heritage study. It is a high priority within Council's Community Strategic Plan but subject to resourcing. As such, and for the purposes of the LEP, clause 5.10(8) will be ineffective until such time as a Study has been prepared, undergone community consultation, been accepted by the Aboriginal community and adopted by Council.*

#### Assessment commentary

RVC has not undertaken an Aboriginal heritage study.

### Part I2 Development in on over or under a public road

#### *I2.1 Objectives*

*The objectives of this Chapter are to:*

- *identify development standards for various types of construction where erected in, on, over or under a public road, and*



- *outline Council's administrative requirements for the erection of structures in, on, over or under a public road.*

#### Assessment commentary

The objectives are not relevant to the Concept DA.

### *12.2 Design principles*

#### *(1) Ownership of Public Roads*

#### Assessment commentary

The ownership of and assets within Iron Gates Dr is unclear. Mills Oakley (16 Oct. 2016) are of the opinion that Iron Gates Dr is owned by RVC. Refer to **Attachment No. 8**.

RVC have advised; *it has never formally accepted the assets within Iron Gates Dr. Notwithstanding works are required in the road reserve, which require an application to RVC pursuant to s. 138 of the Roads Act 1993. Upon satisfactory completion of works RVC will assume ownership of them and the proposed public roads within the subdivision.*

#### *(2) Roads Act approvals*

#### Assessment commentary

An application to RVC pursuant to s. 138 of the *Roads Act 1993* is required for works (refer to Section 10.4.1) in Iron Gates Dr.

### Part I3 Setbacks and building height

#### *13.1 Objectives*

*The objectives of this Chapter are to:*

- *adopt consistent front building line setbacks throughout the LGA that provide for streetscape and neighbourhood amenity, while having regard to physical constraints as may occur.*
- *adopt minimum side and rear boundary setbacks having regard to neighbourhood amenity, height, design and scale of proposed development, and the Building Code of Australia ("BCA").*
- *adopt a foreshore building line to setback development fronting waterways so as to ensure that it will not impact on natural foreshore processes or affect the significance and amenity of the area.*
- *establish a building height plane to minimise the impact of development upon neighbouring sites from taller construction.*

#### Assessment commentary

The relevant objective relating to the foreshore building line is achieved, the other objectives do not apply to the Concept DA.

### *13.2 Design principles*

#### *(c) Foreshore Building Line Setbacks*

*Foreshore Building Line Setback is measured from the shoreline of waterways having either a:*

- *W1 Natural Waterways, or*
- *W2 Recreational Waterways,*

*zoning on the Richmond Valley Local Environmental Plan 2012 – Land Zone Map.*

#### Assessment commentary

The Evans River is zoned W1 and the setback development standards apply.

The proposed allotments are greater than 15m from the foreshore of the Evans River.

In my opinion the buffer distances recommended in Chapter I11 between the residential areas and native vegetation / habitat, ecosystem and wildlife corridors, estuaries and major waterways, wetlands or littoral rainforest are not provided or achieved.

### *13.3 Development standards*

#### *(1) Front building line Setbacks*

##### *(e) Bush fire APZ considerations*

*The Asset Protection Zone should be contained within the boundaries of the land and therefore represents the minimum setback, unless a larger setback is required by this Chapter or a development specific chapter of this DCP.*

##### Assessment commentary

Refer to Section 14.7.

The asset protection zones provided within:

- the fire trail is located for approx. 12m west into Lots 1 to 20 and 60
- Proposed Road 1 is located for approx. 6m south into Lots 61 to 71
- Proposed Road 1 is located for approx. 6m west into Lots 72 to 87
- Proposed Road 1 is located for approx. 6m west into Lots 153 to 159
- Proposed Road 5 is located for approx. 6m south into Lots 96 and Lots 107 to 112
- Proposed Road 6 is located for approx. 6m west into Lots 96 to 101
- Proposed Road 6 is located for approx. 5.5m east into Lots 127 to 133
- Proposed Road 11 is located for approx. 12m east into Lots 184 and 185 and
- Proposed Road 22 is located for approx. 6m south-west into Lots 87 to 97, Lots 36 to 38 and Lot 59 and Lot 1.

The asset protection zones are not wholly located within either proposed public reserves or road reserves.

#### *(2) Side and Rear Setbacks*

##### *(b) Bush fire APZ considerations*

*The Asset Protection Zone should be contained within the boundaries of the land and therefore represent the minimum setback, unless a larger setback is required by this Chapter or a development specific Chapter of this DCP.*

##### Assessment commentary

Refer above.

#### *(3) Foreshore Building Line Setbacks*

*The Foreshore Building Line Setback shall apply to all land fronting rivers, creeks, streams, waterways, or estuaries having a:*

- *W1 Natural Waterways, or*
  - *W2 Recreational Waterways,*
- zoning under the Richmond Valley Local Environmental Plan 2012 – Land Zone Map.*

##### Assessment commentary

The minimum foreshore setback for development in the R1 zone is 15m. Allotments are greater than 15m from the Evans River.

#### *(b) Controlled Activities within 40 metres of Waterfront Land*

*Section 91(2) of the Water Management Act 2000 requires approval to undertake controlled activities, being the:*

- *erection of a building or the carrying out of a work, Ø removal of material or vegetation from land,*
- *deposition of material on land, or*

- *carrying out of any other activity that effects the quantity or flow of water in a water source, within waterfront land.*

#### Assessment commentary

Referral comments have been made by NRAR. Refer to Section 12.5 and **Attachment No. 7a.**

### Part I5 Landscaping guidelines

#### *I5.1 Objectives*

*Landscaping serves to provide a number of important development objectives within Richmond Valley. Good landscaping provided in conjunction with new development;*

- *Facilitates the integration of proposed development into the surrounding streetscape or rural environ;*
- *Presents a new development favourably and introduces the proposal into a neighbourhood in a manner which will promote acceptance;*
- *Contributes to native flora and supporting fauna (both urban and rural) in the environ in which the development is proposed and furthers Environmentally Sustainable Development principles;*
- *Integrates an important component of inter-allotment design by providing essential infiltration areas, as necessary for achieving Water Sensitive Urban Design (WSUD) principles;*
- *Embellishes a new development aesthetically and softens the impact visually of individual components, and the overall design as a whole; and*
- *Provides essential leisure and recreational opportunities as part of the development, promoting health and wellbeing of residents and employees.*

#### Assessment commentary

Generally the *Landscape Statement of Intent* satisfies the objectives. However, no regard of the landscape statement is provided for in either; the fauna and flora assessments, bushfire assessment for the subdivision, crime prevention assessment or engineering report in regard provision of footpaths.

#### *I5.2 Landscaping principles*

#### Assessment commentary

Not applicable to the Concept DA.

### Part I8 Social impact assessment

#### Assessment commentary

The DCP does not require social impact assessment for subdivision of any size. However in my preliminary review of the DA in Feb. 2019 I provided the following comments:

*There has been no social impact assessment undertaken for the DA. The community consultation undertaken for RVC's Settlement Strategy for Evans Head indicates that;*

- *lack of public transport in the area*
- *the need for youth recreation facilities in the town*
- *the cost of rates*
- *concern about development planning*
- *need for subsidised housing*
- *requests to upgrade the sewerage system and*
- *wishes to improve water supply*

*were reoccurring social issues for the local community.*

*The settlement strategy states that RVC's Social Plan indicates; isolation, services, housing, health, child protection and education, transport, provision of outreach services and telecommunications are important social issues for Evans Head and population.*

*The Settlement Strategy identifies the following limitations / constraints at Iron Gates:*

- *Environmental protection*
- *SEPP No. 71*

- Provision of bushfire asset protection zones
- Airfield runway and safety and
- Pygmy perch habitat.

*The Crime Prevention Through Environmental Design (CPTED) assessment needs to be re-considered to address the issue of hiding and entrapment in areas within the subdivision that are to remain heavily vegetated.*

*Irrespective of what is stated in RVC's DCP controls for social impact assessment the DA is a major development. The additional population has the potential to increase demand for and stretch a range of existing federal, state, local government and non-government / community services and infrastructure (e.g. aged, employment, youth, transport, fire protection, recreation, policing & emergency services) and create demand for new services and infrastructure.*

*A social impact assessment is required for the DA and should be undertaken in accordance with RVC and industry best practice guidelines and provided with the consolidated comprehensive DA documentation.*

### **18.1 Objectives**

#### Assessment commentary

In my opinion the social impact assessment for the concept DA does not achieve the following objectives of Clause 18.1:

- *a concise checklist to determine whether social impact Provide assessment is required as part of a development proposal or application.*
- *Provide for qualitative assessment of social impacts within an application or proposal accurately interpreting the possible and likely impacts upon a social sector or community as a whole. The social consideration is required to balance environmental and economical considerations and provide a balanced and integrated assessment of all impacts.*
- *Allow for easy identification of the social constituents within a community likely to be impacted by a proposal or development. If the proposal is permitted to proceed, monitoring of possible impacts upon the identified stakeholders may take place over the lifespan of the development.*
- *Social Impact Assessment should determine conditions and procedures which need to be followed to offset possible negative social impacts resulting from of the proposal. Precautionary measures are required to be anticipated by the proponent that can then be conditioned on any consent Council may grant. Conditions may be interpreted and negotiated between Council and the proponent, however it required the proponent suggest mediating measures within the SIA. This section of the DCP should be read in conjunction with and regard for Clause 1.2 of the Richmond Valley Local Environmental Plan 2012 (the LEP)*
- *Provide for additional advertising and notification procedures.*

### **18.3 Design principles - SIA**

#### Assessment commentary

The proposed development is a large subdivision which has generated over the years considerable community discussion. It was appropriate that a 'high level' social impact assessment be undertaken for it.

### **18.4 Design standards - SIA**

#### Assessment commentary

The following are the requirements for a 'high level' social impact assessment.

- *Minimum Requirements for Social Impact Assessment as per development stipulated within 18.3(2)(a)).*

- *The SIA should detail whether any of the main considerations above relate to the proposal or the land location. A comprehensive response to each of the questions within 18.3(1) will be required, and in instances where an affirmative is recorded, the applicant shall provide a mitigating solution to be incorporated into the design and/or operating procedure of the development. Particular attention to detail should be provided in response to the following criteria:*
- *Is the proposal likely to impact upon neighbourhood amenity and community meeting places (including pedestrian commuting conduits, parklands, etc)?*
- *Is the proposal likely to create any element of security or risk for any occupants, nearby residents or passing pedestrians?*
- *The SIA is required to outline all potential impacts upon adjoining landuses and key stakeholders after completing a comprehensive scoping component to identify all impacted stakeholders. The SIA must be prepared by a suitably qualified or specialist person and reference best practice principles and other contemporary studies.*
- *The SIA shall incorporate a record of consultation with immediate neighbouring land-uses and key stakeholders. Comments and issues raised should be documented preferably written and signed 'letterhead' with responses from the applicant as to how the issues raised support the development, or suggest mitigating measures which may be incorporated to lessen the impact of the issue raised.*
- *The applicant is required to provide a comprehensive analysis of all potential impacts identified as a result of in-depth analysis of the location and active/passive use of the proposal site and surrounds. All impacts should be reported alongside all impacts resulting from community & stakeholder consultation. The proponent is also required to present suggested impact minimisation of all perceived impacts.*
- *In addition to other SIA requirements listed here, consideration should also be made regarding the following:*
- *impact upon particular social groups, such as indigenous, children, aged, ethnic, youth, persons with a disability, etc*
- *social equity (in particular any potential for any disadvantaged groups to be displaced or further disadvantaged).*
- *whether some form of ongoing monitoring should be proposed for the early duration of the proposal, and if so, how a review of impacts can influence management practices. A conditional consent might require monitoring and review of potentially high social impact developments after a nominated period of time.*
- *a Community Focus Meeting may be appropriate to scope potential impact issues and all affected stakeholders. In exceptional circumstances it could be advantageous to hold further focus meetings as a monitoring and facilitating tool. The outcomes of successfully run Community Focus Meetings would provide Terms of Reference (TOR) for accurate predictive modelling within SIA presented alongside a development application.*
- *some degree of quantitative (statistical) analysis may be useful to demonstrate the likelihood of impacts recognised within the TOR within the SIA.*

#### Assessment commentary

In my opinion the social impact assessment for the Concept DA does not satisfactorily address the requirements, in particular those regarding community consultation.

## Part I9 Water sensitive urban design

### I9.1 Objective

*The objective of this Chapter is to ensure that adequate water quality management principles are incorporated into development design and this is carried through into the construction phase.*

RVC's Development Engineer made the following general comments:

- Water Sensitive Urban Design (WSUD) is the application of 'best practice' stormwater management principles to maintain, protect and improve waterway health and mitigate the impact of development on the natural water cycle. This shall achieve neutral or beneficial effect on the natural environment, adjoining property or infrastructure and the receiving constructed system, waters, or wetlands.*
- 'WSUD' utilises on-site collection, treatment and harvesting of stormwater flows as part of an integrated 'treatment train'. It provides opportunity for detention and harvesting of stormwater, reducing potable water demand, discharge volume and pollutant load of stormwater discharge.*
- The objectives of stormwater management are to:*
  - ensure traditional and/or WSUD principles (as approved by Council) are applied to the design and construction of development projects*
  - reduce demand for potable water from the town water supply*
  - ensure stormwater discharge from development projects is controlled to mitigate adverse impact of volumetric discharge and water quality to achieve neutral or beneficial effect on the natural environment, adjoining property or infrastructure and the receiving constructed system, waters, or wetlands*
  - utilise natural flowpaths and incorporate on-site treatment*
  - ensure water management is a key consideration in the urban design process to maximise opportunities for water reuse and ensure stormwater management infrastructure is integrated within the surrounding environment*
  - protect and maintain ecosystems, property, and infrastructure within, adjacent to and downstream of the development site*

RVC's Development Engineer made the following specific comments:

*The development proposes Stormwater Quality Improvement Devices (SQIDs) being bio-retention measures (bio-swale and bio-retention basin).*

*On-property infiltration pits at each allotment are also proposed, these may be defined as private SQIDs.*

*While the bio-swale is considered not appropriate and will require change to a bio-retention basin, the scale of treatment is considered to be equal for the purposes of design review.*

*This modelling does not take into consideration rainwater tanks (likely acting as onsite detention) for each property as required by BASIX, which will reduce flow (ML/yr) and may further treat TSS.*

*The WSUD target reduction parameters and modelling results are:*

<i>Contaminant</i>	<i>Target reduction</i>	<i>Modelling results (catchment A)</i>	<i>Modelling results (catchment B)</i>	<i>Modelling results (catchment C)</i>
<i>Flow (ML/yr)</i>	<i>(Pre) post</i>	<i>(17.6) 9.22</i>	<i>(87.9) 45.1</i>	<i>(121) 120</i>
<i>Coarse Sediment (TSS)</i>	<i>80%</i>	<i>81.1%</i>	<i>80.1%</i>	<i>81.2%</i>
<i>Total Phosphorus</i>	<i>45%</i>	<i>67.7%</i>	<i>59.5%</i>	<i>55.4%</i>
<i>Total Nitrogen</i>	<i>45%</i>	<i>52.4%</i>	<i>64.2%</i>	<i>45%</i>
<i>Litter (Gross Pollutants)</i>	<i>70%</i>	<i>100%</i>	<i>95.5%</i>	<i>100%</i>



*MUSIC modelling of the above meets the current parameters outlined in I9 WSUD, hence typical treatment of water to legal point of discharge is adequate. Particular details of the design requirements required through other parts of I9 will be discussed.*

## **I9.2 General principles**

### **(1) Waste Management Hierarchy**

#### **(2) Treatment Train**

##### **Assessment commentary**

RVC's Development Engineer made the following comments:

*As land is being developed, the avoidance of waste management is not possible. From WSUD, reduction of waste management is achieved by minimising design flows. This is accomplished by capping the post-development flows to equal to or less than pre-development flows, in other terms no increase in stormwater runoff.*

*Re-use and recycling measures are completed on property by ways of capturing water in a rainwater tank (5kL requirement in DCP for a typical dwelling, exceeding minimum BASIX requirement).*

*The disposal of stormwater is what will reach the legal point of discharge, WSUD treatment measures result in this water disposal meeting minimum requirements for quality.*

*As seen in Part I9.1 detention measures on each allotment along with infiltration pits form primary and secondary treatment, while bio-retention basins provide secondary and tertiary treatment.*

## **I9.3 WSUD Principles**

### **(1) WSUD Road Design and Lot Layout Principles**

##### **Assessment commentary**

RVC's Development Engineer made the following comments:

- *Given the development site being filled appropriately to mitigate flood impacts (to a 1% AEP event), there is considerable cut and fill.  
Some cut/fill necessary for the development to be practical, some not so necessary.*
  - *Lots shape proposed to be relatively flat and drain to road for future development with retaining walls on boundary where required – not necessary.*
  - *Large cut into natural hill (some 6.5m+) to better balance cut/fill for development – likely not necessary.*
  - *Large fill in north-east section of development (some 2m+) to drain (by gravity) stormwater to river – considered necessary.*
    - *Noted that cut/fill plan of development can be altered to better suit this requirement.*
    - *What is the quality of the deep excavated material for reuse onsite? will they encounter hard rock?*
      - *I have not seen any borehole testing of deep soils proposed to be excavated for reuse onsite.*
- *Cut/fill proposed will largely alter flow direction of water.*
- *Uncertain if the development is encountering natural drainage lines, if so approvals from relevant authorities is needed.*
- *Peak post-development stormwater outflow is required to be equal to or less than peak pre-development stormwater outflow from development site*
  - *detailed design showing this is needed and generally required pre SWC but should be provided in an SWMP/SMP.*

- *Road to be bounded by kerb and guttering, no swales or infiltration pits proposed in road reserve. Landscaping requirements are typical through detailed design of development.*
- *Minor and major events have been considered, WSUD quality measures to 20% AEP event (minor). Streets designed to be overflow paths for major (1% AEP) events.*
  - *detailed design showing this is needed and generally required pre SWC.*
- *Major cut/fill resulting in low lying C2 zoned areas where drainage is likely an issue, especially if brought through designed stormwater system for development.*
  - *Noted that redesign of how C2 zoned areas drain is likely needed.*

In my opinion the road design and lot layout does not achieve the following WSUD principles:

- *The design should promote the retention of the existing land form. Cut and fill is to be avoided and minimised where possible.*
- *The design and layout should retain water courses.*
- *The design should minimise stormwater runoff and peaks by avoiding the channelling and concentration of flow and making use of existing site topography, natural drainage lines, soils and vegetation to treat, detain, retain and infiltrate stormwater.*
- *Street layout should be designed to fit the topography so as to avoid the requirements for cut and fill.*
- *Streets are not to be constructed within natural drainage lines.*
- *Street design is to take into account the cleansing of stormwater through the use of landscaping, grass swales, filter strips, infiltration pits and oil/grit separators.*

## *(2) WSUD Drainage Principles*

### Assessment commentary

RVC's Development Engineer made the following comments:

- *Cut/fill will largely alter flow direction of water.*
  - *Drainage system open spaces include infiltration pits on property & Bio-retention basins.*
  - *Installation of culvert cell system under road 5 results in better natural drainage of undisturbed C2 zoned area along with improved habitat connectivity.*
  - *Watercourses are somewhat retained as legal point of discharge is unchanged, however cut/fill largely will alter flow direction of water.*
  - *Overland flow path shown to be road network,*
    - *detailed design showing this is needed and generally required pre SWC.*
  - *WSUD quality treatment adequately provided in design via MUSIC modelling*
- Kerb and guttering proposed for all roads, hence no real primary treatment for rainfall on road network other than in bio-retention basins, should be adequate.*
- *There is some road infrastructure that by-passes bio-retention basins, they may need to have some form of treatment.*

*I don't believe there is energy dissipation devices proposed where required*

- *detailed design showing this is needed and generally required pre SWC.*

In my opinion the stormwater management plan does not achieve the following WSUD drainage principles:

- *The trunk drainage design should be based on a system of natural watercourses and floodplains where applicable designed to mimic natural conditions and in particular natural flows as far as possible and to minimise maintenance.*
- *Water and stormwater quality improvement devices such as detention ponds, constructed wetlands, gross pollutant traps, litter traps, sediment ponds should be placed off line to maintain the physical integrity and aesthetics of the creek system.*
- *Indigenous vegetation should be retained and rehabilitated.*

- Stormwater outlets and discharge into bushland areas are to be fitted with energy dissipation devices and protection so as to prevent scour and erosion.
- Where existing natural watercourses are being used to convey stormwater from a development, particular attention must be given to the low flow situation to maintain the existing moisture levels that the flora and fauna are accustomed to and dependant upon.

#### 19.4. Water Quality Controls

##### (2) Objectives

The objectives of this element are to:

- Protect the values and quality of receiving waters for human (commercial, recreational, aesthetic, public health) and ecological purposes.
- Promote and implement stormwater quality source control.

##### (3) Performance Targets

Targets for stormwater quality for all applicable development are provided in Table 19.1.

##### Assessment commentary

RVC's Development Engineer made the following comments:

The development proposes Stormwater Quality Improvement Devices (SQIDs) being bio-retention measures (bio-swale and bio-retention basin).

On-property infiltration pits at each allotment are also proposed.

While the bio-swale is considered not appropriate and will require change to a bio-retention basin, the scale of treatment is considered to be equal for the purposes of design review.

This modelling does not take into consideration rainwater tanks (likely acting as onsite detention) for each property as required by BASIX, which will further reduce flow (ML/yr) and may further treat TSS.

The WSUD target reduction parameters and modelling results are:

Contaminant	Target reduction	Modelling results (catchment A)	Modelling results (catchment B)	Modelling results (catchment C)
Flow (ML/yr)	(Pre) post	(17.6) 9.22	(87.9) 45.1	(121) 120
Coarse Sediment (TSS)	80%	81.1%	80.1%	81.2%
Total Phosphorus	45%	67.7%	59.5%	55.4%
Total Nitrogen	45%	52.4%	64.2%	45%
Litter (Gross Pollutants)	70%	100%	95.5%	100%

The 3 catchments mentioned above do not seem to be defined by any plan or detail, however MUSIC modelling nodes suggest:

- Catchment A is the area that is not treated by Bio-retention or Bio-swale
- Catchment B is the area treated by the Bio-retention and
- Catchment C is the area treated by the Bio-swale.

It is uncertain on how Catchment A achieves target reduction parameters, further information regarding Catchment A is needed.

Catchment C may need to be altered as the Bio-swale is not an ideal treatment device and should only be used when there is no chance for Bio-retention, which in this instance there is.

*It is suggested to provide clarity that these catchments should be detailed on a plan.*

*(4) Policy Requirements*

*(a) All Applicable development*

*The Targets as specified in Table I9.1 must be met for all applicable development covered by this policy.*

Assessment commentary

RVC's Development Engineer made the following comments:

*No alternate designs or requirements are suggested by Council.*

*Infiltration pits on property is generally fine as the applicant will be providing sub-soil drainage measures in road design adjacent to alleviate potential issues with between the infiltration pits and roads.*

*Bio-swales proposed are not ideal*

*(i) Restrictions of treatment measures in certain instances*

*No alternate designs or requirements are suggested by Council.*

*Infiltration pits on property is generally fine as the applicant will be providing sub-soil drainage measures in road design adjacent to alleviate potential issues with between the infiltration pits and roads.*

*Bio-swales proposed are not ideal*

*(iii) SQIDS*

*Bio-retention is adequate and is a natural treatment process using infiltration and vegetation.*

*It is in a location that is readily accessible for the purposes of maintenance in the future.*

*Overflow to drainage system and weir structure to the C2 zone adjacent that will flow into drainage system.*

*(iv) Private SQIDs*

*Private SQIDs may need a register and annual fee as per this section.*

*However, rather than a register showing maintenance undertaken to Council it may be covered by easement/covenant to maintain the private SQID to an operational standard.*

*(d) Subdivision, Commercial, Industrial, Tourism and Other*

*Development to which this Policy Applies*

*The following additional requirements apply:*

*Development must demonstrate adherence to the objectives and targets of this policy by:*

- Undertaking a Stormwater Management Plan where requested.*
- Achieving water quality targets by utilising water quality treatment devices in a method consistent with the waste management hierarchy, stormwater treatment train and principles of Water Sensitive Urban Design as described in Section I9.2 of this Chapter.*
- At least 80% of the total impermeable area of a site must be treated to the targets specified.*

Assessment commentary

RVC's Development Engineer made the following comments:

*Details have been provided on stormwater quality and quantity in the Engineering Services and Civil Infrastructure Report dated 23 July 2019, however no formal SMP has been completed.*

*Water quality targets have been shown to be met in MUSIC modelling, it also shows that all defined catchments (presumed all of development) within the report have been treated.*

*Noted, further information of the catchments needs to be supplied.*

#### **19.5 Stormwater Generation**

##### **(2) Objectives**

*The objectives of element are to:*

- To maintain the sites mean stormwater volumes, peak flow rates, and runoff event frequency as near as reasonable to sites original characteristics.*

##### Assessment commentary

*RVC's Development Engineer made the following comments:*

*Only flow rate shown in the Engineering Services and Civil Infrastructure Report dated 23 July 2019 Is the flow calc from MUSIC modelling, there is no reference to what ARI event this is to but it is in ML/yr so presumed Mean annual stormwater post flow development volumes.*

*Hence, the peak flow in m3/s has not been assessed, meaning there has been no assessment of the minor events (2 & 5 year ARI events) peak flow.*

*Mean annual stormwater post flow development volumes targets are a reduction of 10% from baseline, hence Catchment C (bio-swales) does not meet this from the MUSIC modelling supplied.*

- To reduce flooding, property damage, and risk to public safety to downstream areas as a result of increased impermeability, increase runoff volume and changes to drainage line upstream.*

##### Assessment commentary

*RVC's Development Engineer made the following comments:*

*Cut/fill plans show the post-development land form being on a lessened grade with moderate/major changes to drainage lines as roadways will act as overland flow paths, the legal point of discharge remains unchanged.*

*Future rainwater tanks collecting roof water with reuse through toilets etc along with on-property infiltration pits will minimise the runoff quantity, SMP will need to confirm the peak discharge and annual runoff amounts in line with 19.4.*

*Roadways will be utilised for overland flow in major events, the damage to property is considered to be a non-issue.*

*Risk to public safety has been assessed as it is stated in the Engineering Services and Civil Infrastructure Report dated 23 July 2019 That the VD product of the overland flow on roadways in 100 year event does not exceed 0.4 and maximum flow depth is equal to or less than 200mm, however there is no DRAINS modelling to support this statement.*

*It is difficult to prove the post-development reduces flooding issues arising from stormwater runoff, however with the roadways being the defined overflow path in major events it is presumed that any flooding issues would be prevalent on the road, as the road meets the risk to life standards it can be concluded that flooding issues are not an issue.*



- *To protect receiving environments from the impacts of changes to stormwater characteristics.*

#### Assessment commentary

RVC's Development Engineer made the following comments:

*Policy measures under I9.5 are very similar to those under I9.4, no additional comment is needed.*

*MUSIC modelling shows each catchment is adequately treated in terms of quality, noted quantity requires further assessment.*

*It is also noted a SMP has not been supplied, this is a typical requirement for all major developments.*

*Energy dissipation is required where outflow to natural from concentrated flows in infrastructure, and where else deemed necessary.*

### *I9.6 Riparian areas, Habitat corridors, Vegetation and Landform*

#### *(2) Objectives*

*The objectives of element are to:*

- *To maintain habitat connectivity for critical areas and species.*
- *To reduce declines in biodiversity.*
- *To maintain vegetation which may assist in treating stormwater and providing habitat.*
- *To undertake revegetation in a manner so as to maintain habitat connectivity.*
- *To reduce erosion and sedimentation as a result of site destabilisation from cut and fill.*
- *To reduce flooding, property damage, and risk to public safety to downstream areas as a result of changes to drainage pathways or land slippage.*

#### Assessment commentary

RVC's Development Engineer made the following comments:

*I don't have much comment in this section regarding WSUD, however the removal of vegetation within the development footprint is likely majority regrowth and not habitat/native trees.*

*I am not certain that much of this vegetation could be retained for the purposes of stormwater treatment, especially with the cut/fill proposed.*

*There will be landscaping requirements within the development to provide vegetation, but again this will likely not assist heavily in stormwater treatment (there will be some form of transpiration uptake but considered negligible).*

*I do however have concern for the vegetation and natural land that is downstream of the proposed Bio-swale as there does not look to be any form of protection measures provided for outflow.*

*Noted Bio-swale is not ideal and preference is for Bio-retention where possible.*

#### *(3) Performance Targets*

*Performance requirements for vegetation and landform are provided in Table I9.5.*

#### Assessment commentary

RVC's Development Engineer made the following comments:

*It is noted that cut/fill is prosed to well exceed 2m, not meeting the landform target in table I-9.5.*

*All buffers outlined to be reviewed by Planning.*



#### *(5) Policy Requirements*

##### *(a) All Applicable Development*

*The following measures are required to be implemented to meet the Performance Targets and Objectives of this policy.*

- Cut and fill is restricted to the targets of this policy.*
- Buffer zones are to be left undisturbed in accordance with the targets of this policy.*
- Where possible street and lot layout should be undertaken so that habitat is retained and connected to remnant habitat in adjoining areas outside of the immediate boundaries of the proposed development.*

##### Assessment commentary

RVC's Development Engineer made the following comments:

*The removal of vegetation within the development footprint is likely majority regrowth and not habitat/native trees.*

*I am not certain that much of this vegetation could be retained for the purposes of stormwater treatment, especially with the cut/fill proposed.*

*There will be landscaping requirements within the development to provide vegetation, but again this will likely not assist heavily in stormwater treatment (there will be some form of transpiration uptake but considered negligible).*

*The landscaping plans proposed are reviewed and accepted typically by Planning, hence the species selection will be known prior to its approval for installation.*

#### *19.7 Construction, Erosion and Sediment Control*

##### *(2) Objectives*

- To protect water quality from impacts during the construction phase.*
- To protect key vegetation during the construction phase.*
- To protect the site's natural properties, such as soil permeability, from compaction.*
- To ensure construction waste is managed appropriately.*
- To stage ground disturbance and progressively revegetate the site to reduce the area contributing sediment.*

##### Assessment commentary

RVC's Development Engineer made the following comments:

*Typical erosion and sedimentation controls are shown on plans within the Design Plans completed by Arcadis on 18 July 2019.*

*They are completed in accordance with the Landcom's Managing Urban Stormwater, Soils and Construction ('blue book') and NRLG requirements.*

##### *(3) Performance targets*

*Performance requirements are provided in Table 19.6.*

##### Assessment commentary

RVC's Development Engineer made the following comments:

*Erosion and sedimentation controls protect all recent constructed stormwater devices as shown in design plans, resulting in minimal litter and suspended soils entering system from construction site.*

*Motor fuels are required to be stored in bunded area that is generally a storage device prohibiting rainwater impacting storage area i.e. temporary shipping container or similar.*

*Bio-retention basin or temporary detention basin along with control fencing will need to be constructed at the start of each construction stage to capture majority of runoff from construction site, providing treatment of runoff before outflow offsite.*

#### *(5) Policy Requirements*

##### *(a) All Applicable Development*

*The following measures are required to be implemented to meet the Performance Targets and Objectives of this policy.*

*All applicable development must meet the targets of this element during the construction phase.*

##### *(i) Erosion and Sediment Control and Soil and Water Management Plans*

*An erosion and sediment control plan is required:*

- Where the area of disturbance is between 250m<sup>2</sup> to 2500m<sup>2</sup>.*
- Where the area of disturbance is under 250m<sup>2</sup> but the slope of the site exceeds 18°.*

*An Soil and Water Management Plan is required the area of soil disturbance exceeds 2,500m<sup>2</sup>.*

##### Assessment commentary

RVC's Development Engineer made the following comments:

*Erosion and sediment control plans have been provided within the Design Plans completed by Arcadis on 18 July 2019.*

*All typical requirements as outlined in (b) will be adhered to.*

*Design Plans completed by Arcadis on 18 July 2019 show stockpiles in accordance with (c).*

*All waste produced will be taken offsite and handled accordingly.*

*No comment on storage of chemicals, however required to be in a bunded area out of weather.*

*Vehicle access requires installation of shakedown device to be in line with (d).*

In my opinion whilst the Concept DA does not satisfactorily address all the requirements of Part I9, it appears those requirements could be through revision of the design of the stormwater management plan.

#### Part I10 Crime prevention through environment design

##### Assessment commentary

The Concept DA relies upon the report titled *Crime Prevention Through Environmental Design Assessment*, by Stuart Crawford Consulting, 29 June 2019. The report is for a formerly proposed 184 lot subdivision has not been revised to reflect the Concept DA.

The development was rated as a 'minor crime risk' using the evaluation process within the Australia and New Zealand Risk Management Standard AS/NZS 4360:2004.

The report makes the following recommendations:

##### *6.2 Territorial reinforcement*

*Vegetation should be that if does not inhibit a 'line of sight' throughout the development.*

*Heavy vegetation should be avoided so as not to create/provide concealment opportunities.*

*Vegetation closet to pedestrian pathways and cycle ways require close consideration.*

##### *6.3 Surveillance*

*Landscaping should not inhibit natural surveillance or provide entrapment opportunities.*

*Where possible; lower tree limbs should be above the average head height, and shrubs should not provide easy concealment. Understorey species should be matched with situational hazards. Low garden shrubs (>600mm) for example, are effective when used at the perimeter of a play area/park.*

*It is recommended that 3-5 metres of cleared space be located either side of residential pathways and cycle routes.*

#### 6.4 Access control

Access control strategies restrict, channel and encourage the movement of people and vehicles into, out of and within designated areas. Use of bollards and fences and barriers to prevent access to unauthorised areas.

*With the upgrade of Iron Gates Drive, it is recommended that a shared cycle/pedestrian path be included.*

*All preferred entry points (pedestrian and vehicle) should be clearly signposted*

#### 6.5 Space/ Activity management

Directional signage to be provided. The signage is to be clear, legible and useful, to aid way finding throughout the development.

*The area should be well maintained. Any evidence of anti- social behaviour should be cleaned / fixed/ replaced as soon as possible. There is a maintenance policy for this development that states; malicious damage, graffiti and vandalism will be attended to immediately following notification.*

*Open space should be laid out and landscaped to facilitate clear sight lines into any out of the space. Where possible, landscaping should avoid providing areas of isolation. Bushes and low shrubs should be kept back from pathways. Facilities such as barbeques, toilets and playground equipment should be situated close to areas where most natural activity occurs such as entry and exit points and nearby residences.*

#### 6.6 Lighting & Technical Supervision

*It is recommended that special attention be paid to lighting for pedestrian pathways and movement predictors- to permit the facial recognition of approaching persons at 15 metres. Areas adjoining pathways should be illuminated to avoid concealment/ entrapment opportunities.*

The recommendation of the *Crime Prevention Through Environmental Design Assessment* that a 3m to 5m cleared space be provided either side of residential pathways and cycle routes do not appear to be reflected or assessed in either:

- the engineering plans supporting the *Revised Engineering Services and Civil Infrastructure Report* indicating the carriageway of the section of Proposed Road 5 (approx. 100m in length) between Lot 136 and Lot 137
- the *Amended Ecological Assessment (Iron Gates Drive)* report where Iron Gates Dr traverses wetland areas and where sections of the carriageway and footpath within Iron Gates Dr 'run' close to the southern boundary
- the *Terrestrial Flora and Fauna Assessment Report* where Proposed Road 5 passes between proposed Lot 136 and Lot 137 and Littoral rainforest zoned C2 or
- the *Statement of Landscape Intent*.

The proposed open space areas (Lot 141 and Lot 142) are irregular and narrow in shape and immediately adjoin the Crown Foreshore Reserve in which substantial vegetation is located which cannot be removed.

The NSW Police Force (21 April 2022) has reviewed the report and made the following recommendations:

*Due to the nature of this development, we understand that the proposal does not involve the construction of any buildings and therefore the specific outcomes are not known. We also understand that this review refers to a Concept proposal that may change in the future. As with all new developments, Police recommend the following considerations in relation to CPTED principles:*

*1. Surveillance – Consideration of lighting along roadways, pathways and throughout recreation areas. Ensure private fencing does not obstruct sightlines between residential lots and recreation or environmental areas. Reduce the likelihood of concealment areas, by planting low lying shrubs along pathways and other areas used by pedestrians.*

*2. Access control and Territorial Reinforcement – Ensure Legible internal roadways and pathways. Consider associated way finding signage to direct traffic and define use of space. \*\*Amended recommendation.*

## Part I11 Land use conflict risk assessment

### I11.1 Objectives

The objectives of this Chapter are:

- *To reduce the incidence and likelihood of land use conflict within Richmond Valley.*
- *To introduce methods and guidelines to reduce the likelihood and manage existing land use conflict within the Local Government Area (LGA).*
- *To reproduce current guidelines and ‘buffer distances’ (at the time of DCP formulation) between conflicting land uses in accordance with best practice principles (Living and Working in Rural Areas – A handbook for managing land use conflict issues on the NSW North Coast (LWRA Handbook)). ‘Buffer distances’ provided within this section of the DCP serve as a benchmark for proposed development within Richmond valley, with some opportunity for modification or review based upon demonstrated exceptional circumstance.*
- *To introduce the concept of Land Use Conflict Risk Assessment (LUCRA) as part of the development assessment process. Where it is deemed necessary by the consent authority or consultant representing the applicant, a LUCRA shall be provided alongside all other reports provided to support proposed development. Land use buffers provided here and within the LWRA Handbook can be used to determine whether land use conflict risk assessment need to be addressed in detail within a formal development application.*

### Assessment commentary

Refer to Section 14.16.

No land use conflict risk assessment has been undertaken for either the DA or Concept DA. The DA relies on the streets, fire trails and asset protection zones to buffer sensitive areas from the adjoining development footprint.

In my opinion the Concept DA does not achieve compliance with the recommended buffer distances between the residential areas and native vegetation / habitat, ecosystem and wildlife corridors, estuaries and major waterways, wetlands or littoral rainforest and no information by way of justification to vary the distances or measures to mitigate potential for adverse environmental impact identified is provided.

In my opinion the Concept DA does not achieve the objectives.

## Part I12 Context and site analysis

### Assessment commentary

The DCP requires the following (in *italics*) to be provided in a site analysis.

*The site analysis may include plans, sketches, photographs and supporting written information and should include the following information:*

#### *Identifying Information*

- *orientation*
- *scale and north point*
- *date*

#### *Property Details*

- *site dimensions, property boundaries and site area*
- *easements for drainage, services and rights of carriageway*

#### *Landform and Vegetation*

- *spot levels and contours*
- *differences in ground levels on site as well as between the site and adjoining properties*
- *existing vegetation on/or affecting the site, location, height, canopy cover and species types*
- *important views - from the site and from adjoining land*
- *identification of any contaminated soils on the site and extent of any known landfill*
- *landscape features - cliffs, rock outcrops, embankments, retaining walls, foreshores*
- *soil type and depth*
- *flood liable land, existing means of stormwater drainage, existing stormwater detention systems, flow paths, drainage easements, watercourses, channels etc;*
- *sun and shade characteristics*
- *prevailing winds*

#### *Access*

- *vehicle and pedestrian access to and from the site*
- *public roads, laneways, pathways*
- *on corner sites, the provision of a splay corner if required by Council*
- *driveways, parking areas, loading bays on the site and within the vicinity of the site*
- *public transport services (particularly for affordable housing, and housing for seniors or persons with disabilities)*

#### *Existing Development*

- *existing buildings - on the site and on adjoining land. Show location, distance from the boundary, height, current use. Include elevations showing adjacent buildings*
- *existing neighbourhood character, including the pattern of development, built form, building materials and colours, fencing and garden styles*
- *overshadowing of and by adjoining buildings*
- *fence and wall locations, heights, materials*
- *swimming pools*
- *privacy - adjoining private open spaces, doors and windows*
- *street frontage features - poles, trees, kerbs, footpaths, crossings, street furniture*
- *noise, odour and light spillage sources (e.g. main roads, railway lines, sports fields, air conditioning units, pool pumps, industrial areas)*
- *heritage and/or archaeological features (indigenous and non-indigenous) on site and in the vicinity of the site include landscapes, buildings, conservation areas, special character areas*
- *existing advertising signs.*

#### *Assessment of Proposed Development*

*It is imperative that a site analysis include likely impacts of the proposed development and the measures proposed to mitigate these impacts. It should also show where the site has been unable to incorporate the opportunities and constraints of the site and the requirements of the DCP. Written and graphical explanations should be provided, for any site analysis, ultimately showing the suitability of the site for the proposed use.*

The site analysis plan provided as Appendix N to the *Revised Engineering Services and Civil Infrastructure Report* by Arcadis Consulting Pty Ltd does not contain the information relevant to the land and is not satisfactory as it does not recognise all the constraints and opportunities of the land.

## Part I15-Notification and Advertising

### Assessment commentary

The public notification and advertising of the Concept DA was undertaken in accordance with the EPA Reg and RVC's *Community Participation Plan*.

### **15.13 Contributions and Services Plans**

*Richmond Valley Council Section 94A Development Contributions Plan 2010*

The *Richmond Valley Council Section 94A Development Contributions Plan 2010* applies to the Concept DA.

The contribution levy is 1% of the 'proposed cost of development'. The DA form provided with the *Revised Statement of Environmental Effects (SEE)* prepared by DAC Planning Pty Ltd (July 2019) states that the cost of development is \$12,013,533.

The cost of development was not revised when the DA was amended to a Concept DA, though as all works are to be undertaken in Stage 1 the cost of development is still \$12,013,533.

The economic impact section of the *Social and Economic Impact Assessment by Hill PDA (July 2019)* indicates that the DA development cost prepared by Arcadis Consulting Pty Ltd is \$19.9M for land development.

### **15.14 Ecologically Sustainable Development Protection of the Environment Administration Act 1991**

The following provides commentary in regard the Concept DA and the principles of ecological sustainable development established by the objectives of the EPA Act and defined by the *Protection of the Environment Administration Act 1991* (identified in *italics*).

*(2) For the purposes of subsection (1) (a), ecologically sustainable development requires the effective integration of social, economic and environmental considerations in decision-making processes.*

*Ecologically sustainable development can be achieved through the implementation of the following principles and programs:*

*(a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

*In the application of the precautionary principle, public and private decisions should be guided by:*

*(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*

*(ii) an assessment of the risk-weighted consequences of various options,*

### Assessment commentary

In my opinion the Concept DA does not satisfactorily avoid impacts onto the biodiversity and wetland values of the land and Iron Gates Dr, Aboriginal cultural heritage, or water quality of the Evans River.

In my opinion the assessment of flooding particularly of Iron Gates Dr and of bushfire risk is not satisfactory.

The precautionary principle has not been applied to the design of the subdivision as no thorough site analysis has been undertaken to inform a comprehensive integrated design.

*(b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future*



*generations,*

Assessment commentary

In my opinion the Concept DA does not ensure a healthy, diverse, and productive environment ('proposed development footprint') is maintained or enhanced for future generations.

*(c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,*

Assessment commentary

In my opinion the Concept DA does not provide for conservation of biological diversity and ecological integrity of threatened species, communities, and populations within the 'total development footprint' and adjoining the land, in particular the Crown Foreshore Reserve.

*(d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:*

*(i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,*

*(ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,*

*(iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.*

Assessment commentary

In my opinion the environmental 'problems' with the proposal have not been effectively resolved.

## 16 Conclusion and Recommendation

DA No. 2015/0095 is a complex proposal. The DA was lodged with RVC in Oct. 2014, now over 7 years ago.

The DA could not be determined until the draft Master Plan was approved in accordance with Part 5 of *State Environmental Planning Policy No. 71 – Coastal Protection* (SEPP No. 71). A Master Plan was required to be prepared as the land is in a 'sensitive coastal location'. A draft Master Plan was lodged with DoPI&E on 30 Oct 2015 and negotiated between the Department and Applicant until 19 July 2021 (approx. 6.5 years).

DoPI&E on 19 July 2021 advised RVC of the withdrawal of the draft Master Plan in response to the Department indicating that it would be refused on the grounds that there were outstanding issues that had not been resolved.

DoPI&E in a report to the NRPP dated 18 Aug. 2021 advised it that the proposed subdivision lacked clear design principles which arise from a thorough site analysis. The NSW Government Architect (GANSW) raised a number of unresolved issues and commented that the subdivision presented in the draft Master Plan as a 'generic subdivision'.

The withdrawal of the draft Master Plan and the amendment of the DA to a Concept DA requires the Concept DA to contain the information to be included in a development control plan by an environmental planning instrument. The environmental planning instrument which contains the information is Clause 20 - Preparation of master plans of SEPP No. 71.

In my opinion the Concept DA fails to achieve the majority of the considerations of Clause 20, together with the majority of the considerations of Clause 8, and it fails to achieve entirely Clause 16 of SEPP No. 71.

The Concept DA is an 'integrated' development pursuant to s. 4.8 of the EPA Act and was referred to the following State agencies for issue of General Terms of Approval:

- NSW Rural Fire Service - s.100B *Rural Fires Act 1997*, relating to bushfire safety
- NSW Dept of Premier and Cabinet, Heritage NSW, Aboriginal Cultural Heritage Regulation - s. 90 *National Parks & Wildlife Act 1974*, relating to an application for a Aboriginal Heritage Impact Permit for approval of an Aboriginal Heritage Impact Permit to partially remove a shell midden
- NSW Office of Water - s. 90 of the *Water Management Act 2000*, relating to water management work approval to dewater during construction and
- Natural Resources Access Regulator (NRAR) - s. 91 of the *Water Management Act 2000* relating to activity within 40m of the Evans River.

At the time of completion of this report the following agencies have either issued their General Terms of Approval or provided comments:

- NSW Dept of Premier and Cabinet, Heritage NSW, Aboriginal Cultural Heritage Regulation (21 Feb. 2022)
- NRAR (23 Feb. 2022) and
- NSW Rural Fire Service (16 June 2022).

At the time of completion of this report the NSW Office of Water have a request for additional information which I understand is being address by the Applicant, with an expected delivery time frame in Aug. / Sept. 2022.

The following key specialist reports do not provide environmental and planning assessments which reflect the Concept DA Stages and subdivision plans:

1. *Iron Gates Residential Development Revised Engineering Services and Civil Infrastructure Report* by Arcadis Consulting Pty Ltd, 23 July 2019
2. *Revised Consolidated Bushfire Report*, Version 3, by *Bushfire Risk*, 12 July 2019
3. *Bushfire Assessment – Additional Information Response, Iron Gates Drive*, Version 1, by *Bushfire Risk*, 8 March 2017
4. *Terrestrial Flora and Fauna Assessment* by *Planit Consulting*, August 2014 as amended by *JWA Pty Ltd*, July 2019
5. *Revised Aboriginal Cultural Heritage Assessment* by *Everick Heritage Consultants*, July 2019
6. *Statement of Landscape Intent Issue D* by *Plummer & Smith*, 17 July 2019 and
7. *Revised Biting Insect Impact Assessment* by *Mosquito Consulting Services Pty Ltd*, 10 July 2019.

There are inconsistencies and contradictions between the following key specialist reports in regard to the up-grading of Iron Gates Dr:

1. The *Revised Engineering Services and Civil Infrastructure Report* indicates:
  - 8m carriageway with 1m gravel shoulders for the full length of the road,
2. The *Bushfire Assessment – Additional Information Response, Iron Gates Drive* indicates:
  - 8m carriageway with 0.5m shoulders outside the SEPP No. 14 wetlands and
3. The *Amended Ecological Assessment (Iron Gates Drive) – JWA Pty Ltd, April 2019* indicates:
  - only to widening the pavement from 6m to 6.5m to 8m and has not considered clearing essential for up-grades outside the alignment widening.

4. The *Access Road Signage and Linemarking Layout Plans* provided as *Engineering Plans, Iron Gates Drive Upgrade Work, Revision 02 by Arcadis, 21 August 2017* show between;
- CH160 and CH380, 'match existing 6.0m – 7.0m pavement width'
  - CH380 and CH 840, 'proposed 9m formation width' and
  - between CH 840 and CH1160, 'match existing 6.0m – 7.0m pavement width'.

The recommendation of the *Crime Prevention Through Environmental Design Assessment* that a 3m to 5m cleared space be provided either side of residential pathways and cycle routes do not appear to be reflected or assessed in either:

- the engineering plans supporting the *Revised Engineering Services and Civil Infrastructure Report* indicating the carriageway of the section of Proposed Road 5 (approx. 100m in length) between Lot 136 and Lot 137
- the *Amended Ecological Assessment (Iron Gates Drive)* report where Iron Gates Dr traverses wetland areas and where sections of the carriageway and footpath within Iron Gates Dr 'run' close to the southern boundary
- the *Terrestrial Flora and Fauna Assessment Report* where Proposed Road 5 passes between proposed Lot 136 and Lot 137 and Littoral rainforest zoned C2 or
- the *Statement of Landscape Intent*.

In my opinion the proposed development is not a good planning outcome having regard the environmental sensitivity of the land and locality. The design of the subdivision is not of a contemporary standard and does not reflect or embrace accepted urban design principles which seek to generate a high quality living environment.

I am particularly concerned about the high bushfire risk of the land and of adjoining land zoned for environmental protection and that the assessments (in particularly for Iron Gates Dr) and that the alternate measures proposed to mitigate the risk and threat are not adequate.

It is my opinion that many of the key issues raised in the objections to the DA and Concept DA cannot be addressed by conditions of consent and the submissions should be given weight in the determination of the Concept DA.

Having regard and consideration to the key issues relating to the Concept DA and my assessment of the proposal it is my opinion that the Concept DA fails to satisfactorily achieve relevant planning and environmental merit considerations and statutory planning controls.

Having regard to the consideration to the key issues relating to the Concept DA and my assessment of the proposal and issues raised by submitters in objections I do not concur with the recommendations of approval by:

- NSW Rural Fire Service regarding bushfire safety and
- NSW Dept of Premier and Cabinet, Heritage NSW, Aboriginal Cultural Heritage Regulation, regarding impact on Aboriginal cultural history.

I have no objection to RVC providing this report to the NRPP, noting that RVC and/or NRPP may reach a different conclusion to that which I have assessed and taken.

It is my recommendation that pursuant to Section 4.16 of the *Environmental Planning & Assessment Act 1979*, Development Application No. 2015/96 be refused for the reasons listed below.

Should RVC have any queries please do not hesitate to contact me.

Yours faithfully



Malcolm Scott MPIA  
Enc

## **Recommended reasons for refusal**

### **1 Biodiversity**

Pursuant to Section 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*, the proposed development is likely to have an adverse impact on the biodiversity values of the land and its immediate locality.

#### Particulars

The proposed development will have significant adverse effect on threatened species, populations and ecological communities, and their habitats in particular the Littoral rainforest within the land.

A Species Impact Statement prepared in accordance with Division 2 of Part 6 of the *Threatened Species Conservation Act 1995* should have been lodged with the Concept DA as the development is likely to significantly affect threatened species, populations or ecological communities, or their habitat.

The *Terrestrial Flora and Fauna Assessment Report* cannot be relied upon to adequately identify the flora and fauna within the 'total development footprint' and 'proposed residential footprint' given it was prepared 7 years ago and it is likely the extent and condition of vegetation has substantially changed and additional threatened species have been added to the schedules of the *Biodiversity Conservation Act 2016*.

The *Terrestrial Flora and Fauna Assessment Report* does not contain an assessment of:

- the potential impacts of earthworks, filling, and construction of retaining walls and earthen batters on the Littoral rainforest within proposed Lot 136 and Lot 137 or riparian vegetation in the Crown Foreshore Reserve
- the potential changes to the hydrologic / drainage regime to the Littoral rainforest in proposed Lot 137 because of earthworks, filling, and construction of retaining walls and earthen batters supporting roads surrounding it
- the impact of wind-throw
- the indirect impacts on threatened species, populations caused by human disturbance and noise on sensitive threatened fauna species
- the impacts on threatened species, populations of exposure to bright lights (street and from occupation of future dwellings)
- the large number of houses and how that is likely to interrupt any connectivity of vegetation or
- cumulative impacts.

The *Terrestrial Flora and Fauna Assessment* report does not acknowledge that vegetation and tree removal will be required to provide Proposed Road 5 between proposed Lot 136

and Lot 137 and within or immediately adjoining the land zoned C2 and containing the Littoral rainforest.

The *Terrestrial Flora and Fauna Assessment Report* does not propose the provision of suitable width buffers to the Littoral rainforest in the 'total development footprint' (proposed Lot 136 and Lot 137) which are zoned C2.

The *Terrestrial Flora and Fauna Assessment Report* does not propose or recommend the prohibition of cats and dogs in the subdivision, when it acknowledges they have a potential to cause adverse ecological / conservation impacts.

The *Terrestrial Flora and Fauna Assessment Report* does not propose suitable mitigatory management measures for the on-going prevention of weeds in the littoral rainforest (proposed Lot 136 and Lot 137) likely to be generated by occupation of the allotments.

Other than advisory signage no other measures are proposed to prevent fauna road kill because of the traffic generated by the development along Iron Gates Dr.

The engineering plans in the *Revised Engineering Services and Civil Infrastructure Report* do not provide for any wildlife crossing under (or above) Proposed Road 5 between the areas of Littoral rainforest (proposed Lot 136 and Lot 137) or for stormwater drainage.

The riparian buffer zones recommended by Dept of Primary Industries-Fisheries (18 Nov. 2021) are not provided.

Neither the:

- *Amended Ecological Assessment (Iron Gates Drive)* report where Iron Gates Dr traverses wetland areas and where sections of the carriageway and footpath within Iron Gates Dr 'run' close to the southern boundary or
  - *Terrestrial Flora and Fauna Assessment Report* identify where Proposed Road 5 passes between proposed Lot 136 and Lot 137 and Littoral rainforest zoned C2
- sufficiently account for the recommendation in the *Crime Prevention Through Environmental Design Assessment* that a 3m to 5m cleared space be provided either side of residential pathways and cycle routes.

## **2 Koala**

Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the proposed development is contrary to *State Environmental Planning Policy No. 44 Koala Habitat Protection* and is likely to have an adverse impact on the local Koala population and measures to mitigate that impact are inadequate.

### Particulars

The Concept DA requires the removal of Koala food and habitat trees and proposes compensatory / offset planting in the proposed public reserves and as street tree planting. There are no Koala food and habitat trees identified in the *Landscape Statement of Intent* or identified or shown on the *Landscape Plans* for the proposed open space (Lot 141 and Lot 142). There is insufficient area in the proposed open space areas to undertake adequate offset planting.

Neither the:

1. *Terrestrial Flora and Fauna Assessment Report by Planit (Aug 2014)*.
2. *'Koala Assessment Utilising the Regularised Grid-based Spot Assessment Technique'* by JWA Pty Ltd, April 2019 or
3. *Amended Ecological Assessment (Iron Gates Drive) by JWA Pty Ltd, April 2019*

achieve the requirements of *State Environmental Planning Policy No. 44 Koala Habitat Protection* or the guidelines in the Dept. of Planning Circular No. B35.

A vegetation map, which identifies the components of the tree layer and a description of the shrub layer, of the part of the site in which the Koala habitat trees are proposed to be removed is not provided in the Concept DA in accordance with Circular No. B35.

### **3 Bushfire**

Pursuant to Section 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*, the proposed development is subject to an unacceptable risk of bushfire.

#### Particulars

The Concept DA does not demonstrate that it is consistent with *Planning for Bushfire Protection 2019* which is the current guideline.

#### *Single access road (Iron Gates Dr)*

Excluding where Iron Gates Dr traverses the *State Environmental Planning Policy No. 14 Wetlands*, the existing and proposed widening of the road carriageway is currently and will not be centrally located in the 20m road reserve for the full length of the road from the subdivision to Evans Head.

Between Chainage 350 and 450, where a chicane / 'slow point' is proposed, the footpath and road pavement almost adjoin the southern boundary of the road reserve (adjoining Lot 544 DP 48550 and Portion 408) and the opportunity for vegetation removal to provide necessary clearances is very limited.

Between Chainage 750 and 950, the footpath and road pavement are very close to the southern boundary of the road reserve.

The *Bushfire Assessment – Additional Information Response, Iron Gates Drive* report does not describe or identify the location of the existing and proposed road carriageway in relation to the boundaries of the Iron Gates Dr road reserve.

The *Bushfire Assessment – Additional Information Response, Iron Gates Drive* report does not describe, for the length of Iron Gates Dr the height of trees that are within and immediately adjoin the road reserve, the separation distances to the proposed road formation, potential for road blockage, fire flame length and potential visibility issues together with vegetation management strategies for the areas designated under *State Environmental Planning Policy No. 14 Wetlands*.

The calculation of fuel loads and flame length in regard clearing along Iron Gates Dr should be undertaken in accordance with contemporary guidelines provided in *Planning for Bushfire Protection 2019*.

The proposed up-grade of Iron Gates Dr does not provide for safe passage in the event of a bushfire emergency.

#### *Proposed Road 5 as it passes between Lot 136 and Lot 137*

The width of the proposed road reserve for Proposed Road 5 between proposed Lot 136 and Lot 137 is approx. 15m.

Currently the clearing for the existing driveway track between proposed Lot 136 and Lot 137 is approx. 10m to 12m wide between trees and other vegetation.



The trees within Lot 136 and Lot 137 adjoining the existing driveway track are estimated to be approx. 12m to 15+m high.

The engineering plans supporting the *Revised Engineering Services and Civil Infrastructure Report* indicate the:

- distance between the edges of vegetation either side of the proposed road to be approx. 12m and
- the Section for Proposed Road 5 (approx. 100m in length) between CH 0 to CH 110 and Lot 136 and Lot 137 shows the road will be built of retained fill approx. 8.5m wide with a carriageway 7m wide between upright kerb and gutter and 'armaguard railings' with a 2.5m wide boardwalk adjoining Lot 136 under which water and electrical services will be attached.

The *Revised Consolidated Bushfire Report* states this section of road will be 7m wide (3.5m each way) to negate further clearing of significant ecological communities and either side of the road carriageway will be 2.75m (min.) non-trafficable verges clear of vegetation.

There are no 2.75m wide verges either side of the road carriageway for Proposed Road 5 between Lot 136 and Lot 137.

Proposed Road 5 between Lot 136 and Lot 137 does not provide for safe passage in the event of a bushfire emergency unless additional clearing of significant ecological communities is undertaken. There has been no ecological assessment of the potential impacts of this additional clearing nor consideration of biodiversity offsetting.

*Proposed fire trail east of Lots 1 to 20 and 60*

*Planning for Bushfire Protection 2006* clearly and explicitly states; *perimeter roads should be the normal arrangement for urban areas and not perimeter fire trails.*

The proposed fire trail east of Lots 1 to 20 and 60 will be located on the filled drain and is immediately adjoined by tall closed / open forest (*Melaleuca quinquenervia*) vegetation within Lot 544 DP 48550 with trees approx. 8m to 10+m high.

The fire trail is proposed to be constructed of gravel 5m wide in an 8m wide reserve.

Retaining walls of variable height are proposed to be erected the full length of the fire trail adjoining the eastern boundary of Lots 1 to 20 and 60. Retaining walls are also proposed to be erected both sides of the fire trail access points between Lots 12 and 13 and to the north and north-east of Lot 60. A retaining wall of variable height is also proposed along the eastern boundary of the land adjoining Lot 544 DP 48550 (owned by others) from Lot 14 to Lot 60.

The nominated asset protection (no build) zone from vegetation to the east for Lots 1 to 20 and 60 is 21m. The asset protection zone extends to approximately half the depth of the allotments. The height of retaining walls adjoining the fire trail is unknown as the residential land is to be filled. In the future it is highly likely that each of the allotments will be fenced. The integrity of the asset protection zone in perpetuity relies upon 21 unrelated landowners not erecting structures, not densely planting and maintaining landscaping to inner asset protection standards.

The fire trail to the east for Lots 1 to 20 and 60 does not provide for safe passage of fire fighters in the event of a bushfire emergency and is not a suitable alternative to a perimeter road.

The *Revised Consolidated Bushfire Report* does not satisfactorily justify departure from access requirements of *Planning for Bushfire Protection 2006*.

Neither the *Revised Consolidated Bushfire Report* nor the report, *Bushfire Assessment – Additional Information Response, Iron Gates Drive* have considered the full range of ‘most credible worst case scenarios’ in regard bushfire attack to fully justify variation of the 3 matters of non-compliance. Some ‘most credible worst case scenarios’ include the following:

- Dense thick smoke darkening and limiting visibility.
- The 2 proposed chicanes / ‘slow points’ in Iron Gates Dr.
- A vehicle accident in Iron Gates Dr.
- A vehicle accident in the subdivision internal perimeter and collector road system.
- Fallen trees in the section of Proposed Road 5 between Lot 136 and Lot 137.
- The proximity of vegetation immediately east of the fire trail east of Lots 1 to 20 and 60 and potential for fallen trees to block access in the fire trail.
- The occurrence and strength of winds from the west, north and south.
- Wind behaviour and ember attack having regard to the Eucalypt forest to the west and proposed excavated hill west of the south-western allotments.
- The ability of fire crews to protect property below the excavated area and a 6.25m - 7m high crib wall when no fire trails are proposed to the west of the south-western allotments.
- Human behaviour (fear, panic and poor decision making) in emergency and risk situations.
- The proximity and closeness of future dwellings as shown by the ‘building envelopes’ and potential for house-to-house ignition.
- Maintaining the integrity in perpetuity of the asset protection zone within the fire trail and Lots 1 to 20 and 60.
- Potential for evacuation of Evans Head.
- Timing of evacuation and potential for closure of the wider public road network, e.g. the Evans Head – Woodburn Rd.

#### *Asset protection zones*

The proposed asset protection zones located within proposed allotments are inadequate for the intended purpose and a substantial restriction on the use of the allotments (particularly Lots 1 to 21 and Lot 60) and are not wholly located in either public reserves or road reserves.

#### *Internal public roads*

The *Revised Consolidated Bushfire Report* in its assessment of the ‘acceptable solutions’ for roads between 6.5m and 8.0m wide (with parking restricted to 1 side) and roads up to 6.5m wide (with parking bays) indicates that ‘no on-street parking is proposed’, which is an unrealistic expectation.

The *Revised Engineering Services and Civil Infrastructure Report* indicates road geometry design has generally been undertaken in accordance with the Northern Rivers Local Government’s *Development and Subdivision of Land, 2006* which provides for parking on the carriageway. The report does not refer to either prohibiting on-street car parking on 1 side with services (water main and hydrants) or to ‘no on-street parking’.

#### *Planning for Bushfire Protection 2006 – subdivision objectives*

In regard the ‘specific objectives for subdivision’ (Clause 4.1.2 of *Planning for Bushfire Protection 2006*) the Concept DA:

- does not minimise perimeters of the subdivision exposed to the bush fire hazard which is evidenced by the fire trail adjoining Lots 1 to 20 and 60 as opposed to a perimeter road

- does not minimise bushland corridors that permit the passage of bush fire which is evidenced by retention of the 2 areas of littoral rainforest (Lot 136 and Lot 137) in the centre of the subdivision. The vegetation within Lot 136 is contiguous with the vegetation to the east within Lot 547 DP 48550
- does not provide open space and public recreation areas as accessible public refuge areas or buffers
- cannot ensure the ongoing maintenance of asset protection zones as there will be multiple landowners whose properties are in the asset protection zones and
- no additional or alternative evacuation public road has been proposed.

#### **4      *Aboriginal cultural heritage***

Pursuant to Section 4.15(1)(a)(i), 4.15(1)(b) and 4.15(1)(d) of the *Environmental Planning and Assessment Act 1979*, the impact of the proposed development on Aboriginal cultural heritage is not adequately resolved.

##### *Particulars*

There are conflicting views within the Aboriginal community in regard the proposed development and the potential for adverse impact on Aboriginal cultural heritage.

The copy of the Aboriginal Heritage Impact Permit (AHIP) provided in the *Revised Aboriginal Cultural Heritage Assessment* identifies 'the land to which this application applies' as; 'Part Lot 163 DP 831052, Lots 276 and 277 DP 755624 – located off Iron Gates Road Evans Head NSW'. The application does not explicitly include the Crown Foreshore Reserve.

The General Terms of Approval do not identify the land that they apply too. The embellishment of the Crown Foreshore Reserve has been withdrawn from the Concept DA. The General Terms of Approval could now only apply to the part of the shell midden in Proposed Lot 142 (currently Lot 276 DP 755624).

The *Revised Aboriginal Cultural Heritage Assessment* does not make any recommendations in regard the future conservation / protection or management or preservation and prevention of damage to the part of the shell midden to remain in the Crown Foreshore Reserve or the 2 lithic artefacts.

The *Revised Aboriginal Cultural Heritage Assessment* proposes to incorporate cultural trails into the open space of the development, either in the centre of the development or along the banks of the Evans River. The embellishment of the Crown Foreshore Reserve is no longer land subject to the DA and neither the *Landscape Statement of Intent* refer to or *Landscape Plans* make provision for a cultural trail.

An assessment of the clearing of vegetation in the Iron Gates Dr road reserve for fire safety and the potential for impact on Aboriginal cultural heritage has not occurred.

#### **5      *NSW Government Coastal Policy 1997***

Pursuant to Section 4.15(1)(a)(iv) of the *Environmental Planning and Assessment Act 1979*, the Concept DA fails to demonstrate that it is consistent with the following provisions of the *NSW Government Coastal Policy 1997*:

- Clause 1.2.5 Threatened species
- Clause 1.2.7 Threatening processes
- Clause 1.3.7 Water quality
- Clause 1.3.8 Contaminated stormwater

- Clause 2.1.3 Physical and ecological processes
- Clause 2.2.2 Sea level change
- Clause 3.2.1 North Coast design guidelines
- Clause 4.2.3 Aboriginal heritage

## **6 State Environmental Planning Policies**

- 6.1 Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, potential for adverse impacts of the proposed Concept DA on designated wetlands are not adequately avoided, minimised or mitigated contrary to *State Environmental Planning Policy No. 14 Wetlands*.

### Particulars

The *Amended Ecological Assessment (Iron Gates Drive)* report where Iron Gates Dr traverses wetland areas does not provide an assessment of the recommendation in the *Crime Prevention Through Environmental Design Assessment* that a 3m - 5m cleared space be provided either side of residential pathways and cycle routes.

Whether or not the upgrading of Iron Gates Dr is designated development is not clearly established as Clause 7(3) would appear to be triggered because of achieving requirements for crime prevention together the potential removal and/or pruning of overhanging trees for bushfire protection.

- 6.2 Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, potential for adverse impacts of the proposed Concept DA on the local Koala population are not adequately avoided, minimised or mitigated contrary to *State Environmental Planning Policy No. 44 – Koala Habitat Protection*.
- 6.3 Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the assessment for land contamination is inadequate in regard land known as Lot 163 DP 831052 having regard to *State Environmental Planning Policy No. 55 – Remediation of Land*, NSW EPA Consultants Reporting on Contaminated Land - *Contaminated Land Guidelines and Council's Policy 15.7 Management of Contaminated Land* which defers to the *Regional Policy for the Management of Contaminated Land*, May 2006 (now June 2019).
- 6.4 Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the Concept DA fails to demonstrate that it is consistent with the following objectives, matters for consideration and development standards under *State Environmental Planning Policy No. 71 – Coastal Protection*:
- The following Aims of the Policy; 2(1)(a), 2(1)(b), 2(1)(c), 2(1)(d), 2(1)(e), 2(1)(g), 2(1)(h), 2(1)(j) and 2(1)(k).
  - The following Clauses of the Policy;
    - Clause 8(c) – relating to opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability
    - Clause 8(d) – relating to the suitability of the development given its type, location and design and its relationship with the surrounding area
    - Clause 8(g) – relating to conservation of animals and plants (within the meaning of the *Threatened Species Conservation Act 1995*) and their habitats
    - Clause 8(i) – relating to impact of development on wildlife corridors
    - Clause 8(k) – relating to potential for conflict between land-based and water-based coastal activities
    - Clause 8(l) – relating to protection of the cultural places, values, customs, beliefs, and traditional knowledge of Aboriginals and

- Clause 8(m) – relating to impacts of development on the water quality.
- The following development standards of Part 4 in the Policy:
  - Clause 14 – relating to public access to the Crown Foreshore Reserve and Evans River.
  - Clause 16 – relating to stormwater. As the development is likely to discharge untreated stormwater into the Evans River therefore RVC (NRPP) is prevented from granting consent to the Concept DA.
- The Concept DA does not satisfy the following Master Plans provisions of Part 5 in the Policy:
  - Clause 20(2)(a) – relating to design principles drawn from an analysis of the site and its context
  - Clause 20(2)(b) – relating to desired future locality character
  - Clause 20(2)(c) – relating to location of any development, considering the natural features of the site, including coastal processes and coastal hazards
  - Clause 20(2)(d) – relating to scale of any development and its integration with the existing landscape
  - Clause 20(2)(f) – relating to public access to and along the coastal foreshore
  - Clause 20(2)(g) – relating to pedestrian, cycle and road access and circulation networks
  - Clause 20(2)(j) – relating to building envelopes and built form controls
  - Clause 20(2)(k) – relating to conservation of Aboriginal cultural heritage
  - Clause 20(2)(n) – relating to provision of open space, its function and landscaping
  - Clause 20(2)(o) – relating to conservation of water quality and use
  - Clause 20(2)(p) – relating to conservation of animals and plants (within the meaning of the *Threatened Species Conservation Act 1995*) and their habitats and
  - Clause 20(2)(q) – relating to conservation of the habitats of fish.

### Particulars

The Littoral rainforest within the 'total development footprint' is listed as Critically Endangered under the *Environmental Protection and Biodiversity Conservation Act 1999* and Endangered Ecological Community under the *Threatened Species Conservation Act 1995* (now repealed) and is not adequately protected from harm.

The site analysis is inadequate and overall design of the subdivision fails to account for the natural features of the 'proposed residential footprint' and environmental risks and hazards to the land and Iron Gate Dr.

The proposed public reserves (Lot 141 and Lot 142) are inadequate in design, location, shape, and size having regard to the size of the proposed development.

The extent of earthworks and proposed 6.25m – 7m high crib wall within Proposed Road 6 will have a substantial and irreversible adverse visual impact.

## **7 Richmond Valley Local Environmental Plan 2012**

Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*, the Concept DA has not sufficiently demonstrated that it is consistent with the following considerations of the *Richmond Valley Local Environmental Plan 2012*:

Clause 5.10 Heritage conservation

- The Aboriginal stakeholder consultation in the assessment of Aboriginal cultural heritage for the Concept DA has not been satisfactorily resolved.
- The protection and conservation of the 2 lithic artefacts within the land has not been satisfactorily resolved.
- The on-going management conservation and protection of the remaining shell midden remaining in the Crown Foreshore Reserve has not been satisfactorily resolved.
- There has been no Aboriginal cultural heritage assessment for the removal of vegetation and ground disturbance in Iron Gates Dr for bushfire safety.

#### Clause 5.16 Subdivision of, or dwellings on, land in certain rural, residential or conservation zones

- No land use conflict risk assessment has been undertaken for Concept DA which relies on the streets, fire trails and asset protection zones to buffer environmentally sensitive areas zoned C2 and C3 from the proposed residential development.
- The Concept DA does not:
  - achieve compliance with the buffer distances recommended by NSW Dept of Primary Industries–Fisheries or in *Living and Working in Rural Areas A Handbook for Managing Land Use Conflict Issues on the NSW North Coast* between the residential areas and native vegetation / habitat, ecosystem and wildlife corridors, estuaries and major waterways, wetlands, or Littoral rainforest (i.e. the land zoned C2 and C3).
  - no information by way of justification to vary the distances or measures to mitigate potential for adverse environmental impact identified is provided.
- The full range of potential impacts of the development on the biodiversity values on the 'total development footprint', 'proposed residential footprint' and Iron Gates Dr and adjoining land have not been fully considered and are not satisfactorily resolved.
- The development as proposed is likely to be incompatible with land in the vicinity which is primarily zoned for conservation / environmental protection purposes.
- The measures proposed in the Concept DA to avoid or minimise incompatibility with adjoining land primarily zoned for conservation / environmental protection purposes are insufficient. The application fails to successfully integrate into the design of the subdivision the various recommendations made in the specialist assessment reports prepared for it.

#### Clause 6.1 Acid sulfate soils

- There has been no groundwater investigation of the 'proposed residential footprint' and assessment of the potential for movement of groundwater and contact with potential acid sulfate soils having regard to the extent of filling and potential for pollution of the Evans River.
- The acid sulfate soils assessment undertaken for the Concept DA relies on dated and incomplete information.

#### Clause 6.2 Essential services

- Adequate arrangements have not been made for stormwater drainage from the development.

#### Clause 6.3 Earthworks

- There is no assessment of the filling of the land on groundwater and potentially acid sulfate soils.
- There is no assessment of the impact of filling and associated erection of retaining walls on the Littoral rainforest in proposed Lot 137 or of land known as Lot 544 DP 48550 to the east of the existing drain.



- The quality of the fill is unknown as there has been no geotechnical assessment of the major source of it.
- Earthworks will occur within 40m of the Evans River and will with the erection of retaining walls immediately adjoin proposed Lot 137 containing the Littoral rainforest. No hydrologic / groundwater investigations or impact assessment has been undertaken to determine whether earthworks have potential to have an adverse impact on the hydrologic regime of the rainforest and potential for disturbance of acid sulfate soils.

#### Clause 6.5 Flood planning

- The *Evans River Flood Study – Final report’ by BMT WBM November 2014* prepared for RVC shows that sections of Iron Gates Dr (particularly near wetland areas) are in a ‘high hazard’ area, with flood levels between 2.3m(AHD) and 2.4m(AHD). The road is likely to be inundated to depths between 0.66m to 0.76m.
- There is no specific assessment of flood impacts on Iron Gates Dr including; which ARI flood event is likely to cause flooding, flood depths, flood velocities and duration.
- Iron Gates Dr is inundated in the current 1% AEP design flood event and a climate change assessment results in an increase in flood depth and risk in each of the 2% & 5% AEP design events along with an increase in susceptibility of inundation in higher probable design flood events.
- The assessment of climate change has not been adequately considered for Iron Gates Dr along with any cumulative / adverse impact offsite due to filling of the development.
- There is no specific assessment of flood impacts of the filling of the land and drain on the eastern boundary in regard potential for displacement of floodwaters onto adjoining land including; flood depths, flood velocities and duration.
- The Concept DA proposes no measures to minimise risk to life and for evacuation of people in the event of flood.
- Minimal consideration has been given to the downstream impacts of the ‘bio-swale’ and the potential for erosion impacts because of overflow to Evans River.

#### Clause 6.6 Terrestrial biodiversity

- The Concept DA does not adequately:
  - provide for the protection of native fauna and flora
  - provide for the protection of ecological processes in the Littoral rainforest within the ‘total development footprint’ or Littoral rainforest adjoining the Evans River or
  - encourage the conservation and recovery of native fauna and flora and their habitats.
- Threatened species, communities and populations are known to occur on the land and within the ‘total development footprint’ and the potential impacts of the Concept DA has not been fully assessed.
- The Concept DA has the potential to disturb and diminish the structure, function, and composition of the areas of Littoral rainforest (proposed Lot 136 and Lot 137).
- The development is not designed and sited to avoid significant adverse environmental impacts as no proper and comprehensive site analysis has been undertaken and the specialist assessments undertaken do not consider the full range of likely potential impacts.
- No detail is provided in the *Terrestrial Flora and Fauna Assessment* report regarding the proposed ownership and stewardship agreement for the Littoral rainforest (proposed Lot 136 and Lot 137) to demonstrate the rainforest will be properly managed to protect and enhance its biodiversity values in perpetuity.
- The on-going ownership and management of the Crown Foreshore Reserve and protection of the vegetation within it is not resolved.

#### Clause 6.8 Riparian land and watercourses

- The Concept DA does not sufficiently provide for the protection and future maintenance of the:
  - water quality in the Evans River
  - banks of the Evans River
  - riparian vegetation and habitat or
  - ecological processes within the riparian area.
- There has been no groundwater investigation of the 'proposed residential footprint' and assessment of the potential for movement of groundwater and contact with acid sulfate soils having regard to the extent of filling and potential for pollution of the Evans River from which measures to mitigate potential impacts can be determined.

#### Clause 6.10 Wetlands

- The Concept DA does not demonstrate that wetland areas both along Iron Gates Dr and in the Evans River can be satisfactorily protected.

### **8 Richmond Valley Development Control Plan 2012**

Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*, the Concept DA has not sufficiently demonstrated that it is consistent (in whole or in part) with the following Parts of the *Richmond Valley Development Control Plan 2012*:

- Part G-Subdivisions
- Part H - Natural resources and hazards
  - H1 – Flood prone land
  - H2 – Bushfire prone land
  - H3 – Acid sulfate soils
  - H4 – Natural resources
- Part H4 – Natural resources (NRS)
  - Clause 6.6 Terrestrial biodiversity
  - Clause 6.8 Riparian land and watercourses and
  - Clause 6.10 Wetlands.
- Part I-Other Considerations
  - I1 – Heritage
  - I8 – Social impact assessment
  - I9 – Water sensitive urban design
  - I10 – Crime prevention through environment design
  - I11 – Land use conflict risk assessment
  - I12 – Context and site analysis

### **9 Public interest and social impact assessment**

- 9.1 Pursuant to Section 4.15(1)(b) and (d) of the *Environmental Planning and Assessment Act 1979*, relevant concerns relating to likely environmental, social and economic impacts of the Concept DA have been raised in a significant number of submissions of objection from the local community to the proposed development.

#### Particulars

The total number of objections to the DA and Concept DA were:

- 656 public submissions
- 947 petition signatories and
- 23 'postcards'.

The total number of public submissions in support of the DA and Concept DA was 249.

Most of the submissions both against and for the DA and Concept DA have been prepared by residents of Evans Head and/or the Richmond Valley local government area.

Not all the key issues raised in objections to the DA and Concept DA can be adequately addressed by conditions of consent.

- 9.2 Pursuant to Section 4.15(1)(a)(iii) and (d) of the *Environmental Planning and Assessment Act 1979*, the social impact assessment of the proposal is inadequate because no consultation with key service providers in Evans Head was undertaken.