

DATE OF DETERMINATION	Monday, 4 February 2019
PANEL MEMBERS	Garry West (Chair), Stephen Gow, John Griffin, Vanessa Ekins and Katie Milne
APOLOGIES	None
DECLARATIONS OF INTEREST	Pamela Westing declared a non-pecuniary conflict of interest as several of the submitters are known to her personally

Public meeting held at Byron Theatre on 4 February 2019, opened at 4pm and closed at 4.48pm.

MATTER DETERMINED

2018NTH007 – Byron - DA10.2017.661.1 at Ewingsdale Road Byron Bay (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel considered the SEPP1 application relating 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 Panel accepted the Council Assessment that there is no change in land use and no physical disturbance to the subject land and no additional dwelling entitlements will be created and 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.

The development application was refused for the following reasons:

1. Pursuant to Section 4.15 (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.
2. Pursuant to Section 4.15 (1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal has not adequately demonstrated that the proposed stormwater system and receiving environments have adequate capacity to ensure significant adverse effects on flood behaviour are avoided and stormwater flow rates will be managed to avoid erosion, reduction in bank stability and destruction of riparian vegetation, contrary to Clause 98(3) (b) and (d) Flood Planning of Byron Local Environmental Plan 1988 regarding capacity of the Main Drain.
3. Pursuant to Section 4.15 (1)(a)(i) and (b) 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 to avoid, minimise or mitigate the impacts of such work on drainage patterns, amenity of adjoining properties and waterways or environmentally sensitive land, contrary to Clause 98B(3) Earthworks of Byron Local Environmental Plan 1988.

4. Pursuant to Section 4.15 (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 B3.2.4 Sedimentation and Erosion Control Measures, in relation to the provision of an erosion and sediment control plan and/or a soil and water management plan.
5. Pursuant to Section 4.15 (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 B4.2.1 Traffic Impact in relation to the provision of a traffic impact assessment using best available information.
6. Pursuant to Section 4.15 (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.
7. Pursuant to Section 4.15 (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.
8. Pursuant to Section 4.15 (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 as the proposed staging is inconsistent with the specified staging plan and there is no assurance that the WBURA will be developed in an orderly, co-ordinated fashion as the site is the subject of two independent development applications.
9. Pursuant to Section 4.15 (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.
10. Pursuant to Section 4.15 (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.
11. Pursuant to Section 4.15 (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 arrangements for initial (five-year implementation program) and on going management of landscape planting.


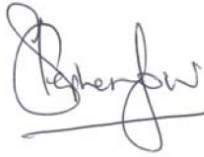


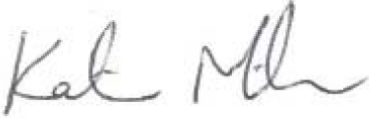
12. Pursuant to Section 4.15 (1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not satisfy all the relevant matters for consideration within Byron Shire Development Control Plan 2014 Section B8.10.6 Public Facilities, Services and Infrastructure, in relation to cycleway and footpath arrangements and facilities.
13. Pursuant to Section 4.15 (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.
14. Pursuant to Section 4.15 (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 generic acid sulfate soils management plan for landowners, impacts of stormwater on the water table, details of asset protection zones and peat fires.
15. Pursuant to Section 4.15 (1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is likely to have an adverse environmental impact on the natural environment as a result of groundwater depth and quality changes, construction noise, construction-phase dust, stormwater discharges (impacting on surface water quality), vegetation removal, habitat destruction, ecological impacts and impacts on the Belongil Creek ecosystem and ICOLL.
16. Pursuant to Section 4.15 (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 biodiversity assessment requirements under Part 7 of the Biodiversity Conservation Act 2016.
17. Pursuant to Section 4.15 (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 and threatened flora and fauna).
18. Pursuant to Section 4.15 (1)(b) and (d) of the Environmental Planning and Assessment Act 1979, relevant concerns relating to likely environmental, social and economic impacts of the development in the locality have been raised in a significant number of submissions from the local community, in objection to the proposed development.
19. That the necessary consent of third party property owners to the lodgement of the application, as required under the Environmental Planning and Assessment Regulation 2000, has not been provided by the applicant before determination of the application.
20. Pursuant to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979, having regard to the objects of the Act, the number of unresolved issues raised in the application's assessment and to the reasons outlined above, the proposed development is not considered in the public interest.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. The Panel notes that issues of concern included:

- Coastal Biodiversity & ecosystems;
- Stormwater impacts;
- Earthworks, including filling;
- Sediment & erosion control;
- Traffic impacts, both onsite & offsite;
- Threatened species impacts;
- Environmental, social and economic impacts;
- Lack of relevant owner's consent; and
- Public Interest

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meetings.

PANEL MEMBERS	
 Garry West (Chair)	 Stephen Gow
 John Griffin	 Vanessa Ekins
 Katie Milne	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2018NTH007 – Byron - DA10.2017.661.1
2	PROPOSED DEVELOPMENT	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
3	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
4	APPLICANT OWNER	Site R & D Pty Ltd Telicove Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Staged development application where total CIV is over \$20m and the DA was lodged before 1 March 2018
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <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 Byron Local Environmental Plan 1988 North Coast Regional Plan 2036 West Byron Bay Planning Agreement (2013/5948) Biodiversity Conservation Act 2016 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Byron Shire Development Control Plan 2014 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Written submissions during public exhibition: 2219 Oral submissions at the public meeting on 19 June 2018: <ul style="list-style-type: none"> Object – Asren Pugh on behalf of the Bangalow Koalas and Friends of the Koalas, Dailan Pugh on behalf of Beacon Conservation Group, Alison Crook on behalf of Bangalow Country Women’s Association, Dr Mary Gardner on behalf of Belongil Catchment Group, John Lazarus on behalf of Byron Environment Centre, Prisca Du Ressac on behalf of Star Nature Group, Colin - Bundjalung man, Andrew Murray, Asren Pugh, Bruce Clark, Eric Freeman, Miranda Burne, John Sparks, Boyd Warren, Tim

		<p>Hochgrebe, Ria Keenan on behalf of Tamara Smith, Member for Ballina, Maryanne Smith, Christine Willmot, Jo Faith, Peter Westheimer, Brian Donnellan, Cr Simon Richardson on behalf of Byron Shire Council, Cr Cate Coorey on behalf of Byron Residents Action Group, Anthony Pangallo on behalf of Skinners Shoot Residents Group, Cr Basil Cameron on behalf of Byron Shire Council, Maia Osborn on behalf of Sustainability Environment and Education Research Cluster – Southern Cross University, Tom Vidal on behalf of the Belongil Swamp Drainage Union, Paul Jones & David Frappell on behalf of Butler Street Community Network, Veda Turner on Behalf of Dune Care Group, Susan Skyvington on behalf of Mullumbimby Residents Association, Damian Antico, Louise Harrison and Giles Parkinson</p> <ul style="list-style-type: none"> • Submission of elected Council: 24 September 2018 • Council assessment report: 25 September 2018 • Addendum Council Assessment report: 5 October 2018 • Oral submissions at the public meeting on 8 October 2018: <ul style="list-style-type: none"> ○ Object – Cr Basil Cameron, Dailan Pugh on behalf of Deacon, Tom Hochgrebe, Veda Turner on behalf of Byron Dune Care, Asren Pugh, Tom Vidal on behalf of the Belongil Catchment Drainage Board, Christie Germain, Cr Cate Coorey on behalf of Byron Residents Group, Mary Gardner, Sandra Kimler, John Sparks, Christopher Wright, James McCready, Maia Osborn on behalf of the Sustainability, Environment and Education Research Cluster at Southern Cross University, Graeme Innes, Cr Michael Lyon, Jacob Miller on behalf of Tamara Smith (Member for Ballina), Robbie Winter-Blick and Cr Sarah Ndiaye ○ Council assessment officer - Ivan Holland ○ On behalf of the applicant – Stuart Murray • Supplementary Council Assessment report: • Oral submissions at the public meeting on 4 February 2019: <ul style="list-style-type: none"> ○ Council assessment officer – Ivan Holland ○ On behalf of the applicant – Stuart Murray
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Public briefing meeting on Tuesday, 19 June 2018 • Site inspection on 8 October 2018 • Final briefing to discuss council's recommendation, 8 October 2018, 11:15 am. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Garry West (Chair), Stephen Gow, John Griffin, Vanessa Ekins and Katie Milne ○ <u>Council assessment staff</u>: Ivan Holland, Chris Larkin, Jeff Begovic, Chris Soulsby, and Shannon Burt • Final briefing to discuss council's recommendation, 4 February 2019, 3pm. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Garry West (Chair), Stephen Gow, John Griffin, Vanessa Ekins and Katie Milne ○ <u>Council assessment staff</u>: Ivan Holland, Shannon Burt
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not supplied