

BSC Reference: 10.2017.201.1

JRPP Reference: 2017NTH013

Our Reference: 02897

2 April 2019

General Manager
Byron Shire Council
PO Box 219
MULLUMBIMBY NSW 2482
Via email: Ivan.Holland@byron.nsw.gov.au

Attention: Ivan Holland

**Harvest Estate – Submission to Council's Assessment Report
West Byron Urban Release Area**

Dear Ivan,

Thank you for the opportunity to provide this submission regarding Council's Assessment Report which has recently been uploaded to the NSW Planning Panels website (Doc No. #A2017/12789).

We are concerned that the Assessment Report does not appear to be an assessment of the body of work and evidence that has been submitted under this Development Application (DA) to confirm the proposal's benefits and compliance with the legislative requirements. We have in this regard provided a response to each of the 'recommendations for refusal'. This is provided as Attachment 1 to this submission.

While it is acknowledged that we will have the opportunity to present our contentions regarding the report and these recommendations to the Northern Regional Planning Panel on the 8th April 2019, we appreciate the opportunity to confirm and positively agree with Council and the Panel the matters which are not key consideration items for this DA, prior to the scheduled meeting. These are detailed below.

Undisputable Errors

Recommendation 1

This recommendation for refusal relates to a SEPP 1 Objection not being submitted to create the proposed residue lot.

The proposed residual lot is 48.6ha in size and contains all land not zoned for residential purposes as well as 1.1ha of residential zoned land.

While we consider that a SEPP 1 Objection is unnecessary as the residue lot achieves the minimum 40ha lot size requirement, we have submitted a SEPP 1 Objection to Council for the creation of this lot. This SEPP 1 Objection was submitted to Council prior to it finalising its Assessment Report and confirms the proposal meets the objectives of the development standard. Compliance with the numerical standard would be unnecessary in the case. A copy of this submission is attached via this link for your reference - [Dropbox](#).

A deferred commencement condition could be applied to any approval to provide additional time to review the Objection and obtain the necessary approvals.

Recommendation 5

This recommendation for refusal relates to 'duplex development / nominated lots' not meeting the minimum lot size requirement under Council's Local Environmental Plan (LEP).

At the request of Council, plans submitted under the DA nominated lots that may be suitable for dual occupancy and medium density development. This was to confirm that housing diversity and lifestyle choice can be achieved within the release area and under the subdivision proposal.

We have confirmed to Council prior to it finalising its Assessment Report that the DA does not seek approval for any dual occupancy or multi dwelling development. A copy of this submission is attached for your reference - [Dropbox](#).

No variation to a development standard nor endorsement of these dual occupancy nominated lots is required under this determination.

Recommendation 8

This recommendation for refusal relates to the proposal not satisfying the requirements of the Byron LEP 1988 and the EP&A Act 1979 which require a DCP for the site.

As acknowledged within Council's Assessment Report, Chapter E8 – West Byron Urban Release Area (E8) was adopted and came into effect post lodgement of the subject application. The adoption of E8 satisfied the provisions of clause 101(2) of the Byron LEP 1988, in effect 'switching off' its utility into the future.

Whilst the Statement of Environmental Effects lodged in 2016 sought to utilise s83C (now Section 8.5) of the EP&A Act 1979 to support the permissibility of the DA in absence of a DCP, these provisions were dissolved once E8 was adopted and clause 101(2) therefore satisfied. This relationship is acknowledged through the assessment process, whereby compliance with the provisions of E8 were discussed within each of the three requests for further information issued by Council and responses provided by the Applicant.

For clarity, E8 has been adopted by Byron Shire Council and applies to the proposal. The provisions of clause 101 of the Byron LEP 1988 are satisfied and no document in lieu of E8 is required.

Recommendation 24

This recommendation states that the DA must be refused as the Rural Fire Service (RFS) has not granted integrated development approval.

The RFS issued integrated development approval on 6 February 2018. A copy of this approval is attached for your reference - [Dropbox](#).

Council raised concern regarding the DA and requirements under this RFS approval under its letters dated 29th March 2018 and 4th September 2018. These letters were responded to by the applicant on 1st June 2018 and 9th October 2018. Of note, our detailed response provided on 9th October 2018 has not been referenced or considered under Council's Assessment Report when commenting on bushfire.

Subsequent to submitting our letter dated 9th October 2018, and unknown to the applicant, Council has re-referred the application to the RFS on 13 February 2019. We have not witnessed a copy of this referral and therefore have not had the opportunity to review or confirm what detail was provided under it.

On 21 March 2019, the RFS issued a letter requesting further information to address this second referral. The RFS has requested that this information be provided within 100 days of the date of this letter.

This letter response from the RFS is not a refusal to issue integrated development approval, but rather a request for further information. A request which the applicant has only been made aware of since the letter was uploaded to the Planning Panels' website with Council's Assessment Report.

A deferred commencement condition could be applied to any consent to provide additional time to review the response from the RFS and obtain the necessary approvals - [Dropbox](#).

Omitted Information

Council's email of 22 March 2019 confirms that documentation has not been considered or included under this Assessment Report, despite it being submitted by the proponent before Council finalised its report. A copy of this email is attached for your reference.

While we appreciate that Council has indicated that all information which has been submitted under the DA will be provided to the Planning Panel, we do have concerns that information has not been referenced in the Assessment Report, that some information may have been missed and that information may not have been provided to the Panel. Similarly, we are concerned that the omission of information may have resulted in inaccurate referencing and assessment under the Assessment Report.

This is clearly evidenced by:

- the Assessment Report indicating that the proponent has not responded to Council's raised bushfire concerns (this is discussed above)
- references that 'legal points of discharge' have not been utilised, despite the evidence provided under the stormwater management plans and supporting reports which confirm this requirement is compliant.
- the Office of Environment and Heritage not being provided detail from Council, which has been submitted with the DA and confirms vegetation communities across the site are not classified as Threatened Ecological Communities
- the lack of reference to the BioBanking Statement issued by the OEHL relevant to the proposal
- the associated VPA for the site includes conditions that relate to the timing for arrangements for in-perpetuity management of the E2 zone, which is required to be satisfied prior to Subdivision Certificate.
- The Social Statement prepared and submitted by Planit (31 January 2019), upon request of Council, supplements the existing SIA, and provides additional information current to the present circumstance.

Considering this, we have attached a summary of all documentation that has been formally submitted to Council for its consideration under the DA. This documentation has been uploaded to the following link to allow Council and the Panel to cross check all documentation- [Dropbox](#)

Inconsistent Recommendations

Recommendation 2 & 10

These recommendations for refusal relate to Council's concern that incorrect traffic modelling has been used in the DA reporting. In turn, Council has indicated that potential traffic, road and noise impacts have not been appropriately addressed.

The traffic volume growth forecast provided in the DA is consistent with current forecast planning, was supported by Council's technical staff at a meeting on 5th of September 2018 and was reviewed and agreed to by Cardno, an independent peer reviewer of the DA on behalf of Council. Further clarification regarding this traffic modelling is provided under our response to Recommendation 10 within Attachment 1.

Despite this, Council's Environmental Health Officer has confirmed that noise mitigation measures can be resolved through conditions of consent. That is, Council's Assessment Report does not raise acoustic amelioration measures as a matter for refusal, yet the Assessment Report concludes that it should be, in contradiction to the recommendation. The officer's advice is referenced on page 15 of the Assessment Report.

Recommendation 3 & 4

These recommendations for refusal relate to Council's interpretation that the Coastal Management SEPP applies to the DA and that the DA has not addressed the requirements of this State policy.

The Coastal Management SEPP does not apply. The DA was lodged before the SEPP commenced and the Policy's savings provision confirm it does not apply (Clause 21). While not disclosed, we have obtained legal advice which confirms this.

Irrespective of its application, the information submitted with the DA confirms the proposal addresses the heads of consideration under the SEPP. We will discuss these outcomes with the Panel on 8th April.

In summary, the specific recommendations for refusal discussed above and listed below are not disputable items, as they have either been resolved or incorrectly made and therefore should not be items for consideration on the 8th April 2019.

- Recommendation 1
- Recommendation 5
- Recommendation 8
- Recommendation 24

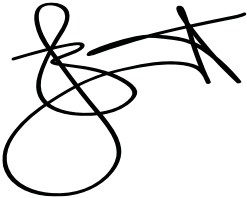
Recommendations 2, 3, 4 and 10 also appear to be made despite being inconsistent with legislative requirements and Council staff reporting.

Omitted information has resulted in an inaccurate assessment of the current proposal, and particularly has influenced items 7, 9, 11, 14, and 19. This is discussed more under Attachment 1.

We appreciate the opportunity for this submission and look forward to working with Council and the Panel to resolve these issues prior to the scheduled meeting. We would in this regard, appreciate a response to this letter before the 8th April 2019.

Please do not hesitate to contact myself on (07) 5526 1500 or alternatively via email at boyd@planitconsulting.com.au if you have any further questions or require additional information.

Yours sincerely,



Boyd Sargeant
Planit Consulting

CC: Planning Panels Secretariat. via email: Lisa.Foley@planning.nsw.gov.au

Attachment 1 – Response to Recommendations

Attachment 2 – DA Documentation

Attachment 3 - 19120 Briefing Note - Villaworld Groundwater, ENV Solutions

Attachment 1. – Response to Recommendations

1. Relates to a SEPP 1 Objection not being submitted to create the residue lot.

- The proposed residual lot is 48.6ha in size and contains all land not zoned for residential purposes as well as 1.1ha of residential zoned land.
- While we consider that a SEPP 1 Objection is unnecessary as the residue lot achieves the minimum 40ha lot size requirement, we have submitted a SEPP 1 Objection to Council for the creation of this lot. This SEPP 1 Objection was submitted to Council prior to it finalising its Assessment Report and confirms the proposal meets the objectives of the development standard. Compliance with the numerical standard would be unnecessary in any case.
- A deferred commencement condition could be applied to any approval to provide additional time to review the Objection and obtain the necessary approvals.

2. Relates to noise mitigation and traffic data.

- The traffic volume growth forecast provided in the DA is consistent with current forecast planning. The Acoustic report makes reference to AM and PM peak period forecast traffic volumes within the original traffic report and assumed a standardised approach as follows: *"Daily traffic volumes have been estimated by multiplying the averaged of the AM & PM peak traffic volumes by 10."*
- The resultant AADT traffic volumes used in the assessment are considered appropriate using this methodology and in line with forecast traffic volumes within the original strategic modelling assessment for West Bryon Development Area prepared by Veitch Lister Consulting.
- This was supported by Council's technical staff at a meeting on 5th of September 2018 and was reviewed and agreed to by Cardno, an independent peer reviewer of the DA on behalf of Council.
- Despite this, Council's Environmental Health Officer has confirmed that noise mitigation measures can be resolved through conditions of consent. That is, Council's Assessment Report does not raise acoustic amelioration measures as a matter for refusal, yet the Assessment Report concludes that it should be, in contradiction to the recommendation. The officer's advice is referenced on page 15 of the Assessment Report.

3. Relates to the application of the Coastal Management SEPP.

- The Coastal Management SEPP does not apply. The DA was lodged before the SEPP commenced and the Policy's savings provision confirm it does not apply (Clause 21).
- Irrespective of its application, the information submitted with the DA confirms the proposal addresses the heads of consideration under the SEPP.
- The development will result in biophysical and ecological benefits. There will be no measurable change in hydraulic discharge or flood behaviour within the wetland or proximity area. Modelling has demonstrated that there will be an improved outcome regarding flows into receiving waterways and no detrimental impacts on groundwater. Further technical response regarding likely groundwater depth, groundwater quality and stormwater discharge changes and management is provided as Attachment 3 to this submission.

4. This matter relates to the application of the Coastal Management SEPP and development within the coastal environment area.

- As stated above the Coastal Management SEPP does not apply.
- However, the proposal achieves the heads of consideration under the SEPP given it has been confirmed to not have a potential adverse impact on the natural environment or coastal values and processes. We discussed this above.
- The site does not front the coastal foreshore, and cultural heritage assessments and archaeological test pits on site have indicated that there is minimal potential for adverse impact to Aboriginal significance. This is confirmed on page 25 of Council's Assessment Report.
- The proposal meets the requirements under the Coastal Management SEPP.

5. Relates to Duplex Lots not meeting the minimum lot size

- At the request of Council, plans submitted under the DA nominated lots that may be suitable for dual occupancy and medium density development to confirm that housing diversity and lifestyle choice can be achieved within the release area and under the proposed subdivision layout.
- We have confirmed to Council prior to it finalising its Assessment Report that the DA does not seek approval for any dual occupancy or multi dwelling development.
- No variation to a development standard nor endorsement of these dual occupancy nominated lots is required under this determination.

6. This matter relates to likely impacts on coastal biodiversity and ecosystems, which is contrary to Clause 88 under the Byron LEP.

- Clause 88 includes heads of consideration for development in the coastal zone.
- This clause was repealed from most LEPs in NSW when the Coastal Management SEPP was introduced. Though it continues to apply to the site.
- As discussed under Recommendation 3 and 4, the detailed information submitted under the DA confirms that the proposal will not have an adverse impact on foreshore access, coastal, biophysical, hydrological and ecological values and processes.
- A State Government biobanking agreement and an Australian Government approval under the EPBC Act have been issued across the whole site, which considered these same matters. Monitoring and performance reporting will be undertaken to ensure early identification and remediation of any adverse impacts.
- The proposal meets the requirements under Clause 88 of the LEP.

7. Relates to proposed earthworks and filling works

- The Earthworks Phasing plan has been developed to consider the stormwater detention and treatment requirements of the site during the roll out of the development. Staged stormwater management plans will be developed as part of each stage of the DA process that tie into the overall site stormwater management plan and includes the additional temporary sedimentation and detention basins necessary to collect and treat surface waters prior to discharge.
- In addition to withdrawing all earthworks from the E2 zone, the earthworks phasing adopts a strategy that progressively opens up the site in a controlled manner that limits the amount of disturbance to the catchments upstream of Belongil Creek. This allows the application of effective Erosion and Sediment Control measures.
- As acknowledged by Council, proposed haul routes for the filling operation have been nominated with separation to the neighbouring properties to minimise impacts. Furthermore, a Construction Traffic Management Plan and a Construction Noise and Vibration Management Plan has been prepared to further minimise impacts to neighbouring properties.

8. Relates to the DCP which applies to the release area

- As acknowledged within Council's Assessment Report, Chapter E8 – West Byron Urban Release Area (E8) was adopted and came into effect post lodgement of the subject application. The adoption of E8 satisfied the provisions of clause 101(2) of the Byron LEP 1988, in effect 'switching off' its utility into the future.
- Whilst the Statement of Environmental Effects lodged in 2016 sought to utilise s83C (now Section 8.5) of the EP&A Act 1979 to support the permissibility of the DA in absence of a DCP, these provisions were dissolved once E8 was adopted and clause 101(2) therefore satisfied. This relationship is acknowledged through the assessment process, whereby compliance with the provisions of E8 were discussed within each of the three requests for further information issued by Council and responses provided by the Applicant.
- For clarity, E8 has been adopted by Byron Shire Council and applies to the proposal. The provisions of clause 101 of the Byron LEP 1988 are satisfied and no document in lieu of E8 is required.

9. Relates to stormwater management

- The site stormwater management plan has been prepared by a fully qualified Hydraulic Engineer to achieve engineering best practice for Water Sensitive Urban Design and utilise the existing onsite connection points into the existing drainage infrastructure that currently drain the site. The stormwater infrastructure has been designed to incorporate a large volume of ground water infiltration across the site to maintain groundwater flows for downstream groundwater-dependent ecosystems and has been designed to have a non-worsening

impact on the existing flow paths. The internal flow paths within the developed portion of the site will be altered as part of the development, however all of the existing flow paths within the E2 zones will remain.

- As a result, an expert has determined the development provides non-worsening stormwater flows that ultimately flow to the existing lawful points of discharge.
- It is noted that the lawful points of discharge have not been raised as a point of contention prior to Council's recommendation report.

10. Relates to traffic volumes used to confirm road upgrade requirements.

- The proposed developments traffic assessment was reviewed and reassessed the development's traffic impacts with consideration to Council and RMS's comments in 2018.
- The applicant acknowledges and agrees with Council that daily traffic volumes have increased significantly over the past 10 years along Ewingsdale Road. However, Council's engineering assessment report fails to report on forecast land use growth projections excluding that of WBURA, which affect traffic growth or identify the relationship between growth trends flattening over time once a road link reaches carrying capacity on a particular link or intersection. The engineering report is incorrect in stating that the traffic growth was based only on meeting discussions with Council. Rather, the traffic assessment's growth projections are based on Zenith Strategic Network Modelling forecast prepared for the West Byron Urban Release Area by Veitch Lister Consulting. Importantly given that WBURA is a strategically planned and zoned release area, traffic growth forecast must relate to 'background' traffic and not incorporate traffic forecasts inclusive of the WBURA. Addition of WBURA to background traffic forecast would be double-counting of the development's impacts.
- Council commissioned Cardno in November 2017 to undertake a peer review of a number of traffic assessments for the MR545 Corridor, including Bitzios Consulting's traffic report prepared for the Harvest development. Within the review of this report, Cardno states that: *"The assumptions outlined in the report are considered reasonable for the purpose of assessing the impact of development traffic"*.
- In this regard to peak period performance of surrounding intersections, the site access and associated intersections along Ewingsdale Road and Bayshore Drive have been shown to not be adversely impacted by the proposed developments traffic generation.
- With specific regard to the Assessment Report's assertions relating to frontage road works, an assessment was undertaken within the Response to Information Request dated 29th May 2018 - [Dropbox](#). The assessment demonstrated that the Bayshore Drive / Ewingsdale Road roundabout intersection operates within acceptable performance limits for a 10 year design horizon with only short approach and departure lanes for the Ewingsdale Road east approach. To clarify RMS comments, RMS did not require the works to be undertaken but rather requested to consider the need for such frontage works at the time of the development.
- The Bayshore Drive intersection is located 400m west of Banksia Drive and 800m west of the SAE access intersection. At the time of the RMS correspondence, construction of the Bayshore Drive / Ewingsdale Road roundabout upgrade had not yet commenced. Considering the short section of road between Banksia Drive and SAE Access intersection, based on discussions with RMS representatives (notably Liz Smith, signatory of the letter) we understand that RMS incorrectly reviewed the site upgrade at the Banksia Drive intersection location, but in the context of the new Bayshore Drive / site access intersection (i.e. closely located to SAE left turn treatment). Importantly, it is noted that the eastern access intersection for the West Byron Urban Release Area proposed to align with the SEA access intersection as a dual lane roundabout intersection. This eastern intersection associated with the West Byron Urban Release Area is therefore the responsibility of neighbouring applications, not Harvest Estate. The Harvest Estate proposal does not require the eastern access intersection fronting the SAE access.
- The nominated works are not considered necessary or appropriate until such time that the eastern intersection fronting SAE access is constructed by the adjacent land owner. Providing the works prior would result in the loss of Channelised turn treatments a Banksia Drive intersection and reconfiguration to a left-in/left-out treatment.
- The applicant has not refused to contribute to upgrade Ewingsdale Road to two lanes in each direction. Rather, the development has considered the RMS request and does not result in the need or rely on this this road upgrade.
- Should Council insist on the additional works be undertaken on Ewingsdale Road fronting the site, it is the view of the applicant that these works would be associated with the development's funding contributions towards "urban road" infrastructure through the WBURA Voluntary Planning Agreement (VPA).

11. Relates to the submission of a Social Impact Assessment

- As acknowledged within Council's Assessment Report, a Social Impact Assessment (SIA) was prepared to facilitate the rezoning of the WBURA. As the application submitted with Byron Shire Council was within 5 years of the rezoning, a further SIA is not formally required under the provisions of the DCP. Whilst this time has since extended beyond the 5 years, the rezoning and project integrity has remained, further supporting why an additional SIA is excessive.
- Whilst demographics, housing delivery and the like has evolved since the previous SIA in 2011, these changes are considered minor, by way of example the North Coast Regional Plan 2036 identifies a minimum additional supply rate for Byron of approximately 160 dwellings per year, likewise the 'Far North Coast Housing and Land Monitor 2016 Figures for 2008–2014', published by NSW Department of Planning and Environment state that housing delivery has been averaging 165 dwellings per year from 2011/2012 – 2013/2014.
- The Council assessment raises concern that the proposal is not serviced by a shopping precinct and has limited public open space. In this regard, the proposal meets the zone objectives and provisions of the WBURA structure planning. Whilst shops are currently not physically provided within WBURA, it is common practice for commercial operations to be provided within the latter stages of development, allowing sufficient population to be generated to support economic viability. Generally speaking, a population of at least 1200 people is required to achieve some degree of economic viability for a general store, let alone a shopping precinct. Furthermore, the Byron Creative Arts Industrial Estate, which contains a variety of supporting retail and food services is located adjacent to the subject site, easily facilitating short-term resident needs.

12. Relates to compliance with Council's Subdivision Design guidelines.

- The objectives of Byron Shire Council's Subdivision Development Controls are to specify development controls that apply generally to subdivisions and to ensure that subdivision proposals deliver contemporary construction and services standards relevant to the context of Byron Shire.
- Particular concern has been raised by Council as to buffers, extent of fill, habitat connectivity, solar access, lot dimensions and interface issues. As buffers, earthworks and ecology have been addressed elsewhere, comments are confined to solar access, lot dimensions and interface issues.
- Responses to the specific issues raised in Council's report are provided below.
 - Solar access – The subject site is located within a subtropical climate, characterised by hot and humid summers and mild winters. An ideal lot orientation for the site is within 20 and 30 degrees of the north-south or east-west axis. This outcome is provided for the majority of the lots proposed within the application.
 - Lots that are orientated outside the preferred alignment and predominately confined to the central section of the site, which has been governed by the alignment of Road 5, which is consistent with Council's illustrative Concept Plan. Whilst many of these lots are at or close to the minimum lot size, complimentary development standards for building height and floor space ratio enable suitable dwelling building bulk to ensure sound access to sunlight. Likewise, passive design features can be incorporated within dwelling design to ensure housing reflects the subtropical climate and energy performance.
 - Lot dimensions – Whilst a small number of corner lots are below the 'preferred' lot size, they are above the minimum lot size standard established. As previously detailed, the complimentary building height and floor space ratio provisions enable sufficient building bulk to support an appropriately sized dwelling which does not cause undue impacts on adjoining lands. Whilst we appreciate the DCP requirement for a 12 x 15m building envelope per lot, it is now commonplace for dwelling design to be lower than these dimensions without affecting the level of amenity enjoyed. Nonetheless, each lot is sufficiently sized to accommodate future dwellings whilst upholding suitable setback provisions are response to site analysis. We would welcome a condition requiring the submission building envelope plan prior to the issue of a construction certificate if formal demonstration is necessary.
 - Interface with Lot 2 DP 551947 – Engineering outcomes have been designed and proposed around the site considering its existing status and potential future development.
 - As this land is not part of the site, retaining walls within the development boundary have been proposed around the lot to enable the Harvest Estate site to be filled to the necessary levels. A stormwater culvert from the existing low point of the Lot 2 to drain a 1 in 100 year storm event is also proposed.
 - This site could be filled to the surrounding development levels if it was developed in the future and connected into the proposed development roads, drainage, water and sewer networks.

- = In short, Lot 2 can remain as it currently is and function as it currently does with no direct impact from the development. If this land was developed in the future it can be filled and connected into Harvest's infrastructure

13. Relates to the staging of proposal and assurance of the orderly development of land

- E8 provides objectives, performance criteria and prescriptive measures regarding the staging of development within the West Byron Urban Release Area. I take this opportunity to clarify that prescriptive measures form one method of achieving performance criteria, as opposed to development standards that must be adhered to. In this regard the relevant performance criteria states that:
 1. *Land use development will be integrated, coordinated and planned in line with the provision of infrastructure*
 2. *All infrastructure will be designed to provide a high standard of living for residents and a vibrant, well serviced village centre and industrial estate.*
 3. *Rehabilitation and re-vegetation works are to be delivered in a timely manner and in accordance with management plans.*
- In considering such, the proposal includes integration with adjoining parcels by providing accessible roads along property interfaces, infrastructure to enable a high-quality urban environment and suitable vegetation management, satisfying the established performance criteria. Notwithstanding such, the proposal achieves a balance of being independent of the urban release area outside the applicant's ownership, whilst upholding the integrity of illustrative staging plan within E8. In this regard, the alignment of the trunk road is as per the Staging Plan and whilst lots within the 'Stage 2' footprint as prescribed within E8 could be delivered ahead of the eastern Stage 1 works, the supporting studies contained within the Development Application do not detail any unsuitable or adverse impacts should this occur. In this sense, the release area can be developed within a co-ordinated and orderly manner despite differing land ownership patterns and timelines.
- As demonstrated in all servicing reports, the West Byron Urban Release Area has been delineated by a clear East & West catchment. The current proposal is wholly contained within the Western catchment and as such is not reliant on any works within the Eastern catchment to occur prior to the completion of any stage of the development proposal.

14. Relates to stormwater management

- This matter has been discussed under Recommendation 9.
- The proposed site SWMP has been developed in accordance with BSC DCP Section E8 10.4 Stormwater Management the stormwater modelling has demonstrated that there will be a non-worsening of flows into the receiving waterways, based on previous reports by AWC 2015, it has been demonstrated that the use of WSUD infrastructure within the proposed development will assist in improving the quality of water being discharged into the receiving water ways from the site.
- The strategy proposes to use lot based infiltration pits into the underlying coastal sands to replicate groundwater infiltration across the site in order to mimic existing conditions and protect downstream groundwater-dependent ecosystems.

15. Relates to biodiversity, vegetation management and landscaping

- Significant work and detail has been submitted with this proposal to confirm the ecological benefits of this development and compliance with the legislative requirements. With specific regard to DCP section E8.10.5, the design and management responses include:
 - = Habitat and Connectivity – The 4.9ha of native vegetation to be removed is to be offset through on-site rehabilitation of approximately 10ha of disturbed grassed paddock. This 10ha forms part of the 48ha native vegetation retention and enhancement area. These rehabilitation works will result in a net increase in native vegetation on site and provide habitat for scheduled species. The rehabilitation areas augment with retained former E zone areas and strengthen wildlife corridors east-west and north-south through the site. The rehabilitation areas also separate the development footprint from the adjoining Belongil Creek and Cumbegin Swamp Nature Reserve.

- The development has also obtained a Biobanking agreement, from the OEH, for the removal of Wallum Sedge and Wallum froglet habitat. The impacts from removing this habitat will be offset in accordance with the OEH and EPBC Act requirements
- Biodiversity Values – No development is proposed within E Zoned land and buffers have been provided to E Zoned land consistent with the requirements of the DCP
- A Biodiversity Conservation Management Plan (BCMP) has been prepared for the site
- E zone land is being investigated as a Biodiversity Stewardship Site under the *Biodiversity Conservation Act 2016*. Through the Stewardship process protection and ongoing maintenance works would also be ensured.
- We are currently in the process of undertaking a BSSAR and do not object to Lot 145 being conditioned to be a Stewardship site should this be deemed the most appropriate mechanism to securing the ongoing management of the E zoned land and retained ecologically significant areas.
- Ecological and hydrological functions and values of Belongil Creek –
- The proposal retains wetlands and riparian vegetation associated with Belongil Creek. The BCMP seeks to improve the ecological functions and values of Belongil Creek.
- The Hydraulic Report submitted and prepared for the site by BMT WBM Pty Ltd dated October 2017 examined the effect of filling the site. The report notes on page 21 that 'The inclusion of the proposed development in the model has a negligible impact on the broader flood behaviour within the Belongil Creek catchment. Peak flood depths in the floodplain to the south of the site remain unchanged from the existing case.'
- Significantly the proposed development complies with clause 98 of the Byron LEP 2014.
- The stormwater report demonstrates a treatment train of measures to ensure the water quality discharge meets relevant standards
- On site infiltration on each allotment is designed to ensure groundwater hydrology and groundwater quality is not affected by the development thus protecting groundwater dependent adjoining ecosystems. Groundwater sampling and logging has informed
- Various site and construction management plan inclusive of Acid Sulphate Management Plans guide works to ensure ecological and hydrological functions and values of Belongil Creek.
- Environmental Buffers – No works are proposed within E Zone areas and these areas are to be rehabilitated.
- The former E zone areas are contained within a single allotment (Lot 145) and subject to the rehabilitation and weed management in accordance with the BCMP prepared for the proposal.
- The DCP does specify a buffer width. This width is 'a minimum width buffer of 20 metres. The buffer can include a perimeter road/ bushfire trail for bushfire protection purposes provided that road is located outside of the E2 and E3 zone and comprises a minimum vegetated edge adjacent to the E2 and E3 zone of 7 metres.
- It is considered the typical road and drainage section / profile provided meets the buffer requirements outlined in item E8.10.5.1 (4)(2)(3)(b) of the DCP and achieves the minimum 20m buffer width, with minimum 7m vegetated, criteria within E8.10.5.1 (4)(2)(3)(b)(iii).
- Koalas – The site retains those areas where koala activity has been recorded through the Planit surveying and also those areas which have been identified as use areas in the Cristecu & Shultz 2015 study and Secondary habitat as mapped by Austeco.
- Within the subject site, it is proposed that thirteen (13) Eucalyptus robusta (primary koala feed tree under the SEPP 44) be removed.
- These primary koala feed trees do not occur within an area mapped as having koala usage within any of the Koala surveys over the site. These trees are adjacent to a number of dwellings which may have deterred /precluded use.
- The proposed rehabilitation works include plantings for the koala ensuring the 13 trees are offset and additional habitat is created. A KPoM has been prepared for the site.

16. Relates to active transport infrastructure provision, as detailed within E8.

- Council has raised concerns regarding footpaths, cycling infrastructure (storage, parking and end of trip facilities) and bus stops.
- Footpaths – the submitted Engineering Plans detailed footpaths, between 1.5 and 2.5m in width along all roads. Whilst we are of the view that two footpaths on each local, collector and distributor roads is excessive considering the population and movement volume of the application area, should this matter be essential we would welcome a suitable condition of consent requiring such prior to the issue of a construction certificate.
- Cycling infrastructure – The proposal comprises residential subdivision with associated infrastructure and open space. Cycling storage, parking and end of trip facilities are generally prescribed for commercial settings as opposed to residential where ample room is afforded within future dwellings to accommodate such. Whilst we could foresee a need for cycling infrastructure with the proposed public open space, the expectations and standards of such are not prescribed within the DCP framework. If this is Council's expectation, we would welcome a condition of consent relating to an agreed Open Space Embellishment Plan, or the like, prior to the issue of a construction certificate.
- Bus Stops – E8 prescribes that the road network be designed to provide designated bus routes and stops in safe and convenient locations. In this regard, suitable road widths have been incorporated to enable public transport access to the site, likewise two bus stops have been located along Road 5, ensuring all lots are located within a 400m radius of the two stops, except for 33 lots fronting Road 10. Lots along Road 10 are located 850m, or less, of a bus stop, the equivalent of less than a 10min walk. Notwithstanding the merits of the proposal, it is common practice to establish the final placement of bus stops in consultation with service providers and Council at Construction Certificate stage. Should this be an outstanding issue of concern, we would welcome suitable conditions requiring such and would be more than happy to collaborate with stakeholders to ensure a suitable network is provided.

17. Relates to the distance between lots and recreation areas.

- As per the location of bus stops discussed within 16, lots located outside of the 500m prescriptive measure are limited to approximately 33 lots, fronting road 10 in the south-eastern portion of the site. Whilst outside of the 500m prescribed, as these lots are still located within a comfortable (flat, dedicated footpath, environmental interface providing an improve qualitative experience) 10min walk of open space the objectives and performance criteria are considered to be met. Likewise, considering the scale of the residential land within the applicant's ownership within the south-eastern portion, its periphery location to the holistic WBURA, it is not considered suitable to locate open space.
- The recreational park areas are entirely consistent with the WBURA zoning and Council's Concept Plan provided under Appendix B of the DCP – Chapter E8.

18. Relates to the hazard and constraint management

- Environmental hazards and constraints were investigated in detail under the former rezoning considerations over the site, to determine the developable land and planning framework across the site.
- These hazards and constraints have been investigated in more detail under the current DA, with specific design, management strategies and monitoring measures (ongoing and future) being proposed to ensure minimal impact to and from environmental hazards.
- Water management – The proposed stormwater strategy for the site follows the recommendations from previous studies by Water and Carbon Group 2010, and AWC 2015 which extensively assessed the proposed development impact on the groundwater levels and Belongil Catchment and recommended the use of infiltration throughout the site to replicate existing conditions and ensure groundwater is recharged to maintain existing levels. The SWMP proposed for the site includes the use of lot based infiltration pits to ensure that infiltration into the groundwater occurs throughout the existing site and not in concentrated treatment areas in order to mimic existing conditions as much as practicable.
- The proposed bioretention basins have been designed with an impermeable base liner to ensure there is no short circuiting of stormwater into the groundwater table prior to treatment through the bio basins.
- The previous studies undertaken have demonstrated that the incorporation of WSUD and treatment throughout the development will improve the water quality of stormwater entering into the catchment, compared to the existing unmitigated and treated flows that currently occur across agricultural land

throughout the existing catchment, the Byron CBD and the Industrial precinct. The total West Byron Development Area occupies is approximately 3.5% of the total Belongil Catchment area.

- Acid sulfate soils - Acid sulfate soils have not been raised as an item of concern by Council's environmental health unit.
- The land is mapped as potentially containing Class 3 Acid Sulfate Soils. This means that any works below 1 metre of the natural ground level may have the potential to intercept ASS.
- We note there is an error under the Assessment Report (pg 25) that notes ASS occurs 'within' 1m of the ground surface.
- Considering an approximate average placement of 1m of imported fill over the site, and the proposed pressurised sewer system, excavation will be limited to minor works to widen and deepen the central drain. An ASS Management Plan has been prepared in relation to this activity to ensure that ASS if exposed, are appropriately managed.
- Additional ASS management can be prepared for individual landowners as a conditional requirement of the approval.

- Bushfire – risks from bushfire have been considered under the DA, and integrated development referral was issued by the RFS. Considering the RFS has now requested further information be provided regarding bushfire management, further consideration of potential 'peat fires' can be undertaken if it is considered necessary. We note that the RFS has not raised peat fires as an item of concern, nor was the applicant made aware from Council that this was an outstanding issue with the DA.

19. Relates to the mechanism proposed to ensure ecological offsets will be restored managed and protected in perpetuity

- The proposal is supported by revegetation and management plans that will need to be adhered to under any development approval granted over the site.
- Land to be revegetated and protected is zoned for environmental conservation purposes and will be contained within one residue lot. This zoning provides a further legal mechanism for protecting these high environmental value resources from future development. In addition to this, titling restrictions have been proposed to ensure the intended use of the land is transparent under any future land sale / purchase negotiations.
- The proponent has made offers to Council and the National Parks and Wildlife Services to dedicate this land for public purposes, however these offers have not been supported.
- Part of the land has been supported under a biobanking agreement, ensuring its protection in perpetuity
- As council is aware the Voluntary Planning Agreement requires the applicant to prepare a Vegetation Management Plan for the conservation land to protect and rehabilitate the retained ecological areas of the site. The current proposal is to fully rehabilitate the E2 zone, being over and above the VPA requirements.
- This retained ecological area is being investigated as a Biodiversity Stewardship Site under the *Biodiversity Conservation Act 2016*. Through the Stewardship process protection and ongoing maintenance works would also be ensured.
- We are currently in the process of undertaking a BSSAR and do not object lot 145 being conditioned to be a Stewardship site should this be deemed the most appropriate mechanism to securing the ongoing management of the E zoned land and retained ecologically significant areas.

20. Relates to Council's perception that the proposal is likely to have an adverse environmental impact

- Recommendations 20 – 23 are broad statements to the DA.
- As addressed above, the matters which Council consider are likely to have an adverse environmental impact or are outstanding, have been adequately addressed through the DA.
- Further technical response regarding likely groundwater depth, groundwater quality and stormwater discharge changes and management is provided as Attachment 3 to this submission.

21. Relates to the development not being suitable in the view of identified constraints

- The constraints listed were considered at the time of rezoning of the release area. This rezoning was subject to extensive public participation. As part of this consideration at this time, the R2 zoned land was deemed

appropriate for urban development and zoned accordingly. No residential development within Harvest Estate is proposed outside of the R2 zoned land.

- The constraints listed by Council have all been considered under further site specific and detailed investigations, studies, proposed strategies and management plans to ensure a controlled development outcome with minimal adverse impacts to the surrounding environment.

22. Relates to potential environmental, social and economic impact as raised in the submissions

- Recommendations 20 – 23 are broad statements to the DA.
- While over 2,000 submissions were received over two exhibition periods, many of these submissions were duplicated, late, or referring to the neighbouring DA. Approximately 60% of the submissions were proforma or reproduced, many were made from outside of the local area or did not disclose their address and many related to the entire West Byron Estate, not specifically the subject DA.
- Broadly speaking, the issues raised in the submissions relate to concerns surrounding perceived ecological, traffic and engineering (earthworks, flooding, stormwater and groundwater) impacts.
- A detailed response to these the submission concerns was provided to Council on 2 August 2018.
- Our response confirmed that the proposal is able to manage these perceived impacts and ensure effective management of all relevant environmental, engineering and social requirements.

23. Relates to unresolved matters under the DA and the proposal not being within the public interest

- Recommendations 20 – 23 are broad statements to the DA.
- As addressed above, the matters which Council consider are likely to have an adverse environmental impact or are outstanding, have been adequately addressed through the DA.

24. Relates to integrated development approval / concurrence not being issued by the Rural Fire Service

- The RFS issued integrated development approval on 6 February 2018. A copy of this approval is attached for your reference.
- Council raised concern regarding the DA and requirements under this RFS approval under its letters dated 29th March 2018 and 4th September 2018. These letters were responded to by the applicant on 1st June 2018 and 9th October 2018. Of note, our detailed response provided on 9th October 2018 has not been referenced or considered under Council's Assessment Report when commenting on bushfire.
- Subsequent to submitting our letter dated 9th October 2018, and unknown to the applicant, Council has re-referred the application to the RFS on 13 February 2019. We have not witnessed a copy of this referral and therefore have not had the opportunity to review or confirm what detail was provided under it.
- On 21 March 2019, the RFS issued a letter requesting further information to address this second referral. The RFS has requested that this information be provided within 100 days of the date of this letter.
- This letter response from the RFS is not a refusal to issue integrated development approval, but rather a request for further information. A request which the applicant has only been made aware of since the letter was uploaded to the Planning Panels' website with Council's Assessment Report.
- A deferred commencement condition could be applied to any consent to provide additional time to review the response from the RFS and obtain the necessary approvals.

Attachment 2. – DA Documentation

The documentation to be considered under this DA include the following. A copy of this documentation is provided at: <https://www.dropbox.com/sh/h02ry9598tdktom/AAB-uHy3fj7EGRpiUZtEUTW-a?dl=0>

- **Plan of Development** by Planit Consulting, dated 1st June 2018
- **Statement of Environmental Effects** by Planit Consulting dated March 2017
- **Engineering Report** by Planit Consulting, dated 1st November 2018
- **Sewer Servicing Assessment** by Planit Consulting, dated 18th April 2017
- **Concept Construction Traffic Management Plan (CTMP)** by Planit Consulting rev.01 dated 9 October 2018
- **Ecological Report** by Planit Consulting, dated October 2017
- **Addendum Tree Clearing Plan and Biodiversity Conservation Management Plan** dated 29th November 2017
- **Koala Plan of Management**, by Planit Consulting dated April 2018
- **Response to OEH Request for Further Information** by Planit Consulting, dated 23rd March 2018
- **Response to OEH** by Planit Consulting, dated 1st April 2019 incl. **Geotechnical Assessment** by Shaw.Urquhart dated 10 June 2010
- **Cultural Heritage Assessment** by Everick Heritage Consultants, dated October 2017
- **Response to Tweed Byron Local Aboriginal Land Council** dated 29 May 2018
- **Detailed Site Investigation (Soil and Groundwater Assessment)** by ENV Solutions, dated May 2018
- **Environmental Noise Impact Assessment** by CRG Acoustics, dated 25 October 2017.
- **Construction Noise and Vibration Management Plan** by CRG Acoustics, dated 25 October 2017
- **Flood Impact Assessment** by BMT WBM, dated 25th October 2017
- **Biobanking Assessment Report** by CO2 Australia, dated 12th April 2017.
- **Bushfire Risk Assessment** by Planit Consulting, dated March 2017 and October 2017.
- **Radiant Heat Shield Sketch** dated 9th October 2018
- **Traffic Impact Assessment** by Bitzios Consulting dated 11th November 2016
- **Subsequent responses per RFIs** dated 29 May 2018
- **Acid Sulfate Soil Management Plan** by HMC Environmental Consulting dated November 2016.
- **Stormwater Management Plan** by Planit Consulting dated 2nd October 2018.
- **Pre and Post development Stormwater Flow Paths plan Drawing C0040 rev. F & SK014 Rev. A** by Planit Consulting n.d.
- **Draft DCP E8 Assessment** by Planit Consulting dated 27th March 2017.
- **Statement of Landscaping Intent** by Planit Consulting dated June 2018.
- **Request for Further Information responses** by Planit Consulting dated 26 October 2017, 5th December 2017, 6th June 2018 and 9th October 2018.
- **Response to Submissions** prepared by Planit Consulting dated 2 August 2018
- **Summary of supporting information** prepared by Planit Consulting dated 5 November 2018
- **Email of 27 February 2019** from Planit Consulting, regarding engineering matters;
- **Email of 4 March 2019** from Planit Consulting, regarding engineering matters;
- **SEPP 1 Objection** by Planit Consulting dated 22 March 2019
- **Biobanking Statement** dated 14th December 2017
- **Rural Fire Service Bushfire Safety Authority** issued 6th February 2018
- **Cardno Peer Review (West Byron Development Area Independent Review of TIA)** dated 10th November 2017
- **State Government Satisfactory Arrangements Certificate** dated 14th December 2017
- **Federal Government EPBC Act Controlled Action Approval** dated 6th July 2018
- **DRAINS and MUSIC modelling issued** to council Officer Ivan Holland via email 18th October 2018
- **Owners Consent Map and Consents Map (including Crown and BSC Consent)** as attached and previously issued to council April 2017, 6th February 2018, 25th July 2018.

Attachment 3 - 19120 Briefing Note - Villaworld Groundwater, ENV Solutions

Briefing Note:



19120 briefing note - villaworld groundwater

01 April 2019

Belongil Creek Flooding and Groundwater

Point 20 Page 44 States:

Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to have an adverse environmental impact on the natural environment as a result of groundwater depth and quality changes, stormwater discharge (impacting on surface water quality including the Belongil Creek ICOLL), vegetation removal, habitat destruction and ecological impacts.

Belongil Creek is situated to the west of Byron Bay. The Byron Bay township drains to Belongil Creek and is susceptible to flooding from both intense rainfall over the town catchment and elevated ocean levels.

Size: The creek is approximately 3km long with a catchment of around 3000 hectares. Significant portions of the catchment area are below 2m Australian Height Datum (AHD). (Byron Shire Council, Website, 2019)

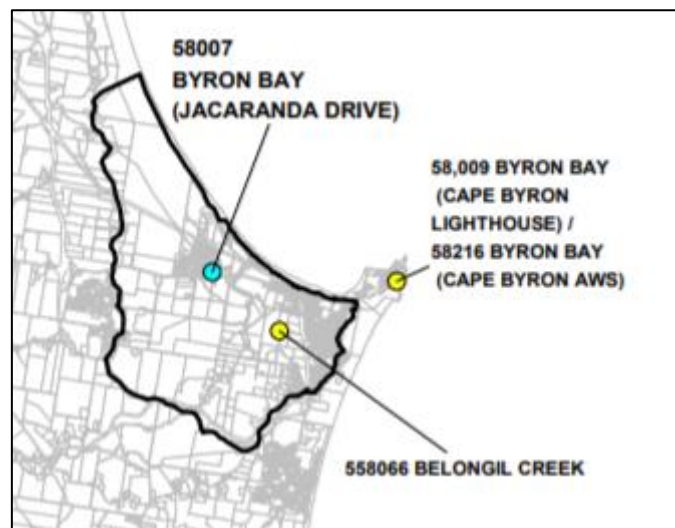


Figure 1: Belongil Creek Catchment and weather stations (Belongil Creek Flood Study, Byron Shire Council, 2009)

Development Impacts on flooding and Water Quality:

Mitigating the impacts of development occurs through the process of detention of development flows using onsite detention (lot scale), promoting reuse (rain water tanks) and development scale detention basins. These are standard development procedures implemented in virtually all urban development throughout NSW in the last 10-years. Modelling is completed typically using

Environmental Engineering Solutions

ENV Solutions Pty Ltd ABN 46856079490
PO Box 248
Ballina NSW 2478
0421519354

integrated rainfall runoff and hydraulic models such as Drains, HEC RAS, XP- RAFTS, PC Drain, Mike 11, TufLOW and ESTRY.

Catchment Based Flood Modelling

Existing studies such as the Belongil Creek Flood Study (SMEC, 2009) are used as the basis for this design. This report concludes:

A hydraulic model of the Belongil Creek floodplain has been established and calibrated to historic flood events. This model has been used to predict flooding behaviour across the Belongil Creek floodplain for a range of design flood events. The design flood events incorporated climate change scenarios based upon IPCC and CSIRO models and DECC guidelines. These models suggest that ocean levels and rainfall intensities in Byron Bay are highly likely to increase over the next century in response to global climate change.

The flood models indicate that flooding of the Byron bay township to the east of the North Coast Railway line is caused by inadequate trunk drainage system capacity, lack of a surface overland flow path to the Belongil Creek Estuary and insufficient change in elevation between the low lying portions of the town and the ocean to facilitate gravity flow. The Butler Street drain is the only means of drainage for the town centre and this drain was found to be deficient in capacity. However any upgrading of this drain may also allow greater quantities of sea water to reverse flow towards the town centre during times of elevated ocean levels and consideration would need to be given to the use of flood gates, levees and pump systems to protect the town east of the railway line. In addition to the Butler Street drain, the Clarkes beach outfall was found to be deficient in capacity, resulting in flooding of Cowper Street and the surrounding area. The capacity to convey water from Cowper Street either to Clarkes Beach or to Belongil Creek would need to be increased, or additional flood storage provided, to reduce flooding at this location. To the west, in the Industrial Estate, a number of Lots in Brigantine Street, Bayshore Drive and Grevillea Street are inundated in the 100 year ARI flood event. Flooding in this area could be reduced with upgraded drainage systems

The western industrial area in Byron Bay drains via a bank of culverts under Ewingsdale Road. The capacity of these culverts is approximately 4.7m³ /s. This is 7m³ /s less than the peak 100 year ARI event flow. Due to the limited capacity of this outlet, flood levels backup within the industrial estate, eventually overtopping Ewingsdale Road. SMEC (2010) estimates that the Ewingsdale Road culverts would need to be upgraded to 3 cell, 1.2 m wide x 0.9 m high box culverts to accommodate the 100 year ARI flow. (Belongil Creek Floodplain Risk Management Plan; BMT/WBM, 2015)

Any Changes to flow regimes in this area will significantly impact the drainage capacity and potential flood levels downstream of Ewingdale Road (the subject site).

Regional Hydrology and Groundwater Context

Belongil Creek is one of approximately 70 Intermittently Closed and Open Lakes and Lagoons (ICOLs) in NSW. Historically, this catchment has been managed by Council with artificial opening during periods of high water measured at the Ewingsdale Road bridge.

The management of this opening is currently under review and management practices are trending towards higher thresholds for artificial opening – ie higher water levels, less artificial openings. This will significantly impact the water quality and average groundwater level with the catchment including on the development site. Flood modelling currently incorporates both open and closed Belongil Creek mouth scenarios.

Council should continue to manage the creek entrance via manual opening, rather than establishing a permanent opening. However, due to the dynamic nature of tidal and flood conditions in the area, including future sea level rise, it is recommended that a long-term management plan is developed for the ICOLL. This management plan should be developed with consideration to the current opening trigger water level, and in combination with other floodplain management measures, such as relocation or modification of properties and infrastructure. (BMT/WBM, 2015)

Development Water Quality

Water quality impacts are addressed using Water Sensitive Urban Design (WSUD) principles and modelling using programs such as MUSIC (model for urban stormwater improvement conceptualization). Ecological impacts such as for the Wallum Sedge Frog have been adequately addressed by other developments in the shire and should be able to be adequately conditioned on this basis (reference the Habitat development, circa 2012).

Development Groundwater Impacts

Significant impacts on groundwater levels have historically occurred within the catchment. This is due to drainage works within the basin, development of low-lying areas, Councils management of the ICOLL and significant changes to the hydraulics of the system by the installation of railway embankments, roads, drainage works and bridges.

Regionally, impacts on groundwater level also impact Acid Sulfate Soils and water quality therefore lead to changes to species habitats.

Unfortunately, catchment wide changes cannot be reversed or mitigated by the proposed development. These are the responsibility of the Council. Management plans for flooding, stormwater (and therefore groundwater levels) and catchment water quality are currently being developed, discussed and agreed.

The science of on-site mitigation of runoff rates, water quality and water sensitive urban design (WSUD) for urban developments is well progressed and able to mitigate the changes proposed from greenfield developments.

These impacts are well understood and with appropriate site specific conditions imposed by Council this should not be a barrier to development.

Current ongoing groundwater and surface water quality studies are improving the amount of data available for future assessment and ongoing design and monitoring of such systems.

Groundwater level data available for the current monitoring wells onsite, are presented in Table 1.

Table 1: Historical groundwater levels (metres below ground level) of current monitoring wells.

Monitoring Well	05/07/2010	01/08/2010	03/05/2018	21/03/2019
MW1	-	-	0.27	0.66
MW2	-	-	0.87	1.61
BH3	0.65	0.71	0.58	0.43

Should you have any queries in relation to this assessment, please don't hesitate to contact the undersigned.

Yours faithfully,



James Foster

Principal Engineer

ENV Solutions Pty Ltd

0421519354

