

DETERMINATION AND STATEMENT OF REASONS
NORTHERN REGIONAL PLANNING PANEL

DATE OF DETERMINATION	27 May 2024
DATE OF PANEL DECISION	25 May 2024
DATE OF PANEL BRIEFING	22 May 2024
PANEL MEMBERS	Dianne Leeson (Chair), Kim Johnston, Joe Vescio and Ian Pickles
APOLOGIES	Michael Wright
DECLARATIONS OF INTEREST	<p>Stephen Gow declared a conflict of interest as he formed part of the Panel that refused the original development application, which was approved by the Land and Environment Court. He declared a conflict of interest to avoid any perception that he may have a pre-determined view on the matter. As this application is for a further modification of the project, he felt that it is appropriate and consistent to declare a further non-pecuniary conflict of interest in relation to this matter. He did not participate in any meetings for this matter.</p> <p>Simon Richardson has declared a non-pecuniary conflict of interest as he was involved in the assessment of the overarching development in his capacity as Mayor.</p>

Papers circulated electronically on 15 May 2024.

MATTER DETERMINED

PPSNTH-267 – Byron – 10.2017.201.3 – 342 Ewingsdale Road and 22A & 22B Melaleuca Drive, Byron Bay - S4.56 to amalgamate stages from 7 to 4; removal of time frame between stages; temporary stockpile of fill material; deletion of boardwalk; and consequential amendments to conditions to modify Subdivision of Six (6) Lots into One Hundred and Forty Nine (149) Lots consisting of One Hundred and Forty Five (145) Residential Lots, Four (4) Large Residential Lots and dedication of residual land to Council for Public or Drainage Reserves (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

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

Application for modification of consent

The Panel determined to approve the modification application pursuant to section 4.56 of the *Environmental Planning and Assessment Act 1979*, with the exception of the proposed modification to Condition 4 in relation to the twelve (12) month timeframe between subdivision stages. The Panel considered that the monitoring period of twelve (12) months between stages was an important safeguard to ensure relevant monitoring of environmental impacts could be undertaken and changes implemented if required.

The amalgamation of the subdivision stages from 7 to 4, the removal of the boardwalk and the use of a portion of the land in proposed Stage 3 for the temporary stockpiling of material was supported by the Panel subject to conditions. The Panel also supported some of the housekeeping amendments to conditions and subsequent changes required to consent conditions arising from the modification as proposed by the applicant, however, there were some conditions which were not modified as requested in relation to the timing of the submission of various plans and reports.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to approve the application for the reasons outlined in the Council Assessment Report.

CONDITIONS

The Development Application was approved subject to the conditions in the Council Assessment Report with the following amendments.

- Amend Condition 1 - amended plans (second table):
J7148 SK001, Stockpile Sketch Plan, undated, Prepared by Planit Consulting
- Amend Condition 8 to read as follows:
8. Integrated approvals from other State Government Approval Bodies
This development consent includes an Integrated development approval under Sections 4.46 and 4.47 of the *Environmental Planning and Assessment Act 1979*, being an authorisation under section 100B of the *Rural Fires Act 1997* in respect of bush fire safety of development of land for subdivision of land, and is subject to the General Terms of Approval from NSW Rural Fire Service dated 30 July 2021 contained in **Schedule 1** of these conditions of consent or any subsequent amendment to the GTA's.
- Amend Condition 13b of the reporting requirements to delete Stage 6 and insert Stage 4
- Amend Condition 19 - typographical error in paragraph 3, being 'Works'
- Amend Condition 40 – Compliance with bushfire conditions under Section 100B of Rural Fires Act 1997 to read as follows"
40. Compliance with bushfire conditions under Section 100B of Rural Fires Act 1997
Documentary evidence from a suitably qualified professional is to be submitted with the Subdivision Works Certificate application, demonstrating that the General Terms of Approval from NSW Rural Fire Service as issued under Section 100 B of the Rural Fires Act 1997 for this development have been complied with in relation to any necessary subdivision works.
- Amend Condition 93 to insert 'Stage 3' at the end of the first sentence

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition. The Panel notes that issues of concern raised by the community included:

- Concerns with adherence with the original consent
- Concerns with the deletion of 12 months monitoring period and consolidation of staging
- Increased traffic congestion
- Negative impact on wetlands and Belongil Creek
- Flood mitigation and rising sea levels
- Increased water use and sewerage demand
- Concern the deletion of nature walk destroying wallum bushland

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report. The Panel notes that in addressing these issues appropriate conditions have been imposed.

PANEL MEMBERS



Dianne Leeson (Chair)



Kim Johnston



Ian Pickles



Joe Vescio

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-267 – Byron – 10.2017.201.3
2	PROPOSED DEVELOPMENT	S4.56 to amalgamate stages from 7 to 4; removal of time frame between stages; temporary stockpile of fill material; deletion of boardwalk; and consequential amendments to conditions to modify Subdivision of Six (6) Lots into One Hundred and Forty Nine (149) Lots consisting of One Hundred and Forty Five (145) Residential Lots, Four (4) Large Residential Lots and dedication of residual land to Council for Public or Drainage Reserves
3	STREET ADDRESS	342 Ewingsdale Road and 22A & 22B Melaleuca Drive, Byron Bay
4	APPLICANT/OWNER	Rob Van Iersel (Planit Consulting Pty Ltd) NSPT Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.56 Modification Application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 Byron Local Environmental Plan 1988 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Byron Development Control Plan 2014 Planning agreements: VPA 2013/8948 Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council Assessment Report: 22 May 2024 (uploaded 14/05/2024) Supplementary report (Council response to Panel request for report clarifications) received: 21 May 2024 Written submissions during public exhibition: 9 Total number of unique submissions received by way of objection: 6
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 12 March 2024 <ul style="list-style-type: none"> <u>Panel members</u>: Dianne Leeson (Chair), Michael Wright and Joe Vescio <u>Council assessment staff</u>: Chris Larkin and Greg Yopp <u>Department staff</u>: Carolyn Hunt Applicant Briefing: 22 May 2024 <ul style="list-style-type: none"> <u>Panel members</u>: Dianne Leeson (Chair), Kim Johnston, Joe Vescio and Ian Pickles <u>Applicant representatives</u>: Rob van Iersel, Anthony Aiossa, Ben Gohl <u>Council assessment staff</u>: Chris Larkin and Greg Yopp <u>Department staff</u>: Carolyn Hunt and Lisa Ellis

		<ul style="list-style-type: none">• Final briefing to discuss council’s recommendation: 22 May 2024<ul style="list-style-type: none">○ <u>Panel members</u>: Dianne Leeson (Chair), Kim Johnston, Joe Vescio and Ian Pickles○ <u>Council assessment staff</u>: Chris Larkin and Greg Yopp○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council Assessment Report and amended on 21/05/2024