



Land and Environment Court  
New South Wales

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Case Name:	Site R & D Pty Ltd v Byron Shire Council (No 2)
Medium Neutral Citation:	[2022] NSWLEC 1209
Hearing Date(s):	10 - 13 November 2021, 22 March 2021 and 21 - 23 June 2020
Date of Orders:	21 April 2022
Decision Date:	21 April 2022
Jurisdiction:	Class 1
Before:	Chilcott C
Decision:	<p>The Court Orders:</p> <p>(1) The appeal is upheld;</p> <p>(2) Development Application 10.2017.661.1, in relation to land identified 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, Lot 5 DP 1222674 and Lot 6 DP 1222674, and seeking consent to subdivide land in two separate areas within the West Byron Urban Release Area (WBURA), is determined by way of the grant of consent, subject to the conditions at Annexure 'A' to this judgment;</p> <p>(3) The exhibits are returned, with the exception of Exhibits A and 1.</p>
Catchwords:	<p>DEVELOPMENT APPLICATION – subdivision of land – whether Subject Site contains core koala habitat – whether potential impacts on frog habitat are acceptable – whether design of road access is acceptable</p>
Legislation Cited:	Land and Environment Court Act 1979
Cases Cited:	Site R & D Pty Ltd v Byron Shire Council [2022]

NSWLEC 1121

Category: Consequential orders

Parties: Site R & D Pty Ltd (Applicant)  
Byron Shire Council (Respondent)

Representation: Counsel:  
C Ireland (Applicant)  
A Seton (Solicitor) (Respondent)

Solicitors:  
Brock Partners (Applicant)  
Marsdens Law Group (Respondent)

File Number(s): 2018/222143

Publication Restriction: No

## JUDGMENT

- 1 **COMMISSIONER:** In a judgment given on 8 March 2022, *Site R & D Pty Ltd v Byron Shire Council* [2022] NSWLEC 1121, I handed down my decision on the appeal by Site R&D Pty Ltd against the refusal by the Byron Shire Council of its development application 10.2017.661.1 seeking consent to subdivide land in two separate areas forming part of the West Byron Urban Release Area (WBURA).
- 2 At [417] in my judgment of 8 March 2022 the Parties were directed as follows:
  - (a) the Parties were to prepare final conditions of consent, reflecting the conclusions of the judgment of 8 March 2022 at [407] to [415], and were to file these with the Court by no later than Thursday 31 March 2022;
  - (b) the matter was listed for mention on Monday 4 April 2022 at 4pm by Teams;
  - (c) if the Parties complied with direction (1) above, the listing on Monday 4 April 2022 would be vacated;
  - (d) the Parties were granted liberty to restore on 3 days' notice.
- 3 At the mention on Monday 4 April 2022, the Parties confirmed that preparation of final conditions of consent was near completion and they were directed to file the conditions by 6 April 2022.

- 4 The Parties have now complied with that direction and have agreed and filed settled conditions of consent reflecting the conclusions in the Court's judgment.
- 5 As the Parties' agreed conditions of consent have now been filed, the Court is able to make final orders.

### **Orders**

- 6 The Court orders:
- (1) The appeal is upheld;
  - (2) Development Application 10.2017.661.1, in relation to land identified 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, Lot 5 DP 1222674 and Lot 6 DP 1222674, and seeking consent to subdivide land in two separate areas within the West Byron Urban Release Area (WBURA), is determined by way of the grant of consent, subject to the conditions at Annexure 'A' to this judgment;
  - (3) The exhibits are returned, with the exception of Exhibits A and 1.

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**M Chilcott**

**Commissioner of the Court**

[Annexure A \(635057, pdf\)](#)

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