

DEVELOPMENT APPLICATION EVALUATION REPORT

Doc No. #E2023/35543

Panel Reference	PPSNTH-134
DA Number	10.2021.575.1 (PAN – 141882, CNR – 29108)
LGA	Byron Shire Council
Proposed Development	Staged subdivision to create One Hundred and Twenty Seven (127) Lots comprising of One Hundred and Twenty three (123) Residential Lots, Three (3) Medium Density Lots, and One (1) Public Reserve, together with associated vegetation management works (tree removal and compensatory planting), Earthworks and Construction of Infrastructure.
Street Address	15 Torakina Road BRUNSWICK HEADS
Applicant/Owner	Newton Denny Chapelle
Date of DA lodgement	27 September 2021
Total number of Submissions Number of Unique Objections	<ul style="list-style-type: none"> • Total number of submissions – 13 • Total number of submissions in opposition – 13 • Total number of unique submissions – 13
Recommendation	Pursuant to Section 4.16 of the Environmental Planning & Assessment Act 1979, Development Application No. 10.2021.575.1 for Staged subdivision to create One Hundred and Twenty Seven (127) Lots comprising of One Hundred and Twenty three (123) Residential Lots, Three (3) Medium Density Lots, and One (1) Public Reserve, together with associated vegetation management works (tree removal and compensatory planting), Earthworks and Construction of Infrastructure, be granted consent subject to conditions.
Regional Development Criteria (SEPP (Planning Systems) 2021)	The proposal is regionally significant development as per Schedule 6, Clause 8 Coastal subdivision.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Planning Systems) 2021 • Byron Local Environmental Plan 1988 • Byron Development Control Plan 2010
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Conditions of Development Consent (E2023/33144) • DA Engineering Plans for Approval (E2023/24471) • Planning Agreement (E2023/16906) • Stormwater Management Plan: Proposed Subdivision, 15 Torakina Road, Brunswick Heads, NSW (E2023/35623 and E2023/35625) • Mosquito Risk Management Plan (E2022/93345) • Acid Sulfate Soil Management Plan (E2022/93344) • Surface Water and Groundwater Management Plan (as amended by conditions) (E2022/93343) • Wallum Froglet Management Plan (revised September 2022) (E2022/93342) • Vegetation Management Plan (revised November 2022) (E2022/110665) • Tree Removal and Retention Plan (E2022/110665) • Landscape Plans - Bayside Brunswick Landscape Documentation and Habitat Creation (E2021/152943)
Clause 4.6 requests	Not applicable
Summary of key matters raised in submissions	<ul style="list-style-type: none"> • Tree removal and habitat degradation • Aboriginal Cultural Heritage

	<ul style="list-style-type: none"> Housing density and capacity and continued viability of transport infrastructure On-street car parking Safety of roadways Amenity, privacy and overshadowing 	
Report prepared by	Jayne Klein on behalf of Byron Shire Council	
Report date	6 April 2023	
Summary of s4.15 matters		
Have all recommendations in relation to relevant s4.15 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 summarised, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>		Yes
Clause 4.6 Exceptions to development standards		
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?		Not applicable
Special Infrastructure Contributions		
Does the DA require Special Infrastructure Contributions conditions (S7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>		Not applicable
Conditions		
Have draft conditions been provided to the applicant for comment? <i>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</i>		Yes

EXECUTIVE SUMMARY

The development application seeks consent for staged subdivision to create One Hundred and Twenty Seven (127) Lots comprising of One Hundred and Twenty three (123) Residential Lots, Three (3) Medium Density Lots, and One (1) Public Reserve, together with associated vegetation management works (tree removal and compensatory planting), Earthworks and Construction of Infrastructure.

Regionally significant development

The proposal is regionally significant development as per Schedule 6, Clause 8 of the *State Environmental Planning Policy (Planning Systems) 2021* as it is coastal subdivision involving subdivision of land for residential purposes into more than 100 lots, and the land is in a sensitive coastal location.

Description of subject site

The subject site is 30.26 hectares in area and is located at the south of the Bayside Estate in Brunswick Heads. The property has frontage to Simpsons Creek at the east, adjoins unimproved rural bushland to the south, a rural lifestyle holding at the west improved by a dwelling house and ancillary structures, the Bayside Residential Estate at the north and is traversed by a paper road (Omega Circuit) through the centre of the allotment.

The subject site is currently devoid of improvements, however benefits from an existing Concept Plan Approval (CPA) which considered:

- residential subdivision;
- roads and pedestrian traffic routes;
- rehabilitation of conservation areas;
- dedication of public reserves;
- stormwater management; and
- bulk earthworks across the subject site.

The CPA was enacted by the issuing of consent to DA10.2016.337.1 for Stage 1A of the subdivision which has now been constructed and adjoins the development subject site at the north.

Byron Local Environmental Plan 1988

The *Byron Local Environment Plan 1988* applies to the subject site, where it is within the 7(a) Wetlands zone, 7(b) Coastal Habitat zone, and 2(a) Residential zone. The proposed development is to take place on the western half of the property (west of the paper road) which accommodates the entirety of the 2(a) zoned land, with ecological restoration to take place on the eastern side of the allotment (7(a) and 7(b) zones).

The subject site contains and interfaces with numerous matters of ecological significance, including:

- 'Biodiversity Values' Mapped land (*Biodiversity Conservation Act 2016*);
- Coastal Environment Area, Coastal Use Area, and Coastal Wetlands (and buffer);
- Frontage to the Cape Byron Marine Park Sanctuary Zone (Simpsons Creek);
- High Environmental Value vegetation including Koala preferred habitat;
- Mitchells Rainforest Snail potential habitat (Very high likelihood);
- Wallum Sedge Frog (presence and habitat).

Council's GIS maps the subject site as including:

- Bushfire prone land
- Acid sulfate soils - Classes 1, 2 and 3
- High environmental value vegetation
- Flood liability
- Biodiversity values
- Key fish habitat
- Koala potential habitat

The applicant sought Certification from the NSW Department of Planning and Environment (DPE) under Clause 34A(3) of the *Biodiversity Conservation (Savings & Transitional) Regulation 2017* to confirm that the biodiversity impacts of the development were satisfactorily addressed in the CPA.

DPE issued a Clause 34A(3) Certificate for the proposed development, dated 30 March 2023, which stated:

- a) *the proposed development (the **proposed development**) is part of a concept plan approval (the **concept plan approval**) for which the biodiversity impacts of the proposed development have been satisfactorily assessed before 25 August 2017, and*
- b) *that conservation measures to offset the residual impact of the proposed development on biodiversity values after the measures required to be taken to avoid or minimise those impacts have been secured into the future.*

History

The development application was received by Council on 7 September 2021. Council requested further information from the applicant on 16 August 2021 following a briefing of the Northern Regional Planning Panel on 28 July 2021. The applicant responded to the further information request on 21 October 2021 which included an amended proposal. A further briefing was provided by Council to the Northern Regional Planning Panel on 20 April 2022. The applicant was advised by Council of issues with the application on several occasions during the assessment. The applicant provided further information and amended plans to address identified issues most recently on 9 November 2022.

Integrated development

The development is integrated development requiring a bushfire safety authority. Correspondence with the Natural Resource Access Regulator confirmed that an activity approval for work on waterfront land is not required. The NSW Rural Fire Service issued updated general terms of approval and bush fire safety authority for the amended proposal on 23 December 2021.

Environmental Planning Instruments

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

- *State Environmental Planning Policy (Resilience and Hazards) 2021*

The subject land is identified in the Coastal Use Area, Coastal Environment Area and Coastal Wetlands area as defined by the SEPP (Resilience and Hazards) 2021. The development has

been designed to avoid and minimise impacts on the coastal zone as discussed within this report.

A contaminated land Preliminary Site Investigation (PSI) was prepared and submitted in support of the proposal, which was reviewed by Council's Environmental Health Officers (EHOs). Additional information was requested to demonstrate that the potential for contamination as a result of black sand fill (a likely residue from mining) does not constrain the site. An amended PSI was provided by the applicant dated 25/07/22, and Council's Environmental Health Officer determined that the site is suitable for the proposed residential development.

- *State Environmental Planning Policy (Transport and Infrastructure) 2021*

The subject site is serviced by Essential Energy transmission and distribution infrastructure. Components of the proposed development are proximate to electricity transmission and distribution infrastructure and consequently the application was referred to Essential Energy for comment (cl.2.48). Essential Energy confirmed on 4 March 2022 that it has no concerns with the proposed development.

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

Plantings and/or restoration works required as compensation for loss of native trees and koala habitat are to be completed in accordance with the approved Revised Vegetation Management Plan and Revised Wallum Froglet Plan of Management prior to issue of the subdivision certificate for the development.

- *Byron Local Environmental Plan 1988*

The proposed subdivision does not contravene any relevant development standards (Part 3) and has the necessary essential services available (cl.45).

Byron Shire Development Control Plan 2010

The proposed subdivision generally complies with all relevant controls of the Byron DCP 2010.

Likely impacts of the development

The proposal will not have a significantly adverse impact on the natural environment of the locality. The proposal considers and proposes management actions to ensure the preservation and longevity of vulnerable species on the subject site. In this regard, the Revised Vegetation Management Plan, Revised Wallum Froglet Management Plan and detailed engineering design allow for the preservation and creation of habitat for the Wallum Froglet. Proposed tree removal is balanced by dedication of land to Council as public reserve for environmental conservation and restoration, including replacement of Koala habitat trees at a 2:1 ratio. Council's Environmental Health Officer and Development Engineer have considered the impact of the development regarding Acid Sulfate Soils and stormwater runoff into the Simpsons Creek and applied conditions as necessary.

The proposal will not have a significantly adverse impact on the built environment of the locality. The proposal will not have a detrimental social or economic impact on the locality.

The development will generate minor impacts during its construction. Conditions of consent are recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

Site suitability

The site is capable of being adequately serviced, has manageable constraints, has high ecological values and capacity for environmental enhancement and is suitable for the proposed development.

Public interest/submissions

The development application was placed on public exhibition from 21 April 2021 to 4 May 2021. Council received 13 submissions in opposition.

Most of the relevant issues raised in the submissions in opposition to the development are considered in the assessment such as permissibility, servicing, increased density, impacts on the environment/

biodiversity, revegetation/ compensatory planting, noise/amenity impacts and management of bush fire risk.

Despite submitter hesitancy surrounding the proposal, concerns have been addressed through environmental management, traffic management, supply of infrastructure and review of the proposal by the RFS. The proposal will not be contrary to public interest.

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

History

Concept Plan Approval (CPA)

The Minister for Planning and Infrastructure granted Concept Plan Approval 05_0091 pursuant to Section 75O of the *Environmental Planning and Assessment Act 1979* (EP&A Act) over the subject site on 9 July 2013. The Concept Plan Approval (CPA) was for the residential subdivision of the land including:

- residential subdivision (Conditions B1 and B2 of the consent involve a reduction in the number of lots shown in the lot layout plan to preserve vegetation and Wallum froglet habitat);
- road and pedestrian traffic routes;
- rehabilitation of conservation areas;
- dedication of public reserves;
- stormwater management, and
- bulk earthworks.

The CPA requires that detailed project approval is to be obtained under Part 4 or Part 5 of the EP&A Act as applicable. Conditions of the CPA relate to various matters including:

- stormwater management,
- flooding,
- bushfire,
- domestic animals,
- traffic,
- access, and
- vegetation management.

Also approved as part of the Concept Plan Approval (CPA) was the proponent's Statement of Commitments. These commitments primarily contain matters that are to be addressed as conditions of consent as well as matters which require further design detail as part of the construction certificate, rather than matters to be addressed as part of the development application.

Stage 1A Subdivision Approval

A development application under the CPA for approval of the first stage of the subdivision was lodged on 3 June 2016 and approved on 22 September 2017 (DA 10.2016.337.1). The Stage 1A subdivision created 12 residential lots and 1 residual lot. The area to be developed under Stage 1A was limited to the area capable of being developed without the need to rely on the upgrading of drainage infrastructure on the allotment adjoining to the south. Stage 1A is an area of 31.26ha at the northeast of the CPA area. Various conditions of the CPA were addressed in the Stage 1A development application.

Description of the proposed development

The development application seeks consent for staged subdivision to create One Hundred and Twenty Seven (127) Lots comprising of One Hundred and Twenty three (123) Residential Lots, Three (3) Medium Density Lots, and One (1) Public Reserve, together with associated vegetation management works (tree removal and compensatory planting), Earthworks and Construction of Infrastructure.

The development as originally lodged was proposed to be undertaken in three (3) stages, and was amended throughout assessment to be undertaken in five (5) stages as depicted in the image below, with an additional two stages at the start of the process being Early Stage 1 Ecological Rehabilitation Works to Lot 324 and 521 and Early Stage 2 Bulk Earthworks for Civil Stages 1, 2 and 3. Refer Figure 1.

Lots to be created predominantly vary between 450m² and 800m², with three (3) medium density housing allotments proposed under Stage 1 with an average area of 2,500m².

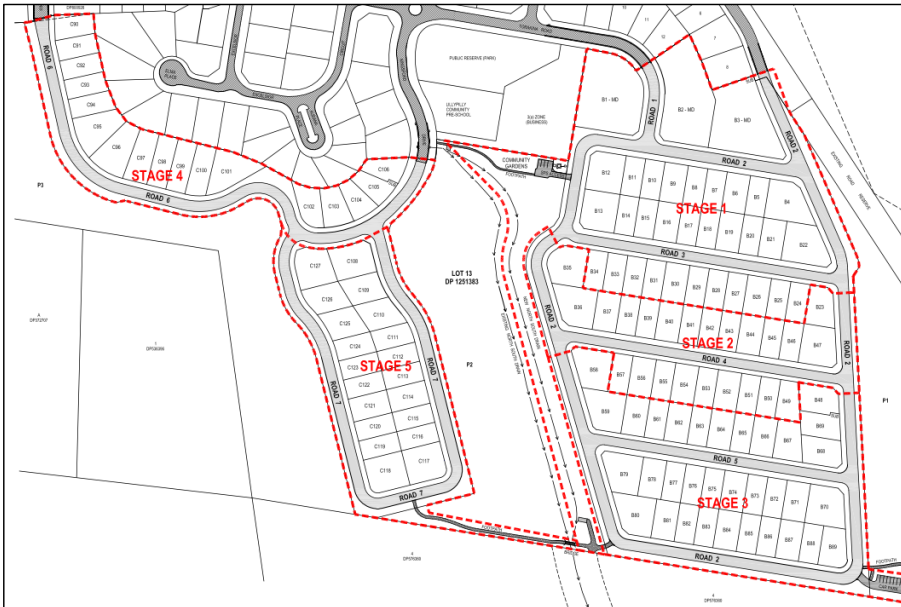


Figure 1 Staging Plan (Source: Bayside Brunswick Pty Ltd)

Subdivision works and subject site preparation

To facilitate the development, site preparation work is required including site scraping and minor fill to create swales and habitat conservation and restoration for the Wallum Froglet. Typical fill depths across the subject site range from 200mm – 600mm, with the average fill across the site being 450mm.

Public reserves and Voluntary Planning Agreement:

As part of the proposal, Lots P1 – P4 are to be created as Public reserves for the purpose of conservation in accordance with the Concept Plan Approval. A Voluntary Planning Agreement (VPA) has been provided by the applicant to formalise the dedication of these allotments to Council. This includes the dedication to Council of the large north south drainage lot through the centre of the site.

Subdivision and Staging

The subdivision is to be undertaken in five (5) stages as depicted in the image above (plus an additional two stages: Early Stage 1 and 2) where the following allotments are to be created:

Stage 1	Area	Stage 1	Area	Stage 2	Area	Stage 2	Area
Lot B1	2,685 m ²	Lot B18	450 m ²	Lot B23	605 m ²	Lot B52	540 m ²
Lot B2	2,715 m ²	Lot B19	540 m ²	Lot B35	810 m ²	Lot B53	450 m ²
Lot B3	2400 m ²	Lot B20	450 m ²	Lot B36	860 m ²	Lot B54	540 m ²
Lot B4	930 m ²	Lot B21	540 m ²	Lot B37	540 m ²	Lot B55	450 m ²
Lot B5	450 m ²	Lot B22	955 m ²	Lot B38	450 m ²	Lot B56	540 m ²
Lot B6	540 m ²	Lot B24	450 m ²	Lot B39	450 m ²	Lot B57	450 m ²
Lot B7	450 m ²	Lot B25	450 m ²	Lot B40	540 m ²		
Lot B8	450 m ²	Lot B26	540 m ²	Lot B41	450 m ²		
Lot B9	540 m ²	Lot B27	450 m ²	Lot B42	450 m ²		
Lot B10	450 m ²	Lot B28	450 m ²	Lot B43	450 m ²		
Lot B11	450 m ²	Lot B29	450 m ²	Lot B44	450 m ²		
Lot B12	800 m ²	Lot B30	540 m ²	Lot B45	450 m ²		

Lot B13	805 m ²
Lot B14	450 m ²
Lot B15	450 m ²
Lot B16	540 m ²
Lot B17	450 m ²

Lot B31	450 m ²
Lot B32	450 m ²
Lot B33	450 m ²
Lot B34	450 m ²

Lot B46	540 m ²
Lot B47	450 m ²
Lot B49	505 m ²
Lot B50	450 m ²
Lot B51	450 m ²

Stage 3	Area
Lot B48	620 m ²
Lot B58	800 m ²
Lot B59	830 m ²
Lot B60	540 m ²
Lot B61	450 m ²
Lot B62	540 m ²
Lot B63	450 m ²
Lot B64	540 m ²
Lot B65	450 m ²
Lot B66	540 m ²
Lot B67	605 m ²
Lot B68	635 m ²
Lot B69	535 m ²
Lot B70	845 m ²
Lot B71	540 m ²
Lot B72	450 m ²
Lot B73	450 m ²

Stage 3	Area
Lot B74	540 m ²
Lot B75	450 m ²
Lot B76	450 m ²
Lot B77	450 m ²
Lot B78	540 m ²
Lot B79	800 m ²
Lot B80	830 m ²
Lot B81	540 m ²
Lot B82	450 m ²
Lot B83	450 m ²
Lot B84	540 m ²
Lot B85	450 m ²
Lot B86	450 m ²
Lot B87	540 m ²
Lot B88	450 m ²
Lot B89	580 m ²

Stage 4	Area
Lot C90	524 m ²
Lot C91	479 m ²
Lot C92	464 m ²
Lot C93	469 m ²
Lot C94	501 m ²
Lot C95	842 m ²
Lot C96	867 m ²
Lot C97	680 m ²
Lot C98	600 m ²
Lot C99	600 m ²
Lot C100	600 m ²
Lot C101	854 m ²
Lot C102	548 m ²
Lot C103	450 m ²
Lot C104	506 m ²
Lot C105	524 m ²
Lot C106	553 m ²
Lot C108	800 m ²
Lot C109	450 m ²
Lot C110	540 m ²
Lot C111	540 m ²

Stage 5	Area
Lot C112	450 m ²
Lot C113	450 m ²
Lot C113	450 m ²
Lot C114	540 m ²
Lot C115	450 m ²
Lot C116	450 m ²
Lot C117	800 m ²
Lot C118	800 m ²
Lot C119	450 m ²
Lot C120	450 m ²
Lot C121	540 m ²
Lot C122	450 m ²
Lot C123	450 m ²
Lot C124	540 m ²
Lot C125	540 m ²
Lot C126	567 m ²
Lot C127	800 m ²
P1	30.3ha
P2	32.25ha
P3	20.5ha
P4	10.24ha

Constraints management (stormwater, Wallum Froglet, ASS etc.):

The land is identified as flood liable, bushfire prone and contains Acid Sulfate Soils and areas of Wallum Froglet habitat.

Detailed stormwater management planning has been undertaken using a combination of 'at-source' (rainwater tanks) and 'end-of-line' (bulk stormwater) management controls. The stormwater design provides for runoff to be directed via bio-retention swales at the perimeter of proposed roads and a central swale to culminate in drainage of the land to the Simpsons Creek at the south. The submitted Stormwater Management Plan resolves to ensure that each allotment is above the designated Flood Planning level.

A Bushfire Assessment Report accompanies the proposal which was reviewed by the Rural Fire Service (RFS). The RFS provided General Terms of Approval.

A report submitted by the applicant identifies that, despite numerous on-site tests, Acid Sulfate Soils have not been detected at the site. Notwithstanding, the report provides recommendations for monitoring during site excavation and preparation, and specifies action to create and implement a remediation plan should they be identified.

An extensive Revised Wallum Froglet Management Plan accompanies the application with key habitat areas either included into the design (i.e. retained habitat) and/or incorporated into the design (i.e. created habitat).

Vegetation Management Plan:

A Revised Vegetation Management Plan (VMP) has been prepared for the development to retain consolidated vegetation communities and re-establish degraded areas of vegetation outside of the development footprint and within four (4) designated management zones. Management zones 2 – 4 will

be dedicated to Council at registration of the subdivision plan, with Management zone 1 to be retained in private ownership.

Description of the site

The subject site is 30.26 hectares in area and is located at the south of the Bayside Estate in Brunswick Heads.

The site has a frontage to Simpsons Creek at the east, adjoins unimproved rural bushland to the south, a rural lifestyle holding at the west containing a dwelling house and ancillary structures, the Bayside Residential Estate at the north and is traversed by a paper road (Omega Circuit) through the centre of the allotment.

The subject site is currently devoid of improvements and has frontages to Kingsford Drive, Omega Circuit and Torakina Road (refer to Figure 2 below). These roads were constructed as part of Bayside Brunswick Stage 1 and terminate at the boundary of the site. An existing road reserve divides the allotment into two parts. The site is located on a flat sandy plain with surface levels in the approximate range of RL3.0m to RL5.9m.

The eastern portion of the site contains dense vegetation including communities of tall wet sclerophyll forest and State significant coastal wetlands. The western end of the allotment also contains stands of existing trees and vegetation. The central portion of the site has been substantially cleared and is dominated by low open heath vegetation communities with existing trees scattered throughout.

The site borders Simpsons Creek to the east which flows north and generally parallel to the coast. The majority of the site drains to the south along an existing open drain which flows into Everitts Creek and ultimately Simpsons Creek. On the site side of Simpsons Creek is the Tyagarah Nature Reserve. Simpsons Creek in this location forms part of the Cape Byron Marine Park.

Further information requests

The development application was received by Council on 7 September 2021. Council requested further information from the applicant on 16 August 2021 following a briefing of the Northern Regional Planning Panel on 28 July 2021. The applicant responded to the further information request on 21 October 2021 which included an amended proposal. A further briefing was provided by Council to the Northern Regional Planning Panel on 20 April 2022. The applicant was advised by Council of issues with the application on several occasions during the assessment. The applicant provided further information and amended plans to address identified issues a number of times with the most recent information provided on 13 March 2023 addressing stormwater matters.

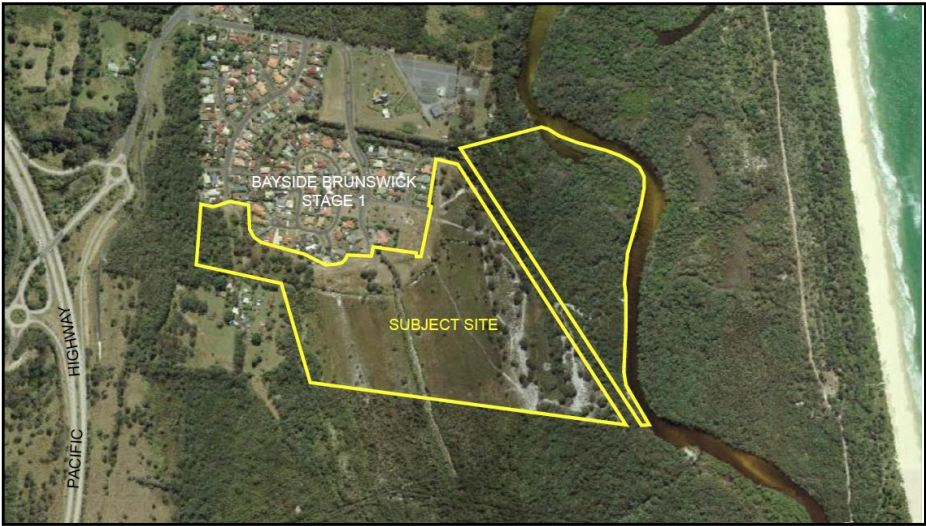


Figure 2 Aerial photo with concept approval area identified as "subject site"



Figure 3 Aerial photo with land zoning overlay. Subject site identified by blue polygon (Nearmaps)

Land is legally described	LOT 13 DP 1251383
Property address	15 Torakina Road BRUNSWICK HEADS
Land is zoned:	2(a) Residential Zone , 7(a) Wetland Zone and 7(b) Coastal Habitat Zone (refer Figure 3 above)

Land area is:	30.26 ha	
Property is constrained by:	<ul style="list-style-type: none"> • Flood Liable Land • Bushfire prone land • Acid Sulfate Soils - Class 3 (and small areas of Class 1 and 2) • High Environmental Value vegetation (Wallum sand heaths, coastal swamp forests, coastal heath swamps, coastal dune dry sclerophyll forests, saltmarshes, mangrove swamps) • Powerlines • Coastal wetlands buffer 	
	Is a BDAR required due to the location of the proposed development?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Are there any easements in favour of Council affecting the subject site? There is a right of way at the south-eastern end of the site which forms a walkway to the coast.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Is there a Vegetation Management Plan which might affect the proposal?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Is there a Voluntary Planning Agreement which might affect the proposal?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

A site inspection was carried out with Panel members on 21 February 2023. [Click here to enter a date.](#)



Photo 1 – Eastern half of the subject site to be developed for residential lots



Photo 2 – Western half of the subject site to be developed for residential lots



Photo 3 – Adjacent emergency flood housing in Torakina Road



Photo 4 – Adjacent child care facility in Kingsford Drive



Photo 5 – Residential housing to the north of the subject site in Torakina Road



Photo 6 – Residual environmental land to the east of residential lots in Stages 1-3



Photo 7 – Existing main drain which bisects the subject site generally in a north south direction



Photo 8 – Adjacent residential development to the north of the subject site in Omega Court from the initial stage (13 lot subdivision) as approved under the Concept Plan

2. SUMMARY OF REFERRALS

Referral	Issue
Environmental Health Officer / Natural Resource Planner	Acid sulfate soils, SEPP (Resilience and Harzards) 2021, mosquito habitat management, Wallum frog have been assessed by Council's EHO who has no objection to the proposal subject to conditions. Refer to Doc #A2021/36948.
Development Engineer	Stormwater management (bioretention swales & infiltration), traffic and access/egress, flood liable land, geotechnical & hydrologic (groundwater), bulk earthworks, and civil infrastructure design have been assessed by Council's Development Engineer who has no objections subject to conditions. Refer to Doc #A2021/36949.
S64 / Systems Planning Officer	Water Supply, Sewer and Bulk Water have been assessed by Council's ET Engineer, who has no objections subject to conditions. Refer to Doc #A2021/36953.
S94 / Contributions Officer	No objections subject to conditions. Section 7.11 developer contributions and Section 64 Levies will be payable prior to the issue of a Construction / Subdivision Certificate. Refer to Doc #A2021/36955.
State Agencies	
Referral	Issue
Rural Fire Service (100B)	No objections subject to conditions. Refer to Doc #E2021/155203.

Referral	Issue
Department of Planning & Environment	A S34A(3) Certificate has been signed by DPE, as discussed elsewhere in this report.
Essential Energy	No objections subject to conditions. Refer to Doc #E2022/22662.
Department of Primary Industries – Office of Water/ NRAR	NRAR has advised an approval from them is not required, however have noted: 1.The main drain comes up on the NSW water hydroline mapping plus the footpath to the east also is in effect work up to Simpsons Creek. 2.The applicant has provided detail that the development will impact on the watertable. Conditions of consent are applied accordingly.
Bundjalung of Byron Bay Corporation (Arakwal)	Site officers from Arakwal met on site with Council. Conditions of consent have been applied to the subdivision with regard to protection of Aboriginal Cultural Heritage.
Tweed Byron Aboriginal Land Council	Site officers from the Land Council met on site with Council. Conditions of consent have been applied to the subdivision with regard to protection of Aboriginal Cultural Heritage.

2.1 Section 5AA - Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994

On the 25 August 2017 the *Environmental Planning and Assessment Act 1979* was amended to repeal Section 5A and introduced Section 5AA. Section 5AA 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.

It is noted that **Biodiversity Conservation (Savings and Transitional) Regulation 2017** Clause 28 states:

- 28 Former planning provisions continue to apply to pending or interim planning applications**
- (1) *The former planning provisions continue to apply (and Part 7 of the new Act does not apply) to the determination of a pending or interim planning application.*
- (2) *However, Part 7 of the new Act applies to the determination of a pending or interim planning application referred to in paragraph (b), (c) or (d) of the definition of pending or interim planning application in clause 27 (1) if the applicant or proponent and the planning approval body for the application agree in writing that Part 7 of the new Act is to apply to the determination of the application instead of the former planning provisions.*

In accordance with Clause 28 the former planning provisions continue to apply and form the basis for the assessment for this application.

DPE has provided a Section 34A(3) Certificate dated 30 March 2023 (refer copy of S34A(3) certificate at Figure 4 below). This certifies that:

- the proposed development is part of a Concept Plan Approval for which the biodiversity impacts of the proposed development have been satisfactorily assessed before 25 August 2017, and
- that conservation measures to offset the residual impact of the proposed development on biodiversity values after the measures required to be taken to avoid or minimise those impacts have been secured into the future.

**ORDER PURSUANT TO CLAUSE 34A(3) OF THE BIODIVERSITY
CONSERVATION (SAVINGS AND TRANSITIONAL) REGULATION 2017**

I, **Anthea Sargeant**, Executive Director of Key Sites and Regional Assessments within the Development Assessment Division, Department of Planning, Industry and Environment, certify under clause 34A(3) of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*, that:

- a) the proposed development (the *proposed development*) is part of a concept plan approval (the *concept plan approval*) for which the biodiversity impacts of the proposed development have been satisfactorily assessed before 25 August 2017, and
- b) that conservation measures to offset the residual impact of the proposed development on biodiversity values after the measures required to be taken to avoid or minimise those impacts have been secured into the future.

Proposed development is only certified by this order where the development for which a development application is made, or will be made, in accordance with the concept plan approval.

For the purposes of this order:

- 1) the *proposed development* comprises BAYSIDE BRUNSWICK RESIDENTIAL SUBDIVISION development on land identified on the *Proposed Subdivision Lot Layout and Proposed Tree Removal Plan*, dated 07/12/2012, being Appendix A of the *Preferred Project Report and Revised Statement of Commitments*, prepared by Jim Glazebrook & Associates Pty Ltd, dated December 2012 as extracted in the attached map and as identified at SCHEDULE 1 of Concept Approval MP 05_0091 (as amended).
- 2) the *concept plan approval* is all of the documents listed at SCHEDULE 2, PART A – TERMS OF CONCEPT PLAN APPROVAL, CONDITION NUMBER A2 of Concept Approval MP 05_0091 (as amended), as at the date of this order.
- 3) *development application* has the same meaning as in clause 34A of the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*.



30/03/2023

Anthea Sargeant, Delegate
Executive Director
Key Sites and Regional Assessments
Department of Planning and Environment

Date

Figure 4 Section 34A(3) Certificate issued by DPE

2.2 Section 5A - Significant effect on threatened species, populations or ecological communities, or their habitats

Three Threatened Ecological Communities (Swamp Sclerophyll Forest, Swamp Oak Floodplain Forest and Saltmarsh) site and one threatened flora species (Pin Nodding Orchid (*Geodorum densiflorum*)) have been identified on the subject site.

The Revised Vegetation Management Plan (VMP) prepared by Australian Wetlands Consulting Pty Ltd aims to retain consolidated vegetation communities, re-establish degraded areas of vegetation outside

of the development footprint within designated Management Zones and thereby improve threatened species habitat.

Threatened species habitat directly affected by the development include the Wallum Froglet, Koala and Glossy Black-cockatoo. The VMP incorporates compensation measures to mitigate adverse impacts to the Glossy Black-cockatoo and Koala. The proposed development requires the removal of 27 of the primary Koala food tree, Swamp Mahogany. These trees will be offset by the planting of 54 Swamp Mahogany (a 2:1 ratio) as part of restoration works. A total of 38 food trees for the Glossy Black-Cockatoo (Black She-Oak *A. littoralis*) will require removal. Compensatory planting of 76 Black She-Oak will be undertaken (a 2:1 ratio).

Within the VMP, four broad Management Zones have been identified at the site. Management Zones total approximately 17 ha and comprise approximately 57% of the site. Various management actions are prescribed within each zone with the aim of restoring existing vegetation/habitat and re-establishing vegetation within formerly cleared areas. Management actions have been based on consideration of several factors including:

- Existing threats to vegetation and mitigation measures to reduce these threats
- Existing vegetation community
- Existing seed banks and ability to utilise the existing seed bank
- Threatened species habitat
- Topography and landform
- Flooding and hydroperiod.

On this basis a range of general actions are prescribed including fencing, weed control and assisted regeneration by ripping and planting.

Compensatory measures for the Wallum Froglet are provided in the Revised Wallum Froglet Management Plan. Development of the site will result in the loss of 1.2 ha of Wallum Froglet habitat within shallow swales in the slashed heathland community and the connecting eastern and western drains. The lost habitat areas are typically in isolated ribbons within existing swales and depressions which will be improved through consolidation of much larger areas of created and retained habitat incorporating foraging and breeding habitat features.

There will be 2.6 ha of Wallum Froglet habitat retained, with a further 1.9 ha of habitat created/restored. Habitat to be retained comprises some good quality and some degraded habitat due to impacts including slashing and motorbikes. Degraded habitat will be restored and additional habitat areas will be created.

2.3 Concept Plan Approval - Schedule 6A Transitional arrangements - repeal of Part 3A

Part 3A Concept Plan Approval has been issued over the subject site by a delegate for the Minister for Planning. Schedule 6A Transitional arrangements - repeal of Part 3A are applicable as follows. Following is an assessment of the proposal against the Concept Plan Approval:

Part A – Terms of the Concept Plan Approval

Project in accordance with documents and plans

A2 *The proponent shall carry out the concept plan and all related future applications generally in accordance with the:*

- Environmental Assessment: Concept Plan MP05_0091 Environmental Assessment (Subdivision of Lot 1 DP 871039 Bayside Way, Brunswick Heads "Bayside Brunswick") prepared by Land Partners and dated 18 August 2011;*
- Preferred Project Report and Statement of Commitments: Concept Plan MP05_0091 Bayside Brunswick, residential Subdivision, Brunswick Heads prepared for Codlea Pty Ltd by Jim Glazebrook and Associates Pty Ltd and dated December 2012;*

- c) drawings listed in the following table:
except for
- 1) any modifications which may be necessary for the purposes of compliance with the BCA and any Australian Standard incorporated in the BCA; and
 - 2) otherwise provided by the modifications and further assessment requirements of this approval.

Inconsistencies

- A3 In the event of any inconsistency between:
- a) the terms of this approval and the Statement of Commitments (at Schedule 3), the terms of this approval prevail;
 - b) the terms of this approval and the drawings/documents referred to in A2, the terms of this approval prevail; and
 - c) any drawing/document listed in A2 and any other drawing/document listed in A2, the most recent drawing/document shall prevail to the extent of the inconsistency.

Comment: The proposed subdivision and associated works are considered to be generally consistent with the Concept Plan Approval.

Part B – Modifications to the Concept Plan

Subdivision layout

- B1 Proposed Lots B151 to B155 are not approved and this land is to remain vegetated, including the retention of trees identified on Drawing LM080082-DR20 Issue H. This land should either be incorporated into lots B146 or B156, become a public reserve, or be consolidated in to one lot.
- B2 The number and location of lots between proposed roads 5 and 9 are not approved and must be redesigned to be consistent with the outcomes required under modification B4.

Comment: Lots B151 to B155 have been incorporated into Lots B146 and B156 to become a public reserve.

Access

- B3 Road 1 is to have a minimum kerb to kerb width of 8m.

Comment: Road 1 has a kerb to kerb width of 8m.

Stormwater Management

- B4 The Stormwater Concept and associated Wallum Froglet compensatory habitat rehabilitation as described in the PPR is not approved. A revised Stormwater Concept for the project must be prepared by a suitably qualified person in consultation with council to achieve the following objectives:
- a) retention of the existing north-south drain alignment with a buffer of 20m either side of the channel such that the existing wallum froglet habitat in this area is conserved and enhanced. Minor infringements of up to 5m into the buffer area can occur provided they are offset on the other side of the channel. For example, a buffer may be 15m on one side of the channel provided this is offset by increasing the other side to 25m (ie a total width of 40m plus channel width);
 - b) the buffer areas should not contain stormwater management facilities other than a stormwater treatment basin at the southern end of the channel, where required;
 - c) no significant change to the flow regimes from the pre-development regime;
 - d) stormwater management consistent with the objectives in Byron Shire Development Control Plan 2010;
 - e) urban stormwater impacts to lot B156 are minimised; and
 - f) bio-retention basins need to be accessible by Council vehicles for maintenance purposes.

The revised stormwater concept for the site is to be submitted to and approved by the Director-General prior to the lodgement of the first development application.

Note: An alternative Stormwater Concept has shown that bio-filtration systems with an area of approximately 2,452m² between Roads 5 and 9 and located in other strategic locations across the site can achieve the above objectives. The location of the bio-filtration systems is indicative only and can be adapted to ensure modification B4 a) is achieved.

Comment: Doc. No. E2014/77126 – Council Conditional Approval. In response to the second amended stormwater concept plan, Council noted the revised concept plans are generally consistent with its letter dated 10 February 2014 (i.e. Doc No. E2014/65847).

Doc No. E2015/42107 - DoP Conditional Approval. The DoP gave approval to the above second Amended Stormwater Concept.

Public reserves

B5 *The existing north-south drain alignment and buffer (as determined under modification B4 of this approval) is to become a public reserve.*

B6 *The Asset Protection Zone for lots along Road 3 is to be contained wholly within the residential lots and the road reserve and not within the proposed P1 Reserve.*

Comment: As indicated in the submitted subdivision plans, the north-south drain alignment and buffer is to become a public reserve.

The perimeter road networks will provide the Asset Protection Zones in accordance with the Concept Plan Approval.

Earthworks

B7 *The bulk earthworks cut and fill plan as shown in drawing LM080082-DR22 of the Preferred Project Report is to be modified having regard to the revised Stormwater Concept as required by B4.*

B8 *All residential lots are to achieve a flood planning level of 4.1m AHD.*

Comment: The bulk earthworks cut and fill plan has been modified to the satisfaction of Council's Development Engineer. The development is designed to ensure allotments are created with a ground level above the Flood Planning Level. Conditions of consent are applied to require works-as-executed drawings to include 1 in 100 year flood and flood planning level extents and levels, where relevant.

Erosion and Sediment Control

B9 *The Erosion and Sediment control concept is not approved. A revised Erosion and Sediment control concept is to be prepared by a suitably qualified person in consultation with council and is to achieve the following objectives:*

- a) *retention of the existing north-south drain alignment with no erosion and sediment control infrastructure located within the channel or within 20m either side of the channel; and*
- b) *prepared in accordance with the Blue Book – Managing Urban Stormwater: Soils and Construction (Landcom, 2004)*

The revised erosion and sediment control concept is to be submitted to and approved by the Director-General prior to the lodgement of the first development application.

Comment: Council's Development Engineer has advised the applicant has submitted details to satisfy the requirements of Condition B9.

Domestic Animals

B10 *The keeping of dogs and cats (except for an assistant animal, as defined under the Commonwealth Disability Discrimination Act 1992) on the site is not approved.*

Comment: As recommended by Council's Ecologist, a condition has been included to require a Section 88B Instrument which specifies "No occupier of any lot shall keep a dog or cat, other than an assistant animal as defined in the Disability Discrimination Act 1992".

Part C – Environmental Assessment Requirements for Future Applications

Pursuant to section 75P(2)(c) of the Act the following requirements apply, as relevant, with respect to future stages of the project to be assessed under Part 4 or 5, as relevant, of the Act:

Stormwater Management

C1 *All future development applications for each development stage are to include a detailed Stormwater Management Plan based on the Stormwater Concept required by modification B4. The Stormwater Management Plan must address and outline measures based on Water Sensitive Urban Design principles which address impacts on the surrounding environment, drainage and water quality controls for the catchment, and erosion and sediment controls at construction and occupation stages.*

C2 *Each plan described in term C1 is to include a detailed design layout plan for the preferred stormwater treatment train showing location, size and key functional elements of each part of the system.*

Comment: Doc. No. E2014/77126 – Council Conditional Approval. In response to the second amended stormwater concept plan Council noted the revised concept plans are generally consistent with its letter dated 10 February 2014 (i.e. Doc No. E2014/65847).

Crown Public Road

C3 *For any development application that includes the use, obstruction or closure of the Crown road, details must be provided demonstrating how properties to the south of the site will retain legal access.*

Comment: The subdivision application does not close of the Crown Road in the eastern portion of the site and will maintain that legal access point to the property to the south. Further proposed roads 2 and 7 also adjoin the boundary of the lot the south and will also provide legal and physical access to the property to the south.

Flooding

C4 *All future development applications for each stage of development must demonstrate how they achieve a flood planning level of 4.1m AHD.*

Comment: The development is designed to ensure allotments are created with a ground level above the Flood Planning Level. Conditions of consent are applied to require works-as-executed drawings to include 1 in 100 year flood and flood planning level extents and levels, where relevant.

Bushfire

C5 *All future development applications must include a detailed bushfire hazard assessment prepared by a suitably qualified person, in consultation with the NSW Rural Fire Service (RFS). This assessment must take into consideration the recommendations in the updated Bushfire Hazard Assessment prepared by BushfireSafe (Aust) Pty Ltd, dated November 2012 and submitted as Appendix F of the PPR, and be prepared in accordance with the following:*

- a) *Planning for Bushfire Protection 2006 (RFS);*
- b) *the modifications to the project described under Part B of this approval; and*

- c) *all asset protection zones are to be clearly identified on the plans and all affected lots are to be encumbered to this effect with a section 88B instrument under the NSW Conveyancing Act 1919.*

Comment: The application was accompanied by a Bushfire Hazard Assessment (dated 31 August 2021) prepared by Bushfire Certifiers Pty Ltd. The assessment was referred to the NSW Rural Fire Service for comment pursuant to Division 4.8 of the EP&A Act 1979 and s100B of the *Rural Fires Act 1997*. The RFS has provided General Terms of Approval which form part of the conditions of consent to this application.

Vegetation Management

C6 *The proponent is to submit with the first development application, a Vegetation Management Plan to apply to the land that comprises public reserve on the site. The plan shall be prepared in consultation with OEH and council and shall include, but not be limited to:*

- a) *dimensions of the reserves;*
- b) *details of how any rehabilitation within the reserves is to occur;*
- c) *actions required to protect and improve habitat for threatened species including Koala, Glossy Black Cockatoo and Wallum Froglet as well as actions to re-establish habitat for threatened species on cleared lands;*
- d) *measures to control weeds;*
- e) *details of any fencing to protect the reserves;*
- f) *identification of timeframes and responsibilities for each action;*
- g) *bushfire management;*
- d) *measures to control public access within the reserves to minimise damage; and*
- e) *details of future management and funding arrangements for the areas and measures to be implemented for the long term protection of the areas, for example, through dedication.*

Note: *The public reserve is proposed in the eastern part of the site (P1 reserve). As a requirement of this approval the area in and around the north-south drainage channel is to also form a public reserve as well as potentially, the land referred to as lots B151 to B155.*

Comment: A Revised Vegetation Management Plan (VMP) dated November 2022 was submitted to Council. A condition of consent requires that an amended VMP be submitted to Council for approval prior to issue of Subdivision Works Certificate – Early Stage 1. The VMP is to be prepared by a suitably qualified Ecologist. Prior to the issue of the Subdivision Works Certificate for Early Stage 2, certification by a suitably qualified ecologist is to be provided to Council, and is to be to the satisfaction of Council's ecologist, demonstrating that all establishment works for Management Zones 1 to 4 have been completed with a monitoring report submitted in accordance with the approved VMP.

A condition of consent requires an amended Wallum Froglet Management Plan (WFMP) to be submitted to Council for approval prior to the issue of the Subdivision Works Certificate. The amended WFMP must contain a review of engineering plans and be prepared by a suitably qualified ecologist and peer reviewed by a suitably qualified hydrogeologist prior to submission to Council.

Domestic Animals

C7 *Future applications must demonstrate that the keeping of dogs and cats (with the exception of assistant animals, as defined under the Commonwealth Disability Discrimination Act 1992) within the site is prohibited and that all residential lots are to be encumbered to this effect with a section 88B instrument under the NSW Conveyancing Act 1919*

Comment: At the recommendation of Council's Ecologist, a condition has been included to require a Section 88B Instrument that prohibits the keeping of cats and dogs on the land other than "assistance animals" as defined by the *Companion Animals Act 1998*.

Traffic and Access

C8 Future applications must demonstrate that the perimeter roads (being roads 1, 2, 3 and 5) are designed to minimise impacts on koalas through the use of speed limiting devices such as speed humps and chicanes.

Comment: A condition of consent is applied requiring Local Area Traffic Management Devices (LATM) to be provided in accordance with the approved plans and AUSTRROADS Guide to Road Design.

Statement of Commitments

Included as part of the Concept Plan Approval (issued by a delegate of the Minister for Planning and Infrastructure) was the proponent's Statement of Commitments. These commitments primarily contain matters that are to be addressed as conditions of consent as well as matters which require further design detail as part of the construction certificate rather than matters to be addressed as part of the development application.

A condition has been included to require the proponent honour/fulfil the commitments included in the statement. It is understood that this is already a requirement of the Concept Plan Approval but the condition is to ensure these commitments are not overlooked in the construction of this project.

3. SECTION 4.14 – BUSH FIRE PRONE LAND

Under section 4.14 of the EP&A 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'. The site is bush fire prone land. The development application was referred to the NSW Rural Fire Service, which provided General Terms of Approval which are reflected in the Recommendation of this report below.

Effect of 10/50 rule on significant vegetation

A search for the site was conducted on the Rural Fire Service site to determine the 10/50 status. The search identified the following:

"The parcel of land you have selected is not located in a designated 10/50 vegetation clearing entitlement area. You cannot use the 10/50 exemption to clear vegetation on this parcel of land. Contact your local council or Local Land Services Office regarding any clearing authorisation required."

Accordingly, the land owner may not clear vegetation in accordance with the 10/50 Vegetation Clearing Code of Practice for New South Wales as it has been identified as being wholly or partially within:



- specified Koala habitat mapped in Comprehensive Koala Plans of Management and as provided by the Department of Planning and Environment
- SEPP 14 Coastal Wetlands as mapped and provided by the Department of Planning and Environment
- 100 metres of the coastline or estuaries of New South Wales.

4. SECTION 4.15C – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

Having regard to the matters for consideration detailed in Section 4.15(1) of the *Environmental Planning & Assessment Act 1979* (EP&A Act), the following is a summary of the evaluation of the issues.

4.1 State Environmental Planning Instruments (SEPP)

Considerations	Satisfactory	Unsatisfactory
SEPP (Resilience and Hazards) 2021	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Considerations	Satisfactory	Unsatisfactory
<p>c) the surrounding coastal and built environment, and the bulk, scale and size of the proposed development have been taken into account.</p> <p>The development is designed, sited and will be managed to minimise adverse impacts as referred to above. The proposal is acceptable having regard to the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.</p> <p><u>Coastal Environment Area:</u></p>  <p><u>Coastal Environment Area:</u> The property is within the Coastal Environment Area and the proposed development is unlikely to cause an adverse impact on:</p> <ul style="list-style-type: none"> a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment, b) coastal environmental values and natural coastal processes, c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1, d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms, e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability, f) Aboriginal cultural heritage, practices and places, g) the use of the surf zone. 	<input type="checkbox"/>	<input type="checkbox"/>
<p><u>Coastal Wetlands:</u></p>  <p><u>Coastal Wetlands:</u></p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Considerations	Satisfactory	Unsatisfactory
The subject site contains Coastal Wetlands and Council is satisfied that sufficient measures have been, or will be, taken to protect, and where possible enhance, the biophysical, hydrological and ecological integrity of the coastal wetland.		
<i>SEPP (Transport and Infrastructure) 2021</i> Consideration: The subject site is traversed by Essential Energy overhead infrastructure. The proposal was referred to Essential Energy under clause 45 of the SEPP who had no objection to the development subject to conditions (see doc #E2022/22662).	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>SEPP (Biodiversity and Conservation) 2021</i> Consideration: Plantings and/or restoration works required as compensation for loss of native trees and Koala habitat are to be completed in accordance with the Revised Vegetation Management Plan (VMP). Proposed tree removal is balanced by dedication of land to Council as public reserve for environmental conservation and restoration.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<i>SEPP (Planning Systems) 2021</i> Consideration: The proposal is regionally significant development as per Schedule 7, Clause 8 Coastal subdivision as it involves subdivision of land for residential purposes into more than 100 lots, and the land is in a sensitive coastal location.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

4.2 Byron Local Environmental Plan 1988 (LEP 1988)

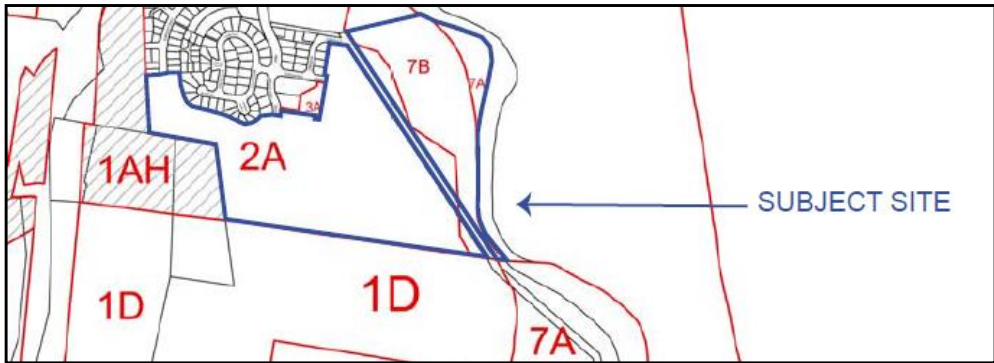


Figure 5 Zoning of the subject site within Byron LEP 1988

Byron Local Environmental Plan 1988 (BLEP 1988) is an applicable matter for consideration in the assessment of the subject development application in accordance with subsection 4.15(1) of the EP&A Act as it applies to the subject land and the proposed development. The BLEP 1988 clauses that are checked below are of relevance to the proposed development:

Part 1	<input checked="" type="checkbox"/> 1 <input checked="" type="checkbox"/> 2 <input checked="" type="checkbox"/> 2A <input checked="" type="checkbox"/> 3 <input checked="" type="checkbox"/> 4 <input checked="" type="checkbox"/> 5 <input checked="" type="checkbox"/> LEP 1988 Dictionary <input checked="" type="checkbox"/> 7
Part 2	<input checked="" type="checkbox"/> 8 <input checked="" type="checkbox"/> 9
Part 3	<input checked="" type="checkbox"/> 10 <input type="checkbox"/> 11 <input type="checkbox"/> 11A <input type="checkbox"/> 11B <input type="checkbox"/> 12 <input type="checkbox"/> 13 <input type="checkbox"/> 14 <input type="checkbox"/> 15 <input type="checkbox"/> 16 <input type="checkbox"/> 17 <input type="checkbox"/> 17A <input type="checkbox"/> 17B <input type="checkbox"/> 18 <input type="checkbox"/> 19 <input type="checkbox"/> 22 <input checked="" type="checkbox"/> 23 <input checked="" type="checkbox"/> 24 <input type="checkbox"/> 25 <input type="checkbox"/> 27 <input type="checkbox"/> 29 <input type="checkbox"/> 29AA <input type="checkbox"/> 29A <input type="checkbox"/> 30 <input type="checkbox"/> 31 <input type="checkbox"/> 32 <input type="checkbox"/> 33 <input type="checkbox"/> 34 <input type="checkbox"/> 35 <input checked="" type="checkbox"/> 36 <input type="checkbox"/> 37 <input type="checkbox"/> 38 <input type="checkbox"/> 38A <input type="checkbox"/> 38B <input type="checkbox"/> 39 <input type="checkbox"/> 39A <input type="checkbox"/> 39B <input type="checkbox"/> 39C <input type="checkbox"/> 40 <input type="checkbox"/> 41 <input type="checkbox"/> 42 <input type="checkbox"/> 43 <input type="checkbox"/> 44 <input checked="" type="checkbox"/> 45 <input type="checkbox"/> 46 <input type="checkbox"/> 47 <input type="checkbox"/> 47AA <input type="checkbox"/> 47A <input type="checkbox"/> 48 <input type="checkbox"/> 49 <input type="checkbox"/> 51 <input checked="" type="checkbox"/> 52 <input type="checkbox"/> 53 <input type="checkbox"/> 54 <input type="checkbox"/> 55 <input type="checkbox"/> 56 <input type="checkbox"/> 57 <input type="checkbox"/> 58 <input type="checkbox"/> 59 <input type="checkbox"/> 60 <input type="checkbox"/> 61 <input type="checkbox"/> 62 <input checked="" type="checkbox"/> 63 <input type="checkbox"/> 64A <input type="checkbox"/> 64B <input type="checkbox"/> 64C
Part 4	Not applicable – not West Byron Bay site

In accordance with BLEP 1988 clauses 5, 8 and 9:

- (a) The proposed development is defined in the EP&A Act as “subdivision of land”;
- (b) The land is within the 2(a) Residential Zone, 7(a) Wetland Zone and 7(b) Coastal Habitat Zone according to the map under BLEP 1988;
- (c) The proposed development is permitted with consent; and
- (d) The proposed development is consistent with the relevant objectives of the Zone for the following reasons:

Zone Objectives – 2(a) Residential Zone	Consideration
(a) to make provision for certain suitable lands, both in existing urban areas and new release areas, to be used for the purposes of housing and associated neighbourhood facilities of high amenity and accessibility	The subject site has been issued Concept Approval for subdivision to create residential allotments. The subject application aligns with the design and conditions of the Concept Approval and will provide additional housing and associated neighbourhood facilities in an accessible manner that facilitates a high level of residential amenity.
(b) to encourage a range of housing types in appropriate locations,	The proposed subdivision includes diversity in lot sizes capable of facilitating a range of housing types. In this regard, three (3) medium density housing allotments are proposed within Stage 1, and each stage includes varied lot sizes between 450m ² and 800m ² which are capable of accommodating individual dwelling houses, secondary dwellings and dual occupancies.
(c) to enable development for purposes other than residential purposes only if it is compatible with the character of the living area and has a domestic scale and character, and	Medium density housing allotments are proposed which facilitate the opportunity for future mixed use development. The subject application relates only to subdivision and accordingly the use of allotments is not considered.
(d) to control by means of a development control plan the location, form, character and density of permissible development.	The development application is responsive to development controls, and aligns with the existing Concept Approval.
The proposal is considered to demonstrate compliance with the 2(a) Residential Zone Objectives.	

Zone Objectives – 7(a) Wetland Zone	Consideration
(a) to identify all lands covered by <i>State Environmental Planning Policy No 14—Coastal Wetlands</i> ,	At the time of lodgement of this application, land within the 7(a) zone was identified under the repealed SEPP (Coastal Management) 2018. Assessment of the application against the provisions of the Resilience and Hazards SEPP has been undertaken (refer Part 4 of this report above).
(b) to identify and preserve estuaries and wetlands and allow them to continue to function as feeding and breeding areas for wildlife, shellfish and fish,	The Resilience and Hazards SEPP identifies that Simpsons Creek, adjacent to the site at the east, is a coastal wetland.
(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 the wetlands,	The proposed development does not occur within the 7(a) zone, with this portion of the allotment to be managed and regenerated under the submitted VMP as a management zone.
(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	Public works (other than revegetation and vegetation management in accordance with the VMP), environmental facilities, and development are not proposed within the 7(a) zone.
(e) to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.	This portion of the allotment is predominantly "in very good condition" (VMP, p.19), and will be managed and regenerated under the submitted VMP as a management zone.
The proposal is considered to demonstrate compliance with the 7(a) Wetland Zone Objectives.	

Zone Objectives - 7(b) Coastal Habitat Zone	Consideration
(a) to identify coastal habitats (being wetlands, heath, sedge, marshland, rainforest types, sclerophyll forest and the like) of local significance,	At the time of lodgement of this application, land within the 7(a) zone was identified under the repealed SEPP (Coastal Management) 2018. Assessment of the application against the provisions of the Resilience and Hazards SEPP has been undertaken (refer Part 4 of this report above).
(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,	The former SEPP (Coastal Management) 2018 identifies that Simpsons Creek, adjacent to the site at the east, is a coastal wetland.
(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,	The proposed development does not occur within the 7(a) zone, with this portion of the allotment to be managed and regenerated under the submitted VMP as a management zone.
(d) to enable development of public works and environmental facilities where such development	Public works (other than revegetation and vegetation management in accordance with the

would not have a significant detrimental effect on the habitat or landscape qualities of the wetland and other significant coastal habitat areas, and	VMP), environmental facilities, and development are not proposed within the 7(a) zone.
(e) to enable the careful control of noxious plants and weeds by means not likely to be significantly detrimental to the native ecosystem.	This portion of the allotment is predominantly "in very good condition" (VMP, p.19), and will be managed and regenerated under the submitted VMP as a management zone.
The proposal is considered to demonstrate compliance with the 7(b) Coastal Habitat Zone Objectives.	

Clause 10 – Subdivision Generally

The proposed development is seeking consent for the subdivision of land.

Clause 11 – Subdivision in rural areas for agriculture etc.

The land to be subdivided for residential purposes is within the 2(a) Residential Zone, which is not one of the zones listed in the table in this clause. Those parts of the subject site zoned 7(a) Wetlands Zone and 7(b) Coastal Habitat Zone are not proposed for subdivision.

Clause 24 – Development of flood liable land

The eastern and western portions of the subject site are subject to the 1:100 year flood event. Refer Figure 6 below.

Those parts of the subject site proposed for residential subdivision are not impacted by the 1:100 year flood event. The development is designed to ensure allotments are created with a ground level above the Flood Planning Level (at least 500 mm above the 1:100 year flood level). When development applications are made for development on the allotments, assessment of any potential flooding impacts will be undertaken at that time.

Commented [JK1]: Council to add site outline



Figure 6 Land subject to the 1:100 year flood event (Source: Byron Shire Council mapping)

Clause 36 – Development adjoining wetland

The residential subdivision is adjacent to land within 7(a) Wetland Zone. The proposed submission has taken into consideration the likely effects of the development on the flora and fauna of the wetland, the water table and the impacts on the wetland of draining, excavation and filling. A Vegetation Management Plan and Wallum Froglet Management Plan have been prepared for the subject site.

Having reviewed the documentation provided for the application, DPE has issued a Section 34A(3) Certificate. Council has applied conditions to the subdivision to ensure there will be no significant impacts on the land within 7(a) Wetland Zone. These include a condition requiring that a Stormwater Maintenance Management Plan is to be prepared and submitted to Council for approval for the existing north south drain bisecting the site and it is to be consistent with the Revised Wallum Froglet Management Plan.

Clause 45 – Provision of services

Council is satisfied that adequate arrangements have been made for the provision of sewerage, drainage and water services to the land. Conditions of consent are applied requiring drainage, sewerage and water mains to be extended to service all residential allotments in the subdivision.

Clause 52 – Tree preservation

Tree removal is proposed as part of the subdivision. The proposed tree removal is balanced by dedication of land to Council as public reserve for environmental conservation and restoration. Refer Section 2.2 above. The Revised VMP includes planting ratios for native and habitat. The amended VMP must be approved by Council prior to issue of a construction certificate for Early Stage 1 works.

Clause 63 – Development on land identified on the Acid Sulfate Soils Planning Map

The subject site is largely classified as Class 3 Acid Sulfate Soils with some Class 2 and Class 1 Acid Sulfate Soils in the eastern part of the site. These Class 1 and 2 areas are not part of the residential subdivision and will not be developed. The checked clauses of BLEP 1988 (above) have been taken into consideration in the assessment of the subject development application in accordance with Section 4.15 of the EP&A Act as discussed above. The proposed development complies with all clauses of LEP 1988 (in some cases subject to conditions and/or to the satisfaction of other assessing officers).

4.3 Byron Shire Development Control Plan 2010 (DCP 2010)

The following comments are provided in relation to the relevant sections of DCP 2010 that apply to the proposed development. .

Part B: Subdivision

The DCP 2010 provides minimum lot areas for urban subdivision. The minimum lot area is 600m² for a general lot and 650m² for a corner lot. While the proposed subdivision includes a number of lots below the minimum lot size, the subdivision is in accordance with the Approved Concept Plan. The proposed subdivision provides for three (3) medium density housing allotments ranging from 2,400m² to 2,715m², and includes varied lot sizes between 450m² and 800m² which are capable of accommodating individual dwelling houses, secondary dwellings and dual occupancies.

As required by the DCP 2010, the proposed subdivision provides lots which maintain an appropriate shape to accommodate a dwelling and associated development. In addition, lot design minimises impacts on the natural environment. Road widths have been assessed by Council's Development Engineer as suitable.

Appropriate footpaths and nature strips are provided for. Drainage has been the subject of ongoing discussions with the applicant and Council has reached agreement with the applicant as to an acceptable resolution of drainage issues. Conditions of consent will be applied in this regard.

Utility services are available to the subdivision. A sustainable sewage management system is provided to all lots, in accordance with Council requirements. All lots are provided with a suitable water supply.

Part C: Residential Development

The subject application relates only to residential subdivision and, accordingly, the details of how the lots are developed is not considered at the subdivision stage.

Part E: Public Art

The DCP 2010 requires the provision of public art for residential subdivision within the 2(a) zone resulting in 20 lots or greater, with an estimated project cost over \$1,000,000.

The walkway on the southern boundary of the subdivision will contain public art. Consultation with the Tweed Byron Aboriginal Land Council and Bundjalung of Byron Bay Corporation (Arakwal) is required with regard to suitable local artists to provide the art work. These requirements are included as conditions of consent.

Part F: Waste Minimisation & Management

This section of the DCP 2010 aims to facilitate sustainable waste management within the Local Government Area in a manner consistent with the principles of Ecologically Sustainable Development.

A condition of consent is applied requiring that prior to the issue of a Construction Certificate, a Site Waste Minimisation and Management Plan (SWMMP) must be submitted outlining measures to minimise and manage waste generated during demolition, construction and the ongoing operation and use of the development. The SWMMP must specify the proposed method of recycling or disposal and the waste management service provider.

Part G: Vehicle Circulation & Parking

This part of the DCP provides guidelines, controls and standards for vehicle access, circulation and parking for developments. The proposal is supported with regard to vehicle circulation and parking, subject to conditions.

The submitted Traffic Impact Assessment prepared by TTM recommends improvement measures for the overall safety and general operation of the Bayshore Drive and Tweed Street intersection. These are supported by Council's Development Engineer.

Council's Development Engineer has considered the internal road design. The internal road design addresses the requirement of 2019 Planning for Bushfire whereby 8.0m wide carriageways were adopted for all perimeter roads (Road 1, 2, 6 and 7) and 7.0m wide carriageways for non-perimeter roads (Road 3, 4 and 5). The proposed carriageway widths comply with the carriageway width requirements for Local Roads in Table D1.5 of Chapter 1 of the Northern Rivers Local Government Development Design and Construction Manual.

A manoeuvring assessment using a 14.5m rigid bus found all intersections are feasible to manoeuvre within the carriageway widths of the road. A condition is applied to identify and locate bus stops along the bus route. The bus route is intended for school buses only.

Footpaths, ramps, and pedestrian crossings are proposed to all roads including connectivity between the west and east of the development. Conditions of consent are applied to ensure connectivity is provided throughout the subdivision.

All parking is required to meet the requirements of AS2890.1:2004. Parking is proposed in the south-east corner of the development. No accessible parking is proposed. The requirement to provide accessible parking is to be addressed by way of condition.

Calming devices such as thresholds, slowpoints, speed humps, chicanes and splitter islands should be designed in accordance with the requirements of the publication AUSTRROADS Guide to Road Design. The proposal generally complies with Section D1.19 of Chapter 1 of the Northern Rivers Local Government Development Design and Construction Manual.

Part H: Landscaping

The DCP 2010 requires landscaping to be provided for residential development, however detailed landscape plans are not required to be provided with a subdivision application. Council's Environmental Health Officer has placed a condition on the subdivision requiring that prior to the issue of a Construction Certificate for each stage, a detailed landscaping plan prepared by a suitably qualified landscape architect or ecologist must be submitted and approved by Council's Ecologist. The plan must not include species that represent translocation of native plants outside their geographic range, or potential or known environmental weeds or species with potential for genetic pollution.

A further condition on the subdivision requiring that all landscaping on any part of the subject site must accord with the requirement to plant only appropriate local native species as marked on the stamped plans.

Part K: Flood Liable Lands

The eastern and western portions of the site are subject to the 1:100 year flood event. The potential for flooding of part of the site has been considered by Council's Development Engineer.

Those parts of the site proposed for residential subdivision are not impacted by the 1:100 year flood event. The development is designed to ensure allotments are created with a ground level above the Flood Planning Level (at least 500 mm above the 1:100 year flood level).

The final plan of subdivision must include the 1:100 year flood and flood planning level extents on land within or adjacent to a flood planning area. The Works-as-Executed Drawings must include the 1:100 year flood and flood planning level extents and levels, where relevant, on the site works drawings/s. When development applications are made for development on the allotments, assessment of any potential flooding impacts will be undertaken at that time.

Part N: Stormwater Management

The DCP 2010 provides controls and guidelines for stormwater management. Council's Development Engineer has advised that the Stormwater Management Plan prepared by Civiltech Engineers, and Marten & Associates did not fully demonstrate compliance with Chapter 1 of Part N of BDCP2010 due to non-compliance with the minimum channel slope specified in Northern Rivers Local Government Guidelines and AustRoads.

The slope of the channel of the new north south drain has been amended to encourage positive drainage to the basin outlet and to prevent water logging. This can be achieved by way of filling. The slope of channel of the new north south drain must provide a desirable slope of 0.5% for the channel (absolute minimum slope of 0.3%).

A full and detailed Stormwater Management Plan for the site must be provided for Council's records at the time of lodging detailed engineering plans for Subdivision Works Certificate approval.

Conditions of consent are applied for the above and additional stormwater management measures as recommended by Council's Development Engineer.

Chapter 6: Bayside Brunswick Estate

Areas of significant vegetation are to be preserved and drainage has been designed to ensure drainage patterns are not altered in the vicinity of the vegetation. The Zone 7(a) and 7(b) areas are retained as common property. A plan of management is required to be prepared for all significant vegetation and

habitat areas within zones 7(a) and 7(b). The Revised Wallum Froglet Management Plan and Revised Vegetation Management Plan have been prepared and conditions of consent require approval of these prior to Subdivision Works Certificates being issued.

Structural mass landscaping is to be implemented upon completion of site development construction activity. A condition on the subdivision requires that prior to the issue of a Construction Certificate for each stage, a detailed landscaping plan prepared by a suitably qualified landscape architect or ecologist must be submitted and approved by Council's Ecologist.

Active and passive open space is to be provided within easy walking distance of residential areas.

The primary estate roading and pedestrian movement routes have been provided generally in accordance with Map 1 (refer Figure 7 below) with some changes to ensure potential environmental impacts are minimised.

A pedestrian access is to be provided by the way of a future footbridge and walkway into and across the northern end of the Tyagarah Nature Reserve. This will enable controlled pedestrian access to the beach from the residential subdivision. A right of way is provided in the subdivision for this purpose. Public art will be incorporated into the design of the walkway.

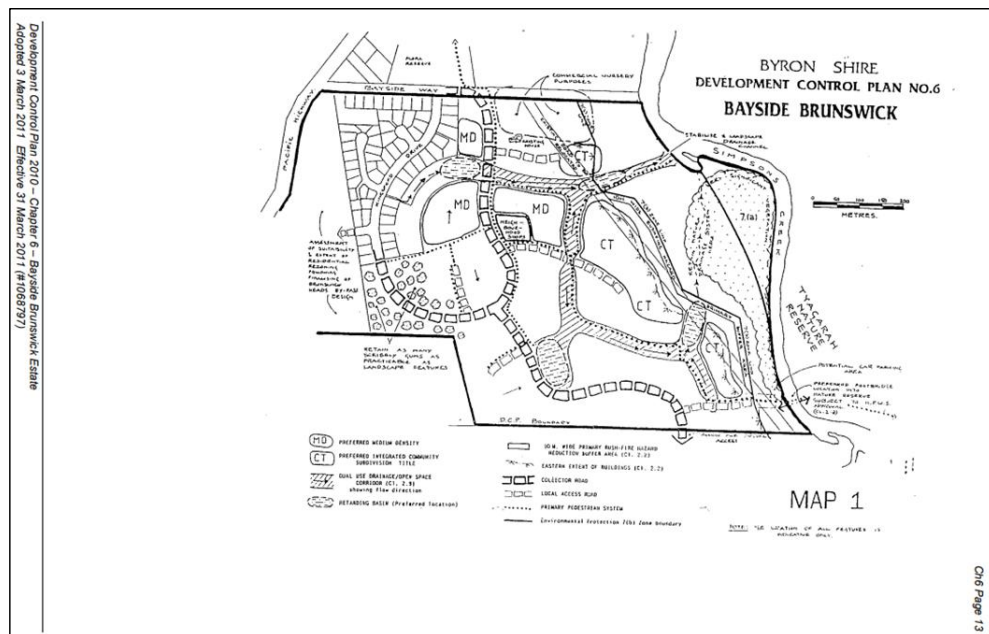


Figure 7 Map 1 – Bayside Brunswick Estate (Source: Byron DCP 2010)

4.4 Environmental Planning & Assessment Regulation 2021 Considerations

Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
61	No	N/A	N/A

62	No	N/A	N/A
63	No	N/A	N/A
64	No	N/A	N/A

4.5 The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Impact on:	Likely significant impact/s?
Natural environment	No. The proposal will not have a significantly adverse impact on the natural environment of the locality. The proposal considers and proposes management actions to ensure the preservation and longevity of vulnerable species on the subject site. In this regard, the Vegetation Management Plan, Wallum Froglet Management Plan and detailed engineering design allow for the preservation and creation of habitat for the Wallum Froglet. Proposed tree removal is balanced by dedication of land to Council as public reserve for environmental conservation and restoration. Replacement tree planting at a ratio of 2:1 is required. Council's Environmental Health Officer and Development Engineer have considered the impact of the development regarding Acid Sulfate Soils and stormwater runoff into the Simpsons Creek and are satisfied subject to conditions.
Built environment	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
Social Environment	No. The proposal will not have a detrimental social impact on the locality.
Economic impact	No. The proposal will not have a detrimental economic impact on the locality.
Construction Impacts	No. The development will generate minor impacts during its construction. Conditions of consent are recommended to control hours of work, builders waste, construction noise, installation of sedimentation and erosion control measures and the like to ameliorate such impacts.

Council Policies that are applicable to the proposed development:

Council Policy	Consideration
Management of Contaminated Land Policy	Council's Environmental Officers have reviewed a Preliminary Site Investigation (pursuant to cl4.6 of SEPP (Resilience and Hazards), Chapter 4: Remediation of Land) and resolved that the site is suitable for residential development.
Planning Agreements Policy	A Voluntary Planning Agreement (VPA) has been entered into by the applicant and Council allocating portions of the development site as Public Reserve associated with drainage, frog habitat, and open space. The planning agreement also proposes to make a monetary contribution to the ongoing maintenance and monitoring of the frog habitat on the land to be dedicated. A secondary purpose of the planning agreement is to enable the Secretary of the Department of Planning and Environment or their delegate to certify that that conservation

Council Policy	Consideration
	<p>measures subject to the previous assessment of the Part 3A concept plan approvals have been secured into the future as required by cause 34A of the Biodiversity Conservation (Savings and Transitional) Regulation 2017.</p> <p>Council has resolved on the 13 February 2023 to enter into that agreement. Conditions of consent to apply to finalise the agreement.</p>
Rainwater Tanks in Urban Areas Policy	Rainwater tanks will be required for each dwelling house constructed within the development and form part of the overarching stormwater management approach.
Water and Sewer Equivalent Tenement Policy	The proposal has been reviewed by Council's Equivalent Tenement Engineers in accordance with this policy. Conditions of consent are recommended accordingly.
Water Sensitive Urban Design Policy	The submitted Stormwater Management Plan considers and includes the principles of Water Sensitive Urban Design and has been endorsed by Council's Development Engineer.

4.6 The suitability of the site for the development

Issue	Comment
<p>Services</p> <ul style="list-style-type: none"> - Water/ Sewer/ Stormwater - Phone/ power - Access 	<ul style="list-style-type: none"> - The subject site is serviced by Council's reticulated water supply. - The site is serviced by Council's bulk sewage infrastructure. - Stormwater is proposed to be managed on the site in accordance with the submitted Stormwater Management Plan which has been endorsed by Council's Development Engineer. Conditions of consent also apply. - The site is serviced by Essential Energy infrastructure and Telecommunications. - Access to the development is available via Torakina Road.
<p>Hazards</p> <ul style="list-style-type: none"> - Flooding - ASS - Bushfire 	<ul style="list-style-type: none"> - The site is identified as flood liable land as the eastern and western parts of the site are subject to the 1:100 year flood, however the residential subdivision is not subject to the 1:100 year flood event. The development is designed to ensure allotments are created with a ground level above the Flood Planning Level (at least 500 mm above the 1:100 year flood level). Stormwater is proposed to be managed on the site in accordance with the submitted Stormwater Management Plan which has been endorsed by Council's Development Engineer.

	<ul style="list-style-type: none"> - The site is identified as containing Acid Sulfate Soils (Class 1, 2 and 3). Council's Environmental Health Officer has reviewed and endorsed the submitted Acid Sulfate Soil Management Plan. - The site is identified as bushfire prone, and the submitted Bushfire Assessment report was reviewed by the Rural Fire Service. General Terms of Approval have been provided which are included in the recommended conditions of consent.
Land Use conflicts	The proposal considers residential subdivision contiguous to an existing residential estate. Land use conflicts are not anticipated as a result of the development.

4.7 Submissions made in accordance with this Act or the regulations

The applicant carried out pre-consultation with the community prior to lodging the DA. Promedia Public Relations prepared the Community Consultation report, dated June 2021.

This report outlines the procedure and results of the community consultation program undertaken between 19 May 2021 and 2 June 2021, with an onsite information session held on Saturday 29 May 2021. The community consultation adopted for the proposal was approved by Byron Shire Council.

Local residents were notified of the opportunity to attend the information session and have their say via a number of channels, including an advertisement in the Byron Shire Echo, a signboard on site and a letterbox drop to approximately 220 residents in the local area. These materials prompted people to visit the project website www.brunswickstate.com.au, which was active during the campaign period and contained project information, FAQs and a call to action to complete a survey.

The website also contained further information about the project information session held on 29 May 2021 from 9am – 12pm, which gave the community the opportunity to visit a marquee on site to view storyboards, including a comparison of the current approved concept plan and Clarence Property's proposed masterplan. There was also the opportunity to discuss any questions or concerns directly with Clarence Property General Manager Paul Rippon, Development Manager James Fletcher and consulting town planner Damian Chapelle (of Newton Denny Chapelle). Attendees were given the option to complete a survey in hard copy at the time.

A total of 19 survey responses were collected online and in hard copy. Survey results have been analysed and reported on in full detail with the following key findings identified:

- 68.42 per cent were aware of the State Government approved current concept plan for the subject site;
- 75 per cent think Clarence Property's revised masterplan delivers improved social and environmental outcomes for the community;
- 77.78 per cent were aware of the Wallum Froglet Habitat located on the site;
- 68.75 per cent think Clarence Property's revised masterplan reduces any future development impact on the Wallum Froglet Habitat;
- 64.71 per cent think Clarence Property's proposed masterplan integrates well with the existing residential community;
- 88.89 per cent think Clarence Property's development proposal is an improvement upon the previously approved concept plans.

The development application was publicly exhibited under Level 3 notification in accordance with the Byron Community Participation Plan 2019. Thirteen (13) submissions of objection and no (0) submissions of support were received.

The 13 submissions of objection made on the development application are discussed hereafter:

Submission concern:	Officer Comment:
Amenity, overshadowing and privacy due to proximity to Medium density housing lots.	The submitter's land is at the north of the medium density housing lots and will not be affected by overshadowing. Privacy for surrounding allotments will be considered through the assessment of an application on the medium density allotments.
Infrastructure, tree removal and impact on koala community, density (re: 131 lots, medium density housing lots)	Council's Development and Equivalent Tenement Engineers have reviewed and endorsed the proposal with regard to infrastructure capacity, with relevant conditions imposed accordingly. Greater than half of the subject site will be transferred to Council as public reserve and/or for habitat restoration. A detailed Vegetation Management Plan prescribes management actions over four key management zones which contain areas of the site for habitat restoration. The density of the development has been approved by the existing Concept Approval, which the proposal aligns with. Further, the development is predominantly consistent with the concept plan titled Map 1 of Chapter 6 – Bayside Brunswick of the Byron DCP 1988 which defines areas of medium density housing.
Tweed Byron Local Aboriginal Land Council should be consulted and Aboriginal cultural heritage requires further consideration.	The application was notified to two Land Councils. Site officers from the two Land Councils met on site with Council. Conditions of consent require a Cultural Heritage Site Inspection Plan to be prepared and approved by Council prior to the issue of the Subdivision Works Certificate. This is to incorporate site inspection protocols for officers from the Tweed Byron Aboriginal Land Council and/or the Arakwal Corporation to be engaged for the Early Stage 2 Bulk Earthworks and Civil Stages 1 to 5 to monitor the site in relation to the protection of Aboriginal Cultural items and objects that may be disturbed during the construction of the development. The plan to be prepared by a suitably qualified archaeologist and is to include a letter of support or certification from the Land Council or the Arakwal Corporation.
Already degraded road conditions at Torakina Road	Conditions of consent are recommended by Council's Development Engineer to ensure road conditions for the subdivision, including Torakina Road, are suitable for the proposed development.
Additional car parking should be provided as medium density housing lots are proposed adjacent to approved boarding house development.	Car parking for development is provided at the stage of development application (or CDC/CC). Council's DCP specifies the requirement for provision of on-site car parking.
Expected on-street parking causing danger to children and pedestrians.	As above. Additionally, traffic control measures are proposed throughout the subdivision to mitigate speeds over 40km/h.
Orientation of proposed allotments does not optimise solar access.	Allotments proposed to be created enable sufficient solar access for future development. Building design can facilitate passive design to maximise solar access.

4.8 Public interest

The proposed development is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

5. DEVELOPER CONTRIBUTIONS

5.1 Water & Sewer Levies

Section 64 levies will be payable. Council requires payment of ET contributions prior to the issue of a Construction / Subdivision Certificate.

5.2 Developer Contributions

Council requires payment of Section 7.11 Developer Contributions prior to the issue of a Construction / Subdivision Certificate.

6. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

Disclosure details	Response
Has a Disclosure Statement been received in relation to this application? If Yes, Provide Disclosure Statement register reference: 91.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed.	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>

7. CONCLUSION

The DA proposes staged subdivision to create One Hundred and Twenty Seven (127) Lots comprising of One Hundred and Twenty three (123) Residential Lots, Three (3) Medium Density Lots, and One (1) Public Reserve, together with associated vegetation management works (tree removal and compensatory planting), Earthworks and Construction of Infrastructure.

The proposed development is satisfactory having regard to the relevant environmental planning instruments and planning controls applicable to the subject site. The proposal raises no significant issues in terms of environmental impacts which cannot be managed and the site is considered suitable for the development. The application appropriately addresses the relevant constraints applying to the site, and is recommended for approval subject to the attached conditions of consent.