

COUNCIL ASSESSMENT REPORT v2

Doc No. #E2019/104

Panel Reference	2018NTH007
DA Number	10.2017.661.1
LGA	Byron Shire Council
Proposed Development	This application seeks approval for Subdivision of Six (6) Lots into One Hundred and Eighty Six (186) Lots consisting of One Hundred and Sixty Three (163) Residential Lots, Fourteen (14) Super (Master) 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. 10.2017.661.1 for Subdivision of Six (6) Lots into One Hundred and Eighty Six (186) Lots consisting of One Hundred and Sixty Three (163) Residential Lots, Fourteen (14) Super (Master) Lots, Two (2) Business Lots, Two (2) Industrial Lots, One (1) Recreation Lot and Four (4) Residue Lots be <u>refused</u> .
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 revised referral response Attachment 1A Planning Circular PS 18-003 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 revised review Attachment I Development Engineer revised review

	Attachment J Water & Sewer Engineer (Local Approvals Officer) review Attachment K Ecologist review and addendum 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	

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 revised (on 19 September 2018) development application seeks consent for a subdivision (and associated works) to create lots for residential (177 lots, including 14 super lots), business (2 lots), recreation (1 lot) and industrial (2 lots) use. Four (4) residue lots will also be created.

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, E2 Environmental conservation and 7A Wetlands.
- Eastern area is zoned R3 Medium density residential, R2 Low density residential, B1 Neighbourhood Centre, RE1 Public recreation, E3 Environmental management, E2 Environmental conservation, 7A Wetlands and 7B Coastal Habitat.

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. Council requested further information from the applicant on 20 April 2018 and on 14 May 2018 and the applicant responded to these requests on 19 September 2018. There was insufficient time to properly consider this information in the Council Assessment Report for the Northern Regional Planning Panel hearing on 8 October 2018 and consequently the matter was deferred at this hearing. This report includes an assessment of the further information provided by the applicant on 19 September 2018.

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.

The development application was re-referred to the NSW Rural Fire Service (including the further information) as integrated development on 11 October 2018 and an updated General Terms of Approval were provided by the Rural Fire Service on 4 December 2018.

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

- State Environmental Planning Policy No 1—Development Standards – The applicant has sought an objection to the development standard requiring a 40ha minimum lot size for land zoned 7(a) Wetlands Zone and 7(b) Coastal Habitat Zone under clause 11(1) of the BLEP 1988 in relation to residual land that results from the proposed subdivision. The objection is consistent with the requirements of clause 7 and may be granted with concurrence of the Director. 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.
- State Environmental Planning Policy (Infrastructure) 2007 – clause 101(2)(c) – The proposed acoustic barrier is of an appropriate height to address some of the road noise impacts. The barrier will ameliorate the impacts on single story dwellings without the need for at property

treatments. At property treatment may still be required for some two story dwellings dependant on their proximity to the road.

- 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. Council's ecology review identified a number of issues that are not adequately addressed by the plan of management, concludes that the "... *identification and assessment of impacts are significantly underdone*" and that the West Byron Fencing Plan (provided in the applicant's further information) will exacerbate the current barrier effects for fauna and the fencing location should be revised

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. Council has a long terms program of works for the upgrading of MR 545 and the town centre of Byron Bay. A key feature of these upgrade works is the Byron Bay Bypass. The bypass is designed to redirect approximately 20% of the traffic around the town centre. This will alieviate but not remove congestion at the Jonson / Lawson Street roundabout which is currently one of the most constrained intersections in the network. Council has received sufficient grant funding to complete the bypass and work is expected to commence after July 2019.

Byron Local Environmental Plan 1988 –

- The proposed development does not comply with the minimum lot sizes (40ha) in relation to the E2 and E3 zoned land (proposed Lots 177, 181, 182, 183) however argues that this is authorised under the allowable exceptions (c.83B, BLEP 1988).
- 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 how the proposed earthworks and filling of the site will be managed (clause 98B).
- E2 zoned land to the east of the subdivision will have a subdivision road, shared pathway and a fire road and to the west, stormwater infrastructure (swales) (Drawing LA01-05). The development (roads, pathways, stormwater infrastructure) within E2 zoned land may damage and/or have an adverse effect on ecological values and may not be consistent with the objectives of this zone.
- E3 zoned land to the east of the subdivision will have a shared pathway and stormwater infrastructure (swales) and to the west, stormwater infrastructure (Drawing LA01-05). The development (pathways and stormwater infrastructure) within E3 zoned land may damage and/or have an adverse effect on ecological values and may not be consistent with the objectives of this zone.

The provisions of any development control plan

Byron Shire Development Control Plan 2014 – The proposed 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. The purpose of the road upgrade contributions was to alleviate the traffic impacts caused by development.

The amended proposal has a number of large super lots. These lots could be used for medium density development. If these super lots are used for medium density development and are not strata subdivided then no contributions will be payable under the terms of the planning agreement. This will mean that the traffic impacts are created by the development but no contribution will be made to the works required to mitigate the impacts.

This is not to say that the impacts are unacceptable or that the application warrants refusal because of the drafting of the planning agreement. However it cannot be said that the planning agreement will wholly ameliorate the traffic impacts created by the development.

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, ecology and the Belongil Creek ICOLL.

The application does not 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 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/submissions

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 considered unlikely the development will provide for affordable housing and no such housing is expressly proposed as part of the subdivision.

The development application was placed on public exhibition from 14 December 2017 to 31 March 2018. Having regard to the significant number of objections (2218), that objections were received from

neighbouring landowners, Byron Bay and Byron Shire residents 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:

- Rural Fire Service (Integrated Development);
- Department of Planning & Environment;
- Roads & Maritime Services;
- Office of Environment & Heritage;
- Department of Primary Industries – NSW Fisheries;
- Department of Industry – Lands & Forestry;
- Water NSW / Office of Water;
- Bundjalung of Byron Bay Aboriginal Corp (Arakwal);
- Jali Local Aboriginal Council;
- Tweed Byron Local Aboriginal Land Council.

Council made a request for further information on 20 April 2018 (#A2018/12354). A second request for further information on 14 May 2018 (#E2018/40758).

The Applicant provided a response to these requests on 19 September 2018 (#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 (#A2017/30659). Council submitted an addendum to the assessment report (#E2018/81079) to the Planning Panels Secretariat, as requested, by 5 October 2018.

The Northern Regional Planning Panel considered the application on 8 October 2018. The Panel deferred their decision on the application as:

1. *The Council had not had sufficient time to complete its assessment of the information provided by the Applicant on 19 September 2018, including the Applicant's SEPP 1 submission to vary a Development Standard;*
2. *The amendments had not been referred to the relevant agency/ies as required by Clause 55 of the Environmental Planning and Assessment Regulation 2000.*

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. 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.

Appeal

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 Applicant (Site R & D Pty Ltd) was required to file and serve any Statement of Facts and Contentions in reply by 24 October 2018.

To date, the Applicant has not filed a Statement of Facts and Contentions in reply. A conciliation conference has been arranged for 12 February 2019.

1.2. Description of the proposed development

Initial (as lodged and publicly exhibited)

The initial application sought 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.

Amended (on 19 September 2018)

This application as amended now seeks approval for subdivision of six (6) lots into one hundred and eighty six (186) lots consisting of one hundred and sixty three (163) residential lots, fourteen (14) super (master) lots, two (2) business lots, two (2) industrial lots, one (1) recreation lot and four (4) residue lots.

The proposed subdivision comprises the following key elements:

The applicant did not provide a clear explanation of which of the original residential lots were combined to form each of the Super Lots. The following table is an attempt to summarise the key changes to the subdivision in relation to the creation of super lots:

Table 1. Summary of proposed amendments to lot size and layout.

Original application	Amended application (September 2018)
Lots 68 - 93	Lot 1 (1.023ha)
Lots 61 - 67	Lot 2 (1658m ²)
Lots 94 - 106	Lot 3 (4499m ²) Road No.12 removed
Lots 107 - 130	Lot 4 (9177m ²)
Lots 131 – 137	Lot 5 (1729 m ²)
Lots 138 – 158	Lot 6 (6389m ²))
Lots 159 - 172	Lot 7 (4522m ²)
Lots 173 - 182	Lot 8 (3465m ²)
<i>Lots 183 – 205 (to be confirmed with applicant)</i>	Lot 9 (7381m ²)
Lots 206 – 230,	Lot 10 (5767m ²)
Lots 231 - 245	Lot 11 (3735m ²)
Lots 246 – 253	Lot 12 (2122m ²)
<i>Lots 254 – 258, 273 – 275 (to be confirmed with applicant)</i>	Lot 13 (4099m ²)
<i>Lots – 294, 295, 311 – 316 (to be confirmed with applicant)</i>	Lot 14 (4287m ²)
Lots 262 - 267	Lot 15 (2148m ²)
Lots 281 - 288	Lot 16 (2839m ²)
Lot 397 and Pt Lot 398	Pt Lot 182 (6333m ²)
Lot 17 (3240m ²)	Lot 18 (2952m ²) southwest corner removed
Road No.26 removed	
Lots 317 - 337	Lots 100 – 122 modified layout to take into account removal of Road No.26
Lot 400	Lot 184 (2089m ²) western portion of lot removed
Lot 392	Lot 177 (6.32ha) western portion of lot 400 added

The proposed staging of the development was amended with the further information response such that in general terms:

- There are now 12 rather than 11 stages; and
- The order, size and boundary of stages have been altered.

The applicant's further information also made changes to the application regarding the acoustic barrier location and design, and fencing.

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
7A Wetlands

Eastern area
R3 Medium density residential
R2 Low density residential
B1 Neighbourhood Centre
RE1 Public recreation
E3 Environmental management
E2 Environmental conservation
7A Wetlands
7B Coastal habitat

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.

A site inspection was conducted with the Northern Regional Planning Panel on 8 October 2018 prior to the initial hearing of this application.

2. SUMMARY OF GOVERNMENT/ EXTERNAL 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:

The applicant's response to the further information request/revised proposal was provided to the Rural Fire Service on 11 October 2018 (#A2018/32713) as required by clause 55(3)(b) of the Environmental Planning and Assessment Regulation 2000.

Referral	Response
Rural Fire Service (Integrated Development Authority)	The NSW Rural Fire Service provided a revised response to the integrated development referral on 4 December 2018 (#E2019/842) which incorporated consideration of the further information provided

Referral	Response
	by the applicant's on 19 September 2018. The response issued a bush fire safety authority (s.100B of the Rural Fires Act 1997) and general terms of approval (Division 4.8 of the EP&A Act) subject to a number of conditions. (Attachment A).
Department of Planning & Environment (Concurrence Authority)	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. The applicant's revised SEPP 1 objection was forwarded to the Department of Planning and Environment on 27 September 2018. The Department 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).
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	A response was received from the Department of Primary Industries on 7 February 2018 (#E2018/9842) which provided comments on: <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	A response was received from the Department of Industry – Lands on 19 February 2018 (#S2018/2872) which stated that: <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). (Attachment E).
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 Aboriginal Land Council	The Tweed Byron Local Aboriginal Land Council responded to 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> ".

Referral	Response
	(Attachment G).

Other Referrals

To assist Council with the assessment, Chris Borg from Ryan Barker Stewart provided advice on development engineering matters, Mark Fitzgerald provided advice on ecological matters and Tim Fitzroy provided advice on environmental matters.

Referral	Issue
Environmental Health Officer	<p>Council's Environmental Health Officer reviewed the development application and further information 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 Environmental Health Officer's review notes that several of the discrepancies/information shortfalls identified were not addressed in the applicant's further information of 19 September 2018.</p> <p>See Attachment H</p>
Development Engineer	<p>Council engaged a consultant engineer to review the development application and further information in relation to development engineering matters. The review was documented in a report dated 5 December 2018 (#E2018/116207) and determined that the application should not be supported 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 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 and further information. The review was documented in a report dated July 2018 (#E2018/59859) and an addendum report dated September 2018 (#E2018/81071) which identifies the issues and omissions with the application.</p> <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

Referral	Issue
	<p>(e.g., pets, gardens, humans); and</p> <ul style="list-style-type: none"> Inadequate assessment of the impacts of the development on fauna. <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>
Developer Contributions	The proposal will generate a demand for additional public facilities and a condition of consent should be imposed to require the payment of developer contributions.

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).

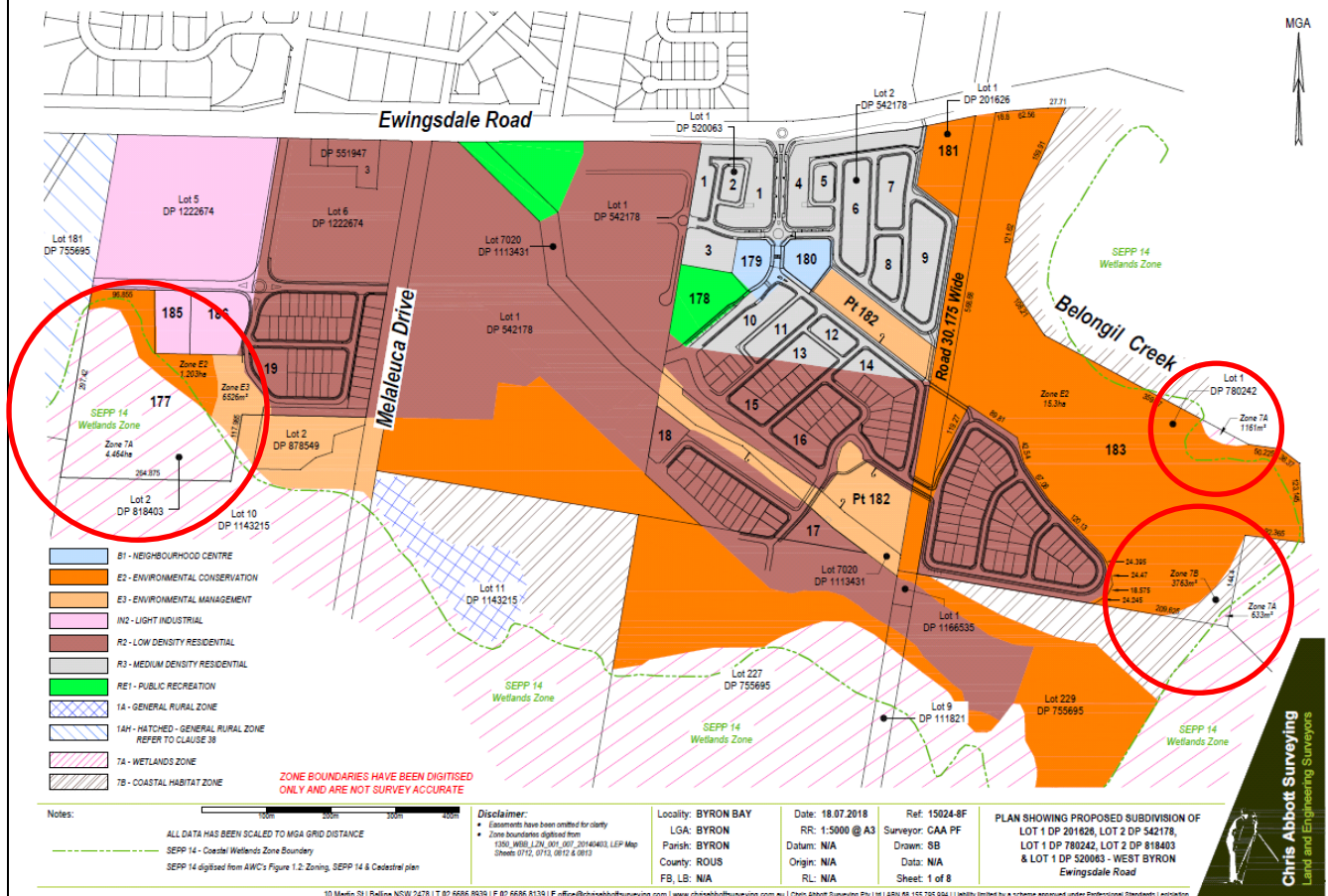
	Satisfactory	Unsatisfactory
State Environmental Planning Policy No 1—Development Standards	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Consideration: This policy does not apply to land within the West Byron Bay site (c.70 of the LEP 1988). However, parts of two of the proposed residue lots (Lots 177 and 183) will contain land components that are outside of the site identified on the Land Application Map.

These areas are zoned 7(a) Wetlands Zone and 7(b) Coastal Habitat Zone under BLEP 1988, for which a 40ha minimum lot size applies (c.11). The areas within the residue lots are significantly smaller than 40ha.

The applicant lodged a State Environmental Planning Policy No 1 objection with the application (Annexure 20) and the further information (19 September 2018) included a revised State Environmental Planning Policy No 1 objection.

The objection relates to the development standard requiring a 40ha minimum lot size for land zoned 7(a) Wetlands Zone and 7(b) Coastal Habitat Zone under clause 11(1) of the BLEP 1988. The areas of the site that are the subject to the objection are identified on the plan below.



The applicant argues that compliance with the development standard is both unreasonable and unnecessary and provides support for this view.

There are no objectives set out in the relevant development standard however, the relevant zone objectives are set out below:

Zone No 7 (a) (Wetlands Zone)

The objectives are:

- to identify all lands covered by State Environmental Planning Policy No 14—Coastal Wetlands,
- to identify and preserve estuaries and wetlands and allow them to continue to function as feeding and breeding areas for wildlife, shellfish and fish,
- to prohibit development within the zone that is likely to have a detrimental effect on the habitat or landscape qualities or the flood mitigation function of the wetlands,
- to enable development of public works and environmental facilities where such

	Satisfactory	Unsatisfactory
<p>development would not have a significant detrimental effect on the habitat or landscape qualities of the wetland and other significant coastal habitat areas, and</p> <p>(e) to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.</p> <p><u>Zone No 7 (b) (Coastal Habitat Zone)</u></p> <p>The objectives are:</p> <p>(a) to identify coastal habitats (being wetlands, heath, sedge, marshland, rainforest types, sclerophyll forest and the like) of local significance,</p> <p>(b) to identify and preserve estuaries and other significant coastal habitat areas, wetlands and allow them to continue to function as feeding and breeding areas for wildlife, shellfish and fish,</p> <p>(c) to prohibit development within the zone that is likely to have a detrimental effect on the habitat or landscape qualities or the flood mitigation function of significant coastal habitat areas, including wetlands,</p> <p>(d) to enable development of public works and environmental facilities where such development would not have a significant detrimental effect on the habitat or landscape qualities of the wetland and other significant coastal habitat areas, and</p> <p>(e) to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.</p> <p>Although the minimum areas are less than the development standard, the applicant's proposal to combine the 7(a) and 7(b) zoned land with the adjoining environmental (E2 and E3) zoned land to create residual lots is not contrary to the relevant zone objectives and is consistent with the object of the EP&A Act to encourage the proper management and conservation of natural resources for the purpose of a better environment (s.5(a)(i)). Further, as noted in the objection, the parent lots are less than the 40ha development standard.</p> <p>The objection is consistent with the requirements of clause 7 and may be granted with concurrence of the Director. 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.</p> <p>The applicant argues that the development standard non-compliance does not raise any matter of significance for State or regional environmental planning (clause 8(a)) as no change in land use and no physical disturbance to the subject land will result from the subdivision and no additional dwelling entitlements will be created. There is no obvious public benefit in maintaining the planning controls (clause 8(b)) and the parent lots are less than the 40ha development standard.</p>		
State Environmental Planning Policy No 14—Coastal Wetlands	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p><u>Consideration:</u> 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.</p> <p>Council consent and concurrence of the Director is not required under clause 7 as none of the identified activities are proposed for the mapped coastal wetlands.</p> <p>Consent of the Council and concurrence of the Director is required for restoration works within mapped coastal wetlands (clause 7A).</p>		
State Environmental Planning Policy No 44—Koala Habitat Protection	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p><u>Consideration:</u> 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 or injured by traffic. The review also raises a number</p>		

	Satisfactory	Unsatisfactory
<p>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>".</p> <p>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 (Attachment K).</p>		
State Environmental Planning Policy No 55—Remediation of Land	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>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.</p> <p>The contaminated land investigation and Council's review (Attachment H) include a number of recommendations that should be considered for inclusion as conditions should the application be approved.</p>		
State Environmental Planning Policy No 71—Coastal Protection	Not applicable	
<p>Consideration: The eastern portion of the subject land is within the "coastal zone" and SEPP No 71 applies to this area (clause 4) however the policy does not apply to land within the West Byron Bay site pursuant to clause 70 of the BLEP 1988.</p>		
State Environmental Planning Policy (Infrastructure) 2007	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>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.</p> <p>Clause 102 states:</p> <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> <p>(a) <i>residential accommodation,</i></p> <p>(b) <i>a place of public worship,</i></p> <p>(c) <i>a hospital,</i></p> <p>(d) <i>an educational establishment or centre-based child care facility.</i></p> <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> <p>(3) <i>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:</i></p> <p>(a) <i>in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,</i></p> <p>(b) <i>anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.</i></p> <p>(4) <i>In this clause, freeway, tollway and transitway have the same meanings as they have in the Roads Act 1993.</i></p>		
<p>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</p>		

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.

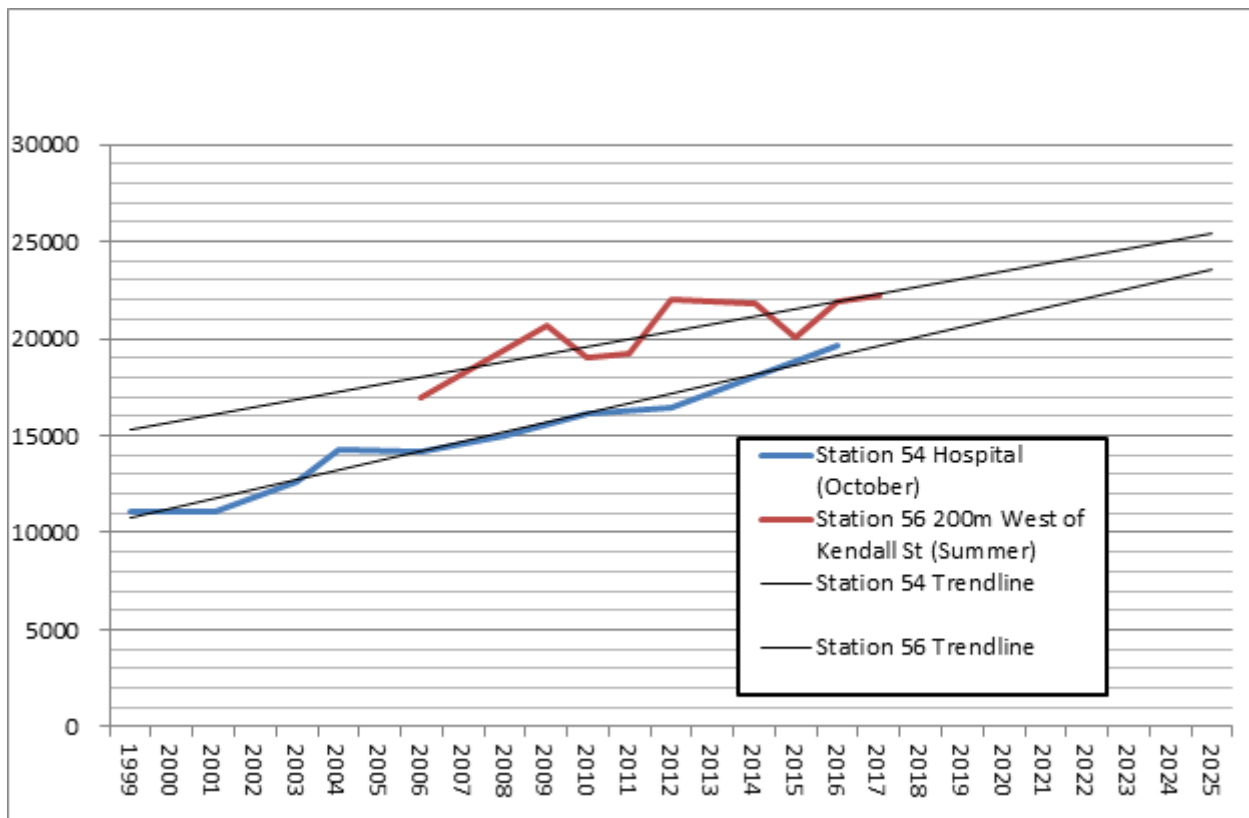
Station 54 is the mean of a 7 day count occurring in Late September to early October. Stations 56, 76 and 77 summer counts is a mean of the counts in a 37-39 day period commencing around 18 December every year. Station 56 (Easter) is a mean of the counts over a variable time period for as little as 5 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"*.

Council has prepared concept plans for the upgrading of Ewingsdale Road the Belongil Creek bridge to west of the Cavanbah centre. These plans include the eventual dual lane upgrade of this section of road. Some components of the concept plans have progressed to detailed design and have been constructed. These sections include the Sunrise Blvd roundabout and the Bayshore Drive roundabout. A lack of detail on the original application plans led to concerns that the acoustic barrier would impact on the planned road upgrades.

Updated plans of the acoustic barrier indicate that it will mostly be contained within the development site and will not impinge on the proposed upgrade works. There is a section of acoustic wall to the east of the proposed SAE roundabout that encroaches into the road reserve. This minor encroachment can be corrected by way of a condition of consent.

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.

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**).

State Environmental Planning Policy (State and Regional Development) 2011



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

	Satisfactory	Unsatisfactory
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	
<p><u>Consideration:</u> 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> <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> (ii) <i>State Environmental Planning Policy No 26—Littoral Rainforests,</i> (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 be in force if that Policy had not been amended by this Policy.</i></p> <p>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.</p> <p>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:</p> <p>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.</p>		

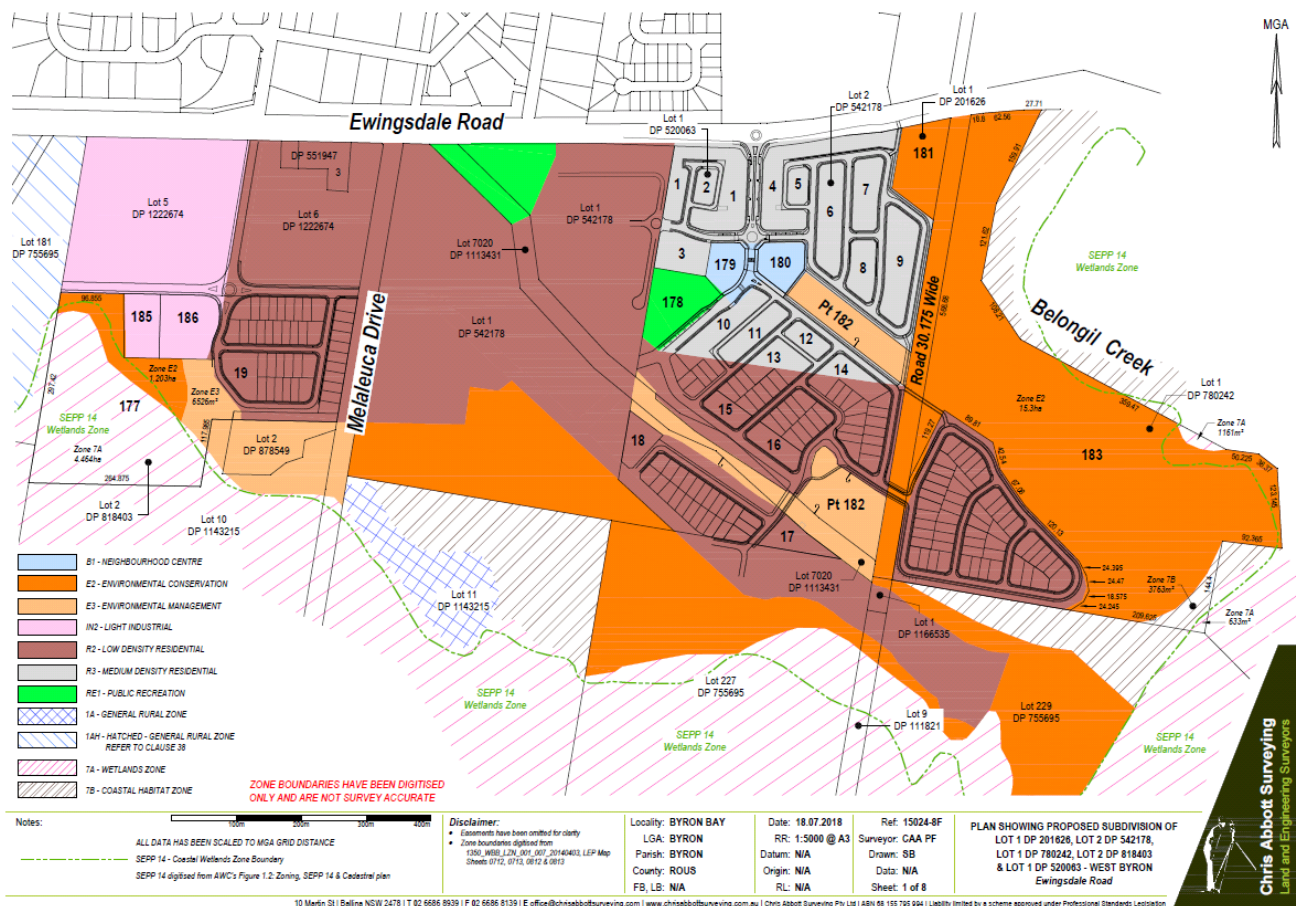
4.2B Byron Local Environmental Plan 1988 (BLEP 1988)

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

BLEP 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(1), 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, E3 Environmental Management, 7A wetland and 7B Coastal Habitat. The general subdivision layout and site zoning is identified on the plan below.



The Statement of Environmental Effects does not include a definitive statement of what activities are proposed in each zone. The relevant land use zones and objectives (clause 71) are detailed in the table below:

Zone Objectives	Comment
<p>R2 Low density residential</p> <p>(a) to provide for the housing needs of the community within a low density residential environment,</p> <p>(b) to enable other land uses that provide facilities or services to meet the day to day needs of residents.</p>	<p>It appears from the application that R2 zoned land will be subdivided only for residential development and uses that support such development such as roads.</p> <p>There are some larger lots within R2 zoned land (e.g., lots 15, 16, 17, 18 and 19).</p> <p>The proposed residential lots will provide for the housing needs of the community (sub (a)).</p> <p>It is not clear from the application whether the proposed subdivision of R2 zoned land will enable other land uses (sub (b)).</p>
<p>R3 Medium density residential</p> <p>(a) to provide for the housing needs of the community within a medium density residential environment,</p> <p>(b) to provide a variety of housing types within a medium density residential environment,</p> <p>(c) to enable other land uses that provide facilities or services to meet the day to day needs of residents.</p>	<p>It appears from the application that R3 zoned land will be subdivided only for residential development and uses that support such development such as roads.</p> <p>The revised application now only proposes super lots within the R3 zone. The proposed super lots have the potential to provide for the housing needs of the community (sub (a)).</p> <p>The proposed super lots have the potential to provide a variety of housing types (sub (b)).</p> <p>It is not clear from the application whether the proposed subdivision of R3 zoned land will enable</p>

	other land uses (sub (c)).
<u>IN2 Light industrial</u> (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.	<p>The Statement of Environmental Effects did not include sufficient information to determine whether the land use objectives of the proposed subdivision of Light Industrial zoned land would be met.</p> <p>The proposed subdivision has the potential to provide for a range of light industrial warehouse and related land uses (sub (a)).</p>
<u>B1 Neighbourhood Centre</u> 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.	<p>The Statement of Environmental Effects did not include sufficient information to determine whether the land use objectives of the proposed subdivision of Neighbourhood Centre zoned land would be met.</p> <p>The proposed subdivision has the potential to provide a range of small-scale retail, business and community uses.</p>
<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.	<p>In E2 zoned land:</p> <ul style="list-style-type: none"> • “Environmental protection works” are permitted without development consent; and • “environmental facilities, recreational areas and roads” are permitted with consent. <p>E2 zoned land to the east of the subdivision will have a subdivision road, shared pathway and a fire road and to the west, stormwater infrastructure (swales) (Drawing LA01-05). The development (roads, pathways, stormwater infrastructure) within E2 zoned land may damage and/or have an adverse effect on ecological values and may not be consistent with the objectives of this zone. Planned retention and revegetation of E2 zoned land (see Annexure 8C) has the potential to maintain and/or enhance ecological values in these areas. Council’s Ecologist has reviewed the Vegetation Management Plan (Annexure 8C) provided with the development application and notes that it is a “... <i>generally appropriate and thorough document listing appropriate management actions, planting species list and community identification.</i>”</p>
<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.	<p>In E3 zoned land:</p> <ul style="list-style-type: none"> • “Environmental protection works” are permitted without development consent; and • “Environmental facilities, recreational areas and roads” are permitted with consent. <p>E3 zoned land to the east of the subdivision will have a shared pathway and stormwater infrastructure (swales) and to the west, stormwater infrastructure (Drawing LA01-05). The</p>

	<p>development (pathways and stormwater infrastructure) within E3 zoned land may damage and/or have an adverse effect on ecological values and may not be consistent with the objectives of this zone.</p> <p>Planned retention and revegetation of E3 zoned land (see Annexure 8C) has the potential to maintain and/or enhance ecological values in these areas. Council's Ecologist has reviewed the Vegetation Management Plan (Annexure 8C) provided with the development application and notes that it is a "... <i>generally appropriate and thorough document listing appropriate management actions, planting species list and community identification.</i>"</p>
<p><u>RE1 Public Recreation</u></p> <p>(a) to enable land to be used for open space or recreational purposes,</p> <p>(b) to provide a range of recreational settings and activities and compatible land uses,</p> <p>(c) to protect and enhance the natural environment for recreational purposes.</p>	<p>The proposed layout and use of the Public Recreation zoned land (lot 178) is detailed in drawing LA06 (Annexure 11). This proposed layout appears to be consistent with the zone objectives.</p>

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:

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

In the revised subdivision layout, all proposed lots within R2 zoned land meet the minimum lot size requirement of 450m² and all proposed lots within R3 and B1 zoned land meet the minimum lot size of 200m² (c.81, BLEP 1988).

The proposed development does not comply with the minimum lot sizes (40ha) in relation to the E2 and E3 zoned land (proposed Lots 177, 181, 182, 183) 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 and #E2018/81071).

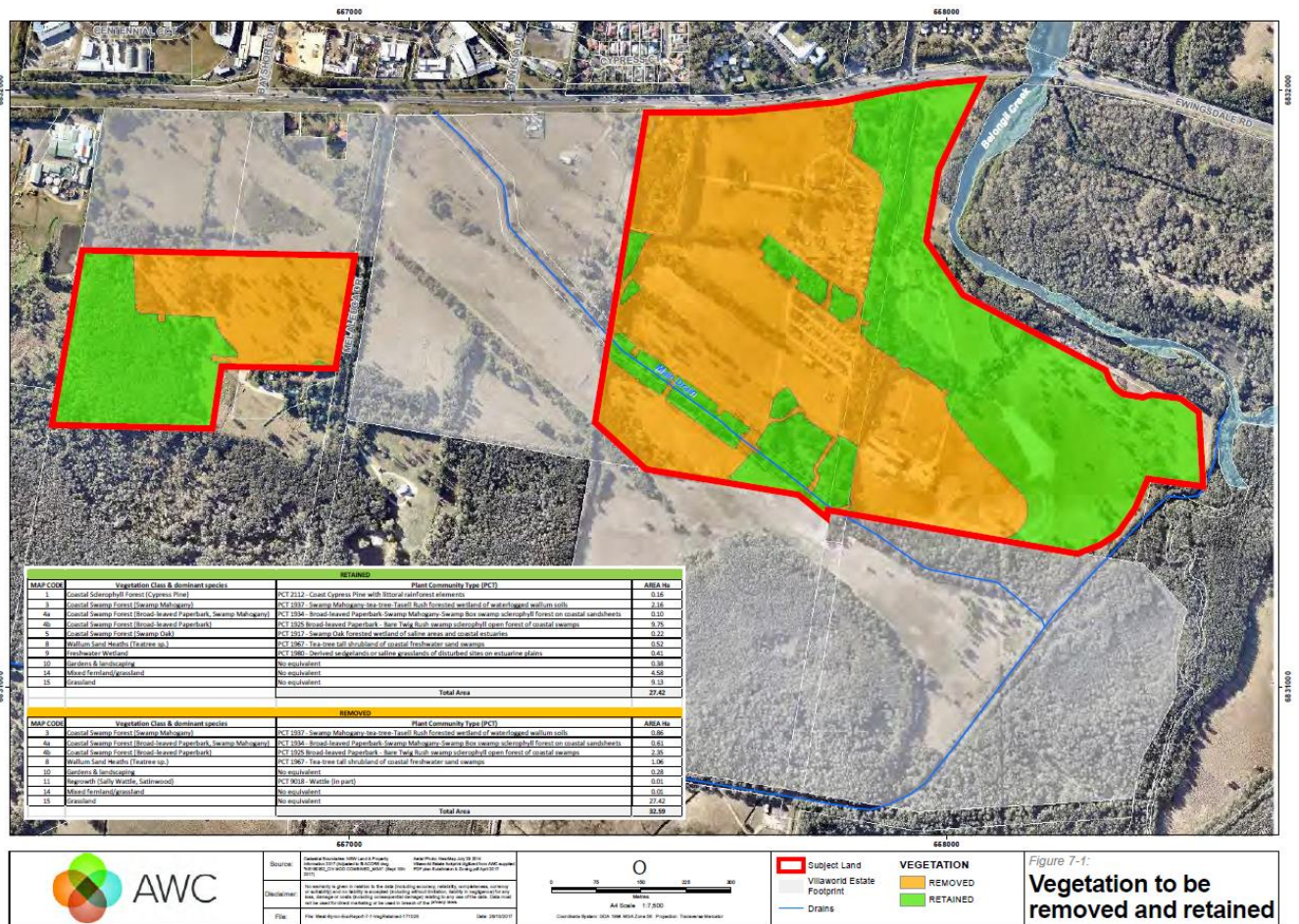
There is insufficient detail to demonstrate what cumulative impacts the development will have on the Belongil Creek catchment and ICOLL. In this regard, increased stormwater run-off may have an adverse impact on the ICOLL by permanently opening or widening the creek mouth and therefore affecting bird 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 proposed subdivision works will result in the clearing of native vegetation ("*Based on the development footprint approximately 4.87 hectares of native vegetation at the site may be cleared for development.*") and the application includes a request to remove trees and vegetation in the development area for which development consent is required (clause 90).

Strategies for offsetting this vegetation removal are outlined in the Biodiversity Conservation management Plan (Annexure 8E) and include that "*Approximately 28.3 hectares of land may be utilised for vegetation restoration within the environmental management zones ...*"

The vegetation to be removed and retained is shown in the applicant's figure below.



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:

- Implement a groundwater monitoring regime to assess the current quality of the groundwater and level of water table variation; and
- Prepare a Construction Environmental Management Plan that:
 - Details the proposed handling, storage, treating and disposing of potential acid sulfate soils/actual acid sulfate soils; and
 - 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(3)) being that the development:

- is compatible with the flood hazard of the land, and
- is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- incorporates appropriate measures to manage risk to life from flood, and

(d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and

(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

Council's engineering review found the flooding impact assessment of the development to be satisfactory. However, numerous concerns were raised by the Engineer in relation to the proposed stormwater management for the developed site. It appears from Council's Engineering review that items (b) and (d) have not been adequately addressed in the application in that increased flow rates and velocities in the Main Drain and Belongil Creek may occur and the Main Drain in its current form may not have capacity for the site stormwater.

Clause 98B Earthworks

The earthworks associated with the proposed subdivision require development consent (clause 98B). In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters (c.98B(3)):

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) the effect of the development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) whether the development minimises cut and fill and the use and location of cut and fill on the site,*
- (e) the effect of the development on the existing and likely amenity of adjoining properties,*
- (f) the source of any fill material and the destination of any excavated material,*
- (g) the likelihood of disturbing relics,*
- (h) whether the location of the earthworks is appropriate, taking into account land that has previously been cleared in response to site characteristics,*
- (i) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive land and measures to prevent sediment, building materials, waste or other pollutants from leaving the site and entering adjoining land, street gutters, drains or watercourses,*
- (j) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The applicant did not provide an assessment of the proposed earthworks in relation to the requirements of this clause.

Council's engineering review found that the development application does not adequately demonstrate how the proposed earthworks and filling of the site will be managed in relation to drainage (sub (a)) and the likely disruption the fill will have on the upstream catchments due to changing of the current flow paths through the site. Further, in the absence of a concept Construction Traffic Management Plan, it is not possible to determine whether impacts of construction phase traffic on Ewingsdale Road will be avoided, minimised or mitigated (sub (j)).

It appears from the applicant's engineer report (Annexure 3) that in a number of locations the proposed fill material will reach a depth of 2.5-3.0m directly adjacent to neighbouring properties and Melaleuca Drive which may affect amenity of adjoining properties contrary to sub (e).

Due to the scale of the proposed development, the associated earthworks have the potential to result in noise and dust impacts that may also affect the amenity of neighbouring properties. This matter does not appear to have been addressed in the application.

The applicant's Stormwater Management Strategy (Annexure 10) does not include details of the management of construction phase stormwater. In the absence of at least conceptual details of how

construction phase stormwater will be managed it is difficult to assess the “*potential for adverse impacts on Belongil Creek/Estuary and/or environmentally sensitive land such as local wetlands*” and further the adequacy of “*measures to prevent sediment, building materials, waste or other pollutants from leaving the site and entering adjoining land, drains or watercourses, as require by sub (i).*”

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 however this document does not include an analysis of the proposal against the planning requirements rather a series of cross-references to Annexures provided with the application. Consequently, determining whether the proposal is consistent with relevant requirements within the BDCP 2014 has been difficult and problematic.

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

B3 - Services

The proposed servicing of the subdivision has been detailed in the Engineering Assessment (Annexure 3) and the Stormwater Management Strategy (Annexure 10). Water and sewer services are proposed to be connected to Council's current systems, and reticulation proposed for the development is detailed in a series of hydraulic infrastructure plans.

The documents have been reviewed by Council's engineer (see #E2018/68469) and issues and concerns have been identified, particularly in relation to stormwater management. An erosion and sediment control plan or a soil and water management plan is required (B3.2.4) but has not been provided.

Proposed electrical and communications infrastructure are detailed in Annexure 15 of the application.

The subdivision has access via Ewingsdale Road, a Council controlled road, and as such a range of road construction and upgrading requirements apply.

B4 - Traffic Planning, Vehicle Parking, Circulation and Access

A traffic impact assessment has been submitted with the application (Annexure 5). This document has been reviewed by Council's engineer (see #E2018/68469) and issues and concerns have been identified.

B7 - Mosquitoes and Biting Midges

The WBURA is within the Saltmarsh Mosquito Primary Habitat 1000m risk zone. A clear consideration of biting insect mitigation and management issues (B7.2.1) could not be identified in the application nor mitigation strategies (B7.2.2).

B8 - Waste Minimisation and Management

Although, the Statement of Environmental Effects submitted for all Development Applications must include a Site Waste Minimisation and Management Plan (SWMMP) that addresses the requirements of this Chapter, the applicant did not provide a SWMMP but has instead proposed to provide a SWMMP prior to the issue of the construction certificate for each stage of the development.

Part C Further Controls Applying to Land with Specific Constraints and Environmental Characteristics

C2 - Areas Affected by Flood

The site is identified as being flood prone. A Flood Impact Assessment (Annexure 4) was submitted with the application. This document has been reviewed by Council's engineer (see #E2018/68469) who accepted that the flood impact assessment addresses the relevant 'General Assessment Criteria' (C2.2) but also recommended conditions relating to flood assessment should the proposal be approved.

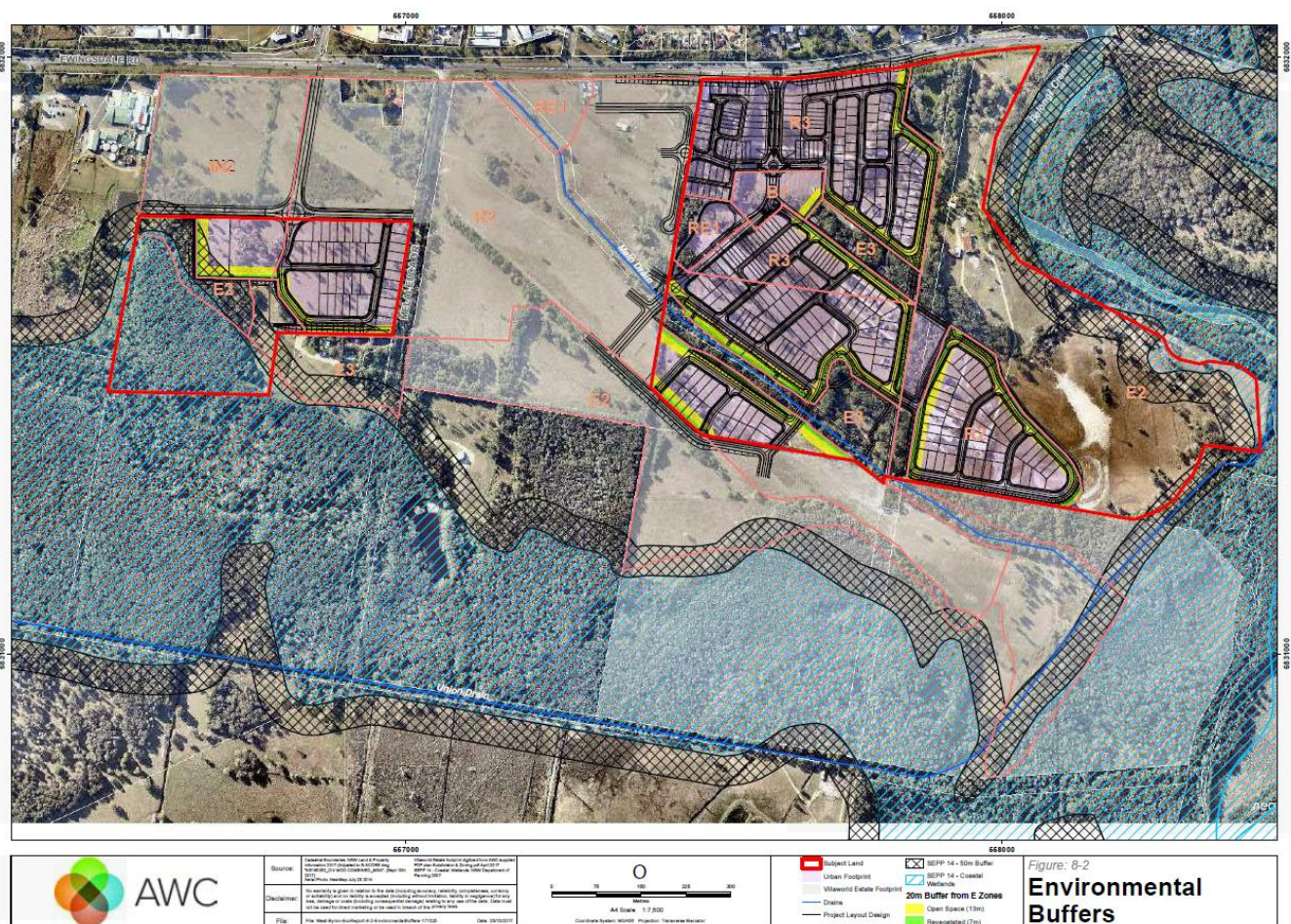
Part D Further Controls Applying to Specific Land Uses

Chapter D6 – Subdivision

The application includes design guidelines (Annexure 18) but this document relates to development within subdivision lots rather than design of the subdivision. The application does not include an express assessment of the proposed subdivision against the 'Design Guidelines'.

The design of the subdivision appears to be guided primarily by the zoning of the land rather than by the factors for consideration (6.2.1).

For example, the figure below, from the applicant's Biodiversity Conservation Management Plan (Annexure 8 E), shows that development is proposed within E zone buffers and coastal wetland buffers.



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 (see Council's engineering review for a discussion of these issues):

- The western portion of the development is not provided with public road access;
- The proposed road levels at the tie in point with Ewingsdale Road are significantly different to the Ewingsdale Road upgrade design levels; and
- Construction access is shown to be through land which is not subject to the development application.

Several corner and/or hatchet lots in the R2 zoned land are smaller than the preferred size for these lots of 650m² and 800m² respectively (6.4.1).

The proposed light industrial lots comply with the relevant size and shape requirements (6.5.1).

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

Proposed subdivision of the WBURA has been separated into two independent development applications (the subject DA and DA 10.2017.201.1). As a result, the proposed staging for this part of the subdivision is not and cannot be consistent with the “Staging Plan” and associated requirements in BDCP 2014 Chapter E8.10.1.

Further, with two separate development applications from two different developers, there is no assurance that the land will be developed in a “co-ordinated fashion” or that “orderly development of the site” will occur.

It has not been adequately demonstrated how access will be managed to the portion of the development located to the west of Melaleuca Drive when this access may be impacted by the development of the Harvest Estate subdivision (DA 10.2017.201.1) should it be approved.

The proposed development does not provide an entirely consistent interface with the adjoining proposed subdivision (DA 10.2017.201.1). It appears that each development has been designed in isolation which has resulted in the interface between the two developments being inconsistent particularly in relation to road design (See Engineering review for further detail).

E8.10.2 Housing Subdivision Layout, Orientation and Diversity

The applicant’s revision of the proposal to composite small lots into a number of ‘super’ lots has removed the initial issue with proposed lots within the R3 zoned land being too small to contain the required building envelope of 12 x 10m. However, a number of proposed lots within the R2 zoned land remain incapable of containing a building envelope of 12 x 15m (Prescriptive Measure 2).

The applicant does not include an explanation of the layout of lots within R2 zoned land in relation to solar access for future dwellings (Prescriptive Measure 3).

The applicant’s revision of the proposal to composite small lots into a number of ‘super’ lots within R3 zoned land has removed the requirement to address access, zero lot line development, parking and orientation for R3 zoned land with this application (Prescriptive Measure 7). However, without an indicative lot layout plan, it cannot be determined whether it will be possible to address these requirements in the future.

The revised subdivision zoning plans identify the location of proposed “duplex lots” and these lots are largely consistent with the relevant requirements (Prescriptive Measures 5 and 6).

Lot 184 is long and thin and not suitable for residential development (Prescriptive Measure 3). In the applicant’s further information, they have offered for this lot to be consolidated with the adjoining Lot 2 DP 878548.

With the exception of lots Pt 182 and Lot 17, the application (Figure 7-1 in the Flora and Fauna Assessment – Annexure 8D) does not identify any vegetation to be retained within R2, R3 and IN2 zoned land within the subdivision area (Prescriptive Measure 8).

E8.10.3 Transport Movement and Street Hierarchy

The proposed road layout is generally consistent with the concept plan in the BDCP 2014.

Council’s engineering review notes that the proposed typical road cross sections are not consistent with those specified in the BDCP2014 (Prescriptive Measure 1/Appendix D).

The street network layout does not appear to have been sited and designed having regards to biodiversity and vegetation management (Prescriptive Measure 2).

The applicant provided information regarding bus stops in the Traffic and Transport Report (Annexure 5) which was reviewed by Council's engineer who identified issues with this aspect of the proposal but indicated that these issues could be managed through conditions.

The application does not appear to include information on laneways and parking in R3 zoned land (Prescriptive Measures 9 and 12).

E8.10.4 Stormwater Management

A Stormwater Management Strategy (Annexure 10) was provided with the application and amended plans were provided with the applicant's response to Council's further information requests. The review of this information by Council's engineer indicates that there are a number of issues with the proposed stormwater management for the development that still require attention such as:

- Legal points of discharge (Prescriptive Measure 1.d));
- Capacity in the Main Drain for stormwater from the development(Prescriptive Measure 1.c));
- Inconsistencies between engineering drawings and the stormwater management strategy;
- Insufficient justification for lack of on-site stormwater detention and system design (i.e., swales and basins with inverts or filter media that may be below the water table and will therefore be water-logged and non-functional).

The application has not adequately addressed a range of matters identified in Prescriptive Measure 1 such as:

- Sufficient detail on ongoing monitoring (sub h));
- Mitigation measures to minimise mosquitoes (sub i));
- Long-term management arrangements (sub m));
- Baseline water quality studies (sub n));
- 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));
- 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)); and
- Monitoring regime for Belongil Creek (sub q)).

The applicant's Biodiversity and Conservation Management Plan does not expressly include any embellishment of the main drain through the site or the secondary drain on the Belongil Fields site (Prescriptive Measure 2).

The information provided is insufficient to determine whether construction water quality impacts will be adequately mitigated (Prescriptive Measure 4).

E8.10.5 Biodiversity, Vegetation Management and Landscaping

E8.10.5.1 Biodiversity and Vegetation Management

The applicant's planning assessment refers to the Biodiversity Conservation Management Plan (Annexure 8E), the Flora and Fauna Assessment (Annexure 8D) and the Statement of Landscape Intent (Annexure 11) in addressing this section of the BDCP 2014.

Council's ecologist has reviewed the Threatened Species Management Plan (Annexure A), Koala Plan of Management (Annexure 8B), Vegetation Management Plan (Annexure 8C), the Flora and Fauna Assessment (Annexure 8D), the Biodiversity Conservation Management Plan (Annexure 8E) and the further information and has identified a range of outstanding issues (#E2018/59859 and #E2018/81071).

In relation to the specific requirements of this chapter, there is a general lack of detail particularly in relation to:

- The initial five-year implementation program (Prescriptive Measure 1 c));
- Responsibility for ongoing management habitat areas in the E2 and E3 zones (Prescriptive Measure 1 d));
- Methods to prevent the introduction of exotic pest species or to manage and reduce pest species already present (Prescriptive Measure 1 e)); and
- Ongoing monitoring (Prescriptive Measure 1 g)).

The Biodiversity Conservation Management Plan does not appear to have included the required Belongil Creek Plan of Management (Prescriptive Measure 1 h) ii) and a plan of management for buffers has not been provided (Prescriptive Measure 3 b)).

There does not appear to be any landscaping proposed for the drainage lines with the development area (Prescriptive Measure 4).

An explanation of how infrastructure proposed for E2 and E3 zones has been site to minimise impacts on native vegetation and habitat in those zones could not be identified in the application (Prescriptive Measure 6).

The applicant provided a fencing plan in the further information and proposed fencing to manage the impacts of cats and dogs on native fauna as an alternative to prohibiting the keeping of cats and dogs by subdivision residents (Prescriptive Measure 9). Council's ecologist has reviewed the fencing plan and has indicated that the proposed fencing will create 'bottlenecks' and potential traps for koalas and should be revised.

E8.10.5.2 Landscaping

The application includes a Statement of Landscape Intent including various related plans (Annexure 11) as required by Prescriptive Measure 1. However, neither the Statement of Environmental Effects nor the Statement of Landscape Intent include an assessment of the proposal against the "General Landscape Design Principles" (B9.3.1) or other relevant principles (e.g., 9.10.1, 9.10.2, 9.11.1, 9.12.4 and 9.12.5) in Chapter 9 of the BDCP 2014.

In relation to the specific requirements of this chapter, there is a lack of detail in relation to how the landscape planting will be maintained (Prescriptive Measure 2).

E8.10.6 Public Facilities, Services and Infrastructure

The development application has not adequately demonstrated that the public car parking, cycleway and footpath arrangements will meet the requirements of Chapter E8.10.6. In relation to cycleways, a traffic impact assessment has been submitted with the application (Annexure 5) that includes a proposed cycleway network and proposed cycleways are also detailed in engineering plans 12.1-12.3. The report does not expressly address the Byron Shire Bike Strategy and Action Plan as required by Chapter B5).

Proposed bicycle storage, parking and end of trip facilities (B5.2.4) are not clearly identified in the traffic impact assessment or on the engineering plans. Some details of proposed bicycle storage, parking and end of trip facilities can be found in the Statement of Landscape Intent (Annexure 11). However there are inconsistencies between what is proposed by the applicant and plan requirements in relation to the number and location of facilities. According to the plans provided, no cycleway or shared pathway is proposed for the western portion of the development.

Comment was made in relation to bus stops under E8.10.3 Transport Movement and Street Hierarchy. Here it was noted that, the applicant provided information regarding bus stops in the Traffic and Transport Report (Annexure 5). It appears only one bus stop has been included in the subdivision design (Road No. 5, Fig 8.2) but this is not clearly labelled or identified.

E8.10.7 Recreational Areas

Not all residential lots within the eastern portion and none of the lots within the western portion of the proposed development are within 500m of the nearest neighbourhood park (Prescriptive Measure 1).

The proposed village centre neighbourhood park (see drawing LA06 – Annexure 11) is largely consistent with the facility requirements (Prescriptive Measures 3 and 5).

E8.10.8 Hazards and Constraints

E8.10.8.1 Flooding

The flood planning considerations are discussed above under C2 - Areas Affected by Flood.

E8.10.8.2 Acid Sulfate Soils

As noted above, the applicant has provided an Acid Sulfate Soils Management Plan (Annexure 9) as required by Prescriptive Measure 1.

Council's Environmental Health Officer has reviewed the applicant's Acid Sulfate Soils Management Plan (**Attachment H**). Although the Plan is largely consistent with the requirements of Prescriptive Measure 2, the following items appear to have been omitted:

- 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.

E8.10.8.3 Groundwater

In relation to groundwater impacts, Council's Environmental Health Officer noted (Attachment H) that 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 (Prescriptive Measure 2). The planning assessment provided with the application states in relation to this requirement "*to be addressed at the next stage of design and development*".

It has not been adequately demonstrated that the proposed stormwater detention devices and bio-retention devices have a base excavation 1m above the water table, or use impermeable liners. Council's Environmental Health Officer notes that 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.

Consequently, the development application has not adequately demonstrated that the proposed stormwater detention infrastructure will not result in an adverse impact on groundwater (Prescriptive Measure 2). The applicant argues that the bioretention basins are for water quality treatment and that there is no detention.

Council's ecologist notes that 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, to rectify such conditions (Prescriptive Measure 3).

E8.10.8.4 Bushfire

The application included a Bushfire Threat Assessment (Annexure 13) however this assessment does not appear to have included accurately mapped plans and details of asset protection zones (Prescriptive Measures 2, 3 and 6). It has not been confirmed whether the Bushfire Threat Assessment needs to be updated in response to the bush fire safety authority issued by NSW Rural Fire Service (#E2019/842).

The applicant has failed to adequately address the potential for peat fires on the site (Prescriptive Measure 8).

E8.10.8.6 Contamination

The application included a contaminated land assessment (Annexure 14) which was reviewed by Council's Environmental Health Officer (A2017/31104) who made a number of recommendations that could be managed through conditions.

E8.10.8.7 Mosquitoes

Council's Environmental Health Officer (A2017/31104) made a number of recommendations in relation to mosquito mitigation and management.

E8.10.8.8 Buffer to Ewingsdale Road

A landscaped buffer between the development and Ewingsdale Road that includes an earth mound and acoustic barrier fence has been proposed by the applicant for their part of the site (rather than the full length of the site – Prescriptive Measure 1).

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

E8.10.8.9 Aboriginal Cultural Heritage

The application included a cultural heritage assessment (Annexure 12) as required.

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 when they are prepared to fulfil their obligations under the VPA.

The proposed development does not accord with the VPA however, as it does not provide a mechanism to ensure that ecological offsets will be restored, managed and protected "in perpetuity" as required by the Voluntary Planning Agreement (2013/8948) for the WBURA.

Note: The planning agreement defines an urban lot as follows:

Urban Lot means a lot located on the Land to be created by the registration of a: (a) Plan of Subdivision and is intended to be developed for residential purposes, or (b) Strata Plan and has been or is being developed for residential purposes, but excluding any Super Lots.

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"/>

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

	Likely impact/s
Impacts on natural environment	<p>Yes. The proposal is likely to 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>
Impacts on 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; and • physical activity and mental health of the communities' residents (e.g., walkability, "bikeability", access to healthy food).
Social impacts <i>(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))</i>	<p>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). In relation to social impacts, this report concluded that "... the proposal would assist in meeting the region's needs, by increasing housing and employment land..." and that "...the site's future population will increase the council's rates base to support existing facilities".</p> <p>The application does not expressly address the potential social impacts of the proposed subdivision development of part of the WBURA and a social impact assessment (SIA) was not provided with the application (see note below).</p> <p>The applicant has submitted that an updated SIA "...would serve no useful purpose." (section 6.0 of the SEE). 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.</p>

	<p><i>Note: An SIA would be required for this development under Chapter B12 of the BDCP2014 however this chapter applies only to land under the BLEP 2014. Under Chapter B12, an SIA is required for residential subdivisions of more than 50 dwellings or lots where: (i) More than 5 years has elapsed since the rezoning SIA was prepared (the report is dated February 2011); and (ii) The development application is for only part of the rezoned area and if developed in isolation could result in different social impacts.</i></p>
Economic impacts	<p>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). In relation to economic impacts, this report concluded that “... <i>the economic impacts of the proposed rezoning will be predominantly positive and will lead to an increase in employment and opportunities for the Byron community</i>”.</p> <p>The application does not expressly address the potential economic impacts of the proposed subdivision development of part of the WBURA.</p>

The key outstanding issues, omissions and/or inconsistencies with the application (not already discussed above) are considered below (further detail can be found in the Council expert reports attached):

Earthworks, Filling and Geotechnical

The development application has not demonstrated how stormwater will be managed during construction of the subdivision particularly in relation to flows from Ewingsdale Road and areas to the north and temporary catch drains or swales to divert flows around work zones.

The development application has not demonstrated how the transport of fill to the site will be managed including details of proposed management of construction traffic (there will be a significant number of truck movements required to deliver fill to the site).

There is an element of unknown as to the quantity of unsuitable material that may require removal off site. The volume of unsuitable material to be removed is expected to be significantly less than the volume of fill to be imported. This should be addressed in the Construction Traffic Management Plan.

The stability of the Main Drain batters if they are left untouched are an engineering concern that has not been addressed in the application.

There is concern about the impact the large quantity of fill will have on groundwater and the Belongil Creek estuary.

Stormwater and Drainage Design

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

- Legal points of discharge for all stormwater outlets;
- In the absence of on-site detention, how affects on the downstream drainage system (e.g., the Main Drain, Belongil Creek) by way of increasing flow rates and velocities causing scour, erosion, degradation of banks and geomorphology changes;
- Engineering drawings do not show the required areas of infiltration to match the Stormwater Management Strategy;
- Sufficient evidence to support stormwater treatment assertions;
- The use of swales and basins with an invert or filter media below current surface levels may be water-logged and non-functional. Further investigation into the water table and groundwater conditions in these nominated areas is recommended;

- The proposed stormwater management is adequate and appropriate for the site and development (and meets hydrological and hydraulic requirements) through the use of suitable model and updated drainage catchment plan/s (that correlate with engineering plans);
- The Main Drain has capacity for the additional flows generated from the developed site (acknowledging additional flow from the Byron Bay sewage treatment plant). The use of infiltration and dispersion on-site may solve the Main Drain flow issues, addresses on-site detention and will assist with stormwater water quality however this has not been offered by the applicant; and
- The location of drainage infrastructure within E zoned land contrary to comments provided by OEH on 19 January 2018.

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 the significant amount of fill and increased stormwater run-off, will adversely impact on the Belongil Creek ICOLL. The potential for impacts on nesting sites and habitat for coastal and migratory birds has not been adequately addressed by the applicant.

Council's Ecological Consultant reviewed the relevant further information provided by the applicant (**Attachment K**) and found that the information generally re-stated and/or re-asserted material previously provided with the development application rather than providing any new 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 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.

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

- a. Native fauna from dog and cat ownership; and
- b. Groundwater quality from fertilising and watering gardens and lawns.

The development application does not provide adequate details of when remediation works are to be undertaken and the future ownership and management structure of the resultant E Zone lots.

Access, Traffic and Road & Drainage Design

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:

- 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;
- 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; and
- Detail the upgrading of Ewingsdale Road (B3.2.1.7 of BDCP 2014).

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	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 & Bayshore Drive RAB*	With first development in Bayshore Drive area	
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	These improvements are safety rather than capacity improvements
New Slip Lane for Banglow Road Intersection with Patterson and Cooper Streets	When queuing causes a safety issue	

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:

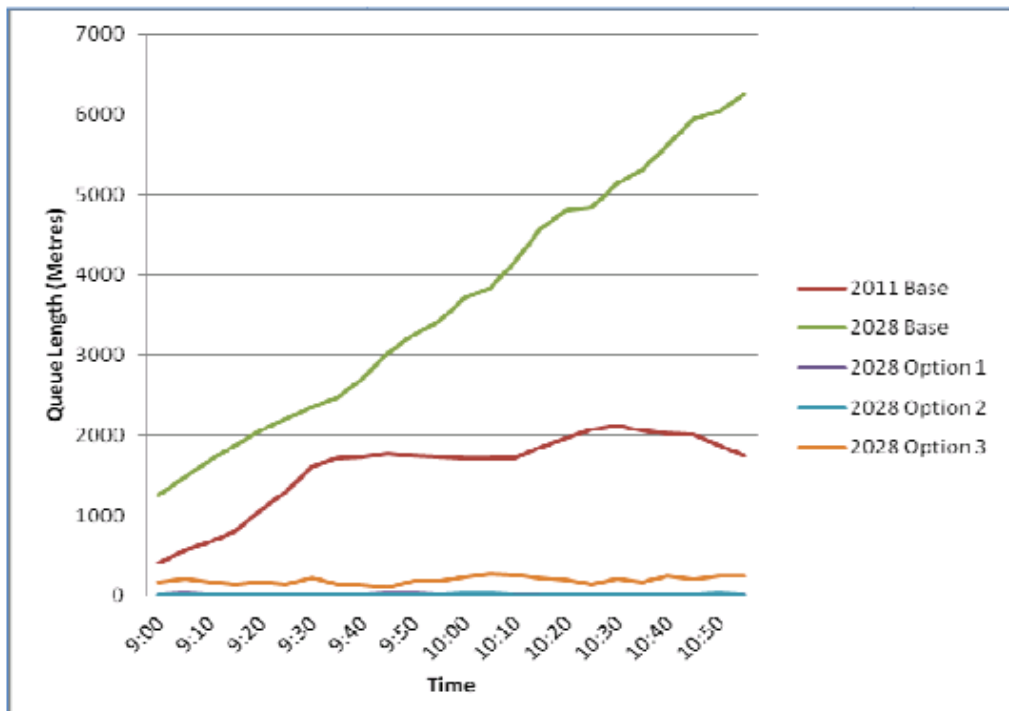


Figure 5: Queue profile on Lawson St West along Ewingsdale Rd

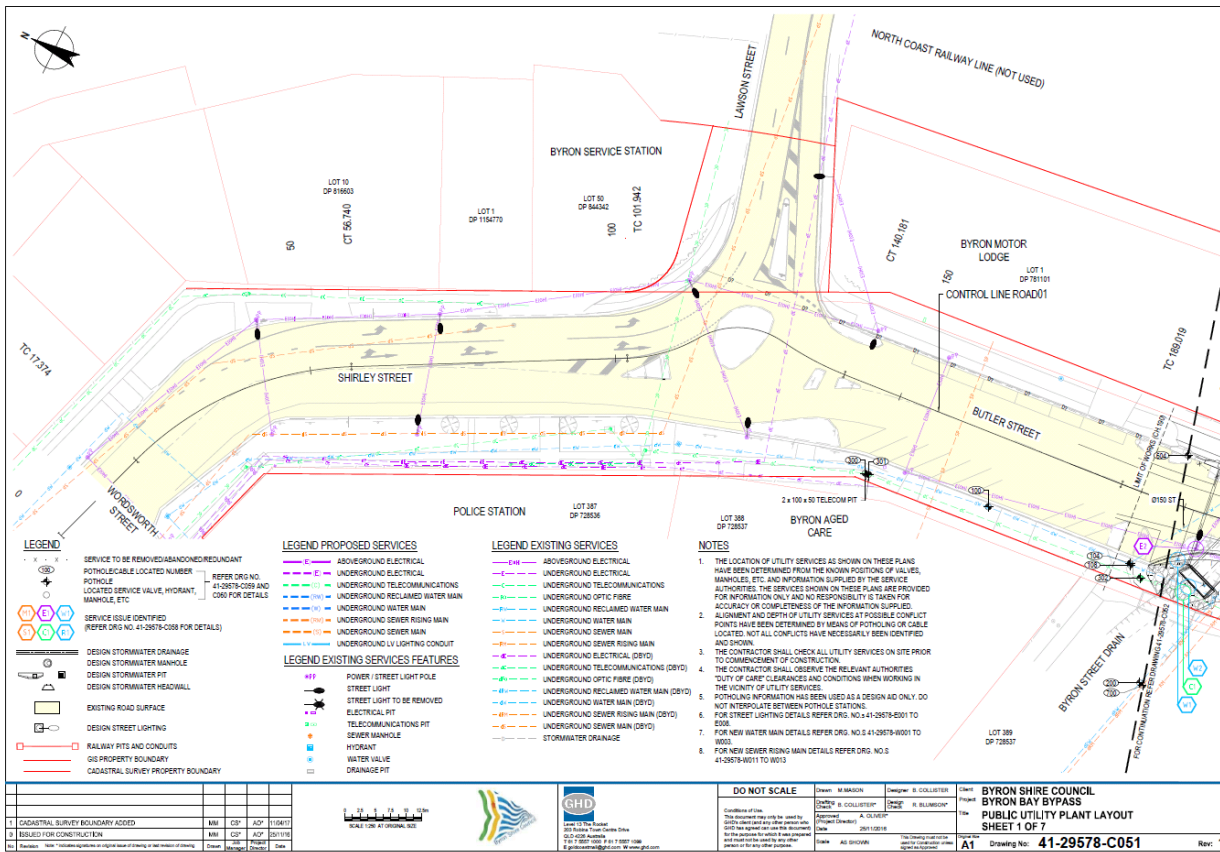
***NOTE: 2028 Option 1 in the above diagram is below 2028 Option 2 and therefore cannot be seen.**

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.

It has been the position of Council that no development should proceed on the West Byron site in the absence of the bypass. At the date of the previous report to the JRPP Council did not have sufficient funding to construct the bypass. Council has received additional grant funding that combined with developer contributions will enable the bypass to proceed. If the bypass commences construction by July 2019 it is likely to be completed before the first lots are released for housing development should this application be approved. The bypass is not a the complete solution to traffic management in Byron Bay. It is however a significant piece of infrastructure designed to mitigate traffic congestion. The commencement of the bypass resolves some of the macro level network concerns associated with the development of West Byron.

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; and
- 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; and
- h. Reference to the Interim Construction Noise Guideline (DECC, 2009) where appropriate.

Visual Impact and character

Due to the scale of the proposed subdivision and limited setback from Ewingsdale Road, it is expected that the development will have a significant visual impact and fundamentally change the character of this part of the northern entrance to Byron Bay.

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 follows:

- Western area is zoned R2 Low density residential, IN2 Light industrial, E3 Environmental management, E2 Environmental conservation and 7A Wetlands.

- Eastern area is zoned R3 Medium density residential, R2 Low density residential, B1 Neighbourhood Centre, RE1 Public recreation, E3 Environmental management, E2 Environmental conservation, 7A Wetlands and 7B Coastal Habitat.

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

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 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 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.

Many of the submissions were made by residents of Byron Bay and/or Byron Shire. The submissions from these local residents are of value as these people have, or have had the opportunity to, be familiar with the subject site, local environment and issues.

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.

It is considered that, in general terms, the issues raised in these submissions have been considered in the assessment as detailed in the above considerations under s.79C of the EP&A Act 1979.

Submissions in opposition were received from:

- Residents of Melaleuca Drive (adjoining the western area of the proposed development);
- Local community groups;

- The Belongil Swamp Drainage Union;
- 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).

Particular issues raised by the Residents of Melaleuca Drive included:

- 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.

I am not aware of any consultation being undertaken by the applicants with these landowners following lodgement of this development application. Although only expressly applicable to development covered by the BLEP 2014, *“Community engagement, including consultation with adjoining landowners ... should be part of the development planning process to identify and avoid land use conflict”* (B6.2.3 of BDCP 2014).

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).

It is unlikely the development will provide for affordable housing and no such housing is expressly proposed as part of the development.

However, having regard to the significant number of objections (2218) from neighbours, Byron Bay and Byron Shire residents 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 *“...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 applicant's further information included updated Assessments of Significance 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.

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 7.11 Contributions

The VPA does not exclude the operation of sections 7.11 or 7.12 (old S94 & 94A as they were at the time of signing the agreement) and as such the 2012 Developer Contributions 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.

It is to be noted that the planning agreement does not prevent Council levying a contribution for the bypass. The proposed roadworks contribution includes an amount for the bypass.

The contributions payable are set out in the following table.

**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 =	185	@	1	=	185
Less Site Credits =	6	@	-1	=	-6
Total SDU				=	179
Schedule valid until			23/01/2019	After this date contact Council for CPI update.	
Local Open Space & Recreation	(OS-BB)	179.00 SDU @	\$ 4,157.26	=	\$ 744,149.54
LGA Wide Open Space & Recreation	(OS-SW)	179.00 SDU @	\$ 748.27	=	\$ 133,940.33
LGA wide Community Facilities	(CF-SW)	179.00 SDU @	\$ 1,095.92	=	\$ 196,169.68
Local Community Facilities	(CF-BB)	179.00 SDU @	\$ 1,234.91	=	\$ 221,048.89
Bikeways & Footpaths	(CW-BB)	179.00 SDU @	\$ 1,369.04	=	\$ 245,058.16
Shire Wide Bikeways & Footpaths	(CW-SW)	179.00 SDU @	\$ 80.39	=	\$ 14,389.81
Urban Roads	(R-BB)	179.00 SDU @	\$ 3,101.29	=	\$ 555,130.91
LGA Wide Roads	(R-SW)	179.00 SDU @	\$ 226.42	=	\$ 40,529.18
Rural Roads	#N/A	179.00 SDU @	\$ -	=	\$ -
Administration Levy	(OF-SW)	179.00 SDU @	\$ 1,131.82	=	\$ 202,595.78
Total				=	\$ 2,353,012.28

6. CONCLUSION

The revised DA proposes the subdivision (and associated works) of Six (6) Lots into One hundred and seventy seven (177) residential lots (including fourteen (14) super lots), Two (2) Business Lots, One (1) Recreation Lot, Two (2) Industrial Lots 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 One Hundred and Eighty Six (186) Lots consisting of One Hundred and Sixty Three (163) Residential Lots, Fourteen (14) Super (Master) Lots, Two (2) Business Lots, Two (2) Industrial Lots, One (1) Recreation Lot and Four (4) Residue Lots be refused.

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 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)(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)(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 B3 Services in relation to the provision of an erosion and sediment control plan or a soil and water management plan.

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 B4 Traffic Planning, Vehicle Parking, Circulation and Access in relation to the provision of a traffic impact assessment using best available information.

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 B7 Mosquitoes and Biting Midges in relation to consideration of biting insect mitigation and management issues and mitigation strategies.

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 subdivision design, public road access and road levels.

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 E8.10.1 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 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 and street network layout location.

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 legal points of discharge, system and receiving environment capacity, an assessment of impacts, monitoring and management, 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 implementation and management, pest species and domestic animals management, ongoing monitoring, impacts of infrastructure encroachments into environmental zoned land and maintenance of landscape planting.

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 and facilities.

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 the distance of lots from neighbourhood parks.

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, provision of a management plan, impacts of stormwater on the water table, details of asset protection zones and peat fires.

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 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) 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 clearly 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