

COUNCIL ASSESSMENT REPORT

Doc No. #A2017/30659

Panel Reference	2018NTH007
DA Number	10.2017.661.1
LGA	Byron Shire Council
Proposed Development	This application seeks approval for the subdivision of Six (6) Lots into Three Hundred and Eighty Seven (387) Lots consisting of Three Hundred and Seventy Eight (378) Residential Lots, Two (2) Business Lots, Two (2) Industrial Lots, One (1) Recreation Lot and Four (4) Residue Lots.
Street Address	Ewingsdale Road BYRON BAY, 394 Ewingsdale Road BYRON BAY, 412 Ewingsdale Road BYRON BAY, Melaleuca Drive BYRON BAY, 364 Ewingsdale Road BYRON BAY
Applicant/Owner	Site R & D Pty Ltd / Telicove Pty Ltd
Date of DA lodgement	21 November 2017
Number of Submissions	2219 (1 submission in support, 2218 submissions in opposition).
Recommendation	Pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application no. 10.2017.201.1 for Staged Development Application: Stage 1: Subdivision of Nine (9) Lots into Two Hundred and Ninety (290) Residential Lots in Nine (9) Sub-Stages, Stage 2: Concept Plan for Residual Land including Medium Density Residential, Low Density Residential, Commercial, Industrial, Recreational and Environmental Management Precincts, be refused .
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	This proposal is considered to be "regional development" as defined under Clause 20 of the SEPP (State and Regional Development) 2011 and Schedule 4A(3) of the EP&A Act 1979 as at the date of DA lodgement, specifically, " <i>Development that has a capital investment value of more than \$20 million</i> ".
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy No 1 – Development Standards • State Environmental Planning Policy No 14 – Coastal Wetlands • State Environmental Planning Policy No 44 – Koala Habitat Protection • State Environmental Planning Policy No 55 – Remediation of Land • State Environmental Planning Policy No 71 – Coastal Protection • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Coastal Management) 2018 • Byron Local Environment Plan 1988 • Byron Shire Development Control Plan 2014 • North Coast Regional Plan 2036 • West Byron Bay Planning Agreement (2013/5948) • Environmental Planning and Assessment Regulation 2000 • Biodiversity Conservation Act 2016
List all documents submitted with this report for the Panel's consideration	Attachment A Rural Fire Service referral response Attachment B Roads & Maritime Services referral response Attachment C Office of Environment & Heritage referral response Attachment D Department of Primary Industries – NSW Fisheries referral response Attachment E Department of Industry – Lands & Forestry referral response Attachment F WaterNSW / Office of Water referral response Attachment G Tweed Byron Local Aboriginal Land Council referral response Attachment H Environmental Health Officer review Attachment I Development Engineer review

	Attachment J Water & Sewer Engineer (Local Approvals Officer) review Attachment K Ecologist review Attachment L Voluntary Planning Agreement 2013/8948 Attachment M Summary of West Byron submissions
Report prepared by	Ivan Holland Planner Byron Shire Council
Report date	25 September 2018

Summary of s.79C matters

Have all recommendations in relation to relevant s.79C matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 85 Exceptions to development standards (BLEP 1988)

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **N/A**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (s.94EF)? **No**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

EXECUTIVE SUMMARY

The development application seeks consent for a subdivision (and associated works) to create lots for residential (378 lots), business (2 lots), recreation (1 lot) and industrial (2 lots) use.

The subject site is approximately 56.9ha and comprises two (2) separate areas within the West Byron Urban Release Area (WBURA). The WBURA is located approximately 2.5km west of the Byron Bay town centre, south of Ewingsdale Road, and west of Belongil Creek. The Byron Arts and Industry Estate and Sunrise Beach residential area is located north of the WBURA and Ewingsdale Road. To the west of the WBURA is a former chicken processing plant and beyond this, the Ewingsdale rural residential area.

The subject site is zoned as follows:

- Western area is zoned R2 Low density residential, IN2 Light industrial, E3 Environmental management and E2 Environmental conservation.
- Eastern area is zoned R3 Medium density residential, R2 Low density residential, B1 Neighbourhood Centre, RE1 Public recreation, E3 Environmental management and E2 Environmental conservation.

The subject site is largely level (mostly less than 5 per cent slope) and low-lying (less than 5m above sea level) and is mapped as including:

- A combination of class 2 and class 3 potential acid sulphate soils;
- Category 1 and buffer bushfire vegetation;
- Flood prone land (100 year flood);
- High environmental value vegetation;
- Primary and tertiary koala habitat; and
- Threatened flora and fauna habitat.

The development application was received by Council on 21 November 2017, was referred to the NSW Rural Fire Service as integrated development and was placed on public exhibition from 14 December 2017 to 31 March 2018. Council requested further information from the applicant on 20 April 2018 and on 14 May 2018: the Applicant has not formally responded to either of these further information requests. The application was appealed by the applicant to the Land and Environment Court in July 2018 based on a deemed refusal. A conciliation conference has been arranged for 12 February 2019.

In determining the application, the consent authority must be satisfied about the following matters:

- State Environmental Planning Policy No 1—Development Standards – clause 7 – the Department of Planning & Environment has notified Council that the objection lodged by the applicant could not be considered without further information. This request was forwarded to the applicant but to date no further information has been received.
- State Environmental Planning Policy (Infrastructure) 2007 – clause 101(2)(c) – The proposed acoustic barrier may be of an appropriate height to address some of the road noise impacts however there is insufficient detail to determine the impacts of the barrier on Council's infrastructure and some of the adjacent proposed residential lots.
- Byron Local Environmental Plan 1988 – clause 98(3) – The development application does not adequately demonstrate that the likely future impacts of flooding from/on the proposed subdivision will be managed.

The following matters are relevant to the subject development and must be taken into consideration in determining the development application (s.4.15/79C):

The provisions of any environmental planning instrument

State Environmental Planning Policy No 44—Koala Habitat Protection - statutory matters are adequately addressed with the exception of the impact of Ewingsdale Road on koalas as both a barrier to movement and the risk of animals being killed/injured by traffic. The review also raises a number of

issues that are not adequately addressed by the plan of management and concludes by stating that the “... *identification and assessment of impacts are significantly underdone*”.

State Environmental Planning Policy (Infrastructure) 2007 – clause 104 – The submission provided by Roads & Maritime Services (RMS) and concerns about the exacerbation of current road congestion issues on Ewingsdale Road must be taken into consideration.

Byron Local Environmental Plan 1988 –

- The proposed development does not comply with the minimum subdivision lot size identified in the Lot Size Map in relation to the subject site (clause 81).
- The development is not considered to be consistent with the objectives and principles for development within the coastal zone (clause 88).
- The development application does not adequately demonstrate that the likely future impacts of flooding on the proposed subdivision will be managed (clause 98).
- The development application does not adequately demonstrate how the proposed earthworks and filling of the site will be managed (clause 98B).

The provisions of any development control plan

Byron Shire Development Control Plan 2014 – The development is contrary to numerous provisions of Council’s adopted development standards and development controls without sufficient justification. The key outstanding issues, omissions and/or inconsistencies with the application in relation to the relevant BDCP 2014 Parts/Chapters relate to site access, staging, subdivision layout and orientation, road design, stormwater management, vegetation management and management of site hazards and constraints.

Planning agreement

A voluntary planning agreement was executed on 21 October 2014 between the Minister for Planning and the Byron Bay West Landowners Association. The planning agreement requires land owners to pay monetary contributions towards road upgrades, and make arrangement for the rehabilitation and ongoing management of the environmental conservation lands.

Likely impacts of the development

The proposal will have an adverse impact on the natural environment of the locality, which may be significant, including on groundwater, noise, air quality (dust), water quality, vegetation, fauna; and ecology.

The application does not expressly address the potential impacts of the proposed development on the built environment of the locality. The subject site currently has a relatively low level of built environment (e.g., roads, buildings, parks).

The application does not expressly address the potential social impacts of the proposed development (a Social Impact Assessment was not provided with the application). Potential social impacts were considered by the Department of Planning & Environment as part of the rezoning (West Byron Bay Urban Release Area Assessment Report, May 2014).

The application does not expressly address the potential economic impacts of the proposed development. The likely economic impacts on surrounding centres were considered by the Department of Planning & Environment as part of the rezoning (West Byron Bay Urban Release Area Assessment Report, May 2014).

Site suitability

The proposed development is largely consistent with the current land zoning and the West Byron Urban Release Area has been identified as an Urban Growth Area. However, the subject site is mapped as having the following constraints:

- A combination of class 2 and class 3 potential acid sulphate soils;
- Category 1 and buffer bushfire vegetation;

- Flood prone land (100 year flood);
- High environmental value vegetation;
- Primary and tertiary koala habitat; and
- Threatened flora and fauna habitat.

These constraints and the potential/likely adverse impacts of the proposed development on these and other matters make it difficult for the proposed development, in its current format, to be considered suitable for the site.

Public interest

There is a high demand for housing in Byron Shire due in part to its attractive coastal and hinterland setting and other natural and cultural features. The proposed subdivision will meet some of that demand. It is unlikely the development will provide for affordable housing and no such housing is proposed as part of the development. However, having regard to the significant number of objections (2218) and the outstanding issues raised in this report, it would appear difficult for the development to proceed in its current format in terms of the public interest test.

NB - The following assessment report needs to be read in conjunction with the various attached reports and submissions from government agencies and Council staff.

1. INTRODUCTION

1.1. History/Background

Rezoning

Rezoning of the West Byron Urban Release Area was approved by the Minister for Planning and gazetted on 14 November 2014. Information on the zoning is detailed in the State Environmental Planning Policy Amendment (West Byron Bay) 2014 which amended the Byron Local Environmental Plan 1988 to include provisions that detail the zoning and associated requirements for the West Byron Urban Release Area.

Application processing

The development application (10.2017.201.1) was accepted by Byron Shire Council on 21 November 2017. On 29 November 2017, Council sent an acknowledgement letter and a request for further information to the applicant seeking:

1. Owner's consent from Crown Land for Lot 7020 DP 1113431; and
2. Residual development application fees.

On 4/5 December 2017, Council referred the DA for consideration and advice to the following organisations:

Council made a request for further information on 20 April 2018 (#A2018/12354). Council made a second request for further information on 14 May 2018 (#E2018/40758). The Applicant has not formally responded to Council in response to the 20 April 2018 or the 14 May 2018 further information requests.

Public notification/exhibition

The development application was notified on 5 December 2017 to property owners in the neighbouring areas (Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications). The DA was placed on public exhibition for a period of eight (8) weeks between 14 December 2017 and 7 February 2018. The notification period was further extended to accept submissions until the 31 March 2018 owing to issues with the accessibility of Council's website.

Council received 2218 submissions in opposing the application and 1 submission in support of the application. Many of the submissions included comments relating both to this development and the development application for the adjacent proposed subdivision (DA 10.2017.201.1) most likely due to the similar timeframes for public exhibition, proximity of the two subject sites and the common scale, nature and issues of the two proposed developments.

The application was appealed by the applicant to the Land and Environment Court in July 2018 based on a deemed refusal (EP&A Act s.82/s8.11) – case number 2018/00222143. The respondent (Byron Shire Council) filed and served its Statement of Facts and Contentions on 11 September 2018, as required by the Court. The Respondent (the Applicant) is required to file and serve any Statement of Facts and Contentions in reply by 24 October 2018. A conciliation conference has been arranged for 12 February 2019.

1.2. Description of the proposed development

This application seeks approval for Subdivision of Six (6) Lots into Three Hundred and Eighty Seven (387) Lots consisting of Three Hundred and Seventy Eight (378) Residential Lots, Two (2) Business Lots, Two (2) Industrial Lots, One (1) Recreation Lot and Four (4) Residue Lots

1.3. Description of the site

Land is legally described as

LOT: 1 DP: 201626
LOT: 2 DP: 542178
LOT: 1 DP: 780242
LOT: 2 DP: 818403
LOT: 1 DP: 520063

LOT: 7020 DP: 1113431

Parcel number/s 21700, 151400, 21720, 152550, 114340, 241870

Property address is Ewingsdale Road BYRON BAY,
394 Ewingsdale Road BYRON BAY,
412 Ewingsdale Road BYRON BAY,
Melaleuca Drive BYRON BAY,
364 Ewingsdale Road BYRON BAY

Land is zoned: Western area
R2 Low Density Residential
IN2 Light industrial
E3 Environmental management
E2 Environmental conservation

Eastern area
R3 Medium density residential
R2 Low density residential
B1 Neighbourhood Centre
RE1 Public recreation
E3 Environmental management
E2 Environmental conservation

Land area is: 56.9ha

Property is constrained by:

- Flood Liable Land (1 in 100 year)
- Bushfire prone land (combination of Category 1 and Buffer)
- Acid Sulfate Soils (Class 2 and Class 3)
- High Environmental Value vegetation
- Koala Habitat (Tertiary and Primary)
- High Conservation Value Vegetation
- Threatened Flora and Fauna

In general terms, the site is described as follows:

- To the immediate north is Ewingsdale Road and then the School of Audio Engineering and the Sunrise Beach and Belongil Beach residential areas;
- To the south is "coastal swamp forest" and at the terminus of Melaleuca Drive are three properties being the Planula Bed & Breakfast Retreat, the Temple Byron healing centre and the Vidal property;
- To the west is the Villa World proposed subdivision (DA 10.2017.201.1) and beyond this the former poultry processing plant and Ewingsdale rural residential area; and
- To the east is the Belongil Creek (an Intermittently Closed and Open Lakes and Lagoons - ICOLL), and the Cumbebin Swamp Nature Reserve.

2. SUMMARY OF REFERRALS

The development application was referred on 4/5 December 2017 to the agencies listed below. A summary of external referral responses is detailed in the table below:

External

Referral	Issue
Rural Fire Service	The NSW Rural Fire Service provided a response to the integrated development referral on 1 March 2018 (#E2018/37398) which was deemed to be a bush fire safety authority as required under section

Referral	Issue
	<p>100B of the Rural Fires Act 1997. The authority was issued subject to a number of conditions (Attachment A).</p> <p>There is no restriction on granting this application in relation to the identified integrated development requirements (s.91A(2) EP&A Act).</p>
Department of Planning & Environment	The referral to the Department of Planning and Environment (#A2017/31040) included a request for concurrence as the proposed development included an objection under SEPP 1. An acknowledgement letter was received from the Department of Planning and Environment on 14 December 2017 (#S2017/21946). An email was received from the Department of Planning and Environment on 15 January 2018 stating that the SEPP 1 objection could not be considered without further information. This request was forwarded to the applicant by email on 19 June 2018 but to date, this information has not been provided.
Roads & Maritime Services (RMS)	A response was received from Roads & Maritime Services on 12 January 2018 (#E2018/3229) which detailed "... <i>comments to assist the consent authority in making a determination</i> " (Attachment B).
Office of Environment & Heritage	The Office of Environment & Heritage (OEH) provided a response to Council's referral on 19 January 2018 (#S2018/1518) providing a number of recommendations (Attachment C).
Department of Primary Industries – NSW Fisheries	<p>A response was received from the Department of Primary Industries on 7 February 2018 (#E2018/9842) which provided comments on:</p> <ul style="list-style-type: none"> • The Marine Estate Management Act 2014; • The Fisheries Management Act 1994; • Buffers to SEPP 14 Coastal Wetlands and other Key Fish Habitat; and • Stormwater Management and Water Sensitive Urban Design (WSUD)." (Attachment D)
Department of Industry – Lands & Forestry	<p>A response was received from the Department of Industry – Lands on 19 February 2018 (#S2018/2872) which stated that:</p> <ul style="list-style-type: none"> • Landowners consent had been provided for the proposed development; and • Any section of Crown public road to be constructed be transferred to the control of Byron Shire Council prior to the commencement of works; and • It is the Department's view that Lot 7020 DP 1113431 was vested in the local government authority (Byron Shire Council). <p>See Attachment E.</p>
WaterNSW / Office of Water	Water NSW responded on Council's referral of the application on 8 January 2018 (#S2018/1054) with comments on dewatering (Attachment F).
Bundjalung of Byron Bay Aboriginal Corp (Arakwal)	Council records indicate that no response was received.
Jali Local Aboriginal Land Council	Council records indicate that no response was received.
Tweed Byron Local	The Tweed Byron Local Aboriginal Land Council responded to

Referral	Issue
Aboriginal Land Council	<p>Council's referral of the application 9 January 2018 (#E2018/2728) stating that <i>"The TBLALC considers that matters of cultural heritage have been adequately addressed and the CHA report has been prepared in accordance with current NSW legislative requirements"</i>.</p> <p>See Attachment G.</p>

Internal

Referral	Issue
Environmental Health Officer	<p>Council's Environmental Health Officer reviewed the development application particularly in relation to acid sulfate soils, contamination, land use conflict, noise impacts and mosquito management and provided an assessment of the proposal (#A2017/31104).</p> <p>The assessment states that further information is required to properly complete the environmental assessment and this information was request from the applicant in Council's RFI dated 14 May 2018.</p> <p>See Attachment H</p>
Development Engineer	<p>Council engaged a consultant engineer to review the development application in relation to development engineering matters. The review was documented in a report dated 9 August 2018 (#E2018/68469) and determined that the application should be refused from an engineering viewpoint.</p> <p>The following engineering aspects of the application were determined to be unsatisfactory:</p> <ul style="list-style-type: none"> • Access; • Traffic; • Road and drainage design; • Stormwater management; • Earthworks; and • Geotechnical. <p>Other engineering matters such as proposed acoustic mound/wall design, bushfire threat mitigation and development in E zones were also considered to be unsatisfactory.</p> <p>See Attachment I</p>
Water & Sewer Engineer (Local Approvals Officer)	<p>A memorandum was provided by the Principal Engineer – Systems Planning on 5 December 2017 (#A2017/31106) which concluded that the proposed subdivision will generate an additional load onto Council's Water, Bulk Water and Sewer System. The memorandum also documented the relevant developer servicing charges and required conditions should the development be approved.</p> <p>See Attachment J</p>
Ecologist	<p>Council engaged a consultant ecologist to review the development application. The review was documented in a report dated July 2018 (#E2018/59859) which identifies the issues and omissions with the application.</p>

Referral	Issue
	<p>The review states that the principal issues/omissions with the development application include:</p> <ul style="list-style-type: none"> • The failure to consistently consider the impacts of the development of the entire WBURA; • Impacts on hydrology and water quality within the WBURA and the Belongil Creek Estuary; • Impacts on hydrology from the increased loading of the West Byron Sewage Treatment Plant; • Failure to consider general impacts of residential development (e.g., pets, gardens, humans); • Inadequate assessment of the impacts of the development on fauna; and • Incorrect approach used in generating the Assessments of Significance of impacts on threatened species. <p>The report states that “<i>The scale, nature and bulk of the development ... will likely result in the extinction of at least one threatened fauna species, and the continuing degradation of both aquatic and terrestrial habitats.</i>”</p> <p>(See Attachment K)</p>

3. SECTION 79BA – BUSH FIRE PRONE LAND

Under section 79BA (4.14) of the Act, Council must be satisfied prior to making a determination for development on bush fire prone land, that the development complies with the document Planning for Bush Fire Protection 2006 or must be provided with a certificate from a qualified consultant that the development conforms to the relevant specifications and requirements. The site is mapped as bush fire prone land. The application included a Bushfire Threat Assessment (Annexure 13), prepared by Bushfire Planning Australia, that includes key recommendations to enable the proposed development to achieve the aims and objectives of Planning for Bush Fire Protection 2006. The development application was referred to the NSW Rural Fire Service (as integrated development), which provided comment and conditions which are detailed above (Section 2. Summary of Referrals – External).

4. NORTH COAST REGIONAL PLAN 2036

The WBURA is identified in the North Coast Regional Plan 2036 (NCRP) as an Urban Growth Area. The NCRP planning principles for guiding growth on the north coast are:

- 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.

The NCRP identifies the following matters specific to West Byron:

- Investigate opportunities for additional employment land at West Byron Bay; and
- Deliver housing at West Byron.

5. SECTION 79C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

Having regard to the matters for consideration detailed in Section 79C(1) of the Environmental Planning & Assessment Act 1979 (EP&A Act), the following is a summary of the evaluation of the issues.

5.1 State Environmental Planning Instruments

State Environmental Planning Policy No 1 and No 71 and the North Coast Regional Environmental Plan do not apply to land within the West Byron Bay site (s.70 LEP 1988).

	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 1—Development Standards	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: This policy does not apply to land within the West Byron Bay site (c.70 of the LEP 1988). The applicant lodged a State Environmental Planning Policy No 1 objection with the application (Annexure 20). The objection relates to the development standard requiring a 40ha minimum lot size for land zoned 7(a) (Wetlands Zone) under clause 11 of the BLEP 1988. As noted above, an email was received from the Department of Planning and Environment on 15 January 2018 stating that the SEPP 1 objection could not be considered without further information. This request was forwarded to the applicant by email on 19 June 2018 but to date, this information has not been provided.		
State Environmental Planning Policy No 14—Coastal Wetlands	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: Part of the subject land is within the area mapped as coastal wetlands under this policy. The application states that as no development is proposed within the mapped coastal wetlands that this policy does not apply.		
State Environmental Planning Policy No 44—Koala Habitat Protection	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: The subject land comprises a small area of mapped primary koala habitat and large areas of mapped tertiary koala habitat. The applicant provided a koala plan of management with the application (Annexure 8B). The koala plan of management was reviewed as part of Council's ecological assessment of the application. The review acknowledges that statutory matters are adequately addressed with the exception of the impact of Ewingsdale Road on koalas as both a barrier to movement and the risk of animals being killed/injured by traffic. The review also raises a number of issues that are not adequately addressed by the plan of management and concludes by stating that the "... <i>identification and assessment of impacts are significantly underdone</i> ".		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: In determining a development application, the consent authority must consider whether the land is contaminated (clause 7). The applicant provided a contaminated land investigation with the application (Annexure 14). The contaminated land investigation was reviewed as part of Council's environmental assessment of the application. The contaminated land investigation and Council's review include a number of recommendations that should be considered for inclusion as conditions should the application be approved.		
State Environmental Planning Policy (Infrastructure) 2007	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: The statement of environmental effects does not include a consideration of this policy. "Subdivision 2 - Development in or adjacent to road corridors and road reservations" and particularly clauses 101, 102 and 104 are relevant to this application.		
Clause 102 states:		
<p>102 Impact of road noise or vibration on non-road development</p> <p>(1) <i>This clause applies to development for any of the following purposes that is on land in or adjacent to the road corridor for a freeway, a tollway or a transitway or any other road with an annual average daily traffic volume of more than 20,000 vehicles (based on the traffic volume data published on the website of RMS) and that the consent authority considers is likely to be adversely affected by road noise or vibration:</i></p> <ul style="list-style-type: none"> (a) <i>residential accommodation,</i> (b) <i>a place of public worship,</i> (c) <i>a hospital,</i> (d) <i>an educational establishment or centre-based child care facility.</i> <p>(2) <i>Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Secretary for the purposes of this clause and published in the Gazette.</i></p>		

- (3) *If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:*
- (a) *in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*
 - (b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*
- (4) *In this clause, freeway, tollway and transitway have the same meanings as they have in the Roads Act 1993.*

Clause 102 was recently amended by the [State Environmental Planning Policy \(Infrastructure\) Amendment 2018](#) however, the previous version of clause 102 applies to this application by virtue of the relevant savings and transitional provisions (Schedule 5). Of relevance to this application is the applicable annual average daily traffic (AADT) volume which is a threshold of 40,000 (rather than the amended 20,000).

The development has frontage to Ewingsdale Road which is part of Main Road 545 (MR545) and is a classified road. The RMS has not published an AADT for MR545. Council's counts from four stations on MR545 are set out in the following table:

Year	Station 54 Hospital (October)	Station 56 200m West of Kendall St (Summer)	Station 76 Rail Crossing (Summer)	Station 77 Bangalow Road (Summer)	Station 56 200m West of Kendall St (Easter)
1999	11032				
2000					
2001	11048				
2002					
2003	12576				
2004	14294				
2005					
2006	14143	17012			
2007					
2008	14987				
2009		20674	25680	19877	20923
2010	16159	18986	22489	20461	25187
2011		19224	20633	19488	19545
2012	16480	22010	21213	19810	20439
2013					
2014		21761	25578	21335	
2015		20092	21446	20348	20717
2016	19945	21925	23446	20713	20779
2017		22226	22792	20196	23153

Note: All of these traffic counts are the arithmetic mean of the counts for the time period that the counts were taken over.

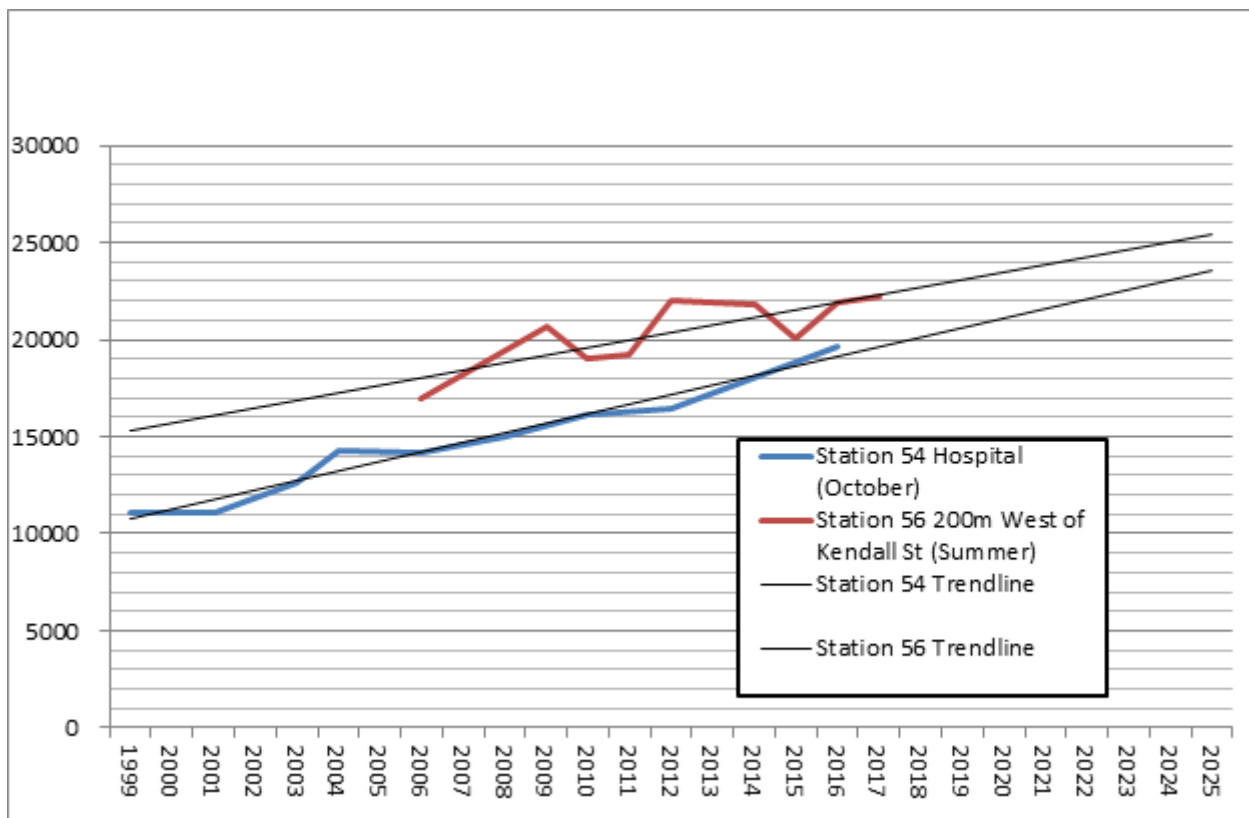
Station 54 is the mean of a 7 day count occurring in Late September to early October. Stations 56, 76 and 77 summer counts is a mean of the counts in a 37-39 day period commencing around 18 December every year. Station 56 (Easter) is a mean of the counts over a variable time period for as

little as 5 days if Easter is in isolation and up to 24 days when Easter is linked in with School holidays.

As these are an average of a snapshot in time, they are not the AADT but are useful for estimating the AADT. The AADT at station 54 is likely to be higher than the mean of the counts provided if the Easter and summer peaks were factored in. The reverse would be true for stations 56, 76 and 77 where the AADT is likely to be less than that recorded over summer.

Peaks of 31047 vehicles in a single day in have occurred in 2014 and 31527 in 2009 at station 76. At Station 56 a peak of 22586 vehicles occurred on Friday 30 September 2016.

The following chart shows traffic growth at Stations 54 and 56 with a trend line to project future growth. Traffic at station 54 has grown at 3.45% per annum over 17 years. Traffic at Station 56 has grown at 2.46% per annum over 8 years. The other stations show a level of variability and do not display a consistent growth trend.



The applicant's traffic engineer Veitch Lister undertook tariff counts on Ewingsdale Road and these are set out in the following table:

Table 2-1: Summary of Classified Count Data (May 2017)

Traffic Count Parameter	West of Bayshore Dr. (4-10 May)	East of Sunshine Blvd. (5-11 May)
7-day Average	20,604	20,810
Weekday Average	21,446	21,296
% of Heavy Vehicles (Class 3+)	5.5%	6.1%
AM Peak Hour	0830-0930	0830-0930
2-way Volume	1,882	1,768
% of Heavy Vehicles (Class 3+)	5.8%	6.5%
PM Peak Hour (time)	1530-1630	1530-1630
2-way Volume	1,788	1,761
% of Heavy Vehicles (Class 3+)	4.1%	5.4%

The applicant's and Council's traffic counts indicate that Ewingsdale road has an AADT of approximately 21,000.

Whilst clause 102 does not strictly apply to the application, as traffic volumes for MR545 are below 40,000, the AADT ~21,000 is relevant for the consideration of impacts of traffic noise and vehicle emissions (Clause 101(2)(c)).

As the proposed development has "frontage" to Ewingsdale Road (a classified road), the consent authority must not grant consent to this development unless it is satisfied that (clause 101(2)):

- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Appropriate ameliorative measures must be in place to limit the impacts of traffic noise arising from the classified road (clause 101(2)(c)). In order to determine the appropriate standard of the ameliorative measures, the guidelines referenced in clause 102(2) need to be considered. The guideline is Development Near Rail Corridors and Busy Roads Interim Guideline by the Department of Planning. These guidelines state: "*In other circumstances (eg. development adjacent to a road with an annual average daily traffic volume of 20,000–40,000 vehicles) these guidelines provide best practice advice.*"

The applicant provided a noise assessment with the application (Annexure 7). The noise assessment concludes that "*With the inclusion of the acoustic wall on the earth berm, the ground floor of dwellings is predicted to achieve compliance with the internal design criteria with standard building construction and windows/doors closed. Upper floors of dwellings in proximity to Ewingsdale Road will require further acoustic assessment once individual building plans are available.*" The noise assessment was reviewed as part of Council's environmental assessment of the application where it was noted that "*The development is predicted to comply with the road traffic noise criteria with the inclusion of a 4m high acoustic barrier fronting Ewingsdale Road.*"

The acoustic barrier may be of an appropriate height to address some of the road noise impacts however, there is insufficient information to determine the impacts of the barrier on Council's infrastructure in Ewingsdale Road at lots 74 to 79 and 123 to 130, and how the wing wall returns on the barrier will impact on Road 5 and lots 74, 79, 120 and 130. The single, generic section provided to date is inadequate to determine the impacts on Council's non-road assets (water and sewer) and on the dual lane upgrade of Ewingsdale Road.

Vehicular access, where practicable and safe, is to be provided by a road other than the classified road (clause 101(2)(a)). In this circumstance, there is no other practical access to the development site. Council has undertaken design work for the upgrading of Ewingsdale Road which has included a dual lane concrete roundabout at the connection of Road 5 with Ewingsdale Road. Provided the applicant's intersection detailed design conforms to the concept designs prepared by Council's consultants, the localised impact on MR545 will be minimal. As an alternative, the applicant may consider designing the intersection with traffic signals. Signalisation of the intersection would require the approval of RMS.

Council's Environmental Health Officer made the following comments in relation to the noise assessment and proposed mitigation:

- a) The selection of the preferred acoustic barrier / earth mound scenario needs to be cognisant of

	Satisfactory	Unsatisfactory
<p>other planning issues such as cost effectiveness of the noise mitigation strategy, community views, social implications (i.e. passive surveillance), environmental effects and visual impact given that the site adjoins the northern entrance to Byron Bay.</p> <p>b) Whilst the noise assessment proposes to “soften” the acoustic barrier / earth mound via landscaping treatments, the impact the development will have on the Ewingsdale Road approach to the Byron Bay Township with a proposed 4m barrier is significant.</p> <p>c) The proposed 4m acoustic barrier will be approximately 2m higher than the preferred barrier scenario presented for the adjoining Villaworld subdivision to the immediate west (DA 10.2017.201.1). A reduction in the acoustic barrier height would inevitably result in single storey dwellings (in addition to two or three storey residential development) that would require building shell treatment to comply with internal noise criteria.</p> <p>It should be noted that proposed industrial land within Part B (western section of development) could be developed into light industrial use/s. The Noise Assessment (Annexure 7) acknowledges that the exact use of the industrial lots is not known and consequently the expected noise impacts cannot be accurately predicted (Section 8.2.1). A detailed acoustic assessment should be undertaken at the development application stage of Part B to ensure appropriate acoustic treatments and management controls are put in place to mitigate noise emissions to adjacent residential lots / dwellings within the development site. A noise assessment of this future light-industrial area at this stage would be preliminary only and would need to rely on acoustic treatments at residential lots / dwellings, which ultimately may not be warranted depending on the final use/s on the land. The same may also apply to retail or commercial uses located within Part A (eastern section of development) to ensure noise emissions comply at the adjacent residential lots.</p> <p>Due to the scale and nature of the proposed development, the consent authority must take into account any submission from RMS and also the accessibility of the site (including “road congestion”) in determining the application (clause 104). RMS provided a submission on the application (#E2018/3229, Attachment B) and the Engineering review raised concerns about the exacerbation of current traffic issues on Ewingsdale Road (#E2018/68469, Attachment I).</p>		
State Environmental Planning Policy (State and Regional Development) 2011	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposed development is not state significant development (clause 8) but is regionally significant development (clause 20) due to the capital investment value. Consequently, the consent authority for the application must be the “... regional planning panel for the area in which the development is to be carried out”. (s.4.5 EP&A Act).		
State Environmental Planning Policy (Coastal Management) 2018	Not applicable – see below	
Consideration: The Coastal Management SEPP commenced on 3 April 2018 being just over 4 months after this development application was lodged. The Coastal Management SEPP forms part of a suite of legislative changes which included the introduction of the Coastal Management Act 2016 and the repeal of SEPP 14—Coastal Wetlands, SEPP 26—Littoral Rainforests and SEPP 71—Coastal Protection.		
<p>The “former planning provisions” continue to apply (and the Coastal Management SEPP does not apply) to a development application lodged, but not finally determined, immediately before the commencement of this policy (Clause 21). ‘Former planning provisions’ is defined in clause 21 as follows:</p> <p>(a) <i>the provisions of each of the following Policies as in force immediately before the Policy’s repeal:</i></p> <p>(i) <i>State Environmental Planning Policy No 14—Coastal Wetlands,</i></p> <p>(ii) <i>State Environmental Planning Policy No 26—Littoral Rainforests,</i></p> <p>(iii) <i>State Environmental Planning Policy No 71—Coastal Protection, and</i></p> <p>(b) <i>the provisions of State Environmental Planning Policy (Infrastructure) 2007 that would</i></p>		

be in force if that Policy had not been amended by this Policy.

The subject development application was lodged prior to the introduction of the Coastal Management SEPP. Accordingly, the development application has been assessed in accordance with applicable former planning provisions.

Should the Coastal Management SEPP be deemed applicable to the application, it is considered that the application does not adequately demonstrate that works within and immediately adjacent the mapped Coastal Wetlands (clause 12) will not significantly impact on:

- a. The biophysical, hydrological or ecological integrity of the adjacent coastal wetland, or
- b. The quantity and quality of surface and ground water flows to the adjacent coastal wetland if the development is on land within the catchment of the coastal wetland or littoral rainforest.

4.2B Byron Local Environmental Plan 1988 (BLEP 1988)

The LEP 1988 definition of the development is: Subdivision (including ancillary vegetation removal, vegetation restoration, earthworks, acoustic fencing, and infrastructure works).

LEP 1988 is an applicable matter for consideration in the assessment of the subject development application (s.79C(1) of the EP&A Act) because it applies to the subject land and the proposed development. Part 4 (West Byron Bay site) of the BLEP 1988 is of relevance to the proposed development and is considered below:

Land within the West Byron Urban Release Area may be subdivided but only with development consent (c.80, BLEP 1988).

The subject site is zoned R2 Low Density Residential, R3 Medium density residential, IN2 Light industrial, B1 Neighbourhood Centre, RE1 Public recreation, E2 Environmental Conservation and E3 Environmental Management.

Zone Objective

R2 Low density residential

- (a) to provide for the housing needs of the community within a low density residential environment,
- (b) to enable other land uses that provide facilities or services to meet the day to day needs of residents.

R3 Medium density residential

- (a) to provide for the housing needs of the community within a medium density residential environment,
- (b) to provide a variety of housing types within a medium density residential environment,
- (c) to enable other land uses that provide facilities or services to meet the day to day needs of residents.

IN2 Light industrial

- (a) to provide a wide range of light industrial, warehouse and related land uses,
- (b) to encourage employment opportunities and to support the viability of centres,
- (c) to minimise any adverse effect of industry on other land uses,
- (d) to enable other land uses that provide facilities or services to meet the day to day needs of workers in the area,
- (e) to support and protect industrial land for industrial uses.

B1 Neighbourhood Centre

to provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.

<u>E2 Environmental Conservation</u> (a) to protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values, (b) to prevent development that could destroy, damage or otherwise have an adverse effect on those values.
<u>E3 Environmental Management</u> (a) to protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values, (b) to provide for a limited range of development that does not have an adverse effect on those values.
<u>RE1 Public Recreation</u> (a) to enable land to be used for open space or recreational purposes, (b) to provide a range of recreational settings and activities and compatible land uses, (c) to protect and enhance the natural environment for recreational purposes.

The relevant clauses of the BLEP 1988 have been taken into consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act. The proposed development complies with these clauses, with several exceptions which are considered further below:

In relation to the E2 Environmental Conservation and E3 Environmental Management zones, Council's Ecologist has reviewed the Vegetation Management Plan (Annexure 8C) provided with the development application and notes that it is a "... generally appropriate and thorough document listing appropriate management actions, planting species list and community identification."

Clause 81 Minimum subdivision lot size & Clause 83 Exceptions to minimum lot sizes

The proposed development does not comply with the minimum subdivision lot size identified in the Lot Size Map in relation to the subject site (c.81, BLEP 1988). The application proposes lots within zone R2 low density residential that are less than 450m² including Lots 262 – 267, 281 – 288. The proposed development also does not comply with the minimum lot sizes in relation to the E2 and E3 zoned land (proposed Lots 392, 396, 398, 399) however argues that this is authorised under the allowable exceptions (c.83B, BLEP 1988).

Clause 88 Development within the coastal zone

The property is within the coastal zone. Council's Ecologist identified numerous potential impacts on coastal biodiversity and ecosystems from the proposed development (and in conjunction with the neighbouring proposed subdivision – DA 10.2017.201.1) including stormwater impacts on groundwater dependent vegetation communities, general impacts on surface water (including Belongil Creek estuary and ICOLL) and groundwater quality from the development, impacts on local fauna and vegetation communities (see #E2018/59859). There is insufficient detail to demonstrate what cumulative impacts the development will have on the Belongil Creek catchment and ICOLL. In this regard, increased stormwater run-off may have an adverse impact on the ICOLL by permanently opening or widening the creek mouth and therefore affecting bird nesting sites for coastal and migratory seabirds some of which are listed as threatened. Consequently, the development is not considered to be consistent with Clause 88 requirements.

Clause 90 Preservation of trees or vegetation

The application includes a request to remove trees and vegetation in the development area for which development consent is required (clause 90).

Clause 97 Acid sulfate soils

The application notes that development consent is required for works on land mapped as having acid sulfate soils (clause 97) and includes an Acid Sulfate Soils Management Plan (Annexure 9). The key recommendations of the applicant's acid sulfate soil investigation are:

- a) Implement a groundwater monitoring regime to assess the current quality of the groundwater and level of water table variation; and
- b) Prepare a Construction Environmental Management Plan that:

- i. Details the proposed handling, storage, treating and disposing of potential acid sulfate soils/actual acid sulfate soils; and
- ii. Provides a framework for a groundwater quality monitoring regime that assesses likely impacts to groundwater (quality and height), based on recommendation a).

Clause 98 Flood planning

The subject site is identified as at or below the flood planning level and as such development consent must not be granted unless the consent authority is satisfied with a range of matters relating to flooding (clause 98). The development application does not adequately demonstrate that the likely future impacts of flooding on the proposed subdivision will be managed, as required by clause 98 of BLEP 1988, including:

- a) An engineering assessment that accurately shows the 2100 100 year flood levels across the site and confirmation that earthworks have been designed accordingly.
- b) A Plan of Subdivision showing the post development extent of flood water surface levels and flood planning levels for a 2100 100 year ARI storm event (where Flood Water Surface Levels and Flood Planning Levels extend into proposed swales and recreational areas these must be shown as part of the extents).

Clause 98B Earthworks

The earthworks associated with the proposed subdivision require development consent (clause 98B). The development application does not adequately demonstrate how the proposed earthworks and filling of the site will be managed, as required by clause 98B of BLEP 1988, including:

- a) An assessment of the interface and retaining impacts of the proposed filling of the site along property boundaries. In a number of locations the proposed fill material will reach a depth of 2.5-3.0m directly adjacent to neighbouring properties.
- b) Temporary retaining of fill that may be required due to potential inconsistency in earthworks between the two proposed, adjoining subdivisions.
- c) How the proposed significant quantities of fill adjacent to gazetted roads (for example Melaleuca Drive) will be retained or otherwise managed to ensure these roads remain trafficable until alternative access is provided.
- d) How filling of the site will be staged to avoid impacts on newly constructed and dedicated roads.
- e) The likely disruption the fill will have on the upstream catchments due to changing of the current flow paths through the site.

4.3 Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

No draft planning instruments were identified that are relevant to this application.

4.4A Byron Shire Development Control Plan 2014 (BDCP 2014)

BDCP 2014 is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 79C(1) of the EP& A Act because it applies to the West Byron Urban Release Area. The application included a compliance checklist with the BDCP 2014 in Annexure 16. The key outstanding issues, omissions and/or inconsistencies with the application in relation to the relevant BDCP 2014 Parts/Chapters are considered below:

Part B Controls Applying Generally to Development Applications

Chapter B12 – Social Impact Assessment

A social impact assessment (SIA) is required for residential subdivisions of more than 50 dwellings or lots (B12.1.3 sub 2.). A SIA was prepared for the WBURA rezoning application (B12.1.3 sub 5.) however, the requirement for a specific SIA for this development application can be justified on the basis that:

- More than 5 years has elapsed since the rezoning SIA was prepared (the report is dated February 2011).

- The development application is for only part of the rezoned area and if developed in isolation could result in different social impacts.

The applicant has submitted that an updated SIA is not required as an SIA was completed as part of the rezoning application however, more than 7 years have now passed since that study was completed and the complexities of split applications (e.g., Harvest Estate DA 10.2017.201.1) across the site need to be considered combined with other changes in demographics, traffic, housing stock and the like since 2011. For the purposes of assessment, an updated SIA is required.

Social impact can be defined as the net effect of an activity on a community and the well-being of individuals and families. (csi.edu.au)

Part D Further Controls Applying to Specific Land Uses

Chapter D6 – Subdivision

The proposed development does not meet the requirements of BDCP 2014 Chapter D6.2.1 which provides that site access is to be considered as part of the site design, in particular:

- Part of the development is not provided with public road access.
- There has been no consideration for emergency/ alternate access to the development.
- The proposed road levels at the tie in point with Ewingsdale Road are significantly different to the Ewingsdale Road upgrade design levels.
- Construction access is shown to be through land which is not subject to the development with no evidence of owners consent provided.

Part E Further Controls Applying to Specific Locations

Chapter E8 – West Byron Urban Release Area

Chapter E8 – West Byron Urban Release Area of the BDCP 2014 was adopted on 22 June 2017 and became effective 20 July 2017 being prior to the lodgement of this development application (21 November 2017).

E8.10.1 Staging Plan

The proposed staging:

- Is not consistent with the “Staging Plan” and associated requirements in BDCP 2014 Chapter E8.10.1.
- Has not been demonstrated to meet the objective of “orderly development of the site”.
- Has not been “co-ordinated” with the proposed subdivision (DA 10.2017.201.1) for the remaining portion of the WBURA. In particular, it has not been demonstrated how access will be managed to the portion of the development located to the west of Melaleuca Drive (proposed stage 11).

The proposed development does not provide a consistent interface with the adjoining proposed subdivision (DA 10.2017.201.1). Each development has been prepared in isolation which has resulted in the interface between the two developments being inconsistent in road layout, connectivity and services. The development application does not adequately demonstrate how the proposed staging will be managed or delivered, including:

- Details of facilities such as temporary cul-de-sacs that will be required where roads terminate on the boundaries of the proposed development site pending development of the adjoining West Byron Urban Release Area (“WBURA”) subdivision (DA 10.2017.201.1).
- Adjoining landowners consent for works outside of the subject site has not been obtained for items such as roads, roundabouts, filling and other works.
- Concept staging plans that show proposed staging of required infrastructure (i.e., services, stormwater) and earthworks. Concept staging plans must:

- i. Clearly indicate which stage works associated with Part Lots 398 and main drain will occur.
 - ii. Assume the adjoining proposed subdivision (DA 10.2017.201.1) has not been constructed.
 - iii. Take into account catchment boundaries.
- d. Evidence of legal access to enable vehicular access back to the Bayshore Drive Roundabout on Ewingsdale Road, the closing of Melaleuca Drive, and provisioning of other services relevant to this part of the WBURA.
- e. Details of when remediation works are to be undertaken and the future ownership structure of the resultant E Zone lots.

E8.10.2 Housing Subdivision Layout, Orientation and Diversity

A large number of proposed lots within Zone R2 low density residential are not capable of containing a building envelope of 12 x 15m and a large number of proposed lots on land within Zone R3 medium density residential are not capable of containing a building envelope of 12 x 10m (Prescriptive Measure 2).

The development application has failed to:

- a) Provide integrated on-street parking where there are four or more small lots proposed in a street section;
- b) Address the requirements for the development of small lots with access gained via a rear lane with secondary frontage available;
- c) Provide small lots orientated between the northeast to the northwest to ensure good solar access; and
- d) Incorporate an appropriate Section 88B instrument for the subject lots and adjoining small lots for zero lot line development (Prescriptive Measure 7).

The development proposes a number of small lots with no legal point of access. These lots gain access over adjoining lots with no right-of-way nominated.

Other non-compliances include:

- a) Multi dwelling housing lots are not nominated on the proposal plans (Prescriptive Measures 5);
- b) Lot 397 and 400 are both long and thin and not suitable for residential development (Prescriptive Measure 3); and
- c) the application does not clearly demonstrate that proposed dual occupancy lots all have a minimum dimension of 25m (Prescriptive Measure 6).

The proposed road layout, bicycle / pedestrian network, drainage reserve immediately north of proposed road 25, engineering plans and plan of subdivision do not correlate with the adjoining proposed subdivision (DA 10.2017.201.1).

E8.10.3 Transport Movement and Street Hierarchy

The proposed road design is inconsistent with the recommended road cross section designs (Prescriptive Measure 1/Appendix D).

E8.10.4 Stormwater Management

The Stormwater Management Strategy (Annexure 10 of the application) has not addressed the following matters, particularly in relation to ecological impacts on and off site:

- a. Identification of all areas proposed for fill or other major earth works and an assessment of impacts on stormwater runoff, ground water levels, acid sulphate soils and threatened wallum froglet and wallum sedge frog habitat and identification of effective mitigation measures where impacts can't be avoided (Prescriptive Measure 1(o)).
- b. Detailed designs for the central drainage line that identify impacts on the water tables in the vicinity of Acid Sulfate Soils and minimises damage to existing native vegetation (Prescriptive Measure 1(p)).

- c. The embellishment of the main drain through the site and the secondary drain on the Belongil Fields site to be carefully designed to protect high conservation value vegetation. The drain(s) to be strategically widened at areas with limited conservation value. Where vegetation is proposed to be removed, details to be provided under Section E8.10.5.1 (Prescriptive Measure 2).

E8.10.5 Biodiversity, Vegetation Management and Landscaping

The development application has not adequately demonstrated that ecological impacts will be appropriately managed or that the development meets the relevant requirements (Chapter E8.10.5), including:

- a. Confirmation as to whether there are any encroachments into E2 Environmental conservation zoned land proposed and if so details of any such encroachments with reference to cadastre.
- b. An Assessment of Significance for areas of *Litoria olongburensis* habitat outside the area contained within the Biobanking Statement application (Statement ID: 48), including areas where the species has been previously recorded and all suitable habitat as required in accordance with section 7.3 of the Biodiversity Conservation Act 2016.
- c. Details of offsets on a like-for-like habitat basis in accordance with BDCP 2014 Chapter B2 and the Byron Biodiversity Conservation Strategy. Total areas of native vegetation communities lost should be counted and added to ensure representative and adequate on-site offsets for all vegetation communities to be lost during development.
- d. A revised Assessment of Significance for the Wallum Froglet to consider the total area of primary habitat lost to development, retained within the development and compensated outside existing primary habitat areas (as illustrated within Appendix F of the AWC Ecological Assessment 2010).
- e. A revised Assessment of Significance for the Wallum Sedge Frog following the additional targeted survey.
- f. Information that demonstrates how the interface of earthworks, fill, retaining and stormwater will impact or avoid the lower part of the western drainage channel (assessed as outside the development footprint within the rezoning assessment yet apparently within the current development proposed footprint).

The development application has not adequately demonstrated that the ecological impacts generally associated with residential development have been adequately considered, including the impact on:

- a. Native fauna from dog and cat ownership (BDCP 2014 Chapter E8.10.5.1).
- b. Groundwater quality from fertilising and watering gardens and lawns.
- c. Native fauna from traffic on subdivision roads and increased traffic on Ewingsdale Road.
- d. The interruption to movement of native fauna arising from the proposed acoustic barrier and proposed Koala exclusion fencing, in combination with additional traffic loads.

E8.10.6 Public Facilities, Services and Infrastructure

The development application has not adequately demonstrated that the cycleway and footpath arrangements will meet the requirements of Chapter E8.10.6.

E8.10.7 Recreational Areas

The development application has not demonstrated that the proposed levels of embellishment of future recreational areas are in accordance with Chapter E8.10.7

E8.10.8 Hazards and Constraints

The application does not address the following Prescriptive Measures (E8.10.8.2):

- 2 g) Monitoring protocols for Belongil Creek including baseline data and target criteria for water quality and ph levels as per ANZECC/NHMRC Guidelines; and
- 2 h) Include a generic management plan for the use of landowners and developers of vacant residential lots after Stage 1 and 2 has been completed. The Plan to address standard development issues such as footing for a dwelling and earthworks for services to the house.

The development application does not include sufficient evidence to demonstrate the proposed stormwater detention and infiltration devices will not have an impact on the level of the water table. The management of acid sulphate soils needs to consider groundwater interaction and variations in the groundwater level as a consequence of the development. There is a discrepancy between infiltration rates used by the applicant in their hydrogeological assessment and their Stormwater Management Strategy and the basis for determination of these rates is not provided. Further, the infiltration areas noted as required in the applicant's Stormwater Management Strategy have not been confirmed to be achieved in the engineering plans.

The proposed stormwater detention devices and bio-retention devices do not have a base excavation 1m above the water table, or use impermeable liners (Chapter E8.10.8.3). The development application has not adequately demonstrated that the proposed stormwater detention infrastructure will not result in an adverse impact on groundwater. Further, the development application does not adequately consider whether any practical, timely, plausible and affordable options are available, should groundwater levels and ph levels, in the vicinity of Wallum Sedge Frog and Wallum Froglet habitats become higher than pre-development regimes (Chapter E8.10.8.3), to rectify such conditions.

It has not been demonstrated how the proposed development will comply with the conditions required in the bush fire safety authority issued by NSW Rural Fire Service (E2018/37398) nor has a revised assessment against the requirements of (Chapter E8.10.8.4), including a revised subdivision plan/s, been provided. The applicant has failed to address the potential for peat fires on the site as required under Prescriptive Measure 8.

The development application has not adequately demonstrated that the proposed buffer will meet the relevant requirements (Chapter E8.10.8.8), including:

- a. Detailed final design of the barrier that shows the exact location of the proposed acoustic barrier and associated earth mound in relation to proposed lots / road reserve; and
- b. Detailed explanation of how the proposed 15m long barrier returns will be integrated with proposed footpaths and road reserves.

The development application has failed to demonstrate how the 4m high acoustic barrier proposed for this subdivision and the 2m high acoustic barrier proposed for the adjoining subdivision (DA 10.2017.201.1) could be considered coordinated (E8.10.1) development of the site

4.5 Any Planning Agreement or Draft Planning Agreement?

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

In accordance with Schedule 4 of the executed agreement, the developer is obligated to:

1. Pay a contribution towards urban roads for each urban lot prior to the issue of each relevant subdivision certificate or strata certificate. Each Contribution Amount will be an amount equal to the sum represented by "X" in the following formula:
$$X = (N \times \$7,000) - A$$

"N" means the number of Urban Lots proposed in each Subdivision Certificate application or Strata Certificate application (as the case may be)
"A" means:
(i) any section 94 contribution paid in relation to the Land for the funding of the Byron Bay bypass; or
(ii) any other amount agreed with the Director-General; and
2. Prepare a vegetation management plan for the Conservation Land prior to the issue of each subdivision certificate.

It is noted, that the Director-General has the power to set the contribution rate for this VPA at \$0. The current contribution rate for the Byron Bypass in the 2012 Byron Developer Contribution Plan is \$1,006.32.

The Department of Planning & Environment have requested that:

- the Conditions of Consent "... include the requirement for the developer to obtain satisfactory arrangement certificate (SAC) with the Minister for Planning in accordance with Section 99 of the Byron Local Environmental Plan 1988." (Email of 22/6/17)
- the developer contact the Department (attention Sanghyun Yang) when they are prepared to fulfil their obligations under the VPA.

	Yes	No
Is there any applicable planning agreement or draft planning agreement (93F)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Consideration: The proposed development does not accord with the VPA as it does not provide a mechanism to ensure that offsets will be restored, managed and protected "in perpetuity" as required by the Voluntary Planning Agreement (2013/8948) for the WBURA.		

4.6 Environmental Planning & Assessment Regulation 2000 Considerations

No clauses were identified for consideration that are relevant to this proposal (Note: the requirement to consider the Coastal Policy (s.92(1)(a)) was repealed on 1 September 2018.

4.7 Any coastal zone management plan?

	Satisfactory	Unsatisfactory	Not applicable
Is there any applicable coastal zone management plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Consideration: Not applicable			

4.8 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Impact on:	Likely significant impact/s?
Natural environment	<p>Yes. The proposal will have an adverse impact on the natural environment of the locality, which may be significant, including:</p> <ul style="list-style-type: none"> • Groundwater; • Noise; • Air quality (dust); • Water quality; • Vegetation; • Fauna; and • Ecology. <p><i>See Council's Ecology and Environmental Health reviews in the attachments.</i></p>
Built environment	<p>The application does not expressly address the potential impacts of the proposed development on the built environment of the locality. The subject site currently has a relatively low level of built environment (e.g., roads, buildings, parks). A consideration of the impacts of the proposal on the built environment may include likely changes to:</p> <ul style="list-style-type: none"> • the community's well-being through implementation of the proposal; • physical activity and mental health of the communities' residents (e.g., walkability, "bikeability", access to healthy food)

Social Environment	The potential social impacts were considered by the Department of Planning & Environment as part of the rezoning (West Byron Bay Urban Release Area Assessment Report, May 2014). However, the application does not expressly address the potential social impacts of the proposed development. As noted above (4.4A), a SIA was not provided with the application.
Economic impact	The likely economic impacts on surrounding centres were considered by the Department of Planning & Environment as part of the rezoning (West Byron Bay Urban Release Area Assessment Report, May 2014). However, the application does not expressly address the potential economic impacts of the proposed development.

The key outstanding issues, omissions and/or inconsistencies with the application (that haven't been discussed above) are considered below:

Groundwater

The development application has not adequately demonstrated that the proposed stormwater detention infrastructure will not result in an adverse impact on groundwater. In this regard, there is a lack of detail as to whether stormwater infrastructure is located above the groundwater layer.

Earthworks & Filling

The development application has not demonstrated how the fill will be sourced and how the transport of fill to the site will be managed, including:

- a. The proposed source/s for the fill material (329,500m² of fill proposed for the site).
- b. Details of proposed management of construction traffic (there will be a significant number of truck movements required to deliver fill to the site).
- c. A Traffic Management Plan for controlling construction traffic.
- d. An assessment of impacts of construction traffic on surrounding road networks.

There is potential for unsuitable in-situ conditions (Geotechnical Report (Annexure 6)) that may require a greater amount of earthworks than anticipated to prepare the site for filling, such as, the substantial removal of unsuitable in-situ material or the inclusion of a structural / drainage layer prior to the importation of fill. (Such conditions may either result in a significantly higher than expected level of construction traffic and may reasonably impact the final earthworks finished surface levels). The development application has not addressed how the impacts of additional site earthworks, that may be required due to unsuitable in-situ conditions, will be managed, including:

- a. Typical concept level section details and cross sections that indicate preliminary earthwork profiles (Water quality and environmental constraints must also be taken into account).
- b. An amended Engineering Assessment to include an analysis of geotechnical conditions.
- c. An amended Traffic Management Plan that includes traffic movements associated with the removal of in-situ material and importation of drainage layers, general fill and structural fill.

Stormwater

The development application has not adequately demonstrated how stormwater from the site will be managed, including:

- a. How stormwater from Ewingsdale Road will be managed until such time as the Ewingsdale Road upgrade is completed.
- b. How stormwater drainage works meet the Water Sensitive Urban Design guidelines.
- c. How stormwater from stage 1 will be managed prior to the construction of stage 2 owing to the current proposed drain configuration (Stormwater Infrastructure, Fig 15.2) that

- proposes piping stormwater from stage 1, through stage 2 to swales located near the eastern boundary of the stage 2 area.
- d. How groundwater-dependent vegetation communities will be prevented from impact by the placement of fill and drain configurations.
- e. How surface water and groundwater quality will be maintained or improved by the proposal.

The development application has not demonstrated that the proposed stormwater management is adequate and appropriate for the site and development, including:

- a. Analysis of the proposed stormwater system using a drainage system design and analysis model incorporating:
 - i. The main drain and hydraulic structures proposed within the main drain,
 - ii. Drainage systems associated with adjoining subdivision,
 - iii. Appropriate blockage factors for relevant culverts and drain crossings,
 - iv. Sufficient detail to confirm proposed main drain crossings are designed to reasonable engineering standards.
- b. Confirmation of the extent of works within the main drain and typical cross section details of the main drain including where infiltration / dispersion structures or swales are proposed.
- c. A post development long section of the main drain from Ewingsdale Road through to the Union Drain.
- d. Details of on-site detention in accordance with Council's Comprehensive Guidelines for Stormwater Management or if on-site detention is not proposed, supporting calculations and geotechnical data to demonstrate adequate infiltration can be achieved for all runoff from all storm events up to and including 100 year ARI.
- e. A drainage catchment plan showing overland flow paths and pipes (Figure 4.1 Sub-Catchment Plan within the Stormwater Management Strategy (Annexure 10) does not correlate with the proposed stormwater layout shown within Figures 15.1 to 15.3 of the Engineering Assessment and Plans report (Annexure 3)).
- f. Details of stormwater disposal from proposed Stage 11 and the proposed legal point of discharge for stormwater taking into consideration the potential blocking of the current stormwater channel and easement, that runs south from the Bayshore Road / Ewingsdale Road intersection through Lot 5 DP1222674 and Lot 2 DP818403, by the filling of stage 11.
- g. Confirmation of the flow paths and legal points of discharge including from the swale within proposed lot 396 (zoned E2 Environmental Conservation) that receives stormwater from the road drainage system for Roads 7 (part of) to Road 10.
- h. Details of the stormwater management system on proposed lot 397 including design contour levels and the overflow path.
- i. Details of how runoff from the catchment area between Road 16, Road 23 and Road 27 will be managed.
- j. Survey details of the current ponds / dams to the immediate north of road 27 and the downstream channel associated with these ponds.
- k. Correcting inconsistencies between the Engineering Assessment and Plans Report (Annexure 3) and the Stormwater Management Strategy (Annexure 10).
- l. An assessment of site suitability for bio-retention measures in accordance with Water By Design Bioretention Technical Design Guidelines.
- m. Provision of site testing information in accordance with Council's Comprehensive Guidelines for Stormwater Management Section 4.7.
- n. Revised subdivision plans that show the alignment of the Main Drain top of batter and toe of batter for the full extent of the Main Drain and the proposed easement alignment for the Drain.
- o. Provision of stormwater quality treatment modelling that is consistent with the engineering plans. The stormwater quality treatment concept proposed by the applicant appears to have a fundamental design flaw in that the depth of the infrastructure will be deeper than the groundwater levels, making infiltration through filter media difficult if not impossible.

Ecology

The development application is likely to have a significant ecological impact and in addition, the impacts on ecology from the entire WBURA development have not been considered. The division of the proposed subdivision into two separate development applications (DA 10.2017.661.1 and 10.2017.201.1) confounds the ability to realistically determine the nature and extent of impacts on the local ecosystem, including on hydrology and water quality both within the WBURA, and the nearby Belongil Creek estuary (part of the Cape Byron Marine Park and a recognised 'Intermittently Closing or Opening Lake or Lagoon'). There is a significant concern that the proposal, through increased stormwater run-off, will adversely impact on the Belongil Creek ICOLL, as discussed above. The potential for impacts on nesting sites and habitat for coastal and migratory birds has not been adequately addressed by the applicant.

The development application has not demonstrated that the ecological impacts on fauna as a result of the proposed development have been adequately considered, particularly:

- a. A consideration of whether the Wallum Sedge Frogs on the site represent an 'important population' under the Environment Protection and Biodiversity Conservation Act 1999 (Cth) in terms of the 'National Recovery Plan for the wallum sedge frog and other wallum-dependent frog species'.
- b. A consideration of whether habitat to be lost from the site represents 'habitat critical to the survival' of the Wallum Sedge Frog.
- c. The proposed provision of artificial ponds to mitigate impacts for the state and federally listed Olongburra Frog/Wallum Sedge Frog is more likely to hasten its demise than to compensate for the loss of known habitat for the species.
- d. The well-known small population paradigm or 'extinction vortex' clearly applies to the Wallum Sedge Frog populations of the development area, yet is not considered in the development application.
- e. The common tendency for philopatry or site fidelity to natal ponds in frogs is ignored.

The development application has not adequately demonstrated that the proposed development will not result in a Significant Impact on threatened species because the Assessments of Significance undertaken do not address the correct unit of consideration, being the 'local population' of each threatened species, nor do they adequately define a 'Study Area' to consider surrounding and cumulative impacts and conservation values.

The development application does not adequately consider the ecological impacts of the bush fire safety authority issued by NSW Rural Fire Service (E2018/37398).

Traffic

The development application has not adequately demonstrated that the potential impacts of the development on traffic have been addressed or will be managed as the Traffic & Transport Report (Annexure 5) has failed to:

- a. Comply with the recommendation of the Roads & Maritime Services advice dated 12 January 2018 (E2018/3229) in relation to determining future traffic volumes based on Councils current and future forecasts for Ewingsdale Road.
- b. Provide a Construction Management Traffic Plan to address the expected volume of truck movements associated with fill importation.
- c. Address the seasonal variations to traffic as per the Austroads Guide to Traffic Management Part 3 – Traffic Studies and Analysis.
- d. Include the internal vehicle movements as per RMS Guide to Traffic Generating Development.
- e. Ensure all figures and intersections correlate with the proposed, adjoining subdivision (10.2017.201.1) layout.
- f. Detail the proposed construction of any roads and services in Lot 2 DP 818403 and Lot 10 DP1143215.
- g. Show how the internal pedestrian and cycle pathways will connect to the existing external pedestrian and cycle pathways along Ewingsdale Road.

- h. Detail how waste collection will function particularly for medium density areas where parking bays will compromise available space for bins to be placed on the street frontage.

The development will have a significant macro impact on the road network.

The MR545 Strategic Study by Opus set the strategic focus for network upgrades in 2008 out to 2028. The works identified in this study have been incorporated into the Byron Shire Developer Contributions Plan 2012 (amendment 3) and the 10 Year Capital Works Plan.

The MR545 Strategic study identified the following works and construction triggers:

Table 8 Triggers for Proposed Works

Intersection Option	Trigger Point	Comments
Ewingsdale Road & McGettigans Lane RAB	When hospital is built	
Ewingsdale Road & Bayshore Drive RAB*	With first development in Bayshore Drive area	The LOS of right turn out movements are difficult in peak periods. The improvements are needed as soon as possible, particularly as development occurs
Ewingsdale Road & Sunrise Boulevard RAB	With construction of Belongil (West Byron) Residential	
Ewingsdale Road Four Traffic Lanes (from the sportsfield roundabout to the Sunrise Boulevard roundabout)	When the operating speeds start falling below 65 kph and traffic volumes are near capacity	Four lanes would increase the speed on this link to 71km/hr in the AM and PM peaks (in 2028); this is approximately the same as the existing speeds thereby maintaining the current level of service.
Shirley Street and Butler Street RAB	2000-2300vph (two-way) on Lawson Street between Shirley Street and Jonson Street	The LOS of the intersection will be ok, but the queue lengths will cause blocking back to other intersections
2 nd Rail Crossing (Butler Street to Jonson/Marvel Streets)	Same as above	Same as above
Additional lane on Fletcher Street approach to Lawson Street RAB	With the construction of Byron Village or when queue lengths regularly reach Byron Street in peaks	The LOS of the intersection will be ok, but the queue lengths will cause blocking back to other intersections
Sportfields, Sunnybrand and Island Quarry Intersection	With the construction of related development	The developments would generate significant traffic and improvements would be needed as development occurs
Broken Head Road & Clifford Street RAB	1400vph (2-way) on Broken Head Road	No change in right turn out in modelling
Right Turning Bay on Golf Course Intersection	When queuing causes a safety issue	
New Slip Lane for Banglow Road Intersection with Patterson and Cooper Streets	When queuing causes a safety issue	These improvements are safety rather than capacity improvements

N.B.: RAB stands for roundabout; *With either the Bayshore Village, Becton or A&I Estate land rezoning development (or their equivalent)

The trigger for the second rail crossing now known as the Byron Bypass has been met as have all the other triggers with the exception of the Sunrise Blvd roundabout (RAB).

The following works have been completed or are under construction:

- Sunrise RAB (completed prior to trigger point due to blackspot grant funding);
- Bayshore Drive RAB (under construction); and
- Sportsfield RAB.

The Byron Bypass (called the 2nd Rail crossing in the Opus report) has been identified as the key piece of infrastructure to alleviate traffic congestion on MR545 from the Shirley Street RAB back to Bayshore Drive.

The supplemental report to the 2011 Veitch Lister study for the West Byron rezoning modelled the following scenarios:

Table 1: Scenario Definitions

Scenarios	West Byron Development	Short Bypass	Long Bypass
2011 Base	Not included	Not included	Not included
2028 Base	Not included	Not included	Not included
2028 Option 1	Included	Included	Not Included
2028 Option 2	Included	Included	Included
2028 Option 3	Included	Not Included	Included

The queue length on west on Ewingsdale Road from the Shirley Street RAB is shown in the following chart:

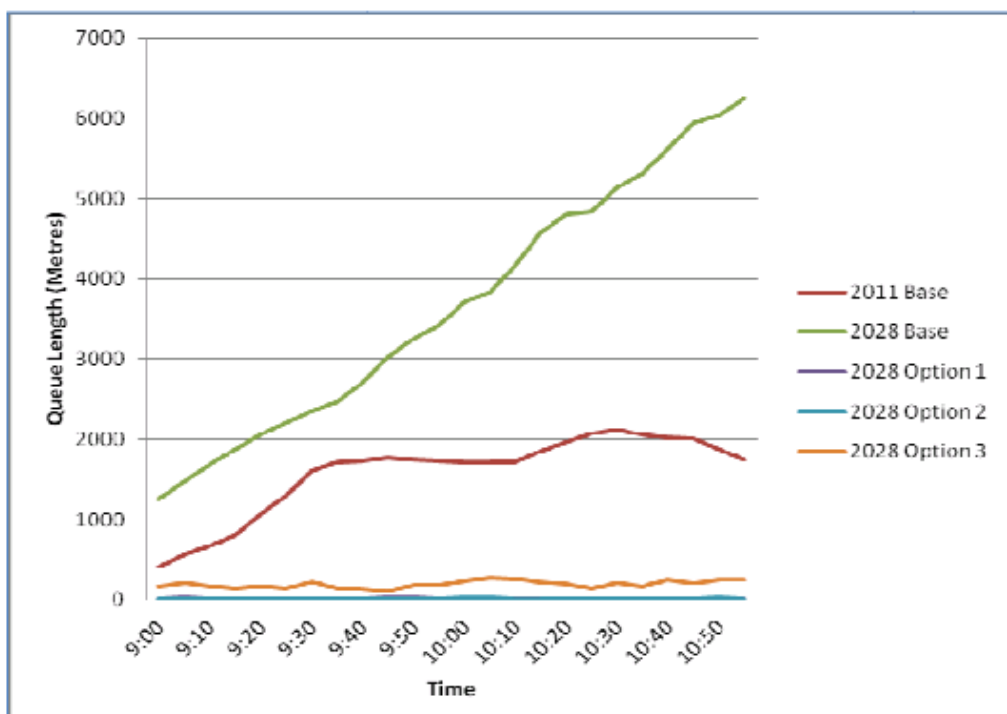


Figure 5: Queue profile on Lawson St West along Ewingsdale Rd

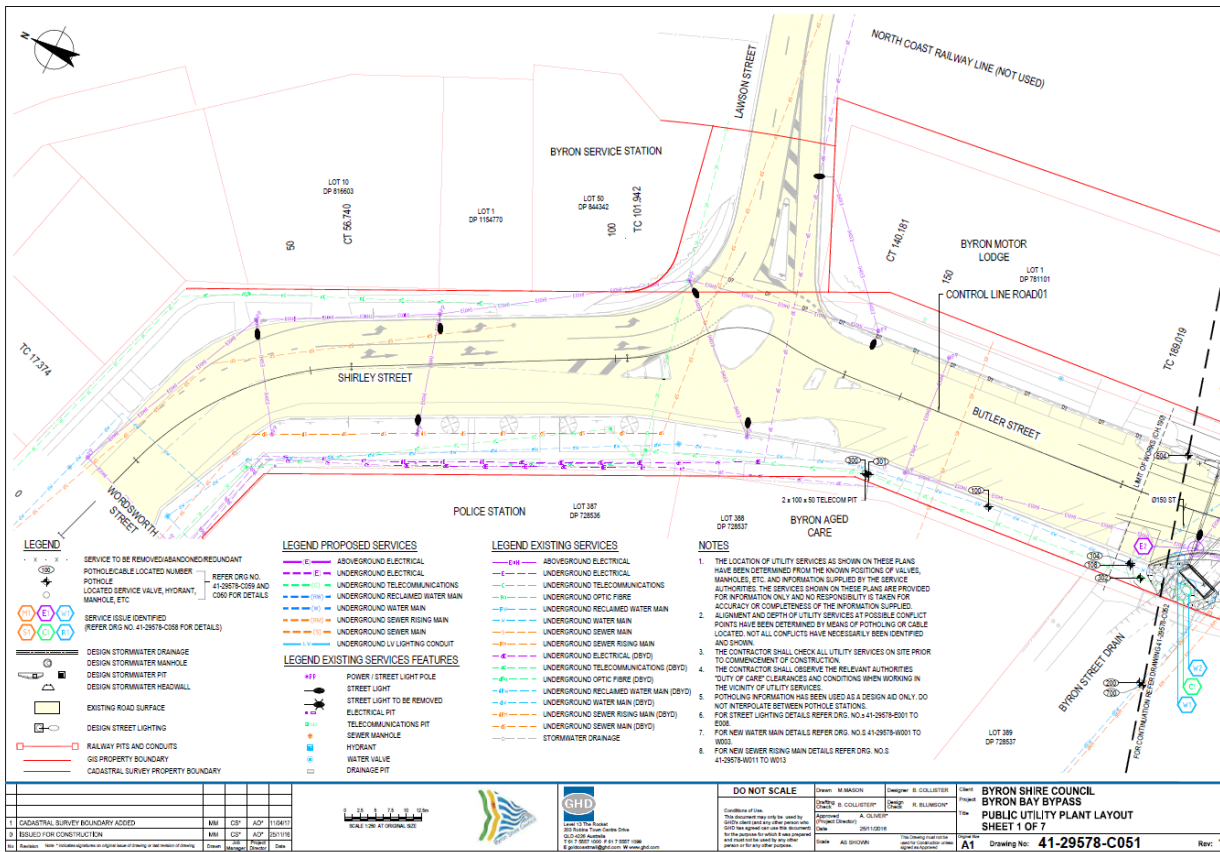
***NOTE:** 2028 Option 1 in the above diagram is below 2028 Option 2 and therefore cannot be seen.

Veitch Lister Consulting Pty Ltd
10-008_WestByron_Micro-sim_Future_Scenarios.docx
23 March 2012

7

The modeling of the 2011 base case is consistent with observation of the operation of the Lawson / Jonson RAB when a significant queue, approximately 1500m in length, to the west would regularly form in the AM peak. During the summer period this queue could exceed 2500m in length reaching back to Bayshore Drive.

The 2011 Veitch Lister modelling was undertaken prior to the completion of the “Two-lanes in” project to add a left turn lane from the Shirley Street RAB through to the Lawson / Jonson Street RAB as shown in the extract from the Byron Bypass plans below:



Since Council has implemented these works, the dynamic of this Lawson / Jonson Street RAB has changed significantly. The queue length to the west has reduced considerably in the AM peak down to 200-300m. There is however now a queue forming to the east down Lawson Street that can exceed 500m. The traffic volumes through the intersection have not changed. The main change to the dynamic of this intersection is altered pedestrian behaviour. The predominant north-south pedestrian crossing point was on the western leg of the RAB. Pedestrians would step out in to the very slow moving traffic amplifying delays and extending the queue westwards. Since the addition of the left turn lane, pedestrians do not view this as a safe crossing point and have moved to the eastern leg of the RAB to cross north-south. This has allowed vehicles approaching from the west to enter the roundabout relatively unrestricted by pedestrian movements.

Despite these changes, queues still form on the western approach to the Lawson / Jonson Street RAB in the AM during all school holidays, Easter, long weekends and festival weekends. This is likely due to a combination of significantly increased traffic volumes and increased pedestrian movements.

The alterations to the Lawson / Jonson Street RAB have meant that the queues to the west, as predicted in the 2011 base case (red line on the chart), are not as long as predicted by that model. The changes have deferred some of the base case impacts and reduced the severity of the queuing on that leg of the RAB.

If the development proceeds without the Byron Bypass being constructed, the additional traffic created by the development will have significant adverse impacts on MR545 and in particular the Lawson / Jonson Street and Shirley / Butler Street RABs. These intersections are already at capacity and it is unacceptable to add a development of this size without the Byron Bypass being operational.

Environmental Management

The development application does not include an Environmental Management Plan (EMP) which is considered necessary due to the scale and significance of the proposed development and the likely prolonged construction works. An EMP would enable Council to assess the likely scope and duration of works associated with the proposed subdivision and should include:

- a. Details of measures proposed to ensure that subdivision construction works do not result in any off-site impacts that could interfere with neighbourhood amenity such as noise, vibration, odour, fumes, smoke, dust and wastewater.
- b. The proposed days/hours of construction.
- c. The likely volume and extraction point of any proposed fill material.
- d. A Waste Management Strategy that details the management of wastes created as a result of the subdivision works including on-site storage and disposal of wastes.

Construction Noise

The development application has failed to demonstrate how noise from construction of the proposed subdivision will be minimised and managed including:

- a. A description of the proposed works, including a discussion of alternative construction methods and justification for the selected method.
- b. Justification for any works proposed to be undertaken outside the recommended standard hours (Monday – Friday: 7am – 6pm, Saturday: 8am – 1pm).
- c. Identification of the residences and other sensitive land uses near the works.
- d. A description of the proposed total duration of noise exposure at the nearest affected sensitive receivers from the proposed works.
- e. Discussion of expected noise or blasting impacts at the most noise-exposed residences and other sensitive land uses. If a quantitative method is used, the predicted noise levels from the proposed construction works should be presented.
- f. A discussion of any community consultation undertaken in assessing the noise impacts.
- g. Discussion of feasible and reasonable work practices and mitigation measures that will be applied to minimise noise impacts from the works.
- h. Reference to the Interim Construction Noise Guideline (DECC, 2009) where appropriate.

The following Council Policies were identified as being applicable to the proposed development:

Council Policy	Consideration
<u>Development Policy (3.23)</u>	Consideration has been given to this policy in the preparation of this report.
<u>Management of Contaminated Land Policy (5.61)</u>	Refer to Council's Environmental Health Officer review (#A2017/31104).

4.9 The suitability of the site for the development

The subject site is zoned as:

- Western area: R2 Low density residential, IN2 Light industrial, E3 Environmental management and E2 Environmental conservation.
- Eastern area: R3 Medium density residential, R2 Low density residential, B1 Neighbourhood Centre, RE1 Public recreation, E3 Environmental management and E2 Environmental conservation.

The WBURA has been identified as an Urban Growth Area (NCRP).

However, the subject site is mapped as having the following constraints:

- A combination of class 2 and class 3 potential acid sulphate soils;
- Category 1 and buffer bushfire vegetation;
- Flood prone land (100 year flood);
- High environmental value vegetation;
- Primary and tertiary koala habitat; and
- Threatened flora and fauna habitat.

As noted above, there is potential for unsuitable in-situ conditions (Geotechnical Report (Annexure 6)) that may require a greater amount of earthworks than anticipated to prepare the site for filling, such as, the substantial removal of unsuitable in-situ material or the inclusion of a structural / drainage layer prior to the importation of fill. It is considered there is insufficient detail in the application addressing this matter in terms of what is proposed and to make the site suitable and geotechnically stable for housing purposes.

These constraints and the potential/likely adverse impacts of the proposed development on these and other matters are considered above.

4.10 Submissions made in accordance with this Act or the regulations

The development application was notified on 5 December 2017 to property owners in the neighbouring areas (Level 2 advertising under DCP 2014 Part A14 – Public Notification and Exhibition of Development Applications). The DA was placed on public exhibition for a period of eight (8) weeks between 14 December 2017 and 7 February 2018. The notification period was further extended to accept submissions until the 31 March 2018 owing to issues with the accessibility of Councils website.

Council received 2218 submissions in opposing the application and 1 submission in support of the application. Many of the submissions included comments relating both to this development and the development application for the adjacent proposed subdivision (DA 10.2017.201.1) most likely due to the similar timeframes for public exhibition, proximity of the two subject sites and the common scale, nature and issues of the two proposed developments.

Council prepared a summary of issues raised in the submissions for both West Byron subdivision development applications (10.2017.201.1 and 10.2017.661.1) which broadly categorises the concerns raised in objections under the following headings (**Attachment M**):

- Environmental;
- Weather/Water/Sewer/Drainage;
- Traffic;
- Amenity;
- Fill and Construction;
- Lack of Consistency with other Policy; and
- Issues with the DA.

All landowners/occupiers at the southern end of Melaleuca Drive and adjoining the western area of the proposed development submitted in opposition to the development. Issues raised particular to these submitters include the following:

- Their homes and/or businesses are near to the development;
- Effects of the proposed development on access to their property; and
- The potential for their properties to be adversely affected by flooding associated with potential changes to flood behaviour (clause 98 BLEP 1988).

Issues raised in the submissions have been considered in the assessment as detailed in the above considerations under s.79C of the EP&A Act 1979.

4.11 Public interest

In considering the rezoning of the WBURA, it was noted that *“Byron Shire is facing a housing shortage and this is continuing to place pressure on the market”* and that *“there is a limited amount of land available for future residential development.”* In justifying the need to rezone the WBURA, it was noted that in addition to increasing the supply of land available for residential development the proposal would also provide for diversity in housing choice. The Department of Planning & Environment supported the rezoning subject to the urban development *“...being able to mitigate and minimise any significant impacts”* (West Byron Bay Urban Release Area Assessment Report, May 2014).

However, having regard to the significant number of objections (2218) and the outstanding issues raised in this report, it would appear difficult for the development to proceed in its current format in terms of the public interest test.

4.12 Section 5AA of the EP&A Act – Application of Biodiversity Conservation Act 2016 (BCA) and Fisheries Management Act 1994

The EP&A Act has effect “..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. (s.5AA EP&A Act).

The application included a Threatened Species Management Plan (Annexure 8A) and a Biodiversity Conservation Management Plan (Annexure 8E). These documents and “whether proposed development or activity likely to significantly affect threatened species or ecological communities, or their habitats” (ss.7.2, 7.3 BCA) were reviewed by Council’s Ecologist (#E2018/59859) who found that:

“The scale, nature and bulk of the development with 329,500m³ of unspecified fill, existing poor water quality in the main drain, and habitat loss are clearly inimical for local biodiversity, and will likely result in the extinction of at least one threatened fauna species, and the continuing degradation of both aquatic and terrestrial habitats.”, and

“... the Assessments of Significance of impacts on threatened species ... are incorrect, addressing impacts on species in the locality, rather than the likelihood of local population extinctions in the Subject Site or Study Area.”

The consent authority must refuse to grant consent (under Part 4 of the EP&A Act) where an application for development consent, if it is of the opinion that the proposed development is likely to have serious and irreversible impacts on biodiversity values (s.7.16 BCA).

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

Section 64 levies will be payable.

5.2 Section 94 Contributions

Section 94 Contributions will be payable.

The VPA does not exclude the operation of sections 94, 94A (as they were at the time of signing the agreement) and as such the section 94 plan will apply to the development. The additional population generated by the development gives rise to an increased demand for public facilities. If consent was to be granted a condition of consent should be imposed to require the payment of contributions.

The works schedules contained within the Open Space and Bikeways components of the plan contain works within the subdivision itself. Subject to the dedication of land and undertaking of the works by the developer, the rate of contribution can be reduced. The following tables set out the works that may be undertaken by the developer as a work in kind.

Open Space and Recreation Works Schedule							
Facility	Priority for Pooling of Funds	Estimated Timing for completion of works	SDU in time frame	Cost of Works Indexed to 24 April 2014	Net cost of works	Apportionment (% attributable to new development)	Cost of works attributable to new development
Byron Bay/ Suffolk Park Catchment							

West Byron Local Parks Acquisition (refer maps) various parcel numbers	-	Upon Lot release in stages	1427	1,115,929.55	1,115,929.55	100.00%	1,115,929.55
West Byron Local Parks embellishment (refer maps) various parcel numbers	-	Upon Lot release in stages	1427	309,980.43	309,980.43	100.00%	309,980.43

Bikeways and Footpaths Works Schedule

Facility (Refer to Bikeways plan for detailed description of works and maps #790722)	Priority for Pooling of Funds	Estimated Timing for works	SDU in time frame	Cost of Works Indexed to 24 April 2014	Net cost of works (less from old plan reconciliation amount)	Apportionment (% attributable to new development)	Cost of works attributable to new development
Internal Shared path to West Byron Development. Refer Draft West Byron DCP Prepared by Land Partners Approximately 5000m	NA	Progressive completion. Prior to release of subdivision certificate for each stage of the West Byron development	1427	1,188,258.32	1,188,258.32	100.00%	1,188,258.32

Clause 2.25 of the contributions plan makes provision for works in kind, as follows:

2.25 Works in Kind and Material Public Benefit

The Council may accept an offer by the applicant to provide an “in-kind” contribution (i.e. the applicant completes part of all of a work identified in the Plan) or through provision of another material public benefit in lieu of the applicant satisfying its obligations under this Plan by way of payment of a monetary contribution. A material public benefit is defined in the EP&A Act as not comprising the dedication of land or the payment of monetary contribution.

Council will only accept such alternatives provided the value of the works to be undertaken is at least equal to the value of the contribution that would otherwise be required under this Plan and the standard of the works is to Council’s full satisfaction. The value of the works must be provided by the applicant at the time of the request and must be independently certified by a Quantity Surveyor who is registered with the Australian Institute of Quantity Surveyors or a person who can demonstrate equivalent qualifications.

Acceptance of works in kind is at the sole discretion of the Council. Council may review the valuation of works and may seek the services of an independent person to verify the costs. In these cases, all costs will be at the expense of the applicant.

Subject to the satisfactory completion of the works in each stage, Council may accept the works in lieu of the payment of a monetary contribution for the local open space and bikeways components of the plan.

A preliminary estimate of the contributions is set out in the following schedule:

**Section 94 contributions Schedule for
Byron Bay Suffolk Park
Catchment**

This schedule was calculated in spreadsheet #E2015/28112

1 bedroom units =	0	@	0.55 SDU	=	0
2 bedroom units =	0	@	0.75 SDU	=	0
3 bedroom units/dwellings =	0	@	1 SDU	=	0
Allotments =	387	@	1	=	387
Less Site Credits =	5	@	-1	=	-5
Total SDU				=	382
Schedule valid until			24/10/2018	After this date contact Council for CPI update.	
Local Open Space & Recreation	(OS-BB)	382.00 SDU @	\$ 4,131.88	=	\$ 1,578,378.16
LGA Wide Open Space & Recreation	(OS-SW)	382.00 SDU @	\$ 743.70	=	\$ 284,093.40
LGA wide Community Facilities	(CF-SW)	382.00 SDU @	\$ 1,089.23	=	\$ 416,085.86
Local Community Facilities	(CF-BB)	382.00 SDU @	\$ 1,227.38	=	\$ 468,859.16
Bikeways & Footpaths	(CW-BB)	382.00 SDU @	\$ 1,360.68	=	\$ 519,779.76
Shire Wide Bikeways & Footpaths	(CW-SW)	382.00 SDU @	\$ 79.90	=	\$ 30,521.80
Urban Roads	(R-BB)	382.00 SDU @	\$ 3,082.36	=	\$ 1,177,461.52
LGA Wide Roads	(R-SW)	382.00 SDU @	\$ 225.04	=	\$ 85,965.28
Rural Roads	#N/A	382.00 SDU @	\$ -	=	\$ -
Administration Levy	(OF-SW)	382.00 SDU @	\$ 1,124.91	=	\$ 429,715.62
Total				=	\$ 4,990,860.56

6. CONCLUSION

The DA proposes the subdivision of Six (6) Lots into Three Hundred and Eighty Seven (387) Lots consisting of Three Hundred and Seventy Eight (378) Residential Lots, Two (2) Business Lots, Two (2) Industrial Lots, One (1) Recreation Lot and Four (4) Residue Lots.

The application does not adequately address or mitigate a range of issues likely to be caused by the development. The development is contrary to several relevant matters for consideration including numerous provisions of Council's adopted development standards and development controls without sufficient justification. A substantial number of submissions (>2000) were received in opposition to the application and the approval of the proposed development will set a precedent for similarly inappropriate subdivision development.

Consequently, it is recommended that the development application be refused

7. RECOMMENDATION

It is recommended that pursuant to Section 80 of the Environmental Planning & Assessment Act 1979, development application no. 10.2017.661.1 for Subdivision of Six (6) Lots into Three Hundred and Eighty Seven (387) Lots consisting of Three Hundred and Seventy Eight (378) Residential Lots, Two (2) Business Lots, Two (2) Industrial Lots, One (1) Recreation Lot and Four (4) Residue Lots, be refused consent for the following reasons:

Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal has not satisfied the matters within State Environmental Planning Policy No 1 – Development Standards, in relation to residual 7(a) Wetland zoned land under BLEP 1988.

Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal has not satisfied the matters within State Environmental Planning Policy (Infrastructure) 2007, Clause 101 Development with Frontage to a Classified Road. The proposal fails to adequately demonstrate that

the measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road are achievable.

Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the subject land is located within the coastal zone and the proposed development is likely to result in numerous impacts on coastal biodiversity and ecosystems, including the Belongil Creek ICOLL, contrary to Clause 88 Development within the coastal zone of Byron Local Environmental Plan 1988.

Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal has not adequately demonstrated how the proposed earthworks and filling of the site will be managed, contrary to Clause 98B Earthworks of Byron Local Environmental Plan 1988.

Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal has not adequately demonstrated that the likely future impacts of flooding from/on the proposed subdivision will be managed, contrary to Clause 98(3) Flood Planning of Byron Local Environmental Plan 1988.

Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy the matters for consideration within Byron Shire Development Control Plan 2014 Section B12 Social Impact Assessment in relation to the provision of a specific and up-to-date social impact assessment.

Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy all the relevant matters for consideration within Byron Shire Development Control Plan 2014 Section B6.2.1 Subdivision Design Guidelines in relation to public road access, emergency/alternate access, road levels and owner's consent for construction.

Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy all the relevant matters for consideration within Byron Shire Development Control Plan 2014 Section B8.10.1 Staging Plan in relation to the proposed staging, orderly development of the site and coordinated development.

Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy all the relevant matters for consideration within Byron Shire Development Control Plan 2014 Section B8.10.2 Housing Subdivision Layout, Orientation and Diversity in relation to integrated on-street parking, small lot requirements, lot orientation and dimensions, lot access and incorporation of appropriate restrictions on title.

Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is not consistent with the Byron Shire Development Control Plan 2014 Section B8.10.3 Transport Movement and Street Hierarchy in relation to proposed road design cross-sections.

Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy all the relevant matters for consideration within Byron Shire Development Control Plan 2014 Section B8.10.4 Stormwater in relation to an assessment of impacts, identification of mitigation measures, detailed design for the central drainage line and embellishment of the drains within the site.

Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy all the relevant matters for consideration within Byron Shire Development Control Plan 2014 Section B8.10.5 Biodiversity, Vegetation Management and Landscaping in relation to encroachments into environmental zoned land, assessments of significance, details of offsets, impacts of fill and stormwater and ecological impacts.

Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy all the relevant matters for consideration within Byron Shire

Development Control Plan 2014 Section B8.10.6 Public Facilities, Services and Infrastructure, in relation to cycleway and footpath arrangements.

Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy all the relevant matters for consideration within Byron Shire Development Control Plan 2014 Section B8.10.7 Recreational Areas, in relation to embellishment of future recreational areas.

Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy all the relevant matters for consideration within Byron Shire Development Control Plan 2014 Section B8.10.8 Hazards and Constraints, in relation to monitoring in Belongil Creek, preparation of a management plan, impacts of stormwater on the water table, compliance with the bushfire safety authority and buffers.

Pursuant to Section 79C(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, noise, air quality (dust), surface water quality, vegetation, fauna, ecology and the Belongil Creek ICOLL.

Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development may have an adverse environmental impact on the built environment through increased traffic congestion on Ewingsdale Road.

Pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development fails to satisfactorily address the environmental impacts of the proposal including impacts on threatened species (particularly the Olongburra Frog/Wallum Sedge Frog), populations and ecological communities, nor does it meet the requirements under the Biodiversity Conservation Act 2016.

Pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act 1979, the site is not considered to be suitable for the proposed development in view of the identified constraints (acid sulfate soils, bushfire vegetation, flood prone land, high environmental value vegetation, koala habitat, threatened flora and fauna), potential for unsuitable in-situ conditions and traffic generation impacts.

Pursuant to Section 79C(1)(d) of the Environmental Planning and Assessment Act 1979 the proposed development received a significant number of submissions in objection to the development and does not appear to have the broad support of the community.

Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not in the public interest having regards to the level of community objection to the subdivision and the number of outstanding issues raised in the assessment.

8. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No

Provide Disclosure Statement register details here: Not applicable