



#E2018/78442
Your ref: 2018NTH007
Contact: Rob van Iersel

24 September 2018

Planning Panel Secretariat
GPO Box 39
SYDNEY NSW 2001

Dear Sir/ Madam,

Your Ref 2018NTH007
DA No 10.2017.661.1
Proposal 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
Property Description Lot and DP: LOT: 1 DP: 201626, LOT: 2 DP: 542178, LOT: 1 DP: 780242, LOT: 2 DP: 818403, LOT: 1 DP: 520063, LOT: 7020 DP: 1113431
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

In March 2018, I wrote to advise that the elected Council considered the proposed development and resolved to prepare a submission of objection.

I note that the application will be considered by the Northern Joint Regional Planning Panel in early October. It is appropriate, therefore, that the submission of the elected Councillors be forwarded to you at this time, so that it can be considered by the Panel members.

At a Council meeting on 5 February 2018, Council resolved to object to Development Application on the following grounds:

1. *Failure to provide a buffer for residential lots from the boundary that adjoins the Ewingsdale Road reserve (noting that any infrastructure associated with the development should be provided on the applicant's site). The proposed use of the road reserve may impinge on the town's future transport corridor needs.*

This objection relates to the proposal to construct an earthen acoustic barrier on the Ewingsdale Road reserve boundary, with a batter into the road reserve.

2. *Failure to provide landowners' consent from the Crown and Byron Shire Council for works within the drainage reserve lot and Council's road reserve.*

Land Owner consent has subsequently been provided.



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THE BUNDJALUNG PEOPLE

ALL COMMUNICATIONS TO B
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3. *Opposition to the use of fill (1 million tonnes) on the site, noting that any structures on the site should be raised above the existing ground level. Concerns regarding the impact of the use of fill on the site and the impact on the whole Belongil Creek catchment area, including the SEPP 14 wetlands and adjoining neighbours properties and insufficient information to enable an informed consideration of the location detail or truck movement (including time frames) concerning the use and source of fill on the site.*

The development application has not adequately demonstrated how the proposed earthworks and filling of the site will be managed, including:

- 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.
- Temporary retaining of fill that may be required due to potential inconsistency in earthworks between the two proposed, adjoining subdivisions.
- 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.
- How filling of the site will be staged to avoid impacts on newly constructed and dedicated roads.

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:

- The proposed source/s for the fill material (329,500m³ of fill proposed for the site).
- Details of proposed management of construction traffic (there will be a significant number of truck movements required to deliver fill to the site).
- A Traffic Management Plan for controlling construction traffic.
- An assessment of impacts of construction traffic on surrounding road networks.

There is potential for unsuitable in-situ conditions 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:

- Typical concept level section details and cross sections that indicate preliminary earthwork profiles (Water quality and environmental constraints must also be taken into account).
- An amended Engineering Assessment to include an analysis of geotechnical conditions.
- 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.

4. *Insufficient information to enable an informed consideration of the traffic impacts associated with the construction activities and resultant subdivision works and development of the site; and*

The applicant's traffic assessment relies on the assumption that the proposed Byron Bay Town Centre Bypass will be constructed and in operation. While Council remains optimistic that this will be the case, it is, at this time, not yet certain.

In any case, modelling associated with the Bypass indicates that it is expected to redirect between 3,200 and 4,400 vehicles per day away from Jonson Street (and the town centre). The application fails to assess the implications of a fully constructed West Byron subdivision in relation to future town centre traffic. Council is of the view that any traffic improvements provided by the Bypass, should it proceed, would be countered by the significant increased traffic movements associated with the development.

The development should not proceed unless the funding for the construction of the bypass has been secured and the bypass is under construction.

5. *Unacceptable increase in traffic movements along Ewingsdale, noting that the estimated 14,000 additional daily car movements is significantly higher than the originally estimated 6,000 at the time the site's State Significance status was considered and increases total Ewingsdale road daily car usage to approximately 35,000.*

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 has failed to:

- Comply with the recommendation of Roads & Maritime Services advice in relation to determining future traffic volumes based on Council's current and future forecasts for Ewingsdale Road.
- Provide a Construction Management Traffic Plan to address the expected volume of truck movements associated with fill importation.
- Address the seasonal variations to traffic as per the Austroads Guide to Traffic Management Part 3 – Traffic Studies and Analysis.
- Include the internal vehicle movements as per RMS Guide to Traffic Generating Development.
- Ensure all figures and intersections correlate with the proposed adjoining subdivision (10.2017.201.1) layout.
- Detail the proposed construction of any roads and services in Lot 2 DP 818403 and Lot 10 DP 1143215.
- Show how the internal pedestrian and cycle pathways will connect to the existing external pedestrian and cycle pathways along Ewingsdale Road.
- 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 proposed road design is inconsistent with BDCP 2014 Chapter E8 Appendix D with regards to road cross section design.

6. *Unacceptable environmental impacts, including:*

- *The clearing of 1.8 hectares of environmentally zoned land*
- *A failure to adequately consider impacts on mapped Wetland areas, including a failure to provide a required EIS for works in these areas*
- *Failure to meet the requirements of the WB DCP for a whole of site (as identified by the DCP) Koala Management Plan*
- *Unacceptable impacts on koalas across the site; due to dealing with potential threats to connectivity and inadequate buffers for core Koala habitat*
- *Failure to adhere to the National Recovery Plan for the Wallum Sedge Frog and other Wallum dependent frog species, and unacceptable risks to the protection and enhancement of the existing Wallum froglet populations as a result of significant*

disturbance of known habitat by proposed fill and stormwater works and insufficient buffers and linkage along drain and watercourse lines; and

- *Unreasonable risk to the health of the Belongil estuary, due to: the extreme difficulty in avoiding Acid Sulfate contamination, or impacts of any drainage works and stormwater impacts*

The proposed development is likely to have a significant ecological impact. In addition, the impacts on ecology from the entire WBURA development have not been adequately 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').

The development application not adequately demonstrated that ecological impacts will be appropriately managed or that the development meets the requirements of DCP 2014 Chapter E8.10.5, including:

- 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.
- 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 (rather than the subject site or study area) as required in accordance with section 7.3 of the Biodiversity Conservation Act 2016.
- 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.
- 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).
- A revised Assessment of Significance for the Wallum Sedge Frog following the additional targeted survey.
- 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 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.

The development application has not adequately demonstrated that works within and immediately adjacent the mapped Coastal Wetlands (Clause 12 of the Coastal SEPP) will not significantly impact on:

- The biophysical, hydrological or ecological integrity of the adjacent coastal wetland, or
- 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.

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

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

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 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'.
- A consideration of whether habitat to be lost from the site represents 'habitat critical to the survival' of the Wallum Sedge Frog.
- 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.
- 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.
- 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.

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 (BDCP 2014 Chapter E8.10.8.3) to rectify such conditions.

7. Inconsistencies to the adjoining Development Applications

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.

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).

8. Failure to take changes in rainfall intensities due to climate change into account in identifying Probable Maximum Flood Levels and designing stormwater management, including failure to

undertake sensitivity analyses for the range of potential changes expected by the end of this century,

9. *any other issues that staff identify in preparing the submission to the JRPP*

Subdivision, Site Design and Site Access

The proposed development does not meet the requirements of Byron Development Control Plan 2014 ("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.

Minimum Subdivision Lot Size

The proposed development does not comply with the minimum subdivision lot size identified in the Lot Size Map in relation to the subject site pursuant to Clause 81 of Byron Local Environmental Plan 1988 ("BLEP 1988"). The application proposes lots within zone R2 Low Density Residential that are less than 450m².

Staging Plan

The proposed staging:

- is not consistent with the "Staging Plan" and associated requirements in BDCP 2014 Chapter E8.10.1; and
- has not been demonstrated to meet the objective of "orderly development of the site".

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.
- 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.
- Details of when remediation works are to be undertaken and the future ownership structure of the resultant E Zone lots.

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 in accordance with BDCP 2014 Chapter E8.10.2 (Prescriptive Measure 2).

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 in accordance with BDCP 2014 Chapter E8.10.2 (Prescriptive Measure 2).

The development application has failed to provide integrated on-street parking where there are four or more small lots proposed in a street section in accordance with the requirements of BDCP 2014 Chapter E8.10.2 (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.

The development has failed to address the requirements of BDCP 2014 Chapter E8.10.2 (Prescriptive Measure 7) for the development of small lots with access gained via a rear lane with secondary frontage available.

The development has failed to provide small lots orientated between the northeast to the northwest to ensure good solar access in accordance with BDCP 2014 Chapter E8.10.2 (Prescriptive Measure 7).

The development has failed to incorporate an appropriate Section 88B instrument for the subject lots and adjoining small lots for zero lot line development in accordance with the requirements of BDCP 2014 Chapter E8.10.2 (Prescriptive Measure 7).

T Lot 397 and 400 are both long and thin and not suitable for residential development contrary to BDCP 2014 Chapter E8.10.2 (Prescriptive Measure 3).

The development application does not clearly demonstrate that proposed dual occupancy lots all have a minimum dimension of 25m on a general N/S boundary as required by BDCP 2014 Chapter E8.10.2 (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).

Recreational Areas

It has not been demonstrated that the proposed levels of embellishment of future recreational areas are in accordance with BDCP 2014 Chapter E8.10.7.

Work in Environmental Zone - Prohibited

Drainage works including swales and infiltration basins are proposed within land zoned E2 Environmental Conservation and such activities are prohibited in the E2 zone pursuant to clause 78 of BLEP 1988.

Groundwater

The proposed stormwater detention devices and bio-retention devices do not have a base excavation 1m above the water table, or use impermeable liners as required by BDCP 2014 Chapter E8.10.8.3.

It has not been adequately demonstrated that the proposed stormwater detention infrastructure will not result in an adverse impact on groundwater.

Public Facilities, Services and Infrastructure

It has not been adequately demonstrated that the cycleway and footpath arrangements will meet the requirements of BDCP 2014 Chapter E8.10.8.6.

Stormwater

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

- How stormwater from Ewingsdale Road will be managed until such time as the Ewingsdale Road upgrade is completed.
- How stormwater drainage works meet the Water Sensitive Urban Design guidelines.
- 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.
- How groundwater-dependent vegetation communities will be prevented from impact by the placement of fill and drain configurations.
- 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:

- 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.
- 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.
- A post development long section of the main drain from Ewingsdale Road through to the Union. Drain.
- 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.
- 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)).
- 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.

- 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.
- Details of the stormwater management system on proposed lot 397 including design contour levels and the overflow path.
- Details of how runoff from the catchment area between Road 16, Road 23 and Road 27 will be managed.
- Survey details of the current ponds / dams to the immediate north of road 27 and the downstream channel associated with these ponds.
- Correcting inconsistencies between the Engineering Assessment and Plans Report (Annexure 3) and the Stormwater Management Strategy (Annexure 10).
- An assessment of site suitability for bio-retention measures in accordance with Water By Design Bioretention Technical Design Guidelines.
- Provision of site testing information in accordance with Council's Comprehensive Guidelines for Stormwater Management Section 4.7.
- 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.
- 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.

Acid Sulphate Soils

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.

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:

- 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.
- The proposed days/hours of construction.
- The likely volume and extraction point of any proposed fill material.
- 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.

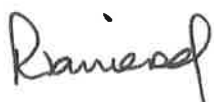
Construction Noise

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

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

Should you have any queries regarding this submission, please feel free to call the writer on 02 6626 7054 or email rob.vanierse@byron.nsw.gov.au

Yours sincerely



Rob van Iersel
Major Projects Planner