

## ADDENDUM TO COUNCIL ASSESSMENT REPORT

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 <b>refused</b> for the reasons detailed in Section 7 of the report dated 25 September 2018 submitted to the panel meeting of 8 October 2018.
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, “Development that has a capital investment value of more than \$20 million”.
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy No 1 – Development Standards</li> <li>• State Environmental Planning Policy No 14 – Coastal Wetlands</li> <li>• State Environmental Planning Policy No 44 – Koala Habitat Protection</li> <li>• State Environmental Planning Policy No 55 – Remediation of Land</li> <li>• State Environmental Planning Policy No 71 – Coastal Protection</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy (Coastal Management) 2018</li> <li>• Byron Local Environment Plan 1988</li> <li>• Byron Shire Development Control Plan 2014</li> <li>• North Coast Regional Plan 2036</li> <li>• West Byron Bay Planning Agreement (2013/5948)</li> <li>• Environmental Planning and Assessment Regulation 2000</li> <li>• Biodiversity Conservation Act 2016</li> </ul>
List all documents submitted with this report for the Panel’s consideration	<p><b>Attachment 1A</b> Planning Circular PS 18-003</p> <p><b>Attachment 2A</b> Review of ecological Components of Responses to Requests for Additional Information</p>

	<b>Attachment 3A</b> Summary of Stand Alone Submissions to be reviewed
<b>Report prepared by</b>	Ivan Holland Planner Byron Shire Council
<b>Report date</b>	5 October 2018

**Summary of s79C matters**

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report?

**Assessment  
of further  
information  
incomplete**

**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?

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

**See  
comments  
regarding  
SEPP 1  
objection**

**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?

**No change  
from  
Previous  
Report**

**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

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

**No change  
from  
Previous  
Report**

**Conditions**

Have draft conditions been provided to the applicant for comment?

*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*

**No**

**MEMO TO:** Joint Regional Planning Panel

**COPY TO:**

**MEMO FROM:** Planner

**SUBJECT:** Addendum to Council Assessment Report on DA10.2017.661.1

**DATE:** 5 October 2018

**RECORD NO:** E2018/81079

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The applicant emailed a response to Council's requests for further information to Council on 19 September 2018 (Doc #E2018/77579). The further information provided by the applicant included:

- An amendment of the proposed development (number of lots, lot sizes, staging) including amended plans (Annexure 1);
- More detailed information on the proposed acoustic barrier and recreational areas (Annexure 2);
- More information on groundwater, stormwater, E zones, threatened species and offsets (Annexure 3);
- An amended State Environmental Planning Policy No 1 (SEPP 1) objection (Annexure 4);
- A technical memorandum (Annexure 5); and
- More information on the interface with neighbouring developments, filling, stormwater and E zones (Annexure 6).

There was insufficient time to properly consider this information in the Council Assessment Report of 25 September 2018. Council was requested to submit an addendum to the assessment report to the Planning Panels Secretariat by 5 October 2018. Council has considered some of the further information provided by the applicant as detailed below:

Amendment of the proposed development (number of lots, lot sizes, staging) including amended plans (Annexure 1);

The applicant's further information states that small lots have been removed and super lots created in their place. The further information does not include an explanation of which lots have been combined to create each of the super lots. The applicant's revised plans have renumbered the resulting, reduced number of lots.

The applicant's further information includes revised staging plans. The number of stages has been increased from 11 to 12 however, the further information does not include an explanation of how the stages have changed (i.e., size, location and order).

This approach has hampered Council's ability to provide a rapid response to these amendments to the proposal.

State Environmental Planning Policy No 1 – Development Standards – Objection (Annexure 4)

The applicant's revised SEPP 1 objection was forwarded to the Department of Planning and Environment on 27 September 2018. The Department of Planning and Environment advised that Council (or in the case of regional significant development, regional planning panels) could assume the concurrence of the Secretary in line with Planning Circular PS 18-003 (**Attachment 1A**).

### Ecology (Annexure 1, 3, 5)

Council's Ecological Consultant has reviewed the relevant further information provided by the applicant (Doc# E2018/81071, **Attachment 2A**). The further information was generally found to re-state and re-assert material previously provided with the development application rather than providing any additional information.

The further information was not found to have thoroughly researched and analysed the status of the threatened Wallum Sedge Frog at the site. This is considered to be important due to the proposed loss of the Wallum Sedge Frog population and habitat on the adjacent site (Harvest Estate subdivision - DA 10.2017.201.1). The status and likely fate of the remaining small population(s) of Wallum Sedge Frog on the subject site remains unclear. The further information did not include current or recent survey data for Wallum Sedge Frog on the site despite suitable weather conditions for a survey(s) during winter and spring of this year. The applicant's assessment of impacts on the local Wallum Sedge Frog population(s) is based on limited data from 2015 and on this basis is considered inadequate.

The applicant's further information provides detail of a proposed West Byron Fencing Plan (Annexure 5) to mitigate the impacts of the proposed development on native fauna in particular Koalas. Council's Ecologist notes that the additional fencing proposed will exacerbate the current barrier effects for fauna in the location and should be revised.

The Assessments of Significance of impacts on threatened species provided with the application were incorrect (addressing impacts on the species in the locality, rather than the likelihood of local population extinctions in the subject site or study area). The applicant's further information includes updated Assessments of Significance (Annexure 3) that have addressed the likelihood of local population extinctions as required. The conclusion of no significant impact in the amended assessment provided for the Wallum Sedge Frog is not supported by Council's Ecologist as the assessment was restricted to the subject site rather than the "local population" which would include the entire West Byron Urban Release Area.

Council's Ecologist concludes that many of the threats and impacts, inadequately addressed in the development application, are not readily amenable to management and/or mitigation particularly at the scale of this proposal and given the site's environmental constraints.

### Incomplete assessment of further information

Council's Consultant Engineer, Environmental Health Officer and Development Planning Officer had not completed their review of the applicant's further information at the time of finalisation of this addendum.

### Submissions

A number of submissions were not expressly included in the summary of West Byron submissions (Attachment M of the Council Assessment Report). These submissions were listed on pages 160 and 161 under the heading "Stand Alone Submissions to be reviewed". The submissions were considered pertinent as they were lodged by:

- Residents of Melaleuca Drive;
- Local community groups;
- Local residents with specific knowledge (e.g., in relation to environmental matters, urban design and previous neighbouring development); and
- The applicant for the adjoining subdivision (DA 10.2017.201.1).

A summary of these submissions is included with this addendum (**Attachment 3A**).

Council staff will endeavour to complete their review of the applicant's further information in the near future and the outcomes of this review will be submitted to the Planning Panel Secretariat.

## PLANNING SYSTEM

Varying Development Standards

<b>Circular</b>	PS 18-003
<b>Issued</b>	21 February 2018
<b>Related</b>	Revokes PS17-006 (December 2017)

# Variations to development standards

This circular is to advise consent authorities of arrangements for when the Secretary's concurrence to vary development standards may be assumed (including when council or its Independent Hearing and Assessment Panel are to determine applications when development standards are varied), and clarify requirements around reporting and record keeping where that concurrence has been assumed.

## Overview of assumed concurrence

This circular replaces Planning Circular PS 17-006 and issues revised assumed concurrence, governance and reporting requirements for consent authorities.

All consent authorities may assume the Secretary's concurrence under:

- clause 4.6 of a local environmental plan that adopts the *Standard Instrument (Local Environmental Plans) Order 2006* or any other provision of an environmental planning instrument to the same effect, or
- *State Environmental Planning Policy No 1 – Development Standards*.

However the assumed concurrence is subject to conditions (see below).

The assumed concurrence notice takes effect immediately and applies to pending development applications.

Any existing variation agreed to by the Secretary of Planning and Environment to a previous notice will continue to have effect under the attached notice.

## Assumed concurrence conditions

### Lot size standards for dwellings in rural areas

The Secretary's concurrence may not be assumed for a development standard relating to the minimum lot size required for erection of a dwelling on land in one of the following land use zones, if the lot is less than 90% of the required minimum lot size:

- Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition
- Zone R5 Large Lot Residential
- Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living

- a land use zone that is equivalent to one of the above land use zones

This condition will only apply to local and regionally significant development.

### Numerical and non-numerical development standards

The Secretary's concurrence may not be assumed by a delegate of council if:

- the development contravenes a numerical standard by greater than 10%; or
- the variation is to a non-numerical standard.

This restriction does not apply to decisions made by independent hearing and assessment panels, formally known as local planning panels, who exercise consent authority functions on behalf of councils, but are not legally delegates of the council (see section 231, to be renumbered 4.8 from 1 March 2018).

The purpose of the restriction on assumed concurrence for variations of numerical and non-numerical standards applying to delegates is to ensure that variations of this nature are considered by the council or its independent hearing and assessment panel and that they are subject to greater public scrutiny than decisions made by council staff under delegation.

In all other circumstances, delegates of a consent authority may assume the Secretary's concurrence in accordance with the attached written notice.

## Independent hearing and assessment panels

From 1 March 2018, councils in Sydney and Wollongong will be required to have independent hearing and assessment panels that will determine development applications on behalf of councils (see section 231, to be renumbered section 4.8 from 1 March 2018).

The attached notice allows independent hearing and assessment panels to assume the Secretary's concurrence because they are exercising the council's functions as a consent authority.

Independent hearing and assessment panels established by councils before 1 March 2018 also make decisions on behalf of councils. The attached notice applies to existing panels in the same way as it will apply to panels established after 1 March 2018.

## Regionally significant development

Sydney district and regional planning panels may also assume the Secretary's concurrence where development standards will be contravened.

The restriction on delegates determining applications involving numerical or non-numerical standards does not apply to all regionally significant development. This is because all regionally significant development is determined by a panel and is not delegated to council staff.

However, the restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will continue to apply to regionally significant development. The Secretary's concurrence will need to be obtained for these proposals in the same way as it would for local development.

## State significant development and development where a Minister is the consent authority

Consent authorities for State significant development (SSD) may also assume the Secretary's concurrence where development standards will be contravened. This arrangement also applies to other development for which a Minister is the consent authority for the same reasons.

Any matters arising from contravening development standards will be dealt with in Departmental assessment reports.

The restriction on assuming concurrence to vary lot size standards for dwellings in rural areas will not apply to SSD or where a Minister is the consent authority for the same reasons.

## Notification of assumed concurrence

Under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, consent authorities are notified that they may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the SILEP (or any other provision of an environmental planning instrument to the same effect), or clause 6 of SEPP 1.

The notice takes effect on the day that it is published on the Department of Planning's website (i.e. the date of issue of this circular) and applies to pending development applications.

## Procedural and reporting requirements

In order to ensure transparency and integrity in the planning framework the below Departmental monitoring and reporting measures must be followed when development standards are being varied:

- Proposed variations to development standards cannot be considered without a written application objecting to the development standard and dealing with the matters required to be addressed by the relevant instrument.
- A publicly available online register of all variations to development standards approved by the consent authority or its delegates is to be established and maintained. This register must include the development application number and description, the property address, the standard to be varied and the extent of the variation.
- A report of all variations approved (including under delegation) must be submitted to [developmentstandards@planning.nsw.gov.au](mailto:developmentstandards@planning.nsw.gov.au) within 4 weeks of the end of each quarter (ie March, June, September and December) in the form provided by the Department.
- A report of all variations approved under delegation from a council must be provided to a meeting of the council meeting at least once each quarter.

Councils are to ensure these procedures and reporting requirements are carried out on behalf of Independent Hearing and Assessment Panels and Sydney district or regional planning panels.

## Audit

The Department will continue to carry out random audits to ensure the monitoring and reporting measures are complied with. The Department and the NSW Independent Commission Against Corruption will continue to review and refine the audit strategy.

Should ongoing non-compliance be identified with one or more consent authorities, the Secretary will consider revoking the notice allowing concurrence to be assumed, either generally for a consent authority or for a specific type of development.

## Further information

*A Guide on Varying Development Standards 2011* is available to assist applicants and councils on the procedures for managing SEPP 1 and clause 4.6 applications to vary standards.

Links to SEPP 1 and the Standard Instrument can be found on the NSW Legislation website at: [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

For further information please contact the Department of Planning and Environment's information centre on 1300 305 695.

Department of Planning and Environment circulars are available at:

[www.planning.nsw.gov.au/circulars](http://www.planning.nsw.gov.au/circulars)

**Authorised by:**

**Carolyn McNally**  
**Secretary**

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**Important note:** This circular does not constitute legal advice. Users are advised to seek professional advice and refer to the relevant legislation, as necessary, before taking action in relation to any matters covered by this circular.

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## ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

### Assumed concurrence notice

I, Carolyn McNally, Secretary of the Department of Planning and Environment, give the following notice to all consent authorities under clause 64 of the *Environmental Planning and Assessment Regulation 2000*.

#### Notice

All consent authorities may assume my concurrence, subject to the conditions set out in the table below, where it is required under:

- clause 4.6 of a local environmental plan that adopts the *Standard Instrument (Local Environmental Plans) Order 2006* or any other provision of an environmental planning instrument to the same effect, or
- *State Environmental Planning Policy No 1 – Development Standards*.

No.	Conditions
1	<p>Concurrence may not be assumed for a development that contravenes a development standard relating to the minimum lot size required for the erection of a dwelling on land in one of the following land use zones, if the variation is greater than 10% of the required minimum lot size:</p> <ul style="list-style-type: none"><li>– Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition</li><li>– Zone R5 Large Lot Residential</li><li>– Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living</li><li>– a land use zone that is equivalent to one of the above land use zones</li></ul> <p>This condition does not apply to State significant development or development for which a Minister is the consent authority</p>
2	<p>Concurrence may not be assumed for the following development, if the function of determining the development application is exercised by a delegate of the consent authority:</p> <ul style="list-style-type: none"><li>– development that contravenes a numerical development standard by more than 10%</li><li>– development that contravenes a non-numerical development standard</li></ul> <p><b>Note.</b> Local planning panels constituted under the <i>Environmental Planning and Assessment Act 1979</i> exercise consent authority functions on behalf a council and are not delegates of the council</p> <p>This condition does not apply to State significant development, regionally significant development or development for which a Minister is the consent authority</p>

This notice takes effect on the day that it is published on the Department of Planning's website and applies to development applications made (but not determined) before it takes effect.

The previous notice to assume my concurrence contained in planning system circular PS 17–006 *Variations to development standards*, issued 15 December 2017 is revoked by this notice. However, any variation to a previous notice continues to have effect as if it were a variation to this notice.

Dated: 21 February 2018



**Carolyn McNally**  
Secretary, Department of Planning and Environment



# REVIEW OF ECOLOGICAL COMPONENTS OF RESPONSES TO REQUESTS FOR ADDITIONAL; INFORMATION

SITE R & D. DA10.2017.661.1

## INTRODUCTION

Byron Shire Council has engaged Mark Fitzgerald, Ecological Consultant to review additional information provided in relation to the WBURA site R & D Development Application DA10.2017.661.1

Byron Shire Council provided separate Requests for Information (RFIs) to the proponent in April, May, June and July 2018.

The following documents responding to ecological aspects of the RFIs were reviewed:

- Annexure 1 Amended Subdivision Plans – Air Photo.pdf dated 7/8/18
- Annexure 3 AWC Response updated.pdf dated 17/9/18
- Annexure 5 AWC Technical Memorandum dated 19/8/18  
West Byron Fencing Plan
- WBL DA 10.2017.661.1 dated 19/9/18  
Letter from Daryl Anderson Consulting to Byron Shire Council

Review Annexure 1 Amended Subdivision Plans – Air Photo.pdf

Eight plans overlaid on aerial photographs depicting amended subdivision layout.

Annexure 3 AWC Response updated.pdf, 29 pages, addressing individual Council RFIs, success criteria for Wallum Sedge Frog constructed ponds, and rewriting of Tests of Significance under the *Threatened Species Conservation Act 1995*.

A Table itemising the BSC query, AWC response, relevant Report & Action was provided in the document.

The responses generally fail to provide any additional information, being instead predominantly re-statement and re-assertion of previous material in the DA. For example, each response includes references to existing material in the DA. In particular there remains a failure to thoroughly research and analyse the status of the threatened Wallum Sedge Frog *Litoria olongburensis* at the site. As the adjacent Villaworld population and habitat of this species is to be lost; the status and likely fate of the remaining small population(s) on the R & D site remains unclear.

Suitable weather conditions for survey of Wallum Sedge Frog have been prevalent in the intervening winter/spring period of 2018, yet no current or recent survey data are presented. Assessment of impacts on the local population(s) of this species based on limited 2015 data is inadequate.

Many of the threats and impacts inadequately addressed in the DA are not readily amenable to management and/or mitigation, particularly at the scale of this proposal, and particularly given the environmental constraints prevailing at the site (poor water quality, high groundwater levels, susceptibility to flooding). Underestimation of the severity of such extant threats leads to optimistic predictions of outcomes for fauna and ecosystems, and consequent likely ongoing ecological degradation.

The specific review responses are provided in the table below.

#### Review

BSC QUERY	AWC RESPONSE	COMMENT
Failure to consider impacts on public sewer system, water quality, flooding	Not relevant to ecological reports	Substantial increased loading on public sewer has a direct and ongoing impact on hydrology, and thus on ecology within WBURA, because the STP discharges water into a drain which flows through the WBURA site and discharges into the

		Belongil estuary.
Failure to consider impacts and barrier effects from proposed fencing: acoustic barrier for north/south wildlife movement. fence along Ewingsdale Road, & dog proof fencing/exclusion fencing around the residential development.	Ewingsdale Road already acts as a physical barrier for north/south wildlife movement.  Fencing with in development needs to be considered further.	Additional fencing proposed for site R & D development exacerbates existing barrier effects for fauna in the location
Failure to consider impacts from the domestic dogs and cats from 378 residential lots: R & D).	Impacts of domestic dogs and cats discussed and considered in various reports. Page 49, 63, and 65 ecology report. Page 10, 35, and 37 of BCMP.	No Additional Information provided.
Net loss of habitat; failure to consider time lag for rehabilitation area to compensate for native vegetation loss.	4.87 Hectares of native habitat to be removed (Page 45 ecology report). Approximately 28.3 hectares available for restoration/ offset (Page 53 ecology report).  Also discussed on page 27 of the BCMP, along with a recommendation that offset works commence as soon as possible (and preferably) before clearing commences.	No Additional Information provided.
Inevitable increased human presence in coastal wetlands, around Belongil Creek and associated impacts, trailbikes, arson, not adequately considered.	This is a generic and speculative statement. Impacts and associated with the proposed development are specifically discussed in relevant reports.	No Additional Information provided.  Inadequate response to real and predictable peri-urban disturbance regimes.
Inadequate mapping, insufficient recent survey data for <i>L.olongburensis</i> ; reliance upon ineffective mitigation	<i>L.olongburensis</i> was last recorded in 2015 at the site. There is no direct impact on this frog species from the development footprint.	Acknowledging the likely presence of Chytrid fungus at the site, therefore there is a high likelihood of it infecting constructed ponds,

<p>measures (constructed ponds likely to be first occupied by common frogs; and failure to address risk of introducing Chytridiomycosis (especially in the common Brown-striped Marsh Frog <i>Limnodynastes peroni</i>) which is a reservoir for the disease <i>Limnodynastes peroni</i> recorded from BF drain (2005).</p>	<p>Mitigation in the form of constructed habitat is a proven method endorsed by the Australian Government as an acceptable strategy under the EPBC Act. Chytridiomycosis is likely to be common throughout amphibian populations in Byron Shire and as such it is unlikely that the development would be introducing the disease to the amphibian population. Brown-striped Marsh Frog (<i>Limnodynastes peroni</i>) is already common throughout site and we do not accept that creating wallum habitat for <i>L. olongburensis</i> will exacerbate pressure on this species.</p>	<p>thus proposed mitigation measures for <i>L. olongburensis</i> may be entirely ineffective, if not counterproductive.</p> <p>The suggestion was not in relation to <u>introduction</u> of Chytrid, but rather its likely proliferation in the numerous artificial waterbodies proposed.</p> <p>The effectiveness of constructed ponds may be critically dependent upon suitable local ecological conditions.</p> <p>Locally constructed ponds in West Byron were not occupied by <i>L. olongburensis</i>, and no alternative mitigation is proposed if constructed ponds are not effective in a reasonable time frame.</p> <p>Areas where this frog was recorded by Council were not surveyed.</p>
<p>5 Constructed ponds at WBSTP were not used by <i>olongburensis</i>, were first occupied by Cane Toads and common frogs; it was &gt;2 years before <i>tinnula</i> (Wallum Froglet) used only 1 of 5 constructed ponds.</p>	<p>It would be expected that the construction of Wallum Sedge Frog ponds would take a number of years to establish. As such the restoration of existing habitat and known populations would be the focus of restoration works. The construction of Wallum Sedge Frog Habitat at West Byron is extensively discussed in Section 4 pages 29- 36 of the TSMP. Long term monitoring of the created Wallum Sedge Frog ponds is discussed in Section 7 of the TSMP</p>	<p>Areas where this frog was recorded by Council were not surveyed, and the viability of <i>L. olongburensis</i> populations on the site is poorly understood. Ongoing threats from the existing poor water quality, and from the development may result in the extinction of the population before constructed ponds achieve minimum required ecological parameters. (e.g. water chemistry, hydroperiod, aquatic vegetation).</p>

		No Additional Information provided.
There must be no translocation of any (Wallum) Frogs without screening for Chytridiomycosis. Refer to NSW Hygiene protocol for the control of disease in frogs (2008).	Agreed. No translocation of frogs has been confirmed, if this action is undertaken all the necessary licenses will be acquired.	--
Translocation of threatened species requires permission from NSW OEH assumptions about the manufacture of long term suitable habitat for Wallum Sedge Frog are untested and unlikely to be achievable in time frames discussed.  Therefore underestimation of impacts likely for <i>olongburensis</i> .	The TSMP applies to the whole site, including the Villaworld site. There is at this stage there is no proposed translocation of the Wallum Sedge Frog on our site as Lot 6 DP 1222674 is on the Villaworld site and this (p37, is what Page 37 of the TSMP pertains too. Thsppmgt Plan).	No Additional Information provided.
Failure to consider viability of <i>olongburensis</i> population remaining after Villaworld population is lost.  Small population paradigm (also applicable to Koalas) not considered.	We cannot control what happens on the Villaworld site. The Wallum Sedge Frog population on our site is already a small population and sits outside the development footprint.  Restoration works will aim to increase the population and improve its viability as discussed in Section 4 pages 29- 36 of the TSMP.	No Additional Information provided.  Failure to identify and to consider <u>the local population dynamics</u> of this threatened frog species, and the likely impacts of loss of a known population and habitat for the remaining small population(s).
Extinction vortex: small (isolated) population leads to inbreeding; lower heterozygosity; impacts of semi-lethal recessive alleles;	This is a broad statement. The population on the site is already small and is likely genetically identical to secure populations	This is basic ecology; many faunal populations at west Byron are small, fragmented and in decline. This critically affects their

reduced fecundity & increased mortality; further decline in population.	at the West Byron Wetlands and Tyagarah Nature Reserve, Page 28 of TSMP. Restoration works will aim to increase the population and improve its viability as discussed in Section 4 pages 29- 36 of the TSMP.	viability and susceptibility to threatening processes.  Failure to adequately consider impacts for the threatened species arguably most likely to become extinct in the WBURA site is inexplicable.  No Additional Information provided.
Cane Toads and fish will likely occupy constructed ponds, and prey upon <i>olongburensis</i> .	The construction methodology of the Wallum Sedge Frog ponds will aim to exclude Cane Toads (Page 37 of BCMP). Re-creation of habitat and hydrological regimes will aim to reduce the risk of predation from fish species.  Creating additional habitat (in addition to rehabilitating existing habitat). is considered preferable to no habitat creation	No Additional Information provided.  This relates to the excessive and unjustified reliance on constructed ponds as an effective mitigation measure for the Wallum Sedge Frog.  Considering the precautionary principle; what is the impact for the local WBURA Wallum Sedge Frog population(s) if constructed ponds are ineffective, or take years to achieve suitable ecological parameters ?  This question has not been addressed.
Stormwater detention ponds/swales likely to be occupied by <i>Bufo</i> , <i>Lim peroni</i> , <i>L fallax</i> , Chytrid. Recovery Plan notes <i>L. fallax</i> (Eastern Dwarf Tree Frog) as a significant competitor with <i>olongburensis</i> .	Stormwater detention ponds and swales are not intended as habitat for <i>L.olongburensis</i> ; however they will be designed to mimic wallum wetland vegetation and function to limit their suitability for competitor species.	No Additional Information provided.  The likely proliferation of Cane Toads, common frogs and Chytrid fungus increases threats to the local WBURA Wallum Sedge Frog population(s), which are not included in the assessment of impacts from the proposed development.

<p>Failure to adequately address the impact of likely changes in stormwater quality, due to 329 500m<sup>3</sup> of unspecified fill, inevitable nutrient loads and eutrophication from occupation phase; existing poor condition of water in main drain, likely to deteriorate because of the development, <i>e.g.</i> degraded peri-urban wetlands around Byron Bay.</p>	<p>Issues relating to stormwater management are addressed within the Stormwater Management Plan prepared for the site.</p> <p>This plan provides specific and measurable criteria for protecting water quality and hydrological regimes post development.</p>	<p>No Additional Information provided.</p>
<p>Failure to adequately address the impact of the Plague Minnow <i>Gambusia holbrooki</i> known from main drain (and likely to be present in all Byron Bay area drains), and likely to occupy constructed ponds. Olongburensis does not breed in water where fish are present, and <i>Gambusia</i> is a listed Key Threatening Process.</p> <p>Fish eat eggs and larvae of <i>olongburensis</i> (Recovery Plan 2006).</p>	<p>As mentioned <i>Gambusia</i> already present throughout the Belongil catchment. This is a catchment wide issue that is not a result of the proposed development.</p> <p>However <i>L.olongburensis</i> is present in the catchment and has historically been recorded at the site. As such, habitat restoration and habitat construction will aim to exclude <i>Gambusia</i> from Wallum Sedge Frog habitat.</p>	<p>No Additional Information provided.</p> <p><i>Gambusia</i> is a listed Key Threatening Process which is inadequately considered in impact assessment.</p> <p>By construction of stormwater detention ponds/swales, the proposed development is likely to increase available habitat for the Plague Minnow <i>Gambusia holbrooki</i> and to increase the impact of this pest species which eats the eggs and larvae of Wallum Sedge Frogs.</p>
<p>Insufficient information relating to the practicalities of long term maintenance of hydrology and water quality parameters for Wallum Frogs. Unmanageable impacts; and responsibility for costs of future &amp; ongoing management effort?</p>	<p>The BCMP, TSMP, VMP and the ecology report all outline mitigation, management, and monitoring strategies. Funding, Tenure Long- Term Implementation shown on page 44 of the BCMP. However a cost table will be produced as part of</p>	<p>No Additional Information provided.</p> <p>This relates to an optimistic and unjustified reliance on the success of long term manipulation of large scale environmental parameters.</p> <p>The impacts of climatic extremes on proposed</p>



	the detailed design stage.	mitigation measures are not considered.
Insufficient contemporary information on the ecology of local Wallum Sedge Frog populations, and inadequate consideration of the probable impacts on this species of the development. Inadequate mapping of local records for the species. Test of significance is therefore inadequate.	Area where the Wallum Sedge Frog was recorded at the site is not within the development footprint. There are many records throughout the catchment in better habitat. Restoration works will focus on restoring and creating Wallum Sedge Frog habitat.	<p>No Additional Information provided.</p> <p>Areas where this frog was recorded by Council were not surveyed,</p> <p>No recent surveys despite suitable conditions.</p> <p>Fails to examine what the 'local population' of Wallum Sedge Frog is.</p>
Draft Referral Guidelines indicate a referral under the EPBC Act is necessary when uncertainty exists about the importance of the population and impacts from the proposal.	The area of habitat where Wallum Sedge Frog has been recorded is not in the development footprint. It is the aim of the restoration activities to improve and restore proposal. Wallum Sedge Frog Habitat at the site while avoiding direct and/or indirect impacts. On this basis referral under the EPBC Act is not required.	<p>No Additional Information provided. Impacts for the species of existing water quality on WBURA are not addressed.</p> <p>Areas where this frog was recorded by Council were not surveyed, and no recent survey data is available.</p> <p>The local population status on WBURA is poorly known, uncertainty prevails and effective further investigation of the species status in the WBURA is recommended.</p>
Proposal conflicts with the principal objective of the Acid Frog Recovery Plan (Meyer <i>et al</i> 2006). Namely: To improve conservation status of wallum sedge and other wallum-dependent frogs through effective management, protection rehabilitation of wallum frog habitat.	It is the aim of the restoration activities to improve and restore Wallum Sedge Frog Habitat at the site, while ensuring there are no direct and indirect impacts upon the species. On this basis the proposed actions and are consistent with the recovery plan.	<p>No Additional Information provided.</p> <p>Inadequate assessment of the existing and likely future threats for the local population(s) of this species.</p> <p>For example: potential impacts for this species due to 329 500m<sup>3</sup> of unspecified</p>

		fill (via groundwater hydrology and water chemistry) are not addressed.
Will Belongil Swamp Drainage Union relinquish control of drain maintenance in the Main & Union Drains ?	The Union Drain is irrelevant to the in proposed development site, being located to the south. The main drain is owned by Council.	--
Cannot create offsets where the impacted species is already present; need adequate recent survey data to have confidence in the suitability of offset areas.	<p>The area where Wallum Sedge Frog habitat already exists will be improved and restored. There are no records of Wallum Sedge Frog in locations where artificial ponds are proposed, though confirmation via follow up survey prior to the creation of artificial Wallum Sedge Frog habitat would be appropriate.</p> <p>Update map showing restoration areas at detailed design and undertake survey if conditions allow.</p>	<p>No Additional Information provided.</p> <p>Proponents acknowledge the need for surveys, but despite suitable conditions for survey in winter/spring 2018, no recent survey data is presented.</p>
Koala are slow to use purpose built crossings (YTOC & BTOY data), Koala movements will be affected by extensive fencing, and loss of access to food trees, presence of dogs, & increased traffic on Ewingsdale Road. Breaches in the fence will soon occur following residential occupation. Annual maintenance interval for fences is inadequate: who funds fence maintenance long term?	Funding for any fencing maintenance to be part of VMP and BCMP maintenance program.	No Additional Information provided.

Location of all fences needs to be shown in order to accurately assess barrier effects and isolation for fauna associated with the development. Where Koala exclusion fences intersect with internal roads, how will Koalas be prevented from entering and becoming trapped in the enclosed residential area?	Location of and design of any fences to be determined at detailed design.	Fencing diagrams provided at Annexure 5, include koala grids, but also bottleneck and potential traps for Koalas: see Figure 1 below.  Suggest Fencing Plan should be revised, with consideration of adjacent development fencing, and net barrier effects.
Vegetation Management Plan nominates use of Koala Feed Trees for infill plantings contrary to the use of exclusion fencing to keep Koalas out of the urban residential residential zone.	The plantings described in the VMP are in relation to the Vegetation Management Zones not landscape plantings in the urban It is clear that the aim of these plantings is to provide habitat for Koalas in the VMZ's not the urban residential areas	--
Fencing at rear of residential lots encourages dumping of garden waste and the proliferation of weeds	Only 4-5 lots back onto bushland all others have roads on their borders. If lots don't have fences, residents have easier access to bushland	No Additional Information provided.
Failure to address impacts of the overall WBURA development on traffic levels and ensuing roadkill pressure on Ewingsdale Road for native fauna.	Traffic impacts discussed in Section 4 on page 36 of the KPOM. Ewingsdale road already pose a threat to Koalas. Threats to koalas on Ewingsdale Rd require a coordinated response from key landholders and Council to ensure Koalas are excluded from areas of high traffic.	No Additional Information provided.

Provision of literature to landowners/residents is an inadequate measure for the control of domestic dogs & cats.	This is not the only control measure suggested but forms part of a strategy which includes Koala fencing refer to Section 4 pages 37-38 of the KPOM. Furthermore the Draft Byron Coast Comprehensive Koala Plan of Management page 49 suggests education and extension to promote responsible dog ownership and koalas as a management strategy.	No Additional Information provided.
Conclusion that the development will not have any significant impact on wildlife movement fails to adequately consider impacts of koala exclusion fencing, acoustic fencing, and uncontrolled ownership of domestic dogs & cats in the development.	Wildlife movement is currently substantially limited by Ewingsdale Road and while the development will limit and/or prevent movement of certain fauna through what is currently open grassland areas, this will be compensated for via the provision of a large and continuous corridor through lands adjoining Belongil Creek east of the site and south and west within environmental zones, meaning that on balance the movement of fauna will be maintained or improved compared to existing.	No Additional Information provided.  Fencing Plan includes bottleneck and potential traps for Koalas. See Figure 1 below.  Suggest Fencing Plan should be revised, with consideration of fencing planned for the adjacent development and net barrier effects.
APZs; absence of consideration of vegetation impacts from APZs and their management. APZs shown to overlap with E Zones in west of site, but no detail on tree removal	Asset protection zones for bushfire management are intended to sit outside E zones and occupy public open space, road reserve and private lots. Any discrepancies from this approach will be identified and addressed.	No Additional Information provided.

Figure 1: Fencing Plan; barriers and potential Koala traps & bottleneck



### Wallum Sedge Frog Constructed ponds

Five (5) constructed ponds in West Byron were not used by Wallum Sedge Frogs. However; if the development includes ponds constructed specifically for this species, the nominated planting mix may be improved.

Considering Table 2 Wallum Sedge Frog Constructed ponds– success criteria, it is recommended that proponents read the article detailed below, and revise the planting species to consider for inclusion the following species:

*Schoenus*, and *Chorizandra*, *Restio pallens*, *Gahnia spp.* *Empodisma minus* and *Banksia ericifolia*.

Shuker, J. Hero J-M. (2012) Australian Journal of Zoology 60(4), 219-224.

“Perch substrate use by the threatened wallum sedge frog *Litoria olongburensis* in wetland habitats of mainland eastern Australia”.

## Amended 7 part tests/Assessments of Significance

The initial Assessments of Significance of impacts on threatened species required under the TSC Act & BC Act were incorrect, addressing impacts on species in the locality, rather than the likelihood of local population extinctions in the Subject Site or Study Area.

Amended Assessments provided have addressed the likelihood of local population extinctions, as required. Assessments provided for threatened flora and Endangered Ecological Communities (EECs) are agreed.

However, the conclusion of no significant impact in the assessment provided for Wallum Sedge Frog is not agreed, because proponents have not considered the local population, apparently restricting their consideration to the R & D site, and ignoring the “local population” known from the overall WBURA, by describing the species (on the basis of 1 record) as:

### ***Restricted to the watercourse in Lot 1 DP780242 an Environmental Zone.***

It is inadequate to limit the assessment of impacts on a local population to a given cadastral area, when the local population is known to extend beyond it. Given the probable extinction of a known population and habitat of Wallum Sedge Frog in the Villaworld component of the WBURA, the demographic and ecological implications for the remaining acknowledged small population of this species on the R & D site warrants examination and consideration, which is not provided in the assessment.

The conclusions of the remaining Assessments of Significance for threatened fauna are agreed, but the Wallum Sedge Frog assessment needs to be supported by a considered analyses of local population dynamics, preferably supported by recent survey data of the local population (s) of the WBURA. Areas where this frog was recorded by Council were not surveyed,

The seven part test provided for all threatened fauna species fails to acknowledge conflict of elements of the proposal with the main objectives of the Wallum Frog and Koala Recovery plans, namely:

#### Wallum Frogs

“To improve the conservation status of the wallum sedge frog and other wallum-dependent frog species through effective management, protection and rehabilitation of wallum frog habitat.”

Conflict: Loss of habitat; contribution to likely increases in threatening processes: *e.g.* Plague Minnow and Chytridiomycosis

Koala

“...to reverse the decline of the Koala in New South Wales, to ensure adequate protection, management and restoration of koala habitat, and to maintain healthy breeding populations of Koalas throughout their range.”

Conflict : Loss of habitat, substantially increased risk of roadkill, barriers and habitat fragmentation, inadequate mitigation.

Dr. Mark Fitzgerald

Ecological Consultant

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NSW 2482

Signed

A handwritten signature in black ink, appearing to read 'M. Fitzgerald', written in a cursive style.

3/10/18



## REFERENCES

DECC 2008 Koala Recovery Plan. NSW Department of Environment and Climate Change. 59 Goulburn Street Sydney.

Meyer W., Hero J-M., Shoo L. and Lewis B. (2006) National Recovery Plan for the wallum sedge frog and other wallum-dependent frog species. Report to the Department of Environment and Water Resources, Canberra. Queensland Parks and Wildlife Service Brisbane.

Shuker, J. Hero J-M. (2012) "Perch substrate use by the threatened wallum sedge frog *Litoria olongburensis* in wetland habitats of mainland eastern Australia". Australian Journal of Zoology 60(4), 219-224.

## **Summary of Stand Alone Submissions to be reviewed**

### Residents of Melaleuca Drive

Concerns include:

- Impacts of increased stormwater, such as consequential flooding and waterlogging, from development on their properties.
- Due to filling of site, excess stormwater is likely to end up on their lower properties.
- Absence of a consideration of stormwater from the entire development means cumulative impacts of run-off not assessed.
- Impact of fill on groundwater levels and flooding of their properties.
- Impact of importation of fill.
- Contamination of stormwater by sediments during construction and urban pollutants from the developed site.
- Downplaying of potential impacts of the development of biodiversity, habitat and the threatened species.
- Impacts on Ewingsdale Road traffic from construction of the development and the completed development.
- Impact of the development on their businesses and personal life including the change to the nature of the surroundings, noise and dust during construction.
- Open-ended timeframe for the construction of the development.
- Potential for housing created by the subdivision to be used for holiday-letting.

### Local Community Groups

Concerns include:

- Proposed development is surplus to requirements for housing in Byron Shire.
- The future subdivision of larger lots should be considered in the context of traffic and sewage impacts.
- Development applications should not be considered in isolation.
- Inadequate assessment of potential effects on water table, water quality, coastal wetlands and flooding.
- Potential activation of acid sulfate soils.
- Inadequate assessment of traffic impacts on Ewingsdale Road and streets in town.
- Impacts on of the development on threatened fauna.
- The visual impacts of the development (e.g., acoustic barriers along Ewingsdale Road).
- Public exhibition of the development applications including timing, duration and scale of the documents to consider.
- Inconsistencies and lack of coordination between the two proposed subdivisions.
- Lack of community support for the subdivisions.
- Impacts on the environment.
- Lot size and layout contrary to Development Control Plan requirements.
- Failure to incorporate recommended 20m buffers to E zones.
- Impact of proposed filling of the site on traffic.

### Local residents with specific knowledge (e.g., in relation to environmental matters, urban design and previous neighbouring development)

Concerns include:

- Inadequacy of assessing two subdivisions separately.
- Increased car/traffic movements on Ewingsdale Road including the potential to effect access to the hospital.
- Amenity, particularly in relation to the proposed acoustic barrier.
- Impact of the development on water movement, flooding and water quality.
- Impact of filling of the site on hydrology and the environment.

- Impact of the development on the Byron Bay sewage treatment plant.
- Environmental effects including on Koalas, endangered frogs species, wetlands and swamp areas.
- The social impact in the absence of the necessary social infrastructure (e.g., schools, childcare, halls and parks).
- The impact on tourism as a result of increased traffic and pollution of Belongil Creek.
- Impacts of the development (e.g., dogs/cats, rubbish, people) on the Belongil Estuary including on migratory and resident shorebirds.
- Critical flaws in the urban design that reduce liveability, walkability and sustainability such as lot orientation, “Courtyard lots”, lot types and laneways and street layouts – recommendations to resolve these issues have been provided.
- Potential negative health effects from vehicle pollution from increase in traffic.
- The loss of native habitat is a loss of country for all first nation people.
- Potential impact on groundwater table by adding wastewater from an additional 1000 homes.
- Impact on longevity of subdivision roads from elevated groundwater table.
- Potential impacts due to climate change on groundwater levels and flooding.
- Potential activation of acid sulfate soils.
- Inadequacy of proposed stormwater system to protect water quality.
- Ignoring sustainability principles and best practice in design of the subdivision.

The applicant for the adjoining subdivision (DA 10.2017.201.1)

Concerns include:

- Inconsistencies with their proposed subdivision including road alignment and work in environmental zones.
- Proposed work on our subject site without consent.
- Incorrect references and information in the traffic assessment pertaining to the Villa World development.
- Incorrect references and information pertaining to the WBURA as a whole.