



**Land and Environment  
Court**  
of New South Wales

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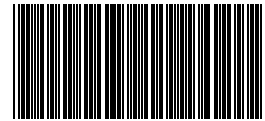
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Your Ref:



D0001JYQJ3

21 April 2022

### NOTICE OF ORDERS MADE

Case number 2018/00222143  
Case title Site R & D Pty Ltd v Byron Shire Council

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On 21 April 2022 the following orders (and/or directions) were made:

The Court Orders:

- (1) The appeal is upheld;
- (2) Development Application 10.2017.661.1, in relation to land identified as Lot 1 DP 201626, Lot 2 DP 542178, Lot 1 DP 780242, Lot 2 DP 818403, Lot 1 DP 520063, Lot 7020 DP 1113431, Lot 5 DP 1222674 and Lot 6 DP 1222674, and seeking consent to subdivide land in two separate areas within the West Byron Urban Release Area (WBURA), is determined by way of the grant of consent, subject to the conditions at Annexure 'A' to this judgment;
- (3) The exhibits are returned, with the exception of Exhibits A and 1.

For the Registrar

## Annexure A

### DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

**Development Application No:** DA 10.2017.661.1

**Development:** Proposed residential, business, recreation and industrial subdivision (and subdivision works)

**Site:** The Subject Site in this appeal is approximately 68.9 Ha in area, and consisting of the following land parcels:

- (1) Lot 1 DP 201626;
- (2) Lot 2 DP 542178;
- (3) Lot 1 DP 780242;
- (4) Lot 2 DP 818403;
- (5) Lot 1 DP 520063;
- (6) Lot 7020 DP 1113431;
- (7) Lot 5 DP 1222674; and
- (8) Lot 6 DP 1222674.

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

**Date of determination:** 8 March 2022

**Date from which consent takes effect:** 8 March 2022

#### TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.

- (c) Any reference to the “site”, means the land known as 394 Ewingsdale Road, Byron Bay, 412 Ewingsdale Road, Byron Bay, Melaleuca Drive, Byron Bay, 364 Ewingsdale Road, Byron Bay.

The conditions of consent are as follows:

### **Definition of Terms**

TSMP: Threatened Species Management Plan

BCPM: Belongil Creek Plan of Management

BCMP: Biodiversity Conservation Management Plan

KHMP: Koala Habitat Management Plan

KPoM: Koala Plan of Management

BCCKPoM: Byron Coast Comprehensive Koala Plan of Management

VMP: Vegetation Management Plan

CEMP: Construction Environmental Management Plan

CTMP: Construction Traffic Management Plan

ASSMP: Acid Sulfate Soils Management Plan

GMP: Groundwater Management Plan

RAP: Remedial Action Plan

WBURA: West Byron Urban Release Area

WSUD: Water sensitive urban design

Council: Byron Shire Council’s Director of Planning, in relation to the provision of information and/or the approval of plans/documents, unless otherwise specified

BDCP 2014: Byron Shire Development Control Plan 2014

### **Parameters of consent**

#### **1. Development to be carried out in accordance with plans and documents**

Development is to be carried out in accordance with the plans and documents listed below, as amended by any plan or document submitted to and approved by Council in accordance with this consent:

Plan No.	Description	Prepared by	Dated:
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<b>Subdivision Plans</b>			
15024-9R Sheet 2 of 9	Plan Showing Proposed Subdivision of Land at West Byron - Ewingsdale Road	Abbott & Macro	02.02.2021
15024-27B	Subdivision Layout & Staging – Plan 2	Abbott & Macro	13.08.19
15024-28B	Subdivision Layout & Staging – Plan 3	Abbott & Macro	13.08.19
15024-29B	Proposed Community Title & Environmental Association Lots – Plan 4	Abbott & Macro	13.08.19
15024-10L Sheet 3 of 9	Plan Showing Proposed Subdivision	Abbott & Macro	15.08.19
15024-11L Sheet 4 of 9	Plan Showing Proposed Subdivision	Abbott & Macro	15.08.19
15024-12L Sheet 5 of 9	Plan Showing Proposed Subdivision	Abbott & Macro	15.08.19
15024-13L Sheet 6 of 9	Plan Showing Proposed Subdivision	Abbott & Macro	15.08.19
15024-14L Sheet 7 of 9	Plan Showing Proposed Subdivision	Abbott & Macro	15.08.19
15024-15L Sheet 8 of 9	Plan Showing Proposed Subdivision	Abbott & Macro	15.08.19
15024-16L Sheet 9 of 9	Plan Showing Proposed Subdivision	Abbott & Macro	15.08.19
<b>Engineering Plans</b>			
Fig 3.2, Rev G	Earthworks Surface Levels Concept Plan Sheet 2	ACOR	May 2019
Fig 3.3, Rev G	Earthworks Surface Levels Concept Plan Sheet 3	ACOR	May 2019
Fig 3.4, Rev C	Earthworks Sections	ACOR	May 2019

Fig 4.2, Rev F	Earthworks Filling Plan Sheet 2	ACOR	May 2019
Fig 4.3, Rev F	Earthworks Filling Plan Sheet 3	ACOR	May 2019
Fig 5.1, Rev B	Acoustic Mound and Utilities Allocations Section	ACOR	May 2019
Fig 5.2, Rev E	Acoustic Mound Returns	ACOR	Aug 2019
Fig 6, Rev D	Typical Footway Cross Sections	ACOR	Sep 2017
FIG 8.1 Issue M	Roads Plan Sheet 1	ACOR	9 Feb 2021
FIG 8.2 Issue F	Roads Plan Sheet 2	ACOR	07.08.19
FIG 8.3 Issue F	Roads Plan Sheet 3	ACOR	07.08.19
Fig 9.1, Rev E	Road No. 1 Longitudinal Section Sheet 1	ACOR	May 2019
Fig 9.2, Rev E	Road No. 1 Longitudinal Section Sheet 2	ACOR	May 2019
Fig 9.3, Rev F	Road No. 1 Longitudinal Section Sheet 3	ACOR	May 2019
Fig 9.4, Rev E	Road No. 2 Longitudinal Section	ACOR	May 2019
Fig 9.5, Rev E	Road No. 3 Longitudinal Section	ACOR	May 2019
Fig 9.6, Rev E	Road No. 4 Longitudinal Section	ACOR	May 2019
Fig 9.7, Rev E	Road No. 5 Longitudinal Section Sheet 1	ACOR	May 2019
Fig 9.8, Rev F	Road No.'s 5 & 6 Longitudinal Sections	ACOR	May 2019
Fig 9.9, Rev E	Road No. 7 Longitudinal Section Sheet 1	ACOR	May 2019
Fig 9.10, Rev E	Road No. 7 Longitudinal Section Sheet 2	ACOR	May 2019

Fig 9.11, Rev E	Road No. 8 Longitudinal Section	ACOR	May 2019
Fig 9.12, Rev E	Road No.s 9 & 10 Longitudinal Sections	ACOR	May 2019
Fig 9.13, Rev E	Road No.s 12 & 13 Longitudinal Sections	ACOR	May 2019
Fig 9.14, Rev E	Road No. 14 Longitudinal Section	ACOR	May 2019
Fig 9.15, rev E	Road No.16 Longitudinal Section	ACOR	May 2019
Fig 9.16, Rev E	Road No.s 17 & 18 Longitudinal Sections	ACOR	May 2019
Fig 9.17, Rev E	Road No.s 19 & 20 Longitudinal Sections	ACOR	May 2019
Fig 9.18, Rev E	Road No.21 Longitudinal Section	ACOR	May 2019
Fig 9.19, Rev G	Road No.22Longitudinal Section Sheet 1	ACOR	May 2019
Fig 9.20, Rev G	Road No.22 Longitudinal Section Sheet 2	ACOR	May 2019
Fig 9.21, Rev G	Road No. 23 Longitudinal Section	ACOR	May 2019
Fig 9.22, Rev F	Road No.25 Longitudinal Section	ACOR	May 2019
Fig 9.23, Rev E	Road No. 27 Longitudinal Section Sheet 1	ACOR	May 2019
Fig 9.24, Rev E	Road No.27 Longitudinal Section Sheet 2	ACOR	May 2019
Fig 9.25, Rev E	Road No.27 Longitudinal Section Sheet 3	ACOR	May 2019
Fig 9.26, Rev E	Road No.s 28 & 29 Longitudinal Sections	ACOR	May 2019
Fig 9.27, Rev E	Road No.30 Longitudinal Section	ACOR	May 2019

Fig 9.28, Rev E	Fire Access No.s 1 & 2 Longitudinal Sections	ACOR	May 2019
Fig 10.1, Rev F	Road Typical Cross Sections Sheet 1	ACOR	Sep 2017
Fig 10.2, Rev G	Road Typical Cross Sections Sheet 2	ACOR	Sep 2017
Fig 11.1, Rev B	Ewingsdale Road Upgrade Works Plan (Roundabout)	ACOR	May 2019
Fig 11.2, Rev A	Ewingsdale Road & SAE Entry Road Longitudinal Sections	ACOR	May 2019
Fig 11.3, Rev A	Ewingsdale Road Typical Sections	ACOR	May 2019
Fig 12.2, Rev F	Cycleways and Pathways Plan Sheet 2	ACOR	May 2019
Fig 12.3, Rev F	Cycleways and Pathways Plan Sheet 3	ACOR	May 2019
Fig 14.1, Rev B	Typical Bioretention Swale Detail	ACOR	May 2019
Fig 14.2, Rev A	Typical Bioretention Basin Details	ACOR	May 2019
Fig 14.3, Rev A	Typical Raingarden Details	ACOR	May 2019
Fig 15.1 Rev Q	Stormwater Infrastructure Sheet 1	ACOR	9 Feb 2021
Fig 15.2, Rev H	Stormwater Infrastructure Sheet 2	ACOR	May 2019
Fig 15.3, Rev H	Stormwater Infrastructure Sheet 3	ACOR	May 2019
Fig 15.4, Rev A	Raingarden Invert Level Table	ACOR	Sep 2017
Fig 16.2, Rev E	Main Drain Cross Section 1	ACOR	May 2019
Fig 16.3, Rev D	Main Drain Longitudinal Section Sheet 1	ACOR	May 2019

Fig 16.4, Rev D	Main Drain Longitudinal Section Sheet 2	ACOR	May 2019
Fig 16.5, Rev E	Main Drain Cross-Sections Sheet 1	ACOR	Sep 2017
Fig 16.6, Rev E	Main Drain Cross Sections Sheet 2	ACOR	May 2019
Fig 17, Rev D	Existing Hydraulic Utilities Plan	ACOR	Sep 2017
Fig 18, Rev D	Water Supply Trunk Main Master Plan	ACOR	Sep 2017
Fig 19.2, Rev F	Hydraulic Infrastructure Plan Sheet 2	ACOR	May 2019
Fig 19.3, Rev F	Hydraulic Infrastructure Plan Sheet 3	ACOR	May 2019
Fig 20.2, Rev D	Erosion and Sediment Control Details Sheet 2	ACOR	Sep 2017
Fig 21.2, Rev B	Erosion and Sediment Control Plan Stage 2	ACOR	Sep 2017
Fig 21.3, Rev B	Erosion and Sediment Control Plan Stage 3	ACOR	Sep 2017
Fig 21.4, Rev B	Erosion and Sediment Control Plan Stage 4	ACOR	Sep 2017
Fig 21.5, Rev B	Erosion and Sediment Control Plan Stage 5	ACOR	Sep 2017
Fig 21.6, Rev B	Erosion and Sediment Control Plan Stage 6	ACOR	Sep 2017
Fig 21.7, Rev B	Erosion and Sediment Control Plan Stage 7	ACOR	Sep 2017
Fig 21.8, Rev B	Erosion and Sediment Control Plan stage 8	ACOR	Sep 2017
Fig 21.9, Rev B	Erosion and Sediment Control Plan Stage 9	ACOR	Sep 2017
Fig 21.10, Rev B	Erosion and Sediment Control Plan Stage 10	ACOR	Sep 2017



Fig 21.11, Rev B	Erosion and Sediment Control Plan Stage 11	ACOR	Sep 2017
Figure 22.1, Revision H	Staging Plan [including hand marked as part of the experts conferencing – Exhibit 5, Annexure E]	ACOR	<b>Oct 2020</b>
Fig 22.1, Rev H	Staging Plan	ACOR	Oct 2020
Fig 22.2, Rev E	Staging Plan Stage 1	ACOR	Oct 2020
Fig 22.3, Rev D	Staging Plan Stage 2	ACOR	Oct 2020
Fig 22.4, Rev D	Staging Plan Stage 3	ACOR	Oct 2020
Fig 22.5, Rev E	Staging Plan Stage 4	ACOR	Oct 2020
Fig 22.6, Rev E	Staging Plan Stage 5	ACOR	Oct 2020
Fig 22.7, Rev E	Staging Plan Stage 6	ACOR	Oct 2020
Fig 22.8, Rev E	Staging Plan Stage 7	ACOR	Oct 2020
Fig 22.9, Rev E	Staging plan Stage 8	ACOR	Oct 2020
Fig 22.10, Rev E	Staging Plan Stage 9 – Sheet 1	ACOR	Oct 2020
Fig 22.11, Rev E	Staging Plan Stage 9 – Sheet 2	ACOR	Oct 2020
Fig 22.12, Rev E	Staging Plan Stage 10	ACOR	Oct 2020
Plan V1 Rev A	WBURA and Harvest Estate mound section location	Acor	10.11.20
Plan V2 Rev A	WBURA and Harvest Estate mound section location	Acor	10.11.20
Plan B3 Rev E	Civil Works Sheet 3	Acor	Aug 2019

Plan S1	WBURA and Harvest Estate Section Locations	Acor	Nov 2020
Plan S4	WBURA and Harvest Estate Sections Sheet 1	Acor	Nov 2020
Plan S5	WBURA and Harvest Estate Sections Sheet 2	Acor	Nov 2020
Plan W1 Issue D	Roads Plan With Semi-Trailer Turn Paths	ACOR	21 Jan 2021
Plan W2 Issue D	Roads Plan With 12.5m Truck/Bus Turn Paths	ACOR	21 Jan 2021
PLAN W3 Issue B	Melaleuca Longitudinal Section	ACOR	18 Jan 2021
PLAN W4 Issue C	Sections Sheet 1 of 1	ACOR	21 Jan 2021
LAD01-09	Landscaping Plans	Ennismore Field	Jul 2019
LAS01-12	Landscaping Plans	Ennismore Field	Jul 2019
LA01-56	Landscaping Plans	Ennismore Field	Aug 2019
<b>Management Plans</b>			
	Revised Construction Environment Management Plan	Australian Wetlands Consulting	28 Oct 2020
1-178189f	West Byron Urban Release Area Stormwater Management Strategy	Australian Wetlands Consulting	August 2019
WEST BYRON	Soil and Water Management Plan, Annexed to the Joint Report of Civil Engineering Experts	Soil and Water Solutions	Oct 2020
	Revised Threatened Species Management Plan	Australian Wetlands Consulting	28 Oct 2020
	Revised Koala Plan of Management	Australian Wetlands Consulting	27 Oct 2020

	Revised Koala Habitat Management Plan	Australian Wetlands Consulting	27 Oct 2020
	Revised Vegetation Management Plan	Australian Wetlands Consulting	28 Oct 2020
	Revised Biodiversity Conservation Management Plan	Australian Wetlands Consulting	27 Oct 2020
	Revised Belongil Creek Plan of Management	Australian Wetlands Consulting	26 Oct 2020
Revision B, 21/08/2019	Preliminary CEMP AMENDED	Australian Wetlands Consulting	August 2019
Ref: 1-17819-8c	Acid Sulfate Soil Management Plan Amended, West Byron Urban Release Area	Australian Wetlands Consulting	21 August 2019
	Mosquito Risk and Management Plan	Australian Wetlands Consulting	August 2019
V02	Generic acid sulfate soils management plan	Martens and Associates Pty Ltd	October 2020
<b>Documents / Reports</b>			
	Statement of Environmental Effects	DAC Planning	Sept 2019
	Revised Engineering Assessment	ACOR	23 Aug 2019
	West Byron Flood Impact Assessment, Rev 2	BMT	Aug 2019
	Bushfire Threat Assessment	Bushfire Planning Aust	Aug 2019
	West Byron Stormwater Assessment	BMT	August 2019

	West Byron WSUD Water Quantity Report	BMT	August 2019
	Hydrogeological Assessment: West Byron Urban Release Area	Martens and Associates	August 2019
	Hydrological Impact Assessment Report	Martens and Associates	Sept 2019
	Amended Cultural Heritage Assessment	Adise Pty Ltd	August 2019
	Revised Assessment Report Traffic and Transport West Byron Urban Release Area	Veitch Lister Consulting	Oct 2020
	Geotechnical Investigation	Shaw Urquhart	August 2019
	Revised Statement of Landscape Intent	Ennismore Field	23 Aug 2019
	Electrical and NBN Infrastructure Report	Clarence	32 Oct 2017
	West Byron Urban Design Report	PAA	Aug 2019
	West Byron Urban Design Guidelines	PAA	Aug 2019
REF: 1-17819-7c	Detailed Site Investigation	AWC	26 September 2017
	Revised Environmental Noise Impact Assessment	TTM	26 August 2019
	Biodiversity Development Assessment Report	AWC	Feb 2020
	Construction Noise Assessment	TTM	Sept 2020

The development is also to be carried out in accordance with any changes made pursuant to these conditions of consent. Where there is an inconsistency between any of the aforementioned plans and documents and these conditions and conditions below, the relevant condition(s) are to prevail to the extent of the inconsistency.

Where there is any inconsistency between a plan dated August 2019 or earlier and a later plan, the later plan prevails to the extent of the inconsistency. In addition, All

plans submitted to and approved by Council in accordance with the conditions of consent are to prevail to the extent of any inconsistency.

The approved plans and related documents endorsed with the Council stamp and authorised signature must be kept on site at all times while construction work is being undertaken.

**2. DELETED.**

**3. Maximum dwelling yield**

A maximum dwelling yield of 856 dwellings applies to the entire West Byron Urban Release Area (WBURA) which includes the subdivision approved by development consent 10.2017.201.1.

**3A Bus routes and bus stops**

Prior to issue of a subdivision works certificate for Stage 1, the following details must be submitted to and approved by Council:

1. Justification for the precise bus route, bus stop locations and service provision (including frequency) that fully addresses the timing of the recommended diversion of bus route 637 through the subject subdivision. It is noted that the VLC Report states on page 12 that the diversion of bus route 637 *“will add some additional service running time, requiring small adjustments to timetables”*. The VLC Report does not provide any detailed supporting assessment of this recommendation. Detailed consultation with Council and bus operators will be needed together with a detailed assessment of current service times, frequencies and potential optimisation of bus services will be necessary. A new or additional bus service, rather than diverting an existing bus service may be needed to support the WBURA. Details of proposed bus stop locations, based on consultation with Council and bus operators concerning the frequency and optimisation of bus services to service the WBURA.
2. Conditions required for traffic calming devices / measures for all local streets greater than 100m in length.

The engineering plans for each Subdivision Works Certificate must be consistent with these details.

**3B Amended landscaping plans required**

Any of the landscaping plans listed above which are inconsistent with the revised layout for Stages 11 and 12 in Plan S1 WBURA and Harvest Estate Section Locations, Acor, November 2020, and amended engineering plans referred to in Condition 4B below are themselves to be amended so as to achieve consistency with those plans, prior to the issue of a subdivision works certificate.

**3C DELETED****4. Updated engineering plans for roads**

Prior to the issue of the first subdivision works certificate for the development (except stage A), the engineering plans shall be amended to regrade Road 6 at the intersection with Harvest Estate Road 6 at centreline level RL5.785m. The Regrade of Road 6 will form a sag at approximately Chainage 150m at the intersection with road 12 and connect the road sag drainage to the Road 12 pipe network.

**4A Updated engineering plans for stormwater infrastructure**

Prior to the issue of the first subdivision works certificate for the development (except Stage A), the engineering plans shall also be amended to

(a) remove smaller rain gardens distributed within the catchment, with water quality objectives to be met through the implementation of swales (as required) and end-of-line bioretention basins.

**4B Updated engineering plans Stages 11 and 12**

Prior to the issue of a Subdivision Works Certificate for Stages 11 and 12 of the development, detailed design shall demonstrate that:

(a) stormwater runoff from the western portion of Melaleuca Drive adjacent to the development and north of chainage 200 is directed to the bioretention basin denoted B3 on "Stormwater Infrastructure Sheet 1 – Fig 15.1 Issue P" prepared by Acor Consultants. The reason for this condition is to ensure that excess stormwater flows do not impact the driveway of Lot 2 DP 878549 to the south of the development; and

(b) the capacity of the culvert through the development is sufficient to collect contributing flows up to the 1% AEP from the upstream catchment, including Lots 5 & 6 DP 1269369. Overland flow paths must be identified for blockages and flows exceeding capacity of the culvert,

Prior to the issue of the first subdivision works certificate for the development, the following engineering plans relating to Stages 11 and 12 shall be amended to accord with the revised layout for Stages 11 and 12 in Plan S1 WBURA and Harvest Estate Section Locations, Acor, 29 March 2021, and the development is to be carried out in accordance with these amended plans:

Plan S1	WBURA and Harvest Estate Section Locations	Acor	2 Nov 2020
Fig 3.1, Rev G	Earthworks Surface Levels Concept Plan Sheet 1	ACOR	May 2019
Fig 4.1, Rev F	Earthworks Filling Plan Sheet 1	ACOR	May 2019
Fig 7, Rev F	Roads Key Plan	ACOR	May 2019
Fig 12.1, Rev F	Cycleways and Pathways Plan Sheet 1	ACOR	May 2019
Fig 16.1, Rev H	Main Drain Plan	ACOR	Sep 2017
Fig 19.1, Rev F	Hydraulic Infrastructure Plan Sheet 1	ACOR	May 2019
Fig 21.1, Rev B	Erosion and Sediment Control Plan Stage 1	ACOR	Sep 2017
Fig 21.12, Rev B	Erosion and Sediment Control Plan Stage 12	ACOR	Sep 2017
Fig 22.13, Rev E	Staging Plan Stage 11	ACOR	Oct 2020
Fig 22.14, Rev E	Staging Plan Stage 12	ACOR	Oct 2020

#### **4C Provision of a tree removal and retention plan**

Prior to the issue of any subdivision works certificate under this consent, a tree removal and retention plan must be submitted to and approved by Council that clearly maps and identifies all trees proposed for removal and retention inside or within 10m of the development footprint. Tree species, diameter at breast height and estimate height must be documented for all trees to be removed. Tree protection zones should be included in the map/s, in accordance with Australian

Standard 4970-2009: Protection of trees on development sites for all trees to be retained.

#### **4D Provision of amended subdivision plans**

Prior to the issue of any subdivision works certificate under this consent, an amended subdivision plan is to be submitted to and approved by Council for each stage of the development that demonstrates that the lot layout within the vicinity of Melaleuca Drive is consistent with the layout approved under development consent 10.2017.201.1 including changes to filling/earthworks, roads and drainage.

The Subdivision Layout Plans series 15024-9Q shall be amended by deleting the faint dashed lines indicating future urban lots within the proposed superlots. For avoidance of doubt the indicative building envelopes marked in red dashed lines on these plans do not constrain the location in which future buildings may be constructed on these lots.

Prior to the issue of the subdivision works certificate for Stage 1, the Proposed Community Title & Environmental Associations Lot Plan 15024-29B (Abbott and Macro dated 13.08.2019) shall be amended as follows:

- a) To mark the whole of Pt 155 in green, and all residential lots in Stage 11 in pink.
- b) Lot 23 shall become part of Pt 155.
- c) The boundaries of each of the 3 Community Schemes are to be clearly identified and clearly show which roads are private accessways and open accessways.
- d) To show proposed Drainage Reserves and drainage easements.

A letter from a Registered Surveyor and/or suitably experienced Solicitor must be submitted with the amended plan certifying that the proposed Community Schemes are in accordance with Community Title legislation and will be acceptable for registration with NSW Land and Property Information. Including, but not limited to, whether the Community Scheme can be subdivided when the land being subdivided is not a contiguous parcel. This letter must be submitted to and approved by Council prior to the issue of the subdivision works certificate for Stage 1.

#### **4E Provision of amended staging plans**

Prior to the issue of any subdivision works certificate under this consent, amended subdivision staging plans are to be submitted to and approved by Council to address and identify the following:



- a) resolve the issue of water being dammed/trapped due to the staging of the filling works. The amended subdivision staging plan is to show revised staging that demonstrates that no water will pond behind newly filled areas and that all areas can drain under gravity to legal points of discharge. The hand mark up of stage numbers on ACOR Drawing Figure 22.1 Revision H provided as part of the experts conferencing (being Attachment E of the Civil Engineering Joint Report being Exhibit 5 in the proceedings) is to be adopted, with the exception of Stages 11 and 12. The amended staging plans provided are to formalise the hand mark-up revised staging and update Stages 11 and 12.
- b) The amended staging plans are to identify (via a notation on the plans or a new plan) a new **Stage A** that occurs prior to the first stage of the urban development (Stage 1). Stage A must comprise : All Year 1 planting and weed control identified in the VMP approved in accordance with these conditions of consent including but not limited to those works in zones 2A, 2D, 3 and the Belongil Creek restoration area.
- c) The amended staging plans are to be consistent with the approved architectural and engineering plans, and must identify that Stages 11 and 12 must not be commenced until the access road from Ewingsdale Road to Melaleuca Drive and the upgrade works to Melaleuca Drive have been completed as approved by development consent 10.2017.201.1.
- d) Stage 1 is to be amended to identify that all road works including roundabout and associated works, footpath and cycleway works, pedestrian/cyclist crossing facilities (traffic signals, grade separation, underpasses or pedestrian refuges) and other associated works required pursuant to this consent within Ewingsdale Road and any other road external to the site, must be included as part of Stage 1 of the subdivision. This excludes any works required pursuant to Stages 11 and 12.

#### **4F Provision of amended engineering plans**

Prior to the **issue** of a subdivision works certificate for Stage 1 updated Engineering plans are to be submitted to and approved by Council to address the following matters:

- (a) ensure that the road and lot layout is compatible with any approved adjoining development, including but not limited to, compatibility with engineering aspects of the adjoining development in regards to bulk earthworks levels, road levels, stormwater drainage and footpath

arrangements for all areas. Particular care is to be taken to ensure compatibility in areas adjoining Melaleuca Drive and Road 6 levels into the adjoining development.

- (b) The ACOR Engineering Plans shall be updated to adjust the details in each plan to the new development layout for Stages 11 and 12 shown in Plan 15024-9R.

#### **4G Community management statements**

Prior to the issue of any subdivision works certificate under this consent, a draft community management statement, in relation to each community scheme, shall be submitted to and approved by Council which requires the association property to be managed for environmental purposes funded by environmental levies on the community development lots. The community title management statement shall require the implementation of the VMP, the BCMP, the TSMP and the KPoM (in final form) in perpetuity. In this regard, the community title management statement shall clearly set out the requirements for each community scheme in terms of the ongoing management of association property.

The management statement in relation to each community scheme must also identify the ownership and maintenance responsibilities for any other infrastructure in the association property for each community scheme.

A letter from a Solicitor, experienced in Community Title legislation, certifying that the management statement and development contract have been prepared in accordance with Community Title legislation and are acceptable for registration with NSW Land and Property Information must accompany the draft statement and contract.

#### **4H Ewingsdale Road pedestrian / cyclist crossing facility (Traffic Signals or grade separation)**

Prior to the issue of any subdivision works certificate under this consent details of a safe pedestrian / cyclist crossing facility at Ewingsdale Road along the site frontage and at (or in close proximity to) Banksia Drive, in the form of a traffic signalised crossing (based upon a reduced warrant assessment for elderly and school children) or provision of an assessment of a grade separated crossing (underpass preferred) must be submitted to and approved by Council. A refuge is not safe access for all users and will not be accepted in terms of a safe pedestrian / cyclist crossing facility.

The staging plans must identify that these works are required as part of Stage 1 of the development.

**4I Ewingsdale Road site frontage shared Path (2.5m wide)**

Prior to the issue of any subdivision works certificate detailed plans for the construction of the 2.5m shared path along the site frontage, being the full extent of the southern side of Ewingsdale Road from the common boundary with 268 Ewingsdale Road to Sunrise Boulevard, must be submitted to and approved by Council.

The staging plans must identify that these works are required as part of Stage 1 of the development.

**5. Staged development**

The development is to be carried out in the stages approved under **condition 4E above, noting** the addition of Stage A.

Stage A must comprise: All Year 1 planting and weed control including, but not limited to, works within management zones 2A, 2D, 3 and the Belongil Creek restoration area as specified in the KPoM, the KHMP, the TSMP, the VMP and the BCMP as amended in accordance with these conditions.

The development is to progress sequentially as per the approved stages with Stage A being the first stage. With the exception of Stage A (noting that Stage A is addressed in condition 13 of this consent) **the previous stage is to be completed to Council's satisfaction prior to works commencing on the next stage.**

Stages 11 and 12 must not be commenced until the access road from Ewingsdale Road to Melaleuca Drive and the upgrade works to Melaleuca Drive have been completed as approved by consent 10.2017.201.1 and/or approved by the consent. For the purposes of this requirement, the access road will be taken to be completed when a subdivision certificate has been issued for all stages of the subdivision approved by consent 10.2017.201.1 and this consent shall include any part of the access road works described above.

A maximum of one (1) stage may be under construction at any one time with only the following exception being the construction of temporary turning heads where roads terminate on stage boundaries.

Where conditions are required to be satisfied prior to a particular event, those conditions are the conditions relevant to the works being carried out in the stage. For clarity, if a condition of consent requires a matter to be addressed prior to the issue of a Subdivision Works Certificate and does not specify a stage of development for the issue of that Subdivision Works Certificate, it is taken to be applicable to each separate stage. That is, the condition must be satisfied prior to the issue of a Subdivision Works Certificate for each stage.

## **6. Temporary turning heads**

Where roads terminate on stage boundaries and temporary turning heads are required, such turning heads are to be provided to facilitate turning for all vehicles and must be designed and constructed in accordance with the relevant requirements of the Northern Rivers Design Guides (<https://www.byron.nsw.gov.au/Services/Building-development/Plans-maps-and-guidelines/Development-Design-Manuals>) and the General Terms of Approval from NSW Rural Fire Service dated 18 June 2021. The engineering plans for each Subdivision Works Certificate must be consistent with this requirement

## **7. Staging progression - monitoring and Reporting**

Prerequisites for Council's assessment to commence to the next development stage are:

- a) Monitoring as required by the approved CEMP for at least 12 months following completion of construction works for the stage in question;
- b) Analysis of monitoring data carried out in accordance with the approved CEMP;
- c) Updated modelling outputs that incorporate monitoring data collected in accordance with the approved CEMP;
- d) Satisfactory implementation of any recommended contingency measures and/or amendments to the proposal based on the above analysis;
- e) Peer review of the above by an independent and suitably qualified and experience expert.

Reports demonstrating that the above requirements have been satisfactorily completed are to be submitted to and approved by Council's Director of Planning (or nominee) for his/her approval. If these reports are not approved within 1 month of submission, construction work is to cease until the Council's Director of Planning (or nominee) is satisfied that these requirements have been addressed.

**8. Vegetation removal**

This development consent does not authorise any native tree to be ringbarked, cut down, lopped, removed or damaged, or caused to be ringbarked, cut down, lopped, removed or damaged other than those within the area identified as “urban footprint” on the environmental management Zone plan (Figure 1-5) in the VMP and not otherwise identified as “Existing vegetation retained” in the VMP.

**9. Conditions prescribed by the Regulation**

This development consent is subject to the conditions prescribed by the *Environmental Planning and Assessment Regulations* in accordance with subsection 4.17(11) of the *Environmental Planning and Assessment Act 1979*. The conditions given in this consent are additional to those given in the Regulations.

**10. Discovery of Aboriginal Relics**

Upon discovery of any Aboriginal relics within the meaning of the *National Parks and Wildlife Act 1974*, the developer shall immediately notify the NSW Department of Planning, Industry and Environment (DPIE), Tweed Byron Local Aboriginal Land Council and the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) and must immediately cease works within the vicinity until such time as the necessary permits have been obtained from DPIE to continue the work. The developer must comply with any further request made by DPIE to cease work for the purposes of archaeological assessment and recording.

**11. 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 18 June 2021**.

**12. Management and ownership of public stormwater infrastructure**

Management, ownership and maintenance of all public Water Sensitive Urban Design (WSUD) infrastructure within a given development stage will be the responsibility of the landowner until 90 % of the dwellings within the stage have been substantially commenced. After that time, management, ownership and

maintenance of stormwater management infrastructure within that stage shall be transferred to Council.

**The following conditions are to be complied with prior to issue of a Subdivision Works Certificate for subdivision works**

**13. Environmental restoration and enhancement and landscaping works**

All works within Stage A (as identified pursuant to condition 5, must be substantially commenced prior to the issue of a subdivision works certificate for Stage 1. The following must be submitted to and approved by Council's Director of Planning (or nominee) to demonstrate compliance with this condition:

- a. A report detailing the works carried out including supporting evidence and reference to the approved subdivision plans and management plans; and
- b. In relation to the environmental restoration and enhancement works, certification of completion of these works by a suitably qualified and experienced ecologist.

For avoidance of doubt, Stage A works will be substantially commenced for the purpose of this condition if all proposed planting of vegetation and specified restoration and enhancement works specified in the relevant management plans have been completed.

**13A Retirement of Biodiversity Credits**

Prior to the issue of a Subdivision Works Certificate Stage 1, the following Ecosystem Credits and Species Credits must be retired in accordance with the *Biodiversity Conservation Act 2016: (Judgement 151(e) referred to in the Judgement as condition 12B)*

<b>Ecosystem</b>	<b>Credits</b>
PCT 663 Banksia dry shrubland on coastal sands of the NSW North Coast Bioregion	42

PCT 780 Coastal floodplain sedgelands, rushlands, and forblands of the North Coast.	16
PCT 1064 Paperbark swamp forest of the coastal lowlands of the NSW North Coast Bioregion and Sydney Basin Bioregion.	396
PCT 1230 Swamp Mahogany swamp forest on coastal lowlands of the NSW North Coast Bioregion and northern Sydney Basin Bioregion.	41
PCT 776 Coast Cypress Pine shrubby open forest of the NSW North Coast Bioregion.	2

Species	Credits
Wallum Froglet	12
Olongburra Frog	10
Southern Myotis	161
Common Planingale	205
Durobby ( <i>Syzgium moorei</i> )	3

#### 13B **Construction and Landscaping of the Acoustic Mound**

The proposed Acoustic Mound in Stage 1 must be constructed, and landscaped in accordance with the approved Landscaping Plans prior to the commencement of other construction works within Stage 1. The engineering plans for the Subdivision Works Certificate must be consistent with this requirement. (*Judgement 119, Judgement 139(3)*).

#### 14. **Updated hydrogeological assessment**

Prior to the issue of the subdivision works certificate for Stage 1, the hydrogeological assessment should be amended to reflect the amended overall site civil and drainage scheme. The amended assessment should determine and specify (as necessary) the requirements of any long-term groundwater impact mitigation measures.

#### 15. **Updated hydrogeological assessment and models required**

Prior to the issue of the first subdivision works certificate for the development (excluding Stage A), the hydrogeological assessment should be

updated to reflect the amended overall site civil and drainage scheme. The amended assessment should determine and specify (as necessary) the requirements of any long-term groundwater impact mitigation measures.

Prior to the issue of a subdivision works certificate for each stage (excluding Stage A), a hydrogeological model shall be prepared for that stage, including any already constructed stages, that determines the requirements of any temporary groundwater impact mitigation measures (if any) that should be included as part of the civil engineering design for that stage.

The hydrogeological assessment and stage specific hydrogeological models shall be peer reviewed by an independent groundwater expert.

The assessment/models and peer reviews shall be submitted to, and approved by, Council's Director of Planning (or nominee) prior to issue of the subdivision works certificate for each stage.

The plans of subdivision works for the relevant Subdivision Works Certificates must be consistent with any such approvals.

**16. DELETED**

**17. Additional monitoring and reporting requirements**

Prior to issue of the first subdivision works certificate, the monitoring requirements in all approved management plans including the ASSMP, BCPM, BCMP, ESCP, TSMP, VMP and KPoM shall be updated in the CEMP and approved by Council.

The monitoring updates shall include, but not be limited to:

- a. Monitoring site locations including site descriptions, photos and coordinates. Monitoring site locations shall be included on a map/plan;
- b. Parameters to be measured;
- c. Monitoring/sampling frequencies for each parameter to be measured;
- d. The duration of sampling for all parameters to be measured;
- e. Sampling and analysis methodologies to be used; and
- f. Data analysis methodologies including thresholds, limits and triggers for contingency actions.

The reporting requirements shall include, but not be limited to:



- a. Analysis of all monitoring and sampling data against baseline data and approved thresholds, limits and triggers,
- b. At least six (6) monthly reporting during subdivision construction works for at least five (5) years or until the issue of a subdivision certificate for Stage 12, whichever is the later.
- c. At least annual reporting thereafter for a total period of at least ten (10) years from the commencement of subdivision works.

## **18. Baseline surface water quality assessment**

Prior to issue of a subdivision works certificate for Stage 1, a baseline surface water quality assessment shall be conducted. The baseline surface water quality assessment shall be carried out over at least twelve (12) months and shall include monitoring of surface water quality, sediment quality and benthic macroinvertebrates within drainage lines across the site and Belongil Creek. Where possible, the baseline surface water quality assessment shall consider wet and dry periods, tidal movements and incorporate sampling upstream and downstream of the development site.

The baseline surface water quality assessment should include any relevant monitoring data collected by, or for, Byron Shire Council.

All information collected as part of the baseline surface water quality assessment shall be documented and analysed and provided to Council for approval prior to the issue of a subdivision works certificate for Stage 1.

## **19. Contaminated land remediation**

A Remediation Action Plan (RAP) which includes an unexpected finds protocol must be prepared by an appropriately experienced and qualified consultant in accordance with the NSW Environmental Protection Authority (EPA) Consultants Reporting on Contaminated Land – Contaminated Land Guidelines (2020), to address lead contamination around the structures in the E2 zone on Lot 1 DP 780242 identified in the Detailed Contaminated Land Investigation referred to in Condition 1. The RAP must be submitted to Council's Director of Planning (or nominee) at least 30 days before the commencement of the remedial work.

Remedial work must be completed and validated in accordance with the RAP and a notice of completion submitted to Council before any works commence east of the Crown Road on Lot 1 DP 780242. The notice of completion must be accompanied by a validation report specifying the standard of remediation achieved, which must be consistent with site's approved residential use. The notice is to be prepared by an EPA accredited site auditor and must conform to the NSW EPA Consultants Reporting on Contaminated Land – Contaminated Land Guidelines (2020), and must also include information confirming that the EPA and all other regulatory requirements have been met. In particular, documentary evidence is to be provided showing that any off-site disposal of contaminated material has been undertaken in accordance with the RAP and applicable regulatory requirements.

**20. Groundwater interaction with road pavement**

Prior to the issue of a Subdivision Works Certificate for each stage (except Stage A), all proposed road pavement works within that stage are to be shown to be above the level of the groundwater under the road. This reporting is to be undertaken by a suitably qualified engineer and hydrogeologist. The detailed design of each stage of works is to include any required protection measures for the pavement layers from groundwater effects.

This information is to be provided in the updated GMP. The plans of subdivision works for the each Subdivision Works Certificate must be consistent with the updated GMP.

**21. Groundwater interaction with stormwater devices**

Prior to the issue of a subdivision works certificate for each stage of the development, the civil engineering plans must demonstrate that the invert of filter media of any stormwater treatment device is one metre above the water table. If this is not possible, then the stormwater treatment device must be suitably lined, with appropriate consideration of hydrostatic forces.

**DELETED**

**21A Frog monitoring**

Monitoring of frogs on the E2 Zoned land on Lot 1 DP780242 (proposed Lot 156) in accordance with section 7.2.2 of the TSMP (the final approved version) shall be

carried out at six monthly intervals during the five year period of regeneration works specified in the VMP (in the final version approved by this consent). Frog monitoring and reporting is to continue for at least 20 years from the issue of a subdivision works certificate for Stage A in accordance with the final approved TSMP and VMP. The ongoing provision of the results of frog monitoring to Council is to be in accordance with the approved TSMP and VMP.

In relation to monitoring on Lot 6, the applicant is not required to duplicate any monitoring already carried out by the landowner of Lot 6 pursuant to development consent DA 10.2017.201.1.

## **21B Koala Monitoring**

Monitoring of koalas in accordance with Section 4.10.1 of the KPoM (the version finally approved by this consent) shall be carried out six monthly for five years following the commencement of Stage A of this consent (noting Condition 13 above), and thereafter in the 10<sup>th</sup> and 20<sup>th</sup> year after commencement.

Monitoring of koala habitat restoration in accordance with Section 4.10.2 of the KPoM shall be carried out yearly for five years following the commencement of Stage A , and every second year thereafter until the 20<sup>th</sup> year after commencement.

After the creation of community title schemes, monitoring shall be coordinated between the community associations to produce a single monitoring report across all of the environmentally zoned land. The ongoing provision of the results of koala monitoring to Council is to be in accordance with the approved KPoM.

## **22. Road pavement design**

Prior to the issue of a Subdivision Works Certificate for each stage (except Stage A), a pavement design report is to be provided by a suitably qualified geotechnical engineer providing a design for the road pavement. The road pavement is to be designed in consultation with Council and accordance with the Northern Rivers Design Guides (<https://www.byron.nsw.gov.au/Services/Building-development/Plans-maps-and-guidelines/Development-Design-Manuals> ).

The report is to demonstrate that the design has accounted for a 20 year design life of the road including projected construction traffic.

## **23. DELETED**

**24. Fill material**

Prior to the issue of a Subdivision Works Certificate for each stage (except Stage A), the type of fill material to be used is to be nominated by a suitably qualified Geotechnical Engineer. The fill is to be provided with certification that it is clean, uncontaminated and suitable for use as engineering fill.

The nominated fill for swales or other areas that rely on infiltration is to be provided to the Certifying Authority for approval showing that the parameters of the fill meet the minimum infiltration rates as required by the approved Stormwater Management Plan.

**25. Supervision of earthworks**

All earthworks are to be carried out under Level 1 geotechnical supervision and generally in accordance with AS3798-2007 '*Guidelines on earthworks for commercial and residential developments*'. The plans of subdivision works for the relevant Subdivision Works Certificate must be consistent with this requirement.

**26. Maximum disturbed area**

Prior to the issue of a Subdivision Works Certificate for each stage (except Stage A), the detailed design plans must show that the maximum area to be disturbed in that stage is 5ha or less. This 5ha maximum is inclusive of all works on site the subject of this Consent. An area is considered no longer disturbed if it has been planted with a ground cover species or if ground covering plants have naturally regenerated on the land, and achieved a coverage of not less than 70%.

**27. Approval for works on neighbouring land**

In the event that a stage includes works on neighbouring land, a letter is to be obtained from the affected landowner consenting to the works on their land. Any such letter is to be provided to Council prior to the issue of a Subdivision Works Certificate for the relevant stage.

**28. Master Stormwater Management Plan**

Prior to the issue of the subdivision works certificate for Stage 1, a modified 'Master' Stormwater Management Plan shall be submitted to Council for approval including the following amendments:

- a. amendment of the Stormwater Management Plan by AWC dated August 2019 to remove the smaller rain gardens distributed within the catchment, with water quality objectives to be met through the implementation of swales (as required) and end-of-line bioretention basins.
- b. Inclusion of a Design Submission Checklist as set out in Appendix C of the Northern Rivers Local Government Handbook of Stormwater Drainage Design, which must be signed by a suitably qualified Civil Engineer or Registered Surveyor.
- c. Inclusion of the following items:
  - i. Catchment plan including all contributing external catchments including flows from Ewingsdale Road (to also be included in the engineering drawing set);
  - ii. Hydrological and hydraulic calculations based on the methods outlined in the Queensland Urban Design Manual (QUDM) and Australian Rainfall & Runoff (AR&R) 1987. A summary of the calculations must be included on the drawings consistent with the Sample Drawings of the Northern Rivers Local Government Development & Design Manuals;
  - iii. For existing flow paths, it must be shown that the peak flow from the proposed development for the 5, 10, 20, 50 and 100 year ARI events, for durations from 5 minutes to 3 hours, does not exceed the existing peak flow from the site i.e. post-development flows must not exceed pre-development flows;
  - iii. Proposed Legal Points of Discharge for the site as a whole;
  - iv. Proposed works in the Main Drain to ensure it flows under gravity and has the capacity for major flows with appropriate freeboard.
- d. A long-term management plan that details ownership and maintenance arrangements for all stormwater infrastructure including associated maintenance inspection forms.

The 'Master' Stormwater Management Plan is to set out the requirements for stormwater management of the development as a whole, and must be:

- a. Based on the West Byron Urban Release Area Stormwater Management Plan (AWC, August 2019), West Byron Stormwater Assessment (BMT, August 2019), West Byron WSUD Water Quantity Report (BMT, August 2019) and the Hydrogeological Assessment: West Byron Urban Release Area (Martens and Associates, August 2019) and;
- b. Consistent with the amended and approved engineering plans and management plans listed in this consent.

**29. Stage Specific Stormwater Management Plan**

Prior to the issue of the Subdivision Works Certificate for each stage of the development (except Stage A) a stage specific Stormwater Management Plan is to be submitted showing how the relevant stage meets the requirements of the 'Master' Stormwater Management Plan.

The stage specific Stormwater Management Plan must be based on all previously constructed works, modelling and reporting that has occurred prior to the stage of works in review. Where the stage specific Stormwater Management Plan differs from the Master Stormwater Management Plan justification is to be submitted to and approved by Council's Director of Planning (or nominee).

The stage specific Stormwater Management Plan is to address:

- a. Stage catchments (external and internal);
- b. Temporary re-routing of drainage paths in accordance with the further hydraulic flood studies required pursuant to these conditions of consent;
- c. Water quality, by ensuring each stage satisfies the water quality objectives set in the Master Stormwater Management Plan;
- d. Legal points of discharge for the relevant stage;
- e. Minor and major flow conveyance; and
- f. Erosion and sediment control.

The Stormwater Management Plan for each stage must be consistent with the amended and approved engineering plans for the subject stage and the amended and approved management plans listed in this consent.

**30. Amended stormwater management for stages 11 and 12**

Prior to the issue of the Subdivision Works Certificate for Stages 11 and 12 of the development:

- a. Detailed design of the proposed stormwater management must be provided that demonstrates that:
  - i. Stormwater runoff from the western portion of Melaleuca Drive adjacent to the development and north of chainage 200 will be directed to the bioretention basin denoted B3 on "Stormwater Infrastructure Sheet 1 – Fig 15.1 Issue P" prepared by Acor Consultants; and

- ii. Excess stormwater flows will not impact the driveway of Lot 2 DP 878549 to the south of the development.
- b. The stormwater management plan/s for these stages must be amended to remove smaller rain gardens distributed within the catchment, with water quality objectives met instead through the implementation of swales (as required) and end-of-line bioretention basins; and
- c. Detailed design of the proposed stormwater management must demonstrate the capacity of the culvert through the development is sufficient to collect contributing flows up to the 1 % Annual Exceedance Probability from Lots 5 & 6 DP 1269369. Overland flow paths must be identified for blockages and flows exceeding capacity of the culvert.

### **31. Further Hydraulic Flood Studies**

Prior to the issue of a subdivision works certificate for any stage of the development (except Stage A), a two dimensional (2D) hydraulic flood model shall be prepared for that stage, and including any already constructed stages, that determines the requirements of temporary flood mitigation measures (if any) that should be included as part of the civil engineering design to prevent adverse impacts on neighbouring properties, or on the integrity of the Main Drain. The plans of subdivision works for the relevant Subdivision Works Certificate must be consistent with such flood model.

### **32. Main Drain Upgrade**

The Master Stormwater Management Plan to be provided prior to the issue of the Subdivision Works Certificate for Stage 1, must include plans and details of the proposed upgrades to the Main Drain. The plans and details must include:

- a. Longitudinal sections;
- b. Cross Sections; and
- c. Batter stabilisation (turfing or other).

The profile of the Main Drain, including any upgrades are to be supported by hydraulic calculations showing the Main Drain has the capacity to convey the major event flows, including the 8 megalitres/day flows expected to be discharged into the Main Drain by the upstream sewage treatment plant.

An approval is to be obtained, if required, under Section 68 of the *Local Government Act 1993* to carry out stormwater works.

**33. Main drain stability**

Prior to the issue of any Subdivision Works Certificate that includes any works within the Main Drain or works that discharge water into the Main Drain, a suitably qualified geotechnical engineer is to provide certification that the Main Drain batters in the affected areas are suitably stable for the works and the resulting flows. Any recommended stability works must be included in the detailed design and approved as part of the Subdivision Certificate Works.

**34. Construction Traffic Management**

Prior to the issue of a Subdivision Works Certificate for each stage (except Stage A) an updated Construction Traffic Management Plan (CTMP) specific for the proposed works is to be submitted to and approved by Council. The CTMP must address as a minimum:

1. Provides an estimation of the number of truck movements and worker vehicle movements required for site preparation and construction and identifies that the haulage route will be to and from the Pacific Highway and will avoid the Byron Bay town centre.
2. The CTMP must consider the following factors in terms of haulage truck generation:
  - a) Estimated imported fill volumes.
  - b) Estimated export material volumes (not identified).
  - c) Bulking factors of specific import and exported materials.
  - d) Location of source of fill material with associated cartage distance and travel times.



e) Location of destination of exported material with associated cartage distance and travel times.

f) Number of stages of construction.

g) Number and range of truck types involved in import and export tasks.

h) Number of worker vehicles (light vehicles).

i) Number of other trucks involved in nonfill deliveries such as road construction related activities (road sub-base, pavement, concrete, reinforcing, landscaping, service utilities and street furniture).

3. The following must be addressed:

- a. Pedestrian and vehicle movement plan for the public;
- b. Hours of work;
- c. Noise and vibration;
- d. Dust mitigation; and
- e. Flora and fauna protection.

4. The CTMP is to also consider the effects of construction traffic on the neighboring development and provide measures and commitments to ensuring that the cumulative effects of construction traffic from the subject and neighbouring development are appropriately handled to the satisfaction of Byron Shire Council.

5. The updated CTMP is to commit to carrying out works only as per the approved working hours and not carry out works in public holiday periods.

6. As a minimum, the CTMP is to commit to the following measures to reduce the impacts of construction traffic on Ewingsdale Road:

- (a) schedule the works involving the greatest volume of truck movements outside of school holiday or public holiday periods.
- (b) The haulage route for trucks is to be to and from the Pacific Highway, and is to avoid the Byron Bay town centre;
- (c) trucks entering the site during the construction of any stage of the development are not to exceed 10 trucks in any 1 hour period, or 5 trucks during the period 8:00am to 9:00 am. (*Judgement 176(1)*)

7. The CTMP is to commit to a plan for weekly of monitoring construction traffic movements in accordance with Condition 82

The reason for this sub-clause of this condition is to ensure that construction traffic does not exceed the limits required pursuant to this condition (10 trucks in any 1 hour period, or 5 trucks during the period 8:00am to 9:00 am). Any exceedance of the limits required by this condition will increase the impact of construction traffic loads along Ewingsdale Road and is likely to require upgrade works along Ewingsdale Road between Bayshore Drive and Sunrise Boulevard (including any associated intersection upgrade works).

9. The final approved CTMP must be complied with at all times.

### **35. Bus Stop**

Bus stops are to be located in accordance with the locations shown in the plans approved pursuant to condition 3A of this consent, including bus stands, connecting footpaths and pedestrian refuge. If the neighbouring development has a Subdivision Works Certificate issued which formalises a bus stop location(s) on the neighbouring land, the bus stop locations on the subject land may be adjusted in consultation with Byron Shire Council.

Bus stops must be designed such that they do not impair stormwater treatment or conveyance and provide safe pedestrian access to the bus stops including but not limited to pedestrian ramps.

**36. Disruption to Existing Drainage Patterns**

Prior to the issue of a Subdivision Works certificate for each stage of works that includes earthworks, the engineering plans must indicate how any existing drainage patterns affected by the works can be managed such that they are safely conveyed to their pre-development point of discharge unless they form part of a redirected catchment as per the Master or Stage Specific Stormwater Management Plan. The plans are to clearly show where all upstream stormwater flows are conveyed and show that the conveyance methods proposed have sufficient capacity for the flows.

**37. Probable Maximum Flood (PMF) Evacuation Plan**

Prior to the issue of a Subdivision Works certificate for each stage of works (except Stage A) a flood evacuation plan is to be provided to show appropriate evacuation routes for the proposed lots in the PMF event.

The evacuation plan is to show that the route provides safe vehicular and pedestrian access to an area on/ north of Ewingsdale Road not affected by the PMF to the satisfaction of Council.

**38. Updated Biodiversity Conservation Management Plan (BCMP)**

Prior to the issue of the Subdivision Works Certificate for, or the commencement of any planting or weed control required by, Stage A, a modified BCMP (shall be submitted to and approved by Council including the following additions and/or amendments (in addition to the general updates required by Condition 17):

- a. That herbicides will not be used or applied in acid frog habitat;
- b. Ongoing monitoring of bat boxes for bats and occupation by pest species;
- c. Description of, justification for and mapping of acid frog habitat buffers;
- d. Measures to exclude cane toads on an ongoing basis (i.e., as part of maintenance schedule);
- e. Timing of delivery to be updated to the approval and relevant construction milestones and/or subdivision stages;

- f. Frog monitoring and reporting to continue for at least 20 years from the issues of a subdivision works certificate for Stage A; and
- g. Details of monitoring and reporting of threatened coastal and migratory birds; and
- h. Inclusion of specific, long-term management measures for the buffers between zone R2 and E2 and E3 land.
- i. Consistency with the final, approved, subdivision layout and design.
- j. Inclusion of required asset protection zones and consistency with the final Bushfire Safety Authority and General Terms of Approval issued by the NSW Rural Fire Service.
- k. Consistency with the updated KPoM (see Condition 42 below).

**39. Updated Belongil Creek Plan of Management (BCPM)**

Prior to the issue of the Subdivision Works Certificate for, or the commencement of any planting or weed control required by, Stage A, a modified BCPM shall be submitted to and approved by Council including the following additions and/or amendments (in addition to the general updates required by Condition 17):

- a. Consideration and details of proposed human access to Belongil Creek including ongoing management and consultation with Marine Parks.
- b. Consistency with the final, approved, subdivision layout and design.
- c. Inclusion of required asset protection zones and consistency with the final Bushfire Safety Authority and General Terms of Approval issued by the NSW Rural Fire Service.
- d. Consistency with the updated KPoM (see Condition 42 below).

**40. Updated Threatened Species Management Plan (TSMP)**

Prior to the issue of the first Subdivision Works Certificate a modified TSMP shall be submitted to and approved by Council including the following additions and/or amendments (in addition to the general updates required by Condition 17):

- a. Update threats and management to include chytrid fungus, that affects frogs, particularly in relation to stormwater retention ponds and other constructed basins/water bodies;

- b. Inclusion of survey methodology for frog and tadpole monitoring that does not impact on habitat and addresses hygiene protocol for survey work; and
- c. A commitment to ongoing monitoring regardless of successful detection in previous surveys.
- d. Consistency with the final, approved, subdivision layout and design.
- e. Inclusion of required asset protection zones and consistency with the final Bushfire Safety Authority and General Terms of Approval issued by the NSW Rural Fire Service.
- f. Consistency with the updated KPoM (see Condition 42 below).

**41. Updated Vegetation Management Plan (VMP)**

Prior to the issue of the first Subdivision Works Certificate, a modified VMP shall be submitted to and approved by Council including the following additions and/or amendments in addition to the updates required by Condition 17):

- a. A commitment to a maximum disturbed area/area of earthworks of 5ha at any one time; and
- b. Details of proposed embellishment of the Main Drain including, but not limited to, works, timing and maintenance.
- c. Consistency with the final, approved, subdivision layout and design.
- d. Inclusion of required asset protection zones and consistency with the final Bushfire Safety Authority and General Terms of Approval issued by the NSW Rural Fire Service.
- e. Consistency with the updated KPoM (see Condition 42 below).

**42. Updated Koala Plan of Management (KPoM)**

Prior to the issue of the Subdivision Works Certificate for, or the commencement of any planting or weed control required by Stage A, a modified KPoM shall be submitted to and approved by Council including the following additions and/or amendments:

- a. Consistency with the final, approved subdivision layout and design.
- b. Details of proposed acoustic fencing demonstrating compliance with safe koala fencing requirements; and Road speed limits within the subdivision to be 40 km/h.

- c. More detailed plans of the areas proposed for habitat improvement and habitat enhancement, showing the boundaries of each area, the rate of planting and the species to be planted within in each area.
- d. Clarify that habitat improvement and habitat enhancement works in all areas are to be substantially commenced in accordance with Condition 13 above prior to the grant of a subdivision certificate for Stage 1.

#### **42AA Updated Koala Habitat Management Plan (KHMP)**

Prior to the issue of the Subdivision Works Certificate for, or the commencement of any planting or weed control required by Stage A, a modified KHMP shall be submitted to and approved by Council including the following additions and/or amendments:

- a. Consistency with the final, approved subdivision layout and design.
- b. Inclusion of required asset protection zones and other amendments to achieve consistency with the final Bush Fire Safety Authority and General Terms of Approval issued by the NSW Rural Fire Service.
- c. Consistency with the updated KPoM (see Condition 42 above).

#### **43. Baseline surface water quality assessment**

Prior to issue of a subdivision works certificate for Stage 1, a baseline surface water quality assessment shall be conducted generally in accordance with the BCPM. The baseline surface water quality assessment shall be carried out over at least twelve (12) months and shall include monitoring of surface water quality, sediment quality and benthic macroinvertebrates within drainage lines across the site. Where possible, the baseline surface water quality assessment shall consider wet and dry periods, tidal movements and incorporate sampling upstream and downstream of the development site.

The baseline surface water quality assessment is to include any relevant monitoring data collected by, or for, Byron Shire Council.

The baseline surface water quality assessment shall be peer reviewed by an independent and suitably qualified and experienced expert.

All information collected as part of the baseline surface water quality assessment shall be documented and analysed and provided to and approved by Council , with

the independent peer review, prior to the issue of a subdivision works certificate for Stage 1.

**44. DELETED**

**45. Updated CEMP to include details of monitoring and reporting**

1. The monitoring requirements in the updated TSMP, BCPM, BCMP, KPoM and VMP shall be updated in the CEMP to include, but not be limited to:

- a. Monitoring site locations including site descriptions, photos and coordinates. Monitoring site locations shall be included on a map/plan;
- b. Parameters to be measured;
- c. Monitoring/sampling frequencies for each parameter to be measured;
- d. The duration of sampling for all parameters to be measured; and
- e. Sampling and analysis methodologies to be used.

2. The reporting requirements in the updated TSMP, BCPM, BCMP, KPoM and VMP shall be updated in the CEMP to include, but not be limited to:

- a. Data analysis methodologies;
- b. Analysis of all monitoring and sampling data against baseline data, thresholds, limits and triggers for contingency actions;
- c. At least six (6) monthly reporting during subdivision construction works for at least five (5) years or until the issue of a subdivision works certificate for Stage 12, whichever is the later; and
- d. At least annual reporting thereafter for a total period of at least ten (10) years from the commencement of subdivision works.

**46. Updated CEMP required**

An updated CEMP is to be prepared and submitted to Council. The updated CEMP shall:

- a) Document all environmental related commitments for each Stage of development including but not limited to mitigation, management, restoration, monitoring and reporting including that detailed in the approved TSMP, BCPM, BCMP, KPoM and VMP.

- b) Include a requirement to close all trenches at the completion of works each day or provide an escape slope for fauna with a slope of no greater than 30 degrees.
- c) Be developed so that it can receive new information gathered from ongoing monitoring and modelling and be adapted as necessary to accommodate any necessary design changes and/or contingency measures.
- d) Specify that the successful contractor is to understand the interrelationships and potential conflict during construction between surface, groundwater, vegetation, acid sulphate soils, acid frog habitat and benthic invertebrates. The successful contractor is to retain competent environmental consultants to ensure that the CEMP is understood fully and implemented as required.

The current CEMP is to be submitted to Council for approval prior to the commencement of each stage of the development. Any non-compliance/s is/are to be satisfactorily addressed before commencement of the following stage.

In relation to acid sulfate soils, the CEMP shall be updated by a suitably qualified environmental consultant to include the following as a minimum:

- Detail the specific methods in the handling, storing, treating and disposing of PASS/ASS
- Detail specific methods in the dewatering of construction areas and the neutralisation of acidic groundwater (should they be encountered)
- Provide a framework for a groundwater quality monitoring regime that assesses likely impacts to groundwater (quality and height), trigger values and associated management actions

**47. DELETED**

**48. Landscaping Plan required**

A detailed landscaping plan must be submitted as part of the subdivision works certificate application for each stage. The landscaping plan must be prepared by a suitably qualified and experienced landscape architect / architect / ecologist and demonstrate consistency with the relevant requirements of Chapter B9 of Byron Development Control Plan 2014.

The detailed landscaping plans must indicate the following as a minimum:

- a. Details of the landscaping to be carried out in the Main Drain corridor and all other areas identified as public or recreational open space.



- b. Use of “fauna-neutral” plant species adjacent to Ewingsdale Road to minimise likelihood of colonisation by native fauna and consequently risk of vehicle strike. For the purposes of this condition, “fauna neutral” plant species are not plant species known to be used as food resources by native fauna, namely plants which provide foliage, blossoms, fruit or other ecologically relevant attributes. A “fauna neutral” plant species list must be submitted to Council for approval.
- c. Details of pedestrian links to/from the Main Drain corridor from footpaths and cycleways. The pedestrian links to the Main Drain corridor should avoid the use of concrete and asphalt surfaces in favour of timber, gravel and other “soft” pathway surface options.
- d. The environmental embellishment of the Main Drain including removal of weed species.
- e. Landscaping associated with stormwater treatment and conveyance devices and infrastructure.
- f. Landscaping treatments throughout the public road reserves including provision of street trees at a minimum of one street tree per 15 metres of residential lot street frontage. Street trees are to have a general maturity height of 10 metres and a canopy diameter of 8 metres.
- g. Landscaping and planting for drainage lines, car parking areas and recreational reserves to be dedicated to Council.
- h. Demonstrated consistency with the adjacent, approved subdivision (DA 10.2017.201.1) in relation to footpaths, cycleways, street trees, Main Drain embellishment and the area adjacent to Ewingsdale Road.
- i. Proposed location for planted shrubs and trees – trees should be located clear of infrastructure and service pits.
- j. Common and botanical name of shrubs and trees to be planted. Locally indigenous species are to be predominantly used in landscaping. No species listed as undesirable in Chapter B2 of Byron Development Control Plan 2014 are to be used in landscaping of the site.
- k. Mature height, location and density of trees to be planted.
- l. Location of grassed and paved areas.
- m. Locations and design of acoustic barriers.
- n. Details of how landscape planting will be maintained, including weed control, and a description of any passive watering arrangements through water sensitive urban design.

The landscaping plan must be approved as part of the Subdivision Works Certificate for each Stage.

**49. DELETED**

**50. Details of acoustic barrier**

Details of the proposed acoustic walls, as described in the Revised Environmental Noise Impact Assessment (Ref:ttm: 26 August 2019) are to be submitted to Council for approval prior to installation. The details are to be prepared by a suitably qualified acoustic engineer.

In order to provide opportunities for koalas to escape potential predators and move over the acoustic fence into or out from the development, the final design of the acoustic fence is to include koala bridges at 100m intervals. Each bridge is to be constructed of timber logs at least 125mm in diameter, positioned adjacent to and within 1m of each other on either side of the fence and extend for at least 1m above the fence. A cross piece of similar diameter is to connect the two logs. The koala bridges should also be designed in accordance with the requirements of the BCCKPoM.

**51. Public/Recreational Open Space Plan**

Details of the proposed facilities for the public/recreational open space to be dedicated to Council are to be detailed in a plan to be submitted to Council for approval prior to installation. The plan shall include a consideration of the park facilities required under Prescriptive Measures 3 and 5 of E8.10.7 Byron Development Control Plan 2014.

Note: Developer contributions credits will be provided for the provision and embellishment of new neighbourhood parks in accordance with Council's Development Contribution.

**52. 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 **18 June 2021**, have been complied with in relation to any necessary subdivision works.

**53. Works within the road Reserve**

Consent under the *Roads Act 1993* must be obtained from Council for all works within public road reserves with concurrence from Transport for NSW (TfNSW) for classified roads. All works within any classified road are to be designed and undertaken in accordance with applicable TfNSW requirements. Such works are those works on the Public Roads identified on the approved plans as amended by these conditions, including but not limited to:

- a) Roundabout and associated works on Ewingsdale Road
- b) Road and drainage works on Melaleuca Drive.
- c) Roundabout and associated works on Melaleuca Drive.
- d) Ewingsdale Road pedestrian / cyclist crossing facility (Traffic Signals or grade separation).
- e) Ewingsdale Road site frontage shared Path (2.5m wide).

Prior to the issue of an approval under s 138 of the Roads Act for construction within Melaleuca Drive a qualified Geotechnical Engineer is to certify that the proposed batter slopes are suitable and will remain stable and this certification must be submitted to and approved by Council.

**54. Detailed design required for stages 11 and 12**

Prior to the issue of a Subdivision Works Certificate for Stages 11 and 12 of the development, detailed design of earthworks, roads, roundabout and stormwater management shall be undertaken incorporating Figure 8.1 Issue L, Figure 15.1 Issue P, PLAN W1 Issue D, PLAN W2 Issue D, PLAN W3 Issue B, and PLAN W4 Issue C as amended by any plan submitted pursuant to the conditions of this consent.

**55. Engineering Construction Plans**

Three (3) copies of engineering construction plans and specifications must accompany the Subdivision Works Certificate application demonstrating compliance with Council's standards for the required engineering works.

Each set of drawings must be accompanied by a Certification Report which must be signed by a suitably qualified Civil Engineer or Registered Surveyor. The Certification Report will comprise the certificate and check lists set out in Annexure DQS-A of the [Northern Rivers Local Government Development & Design Manuals](#).

The information shown on the drawings must be logically collated on discrete sheets generally in accordance with Annexure DQS-B and the Sample Drawings of the Northern Rivers Local Government Development & Designs. The drawings are to provide for the following works:

**a) Full Width Road Construction for works within the subdivision**

Full width road and drainage construction for all proposed roads within the relevant stage. Trafficable road widths must be in accordance with Northern Rivers Design Guidelines as well as provide appropriate connection to roads they are connecting into over adjoining properties.

Traffic calming measures shall be supplied on all residential streets which have straight lengths greater than 100m.

**b) Footpath, Cycleway and Pedestrian Refuge Construction**

Footpaths (minimum 1.2m wide), shared cycleways (minimum 2.5m wide) and pedestrian refuges are to be provided generally in accordance with the revised engineering plans. The following must be provided for:

- (i) A shared pathway/cycleway (minimum 2.5m wide) along the Ewingsdale Road frontage connecting to the internal path network (including extension of drainage infrastructure and safety rails/fencing) as required;
- (ii) A 1.2m wide footpath on one side of local roads; and
- (iii) A shared path on one side of the road and a 1.2m footpath on the other side for distributor/collector roads, subject to approval by Council for areas of high density or business/commercial zonings.

The final footpath layout for the subdivision is to be submitted to Council for approval prior to the issue of the Subdivision Works Certificate for the stage under review. No new pedestrian refuges are to be constructed on Ewingsdale Road.

**c) Gutter/Verge Crossings**

Gutter/verge crossings to each of the proposed new allotments that have a fronting swale are to be provided as part of the subdivision works and extend from the edge of the road to the property boundary. Footpaths are to start and stop either side of

the crossings. Cycle ways to be continuous and not start/stop for verge crossings, to give a continuous cycle way fronting lots. Typical details are to be provided for both cases.

**d) Turn Around Areas**

All turn around areas are to be minimum 12 metre outer radius in accordance with Planning for Bushfire Protection 2019 or shall be provided in accordance with relevant General Terms of Approval from NSW Rural Fire Service **18 June 2021** .

**e) Service Conduits**

Service conduits to each of the proposed new allotments laid in strict accordance with the service authorities' requirements.

**f) Street Name Signs**

Street name signs and posts to all proposed new roads.

**g) Stripping and Stockpiling**

Stripping and stockpiling of existing topsoil on site, prior to commencement of earthworks, and the subsequent re-spreading of this material together with a sufficient quantity of imported topsoil so as to provide a minimum thickness of 80mm over the allotments and footpaths and public reserves, upon completion of the development works.

**h) Inter-allotment Drainage**

Inter-allotment drainage to an approved public drainage system for each of the proposed new allotments where it is not possible to provide a gravity connection of future roof water to the fronting kerb and gutter/swale.

**i) Stormwater Drainage**

Stormwater is to be collected and discharged in accordance with Council's standards, currently [Northern Rivers Local Government Development Design & Construction Manuals](#). Detailed engineering drawings of the proposed stormwater drainage system must be provided. The drawings must be accompanied by a Design Submission Checklist as set out in APPENDIX C of the Northern Rivers Local Government Handbook of Stormwater Drainage Design, which must be

signed by a suitably qualified Civil Engineer or Registered Surveyor. The drawings and management plan are to include, but not be limited to, the following items:

- i) Catchment plan including all contributing external catchments (included in the drawing set);
- ii) Hydrological and hydraulic calculations based on the methods outlined in the Queensland Urban Design Manual (QUDM) and Australian Rainfall & Runoff (AR&R) 1987 or 2019. A summary of the calculations must be included on the drawings consistent with the Sample Drawings of the Northern Rivers Local Government Development & Design Manuals;
- iii) For existing flow paths, it must be shown that the peak flow from the proposed development for the 5, 10, 20, 50 and 100 year ARI events, for durations from 5 minutes to 3 hours, does not exceed the existing peak flow from the site i.e. post-development flows must not exceed pre-development flows.
- iv) Stormwater management structures/facilities that have minimum impact on Council's maintenance program. All maintenance activities must be specified in a maintenance plan (and associated maintenance inspection forms) to be developed as part of the design procedure and included in the stormwater management plan. The maintenance plans must be submitted with each stage of the subdivision and relate to the stormwater infrastructure propose for the stage in review;
- v) It must be shown that the minor event stormwater flows can be conveyed within the roadside swales and the major event is conveyed within the road reserve without entering any private land. Major flow depths on the trafficable road width and driveway crossings are to be shown to be maximum 200mm and with a velocity x depth ratio of no more than:
  - $0.4\text{m}^2/\text{s}$  where pedestrian traffic is expected (footpath/ road).
  - $0.6\text{m}^2/\text{s}$  where vehicular traffic is expected (where vehicle crosses swale);
- vi) Surcharge pits in swales are to be provided for each lot that fronts and drains to a roadside swale. The pit in the swale and a stub that provides a connection point at the lowest part of the lot is to be provided as part of the subdivision works;
- vii) All lots that do not front a roadside swale are to be provided with a kerb outlet. The kerb outlet is to be connected to a stub located at the lowest part of the lot. This is to be provided as part of the subdivision works; and
- vii) Pits in roads are to be located outside kerb returns.

**j) Stormwater quality**

Stormwater quality must be suitable for discharge in accordance with Council's standards, currently [Chapter B3 Services of Development Control Plan 2014](#) and [Northern Rivers Local Government Development Design & Construction](#)

[Manuals](#). The proposed water quality management devices and treatment train must have minimum impact on Council's maintenance program. All maintenance activities must be specified in a maintenance plan (and associated maintenance inspection forms) to be developed as part of the design procedure and submitted with the subdivision works certificate documentation.

Stormwater Quality measures for each stage of development are to be shown to comply with the Council pollution reduction targets and NORBE requirement as per the Stormwater Management Plan.

The arrangement of basin and swales is to generally be in line with the Master Stormwater Management Plan, minor modifications to the layout/ sizes may be allowable subject to the satisfaction of the Certifying Authority. Detailed design for each stage is to be supported by MUSIC modelling, as well as being supported by a maintenance plan.

The detailed design must include:

- An extended detention depth;
- Depth of filter media;
- Maintenance track details from the nearest public road (for basins);
- Landscaping detail for within and surrounding the basin. Note that the plants in the bioretention basin are to be selected and certified by a landscape architect to withstand significant periods of inundation and planted at a density of 8-10 plants/ m<sup>2</sup> to mitigate the growth of weeds on the filter area; and
- A staged approach to basin construction to suit the subdivision construction phase, lot development stage and final operations phase.

The bioretention basins must be shown to be above the surrounding groundwater levels or appropriately lined.

#### **k) Access to Stormwater Structures**

Satisfactory access to all drainage discharge points and filter controls for maintenance purposes. Where it is proposed to discharge stormwater into the Main Drain via a pipe, provide a junction pit upstream of the discharge point at the level of the top of batter for maintenance.

**l) Filling to above the flood level**

Filling of lots with clean suitable material to at least a level equivalent to the 1% flood level +0.5m is required. Fill levels are to be shown to be in line with the bulk earthworks levels shown in the amended engineering drawing required by the conditions **of this consent**.

**m) Street lighting**

The provision of street lighting to the satisfaction of Byron Shire Council and Essential Energy. Such lighting must be strategically positioned to minimise spill impacts on future dwellings within the subdivision and existing dwellings within adjacent properties.

**56. Sewerage and water mains**

An approval is to be obtained under Section 68 of the *Local Government Act 1993* to carry out water supply and sewerage works.

Sewerage and water mains are to be extended to service all residential allotments in the subdivision. All Council gravity sewerage mains are to be a minimum 150 mm diameter and water mains are a minimum 100mm diameter.

A water trunk main of 250mm diameter is to be designed to service the development from the 300mm Trunk Main located along Ewingsdale Road linking through to the adjacent development to the east and ultimately connect to the existing 400mm diameter Trunk Main running from Coopers Shoot. No water service tapping will be permitted on  $\geq 250$ mm diameter trunk mains, all residential service tapping are restricted to water reticulations mains between 100mm diameter and  $<250$ mm in diameter.

Water supply and sewerage works are to comply with, as a minimum, Council's latest Standards and Policies including but not limited to:

- Development Design and Construction Manuals, Northern Rivers Local Government, 2009;
- Development Servicing Plan for Water Supply Services, Byron Shire Council, 2011;



- Development Servicing Plan for Sewerage Services, Byron Shire Council, 2011;
- Fire Flow Design Guidelines, Water Directorate, 2011;
- Water and Sewer Equivalent Tenement Policy (13/005), Byron Shire Council, 2013;
- Pressure Sewerage Policy (12/014), Byron Shire Council, 2012.
- Private Sewer Pump Station Policy (12/015), Byron Shire Council, 2012.

#### **57. Traffic Guidance Scheme**

The plans and specifications accompanying the Subdivision Works Certificate application for each stage are to include a traffic guidance scheme to indicate the measures to be employed to control traffic on public roads during construction of the subdivision. The traffic guidance scheme is to be designed in accordance with the requirements of the TfNSW Traffic Control at Work Sites Technical Manual (2020), and Australian Standard 1742.3, Manual of Uniform Traffic Control Devices Part 3, 'Traffic Control for Works on Roads' (2019).

The traffic guidance scheme must be prepared by a suitably qualified Transport for NSW accredited person.

The traffic guidance scheme must be submitted for each stage of the works showing compliance with above.

#### **58. Erosion and Sediment Control Plan**

The plans and specifications to accompany the subdivision works certificate application are to include an Erosion and Sediment Control Plan (ESCP). The ESCP is to detail the measures to be employed to control erosion and loss of sediment from the site, is to be prepared in accordance with the requirements of Managing Urban Stormwater: Soils and Construction (NSW Government, 2004) and is to be generally in accordance with the Soil and Water Management Plan provided as part of the expert witness conferencing and reviewed by Soil and Water Solutions, with accompanying letter dated 1/09/2020.

The plan must include, without being limited to:

- a. Information on general site management;
- b. Material handling practices;

- c. Soil stabilization, based on data from the proposed fill material;
- d. Sediment basin inclusion and maintenance;
- e. Water control;
- f. Sediment control;
- g. Wind erosion control;
- h. Water quality monitoring during construction works;
- i. Specific measures to protect sensitive environments such as frog habitat, vegetation to be retained, waterways and E2 zoned land;
- j. Access measures and any fencing of 'No Go Zones' as required by the CEMP or other related reports; and
- k. Source of fill.

A suitably qualified and experienced person must prepare the ESCP.

Note: Suitably qualified people include those certified by:

- The Institution of Engineers, Australia, for engineering and hydrology matters.
- The International Erosion Control Association for soil conservation matters.
- The Australian Society of Soil Science for collection or analysis of soil data.

## **59. Long Service Levy to be paid**

Long Service Levy in accordance with the requirements of the Long Service Corporation is required to be paid prior to issue of the Subdivision works Certificate. This is a State Government Levy and is subject to change.

These payments may be made online at [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au) or at Council's Administration Office, Station Street, Mullumbimby. Where paying to Council, cheques are to be made payable to 'Byron Shire Council'.

For further information regarding the Long Service payment please refer to the website above.

**60. Street Name Application to be lodged**

Street / road names for the subdivision must be submitted for Council approval prior to issue of the Subdivision works Certificate.

An application for approval of a street name must be in writing (letter or email) and is to include:

- a. at least two (2) names for each proposed road in preferential order;
- b. the location and extent of the road;
- c. background/history of the selected name/s;
- d. details on why the selected name is considered to be appropriate;
- e. details on how the selected name conforms with Council's Street Names policy (07/102), and the NSW Address Policy and Guidelines;
- f. a locality plan;
- g. a layout plan showing proposed road/s and selected name/s suitable for publishing in the local newspaper; and
- h. payment of fees in accordance with Council's adopted schedule of fees and charges.

**61. Fibre-ready Facilities and Telecommunications Infrastructure**

Prior to the issue of the Subdivision works Certificate in connection with a development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:

- a. the installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose; and
- b. the provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

Note: "Real estate development project" has the meanings given in section 372Q of the Telecommunications Act.

**62. Site Waste Minimisation and Management Plan**

Prior to the issue of a Subdivision works 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.

Chapter B8 of Byron Shire Development Control Plan 2014 (DCP 2014) aims to facilitate sustainable waste management in a manner consistent with the principles of Ecologically Sustainable Development. A template is provided on Council's website to assist in providing this information

[www.byron.nsw.gov.au/files/publication/swmmp - pro-forma-.doc](http://www.byron.nsw.gov.au/files/publication/swmmp-pro-forma.doc)

**63. Long-term delivery of environmental restoration and management**

A draft positive covenant (pursuant to Section 88E of the *Conveyancing Act 1919*) is to be submitted to and approved by Council prior to the issue of a subdivision certificate for the three community title subdivisions. The proposed Section 88E Instrument is to create an obligation on the community association lots to carry out ongoing maintenance, management, monitoring and reporting of the identified rehabilitation zones and existing vegetation and fauna habitat on residual land zoned E2, E3, 7(a) and 7(b) in accordance with the Vegetation Management Plan, the Biodiversity Conservation Management Plan, Threatened Species Management Plan, Koala Habitat Management Plan and the Koala Plan of Management as amended in accordance with the conditions of consent

The positive covenant must contain a provision identifying Byron Shire Council as the only person or authority having the power to revoke, vary or modify the instrument.

**64. Stormwater drainage**

Unless exempt from obtaining an approval under section 68 of the [Local Government Act 1993](#) by a Local Approvals Policy, an approval must be obtained under that Act prior to issue of a Subdivision Works Certificate for stormwater drainage works.

**65. Mosquito management**

The subdivision development is to incorporate design measures to limit the habitat for mosquitoes. Such measures to be incorporated into the design of the development must include but not be limited to:

- a. Stormwater ponds and artificial wetlands to be located in open areas to enable wind action to create surface waves that will help disrupt mosquito breeding and reduce habitat refuges for immature mosquitoes;
- b. Stormwater swales are to be designed to ensure ponding or standing water does not occur after rainfall events;
- c. Asset Protection Zones for bushfire protection purposes around residential development are to be suitably designed to reduce habitat for mosquitoes; and
- d. Appropriate plant selection and management of vegetation to reduce habitat opportunities for mosquitoes.

**66. Certification of fill to be provided to Council**

Documentation certifying that fill proposed for use on the subject site is from a source that is clean and uncontaminated must be provided to Council prior to the issue of a Subdivision works Certificate for the relevant stage of development.

**67. Emergency Access Provision**

Prior to the issue of a Subdivision Works Certificate a design must be provided for a two-way, all-weather access road providing secondary emergency access from the development to Ewingsdale Road.

A lockable gate or similar to Council's approval, must be provided at the emergency access path location to eliminate unlawful use of this access way.

If/when the permanent West Byron Urban Release Area secondary access point is operational at the Bayshore roundabout and through connection is available to this secondary access point, the temporary emergency access paths are to be removed at the applicant's expense unless Council deems the access appropriate to remain for the purpose of further emergency access.

A bond is to be lodged to Council for the removal of the temporary emergency access. The value of the bond is to be approved by Council and cover the cost of the removal of the emergency access road and all ancillary works.

**68. CEMP – reporting and review**

An independent environmental audit of CEMP implementation is to be undertaken by a suitably qualified person/s and submitted to Council for approval prior to the commencement of each stage (except Stage A). Any non-compliance/s are to be documented along with contingency measures undertaken along with suggested alterations to future stages and the CEMP.

The review of compliance with the CEMP should include but not be limited to:

- a. Surface water quality monitoring and impacts;
- b. Adequacy of erosion and sediment control measures;
- c. Groundwater level and quality;
- d. Acid frog monitoring and habitat health;
- e. Threatened species monitoring and health;
- f. Vegetation rehabilitation and management progress;
- g. Mosquito management;
- h. Dust control;
- i. Noise and vibration management;
- j. Acid sulfate soil management; and
- k. Contaminated land management.

**The following conditions are to be complied with prior to commencement of subdivision works**

**69. Subdivision work**

Subdivision work in accordance with the development consent must not be commenced until a Subdivision Works Certificate has been issued, a principal certifying authority has been appointed and at least 2 days' written notice for the intention to commence works has been made, in accordance with the requirements of the *Environmental Planning and Assessment Act and Regulations*. The written notice for the intention to commence works must also include names and contact details of the certifying engineer and principal contractor.

Note: Subdivision work means any physical activity authorised to be carried out under the conditions of this development consent for the subdivision of land, including earthwork, road work, stormwater drainage work, landscaping work, tree/vegetation removal, erosion and sediment control, traffic control, etc.

**69A CEMP – independent audit**

An independent environmental audit of CEMP implementation is to be undertaken by a suitably qualified and experienced person/s and submitted to and approved by Council prior to the commencement of each Stage of the development (except Stage A). Any non-compliance/s are to be documented along with contingency measures undertaken along with suggested alterations to future stages and the CEMP.

The review of compliance with the CEMP should include but not be limited to:

- a. Surface water quality monitoring and impacts;
- b. Adequacy of erosion and sediment control measures;
- c. Groundwater level and quality;
- d. Acid frog monitoring and habitat health;
- e. Threatened species monitoring and health;
- f. Vegetation rehabilitation and management progress;
- g. Mosquito management;
- h. Dust control;
- i. Noise and vibration management;
- j. Acid sulfate soil management; and
- k. Contaminated land management.

**69B Vibration Management Plan**

Prior to the commencement of any excavation works requiring vibratory rolling, rock drilling, blasting or breaking on the site, a Vibration Management Plan prepared by a suitably qualified and experienced person must be submitted to and approved by Council. The Plan must address, but not be limited to, the following matters:

- a. Identification of the specific activities that will be carried out;
- b. Identification of all potentially affected sensitive receivers;
- c. Determination of appropriate vibration objectives for each identified sensitive receiver;
- d. Vibration monitoring, reporting and response procedures;

- e. Assessment of potential vibration from the proposed construction activities;
- f. Description of specific mitigation treatments, management methods and procedures that will be implemented to control vibration during construction;
- g. Procedures for notifying residents of construction activities that are likely to affect their amenity through vibration, and
- h. Contingency plans to be implemented in the event of non compliance and/or complaints.

**70. Public Liability Insurance**

The developer and/or contractor must produce evidence to the Principal Certifying Authority of public liability insurance cover for a minimum of \$20 million. Council is to be nominated as an interested party on the policy.

**71. Erosion and sediment control measures**

Erosion and sediment control measures are to be in place in accordance with the approved Erosion and Sediment Control Plan for each stage.

No soil or fill material is to be placed within the dripline of a tree that is to remain so as to cause changes in surface level by more than 50mm from the existing level and such soil is not to be compacted. Such soil fill must not be finer than that being covered in situ, e.g. clay must not be placed over loam soil.

Note: Council may impose on-the-spot fines for non-compliance with this condition.

**72. Acid sulfate soils treatment and storage**

All treatment and storage facilities associated with the approved Acid Sulfate Soils Management Plan must be in place prior the commencement of subdivision works.

**73. Metered Stand Pipe required**

Prior to the commencement of any civil works requiring water from Council water main, a metered Stand Pipe for temporary water supply must be supplied and installed by Council.



Note: Council may impose on-the-spot fines for non-compliance with this condition.

**The following conditions must be complied with during subdivision works**

**74. Construction noise**

Construction noise is to be limited as follows:

- a. For construction periods of four (4) weeks and under, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 20 dB(A).
- b. For construction periods greater than four (4) weeks and not exceeding twenty-six (26) weeks, the L10 noise level measured over a period of not less than fifteen (15) minutes when the construction site is in operation must not exceed the background level by more than 10 dB(A).

**74A Construction truck limits**

Trucks entering the site during the construction of any stage of the development are not to exceed 10 trucks in any 1 hour period, or 5 trucks during the period 8:00am to 9:00 am.

**75. Construction times**

Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible from adjoining residential premises, can only occur:

- a. Monday to Friday, from 7 am to 6 pm.
- b. Saturday, from 8 am to 1 pm.

No construction work to take place on Saturdays and Sundays adjacent to Public Holidays and Public Holidays and the Construction Industry Awarded Rostered Days Off (RDO) adjacent to Public Holidays.

Note: Council may impose on-the-spot fines for non-compliance with this condition.

**76. Public safety requirements**

All care is to be taken to ensure the safety of the public in general, road users, pedestrians and adjoining property. Council is not held responsible for any negligence caused by the undertaking of the works.

**77. Council Specification**

All works to be constructed to at least the minimum requirements of the "[Northern Rivers Local Government Design and Construction Manual](#)".

Water supply and sewerage works are to comply with, as a minimum, Council's latest Standards and Policies including but not limited to:

- Development Design and Construction Manuals, Northern Rivers Local Government, 2009;
- Development Servicing Plan for Water Supply Services, Byron Shire Council, 2011;
- Development Servicing Plan for Sewerage Services, Byron Shire Council, 2011;
- Fire Flow Design Guidelines, Water Directorate, 2011;
- Water and Sewer Equivalent Tenement Policy (13/005), Byron Shire Council, 2013;
- Pressure Sewerage Policy (12/014), Byron Shire Council, 2012.
- Private Sewer Pump Station Policy (12/015), Byron Shire Council, 2012.

**78. Approved Subdivision Works Certificates to remain on site**

Copies of the approved Subdivision Works Certificates including approved plans, details, supporting reports, specifications and the CEMP must remain at the site at all times during the construction of the subdivision.

**79. Acid sulfate soils management**

All soil disturbance and excavation works must be carried out in accordance with the approved Acid Sulfate Soils Management Plan.

**80. Aboriginal Cultural Heritage**

The management recommendations of the Amended Cultural Heritage Assessment (Adise Pty Ltd, August 2019) shall be implemented during subdivision construction works.

**81. Access to Ewingsdale Road for Melaleuca Drive residents**

Safe and suitable vehicular and pedestrian access to the properties on Melaleuca Drive is to be provided at all times. Where access arrangements are to be modified, the residents are to be notified five (5) days prior to the changes being made, with clear instructions of how access will be provided during constructions works.

**82. CTMP monitoring**

For the duration of the subdivision construction works, the following must be recorded daily:

- a. the total number of construction traffic movements related to the works;
- b. the number of heavy vehicle movements;
- c. the number of light vehicle movements;
- d. the number of vehicle movements related to importing fill to the site;
- e. the number of vehicle movements related to exporting unsuitable/excess material from the site;
- f. any construction traffic incidents;
- g. any construction traffic complaints; and
- h. the source of imported material and the disposal location of exported material.

A report that includes the above construction traffic monitoring shall be provided to Council fortnightly for the duration of the subdivision construction works.

**83. Prevention of water pollution**

Only clean and unpolluted water is to be discharged to Council's stormwater drainage system or any watercourse to ensure compliance with the Protection of Environment Operations Act.

**84. Maintenance of erosion and sediment control measures**

Erosion and sediment control measures specified in the approved Erosion and Sediment Control Plan must be maintained at all times until the site has been stabilised by permanent vegetation cover or hard surface.

**85. Ongoing monitoring and reporting**

Monitoring and reporting outlined in the approved CEMP shall continue during construction of the subdivision and following issue of the subdivision certificate for the final stage of the development for a period of at least 12 months.

**86. Groundwater Monitoring**

Monitoring of groundwater levels and quality shall continue during subdivision works in accordance with the approved GMP and the relevant conditions in this consent.

**87. Belongil Creek and Main Drain monitoring**

Monitoring of the Main Drain and Belongil Creek shall continue during subdivision works in accordance with the approved CEMP and the relevant conditions of this consent. Baseline (pre-construction) monitoring results for the Main Drain and Belongil Creek must be used to inform analysis of subsequent monitoring data.

The following monitoring is required during the earthworks phase of the development, as the per the approved ASSMP:

- a. monitoring of treated, excavated acid sulfate soils to confirm neutralisation and success of treatment procedures;
- b. visual monitoring for (i) unexplained scalding or degradation of vegetation, (ii) green- blue or extremely clear water indicating high concentrations of aluminum;
- c. loss of neutralising agent from temporarily stockpiled material, bunds and treatment pads following rainfall events; and
- d. regular monitoring of leachate collection ponds, stormwater retention basins and water discharged from the site.

**88. Frog and threatened species monitoring**

Monitoring of frogs and threatened species shall continue during subdivision works in accordance with the approved TSMP and BCMP and the relevant conditions in this consent.

**89. Builders rubbish to be contained on site**

All builders rubbish is to be contained on the site in a 'Builders Skips' or an enclosure. Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

**90. All excavated soils to be disposed of off-site**

All excavated soils to be disposed of off-site must be handled in accordance with NSW Environmental Protection Authority Waste Classification Guidelines (2014) and approved environmental management plans.

**91. Removal of demolition and other wastes**

All wastes, including asbestos and lead-contaminated wastes, associated with the subdivision works are to be handled, and disposed of, in accordance with the requirements of the Work Cover Authority. Documentary evidence that this condition has been met must be provided to Council. Wastes must be disposed of at a Licensed Waste Facility. All wastes removed from the site must be managed and disposed of in accordance with the NSW Environmental Protection Authority Waste Classification Guidelines (2014) <https://www.epa.nsw.gov.au/your-environment/waste/classifying-waste/waste-classification-guidelines>.

**92. Excavated natural materials and demolition waste disposal**

Any and all excavated natural materials and demolition and builders waste transported from the site must be accompanied (a copy kept with the transporter) by a NSW Protection of The Environment Operations Act s143 Notice.

Note: Template s143 Notices are available at <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/wasteregulation/160095-notices143-form.docx>

**93. DELETED**

**The following conditions must be complied with prior to issue of a Subdivision Certificate for each Stage of the subdivision****94. Subdivision Certificate application required**

An application for a Subdivision Certificate must be made on the approved form. The Subdivision Certificate fees, in accordance with Council's adopted schedule of fees and charges, must accompany such application.

Note: The application MUST be one complete concise package addressing ALL conditions of consent relevant to the subdivision with a clear explanation how each condition has been complied with, together with supplying ALL the relevant information /documents/ certificate and/or plans that is required by that condition. Failure to provide the abovementioned information in one package will likely result in the application being refused or rejected and returned to you.

**94A No Stopping on Road No. 2**

The northern side of Road No. 2 shall be sign-posed "No Stopping" to ensure the smooth functioning of that road

**95. Plan of Subdivision**

The final plan of subdivision must be in accordance with the approved plan/s. A Deposited Plan Administration Sheet (original plus one (1) copy), two (2) copies of the plan of subdivision and any necessary section 88B instrument (original plus one (1) copy) are to be submitted with the application for a subdivision certificate.

The final plan of subdivision must indicate lots to be transferred to Council.

**96. Street addressing**

In accordance with clause 60(c) of the Surveying and Spatial Information Regulation 2017 the Plan of Subdivision (Deposited Plan) shall show the approved street address for each lot in the final plan of subdivision. The street addressing for this property must be approved by Council. A written request seeking approval of street addresses is to be submitted to Council's Land Information Officer ([planning.certificates@byron.nsw.gov.au](mailto:planning.certificates@byron.nsw.gov.au)) with a copy of the final plan of subdivision showing driveway access to each lot from the public road servicing the lots.

Prior to issue of the subdivision certificate, the approved street number must be displayed in a prominent location near the approved driveway access for each lot with an existing dwelling/building approved for separate occupation.

**97. Remediation of contaminated land**

For any stage(s) subject to the lead contamination identified in the Detailed Site Investigation (AWC, 26 September 2017), the application for a subdivision certificate must be accompanied by a Notice of Completion of remediation works and a Validation Report prepared by a suitably qualified person with experience in the remediation of contaminated land. The Notice of Completion and Validation Report must specify the standard of remediation achieved and certify that the site is suitable for the proposed use. The report must conform to NSW EPA *Consultants Reporting on Contaminated Land – Contaminated Land Guidelines (2020)*, and all other relevant statutory requirements.

Documentary evidence must be provided confirming the method of disposal and destination of all contaminated soil removed from the site.

**98. Road Widening**

The location of the existing road formation and fences in relation to the property boundaries are to be shown on a survey plan to be submitted to Council. Any encroachments onto the property are to be dedicated as “Road Widening” at no cost to Council.

**99. Section 88B Instruments**

A Section 88B Instrument, under the *Conveyancing Act 1919*, and one (1) copy are to be submitted with the application for a subdivision certificate. The final plan of subdivision and accompanying Section 88B Instrument are to provide for:

**a) Dedicated Public Road Access**

Dedication of suitable public road accesses to all proposed allotments.

**b) Dedicated Public Pathway**

Dedication of the proposed pathway(s) to the public.

**c) Dedicated Public Reserve**

Dedication of the proposed public reserves on the approved plans as amended by the conditions of this consent.

**d) Dedicated Corner Splays**

Dedication of 4m x 4m corner splays at all street junctions and intersections.

**e) Inter-allotment Drainage Easements**

The creation of easements for drainage of water, with a minimum width of 1.5 metres, over all inter-allotment drainage pipelines and structures located within the proposed allotments.

**f) Drainage Easements**

The creation of easements for drainage of water over all drainage pipelines and structures located within the proposed allotments in accordance with Council's *"Building in the Vicinity of Underground Infrastructure Policy"*.

**g) Drainage Reserves**

The dedication of drainage reserves over the stormwater treatment devices and constructed access.

**h) Restricting Development –Stormwater Management**

Restricting residential development of each vacant allotment until the stormwater management system has been completed for that stage of the development to the requirements of Byron Shire Council.

**i) Easement for Electricity**

The creation of any necessary easements for electricity purposes as required by the electricity supply authority.

**j) Sewer Easements**

The creation of easements for drainage of sewage over all sewage pipelines and structures located within the proposed allotments in accordance with Council's *"Building in the Vicinity of Underground Infrastructure Policy"*.



**k) Water Supply Easements**

The creation of easements for water supply pipelines and structures located within the proposed allotments in accordance with Council's "*Building in the Vicinity of Underground Infrastructure Policy*".

**l) Easement for Support**

The creation of suitable easements for support to suit the arrangement of retaining walls built, where the retaining wall at the rear of one lot supports the adjoining lot.

**m) Positive Covenant – Rainwater tanks**

Creation of a positive covenant over the title of all proposed lot(s) to require provision of a rainwater tank with a capacity to match what is required by the amended and approved Stormwater Management Plan for the purpose of on-site stormwater management and re-use. The capacity of this rainwater tank must be in addition to any rainwater tank required by a BASIX Certificate for the dwelling(s) on the lot.

**n) Restriction on keeping of cats and dogs**

A restriction on the use of land on all residential lots which prohibits the keeping of cats and dogs other than official guide dogs or personal assistance dogs.

**o) Restriction on use of residual lots**

A restriction on the use of land must be registered on the "association lots" which prohibits, except as otherwise permissible by law, all of the following within the area covered by the restriction on the use of land, noting that any works required by the General Terms of Approval from NSW Rural Fire Service dated 18 June 2021 are excluded from the restriction on the use of land :

- the destruction or removal of any local indigenous trees, shrubs, grasses or other vegetation, or the planting of any flora other than local indigenous flora;
- any act or omission which may adversely affect any local indigenous flora or any indigenous fauna or their related habitats;
- any act or omission which may result in the deterioration in the natural state or in the flow, supply, quantity or quantity of any body of water or in the natural moisture regime of the area;

- the creation of any tracks through the area;
- the removal, introduction or disturbance of any soil, rock or other minerals;
- any structures or dwellings;
- the deposition or accumulation of rubbish or refuse, including garden refuse and weed propagules; and
- the use of any of the area for storage of any substance or material.

**p) Easement for landscaping**

The creation of an easement for landscaping extending for 3m from Melaleuca Drive into all adjoining lots to the west and extending 3m to the south from Road No.2 into the northernmost lot adjoining Melaleuca Drive. .

**q) Restriction on use of lot 157**

A restriction on the use of Lot 157 which prohibits the carrying out of any residential development on that lot.

**r) Koala friendly fencing**

A restriction on the use of land must be registered on residential lots to prohibit fencing of residential lots unless it complies with the following:

Fencing of residential lots must not impede the movement of koalas. Fences that do not impede koala movement may include:

- a) hedges or screens of trees and/or shrubs;
- b) fences where the bottom of the fence is a minimum of 300 mm above the ground to allow koalas to freely move underneath;
- c) open post and rail fences;

d) fences that comply with the provisions of the BCCKPoM.

**s) Acid Sulphate Soils Management Plan**

The construction of future dwellings within the subdivision shall be undertaken in accordance with the Generic Acid Sulphate Soils Management Plan referred to in Condition 1.

The s88B Instruments must contain a provision identifying Byron Shire Council as the only person or authority having the power to revoke, vary or modify the instruments.

**99A. Community title Subdivisions**

The following proposed lots will be registered as three separate community schemes under Part 2 of the *Community Land Development Act 1989*:

Community Development Lot/s	Association Lot
25-64	150
21-22	155
107-149	156

Community Title plan 15024-29B is as amended pursuant to the requirements of the conditions of this consent .

**99B. Community management statements** The community management statements for each community scheme approved pursuant to the conditions of this consent, and development contract are to be submitted with the application for a subdivision certificate, together with a letter from a Solicitor, experienced in Community Title legislation, certifying that the management statement and development contract have been prepared in accordance with Community Title legislation and acceptable for registration with NSW Land and Property Information.

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**99C. DELETED.**

**100. Section 88E Instruments**

The positive covenant under Section 88E of the *Conveyancing Act 1919*, approved by Council **pursuant** to condition 63 of this consent, must be registered on title of

the **association lots (150, Pt 155 and 156)** prior to issue of the subdivision certificate for **Stages 5, 6, 7 and 11** respectively.

Documentary evidence is to be provided with the application for subdivision certificates for **Stages 5, 6, 7 and 11** that the positive covenant has been registered on the title of the community title association lots.

**101. Completion of all works**

All subdivision works required by this development consent, and associated Subdivision Works Certificate, are to be completed prior to issue of the subdivision certificate. A copy of the final completion letter/s, issued by the Principal Certifying Authority, and final plumbing certificate, issued by the water supply authority, for the relevant subdivision works must be submitted with the application for a subdivision certificate.

**102. Erection of street signs**

The subdivider is to supply and erect street signs for the approved street names in accordance with this development consent and the Subdivision Works Certificate approval.

**103. Certificates for engineering works**

The submission of all test certificates, owners manuals, warranties and operating instructions for civil works, mechanical and/or electrical plant, together with a certificate from a suitably qualified engineer certifying that all works have been constructed in accordance with the approved plans and Council's current "Northern Rivers Local Government Design and Construction Manuals and Specifications".

**104. Works-As-Executed Plans**

Following completion of works and prior to issue of the subdivision certificate, Work-as-Executed Drawings, together with a Work-As-Executed Certification Report, in accordance with Council's requirements are to be submitted to Council. Further, a Road Safety Audit (completed by an accredited Level 3 Road Safety Auditor listed on the RSA register) is to be submitted to Council that confirms that all works (road widths, footpaths, shared paths and pedestrian refuges) comply with the approved engineering plans and required sight distances for refuges. The scope of the RSA shall include confirmation that all lots can comply with AS2890.1-2004, with respect to safe driveway locations. Two categories of Work-as-

Executed Drawings are to be submitted to Council, being **Amended Design Work-as-Executed Drawings** and **Summary Work-as-Executed Drawings** as follows:

**a. Amended Design Work-as-Executed Drawings**, being certified copies of all approved design plans with as constructed departures, deletions and additions clearly noted and detailed on the plans, are to be submitted to Council in the following formats:-

- i. One (1) paper copy at the same scale and format as the approved design plans, but, marked appropriately for as constructed information and with original signatures; and
- ii. An electronic copy of above in PDF format and provided to Council on CD, DVD or via email.

**b. Summary Work-as-Executed Drawings** are to be prepared on a background plan of lot layout and kerb lines with a set of separate plans for stormwater drainage, sewerage, water supply and site works. The site works drawing/s must include the 1 in 100 year flood and flood planning level extents and levels, where relevant. Such drawings are to be submitted to Council in the following formats:-

- i. One (1) paper copy of each drawing with original signatures and in accordance with Council's requirements.
- ii. Electronic copy of the above in AutoCAD DWG or DXF format and provided to Council on CD, DVD or via email. The AutoCAD (DWG or DXF) files are to be spatially referenced to MGA Zone 56.
- iii. Electronic copy of above in PDF format and provided to Council on CD, DVD or via email.

Note: Council's requirements are detailed in Council's adopted engineering specifications, currently the [Northern Rivers Local Government Development Design and Construction Manuals](#), and on Council's website.

#### **105. CCTV Inspection and Report**

CCTV inspection must be undertaken on all completed underground pipe systems, including minor sewer main extensions, in accordance with Council's specification.

Both a hardcopy and electronic copy of the report (submitted in CD or DVD medium in a format suitable to Council) of the CCTV inspection must be provided to Council for consideration prior to the release of the Subdivision Certificate, Occupation Certificate, Final Inspection for Section 68 Approvals, "Off-maintenance" or Release of Security Bond.

**106. Certificate for services within easements**

The submission of a certificate from a registered surveyor certifying that all pipelines, structures, access driveways and/or services are located wholly within the relevant easements.

**107. Water service and meter to be connected to each lot**

A water service and water meter must be connected to all residential allotments in the subdivision using an approved backflow prevention device. It is the applicant's responsibility to engage a licensed plumber who shall liaise with council during this process.

Note: Any new water service and meter will be at the applicants cost.

**108. Electricity Supply Certificate**

Prior to the issue of the Subdivision Certificate, a Notice of Arrangement (NOA) requested from the Distribution Network Service Provider, currently Essential Energy, must be submitted to the Principal Certifying Authority. The NOA must confirm that satisfactory electricity supply has been provided to each of the proposed lots and all necessary street lighting has been energised for the development.

Note: Requests for a NOA are to be made to the Contestable Works section at Essential Energy.

**109. Fibre-ready Facilities and Telecommunications Infrastructure**

Prior to the issue of the Subdivision Certificate, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Certifying Authority that arrangements have been made for:

- a. The installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose; and

- b. The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

Note: real estate development project has the meanings given in section 372Q of the Telecommunications Act.

**110. Certificate of Compliance – *Water Management Act 2000***

Water and sewer services are to be provided to the land in accordance with an approval granted under Section 68 of the Local Government Act 1993.

Payment of developer charges to Byron Shire Council for water supply and sewerage must be made prior to the issue of a subdivision certificate, in accordance with the “Water Payments under the Water Management Act” identified at the end of these conditions.

A copy of the Certificate of Compliance under Section 307 of the Water Management Act 2000 is to be obtained from Byron Shire Council prior to the issue of a Subdivision Certificate.

Note: Application forms are available from Council’s administration building or online at [http://www.byron.nsw.gov.au/files/Forms/Section\\_305\\_Certificate.pdf](http://www.byron.nsw.gov.au/files/Forms/Section_305_Certificate.pdf) to be submitted for a Certificate of Compliance.

**111. Geotechnical Report (Lot Classification)**

A certificate from a practicing geotechnical engineer must be provided in conjunction with a Lot Classification Report prepared in accordance with Australian Standard AS2870.1. Such certificate must certify that all vacant allotments have a building site of adequate size and shape on each lot that is not subject to slip or subsidence.

**112. Landscaping to be completed and maintenance bond paid**

The site is to be landscaped in accordance with the approved landscape plan. A bond of **\$20,000** is to be paid to Council, which will be released six (6) months following the issue of a subdivision certificate for the final stage of works if the landscaping for the entire subdivision is maintained to Council’s satisfaction.

**113. Developer Contributions to be paid**

Contributions set out in the schedule contained at the end of these conditions are to be paid to Council prior to the release of a subdivision certificate. Contributions are levied in accordance with the Byron Shire Developer Contributions Plan 2012 (as amended). The Plan may be viewed online or during office hours at the Council Offices located at Station Street, Mullumbimby. These contributions are to fund public amenities and services as listed in the schedule. Additional details on the specific amenities are to be found in the Byron Shire Developer Contributions Plan 2012 (as amended).

The contributions as set out in the schedule may either be paid in full or they may be paid in stages on a proportional basis dependent on the number of lots to be released in the subdivision certificate. The first credit for a site will be retained on the residual lot. Any additional credits over one (1) will be allocated at the first stage.

In lieu of payment of the developer contribution for bikeways and footpaths Council will accept the works as set out in condition 55 (b) (i) for the shared path and 55(b) (iii) for the shared path only as works in kind. Council will offset up to the full amount of the contribution for bikeways and footpaths provided that the value of the works is independently certified by a Quantity Surveyor who is registered with the Australian Institute of Quantity Surveyors.

In lieu of payment of the developer contribution for local open space Council will accept the works as set out in condition 51 as works in kind. Council will offset up to the full amount of the contribution for local open space provided that the value of the works is independently certified by a Quantity Surveyor who is registered with the Australian Institute of Quantity Surveyors.

In lieu of payment of the developer contribution for local open space Council will accept the dedication of the recreation lot as shown on plan 15024-9R. Council will offset up to the full amount of the contribution for local open space provided that the value of the land to be dedicated is independently valued by a registered valuer.

The contributions in the schedule are current at the date of this consent. The contributions payable will be adjusted in accordance with the relevant plan and the **amount payable will be calculated on the basis of the contribution rates that**



**are applicable at the time of payment.** The schedule contains a date for which the schedule remains valid, after this date you will have to contact Council for an updated schedule.

**114. Maintenance Bond**

A maintenance bond of 5% (**minimum bond amount of \$1,000.00**) of the value of the works constructed is to be lodged with Council. A copy of the contract construction cost of the subdivision works is to be submitted with the bond. Otherwise as required by condition 12 and 123, the maintenance period is 6 months in accordance with Council's current Design & Construction Manuals and will commence from the date of issue of the **Subdivision Certificate**. The security may be provided, at the applicant's choice, by way of cash bond or a satisfactory bank guarantee. An application in writing for the release of the bond must be made at the satisfactory completion of the maintenance period.

**115. Record of Infrastructure**

A record of infrastructure coming into Council ownership, upon registration of the final plan of subdivision, is to be submitted to Council. The information is to be submitted in the form of Council's Standard Form titled "Asset Creation Record". This form is available from Council's Local Approvals Section.

**116. Compliance with bushfire conditions under Section 100B of *Rural Fires Act 1997***

Prior to issue of the Subdivision Certificate, documentary evidence from a current level 2 Bushfire Planning and Design (BPAD) accredited consultant, under the Fire protection Association of Australia, is to be submitted to the Principal Certifying Authority certifying that the General Terms of Approval from NSW Rural Fire Service dated 18 June 2021 have been complied with

**117. Landscaping and Public/Recreation facility works**

Prior to the issue of a subdivision certificate for each stage of the development, the developer must demonstrate to Council's satisfaction that all landscaping works required for the subject stage have been completed in accordance with the approved Landscape Plan and that all public/recreation facilities required for the

subject stage have been completed in accordance with the approved Public/Recreational Open Space Plan.

**118. Acid sulfate soils**

The works engineer must certify to the Principal Certifying Authority that all works have been carried out in accordance with the approved Acid Sulfate Soils Management Plan. Documentary evidence must be provided confirming the destination of all Acid Sulfate soils removed from the site.

**119. Emergency Access Bond**

Prior to the issue of the Subdivision Certificate for Stage 4, a bond is to be lodged with Council for the removal of the temporary emergency access provided as part of Stage 4 works. The value of the bond is to be approved by Council and cover the cost of the removal of the emergency access road and all ancillary works.

**120. Habitat Fencing**

Prior to the issue of a Subdivision Certificate for each stage, the boundary between environmentally zoned land (E2 and E3 zones) and urban zoned land within the stage shall be fenced with a low single bar wooden or metal fence with no wire, with a sign saying "Koala Habitat Conservation Area – No Entry". If the zone boundary is not accessible on foot, the fence may be located at the nearest accessible point within urban zoned land.

**The following conditions must be complied with after subdivision**

**121. Lot 157**

Lot 157 must be transferred to the owner of the adjoining allotment to the south within 3 months of the registration of that subdivision.

**122. Deleted.**

**123. Maintenance of landscaping on Ewingsdale Road**

Notwithstanding that all public roads and parkland will be dedicated to Council upon registration of the relevant subdivisions, landscaping works will be maintained by the developer at its own cost for the periods as specified in the table below:

Landscaping Works	Maintenance period
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The Park designated Lot 159	Two years from the issue of a Subdivision Certificate for Stage 5
The Park in Stage 9	One year from the issue of a Subdivision Certificate for Stage 9
The Landscaped Bund on Ewingsdale Road	Five years from completion of Stage 1 or after the completion of Stage 10, whichever is the sooner.
Road verges within each stage	Twelve months after issue of the subdivision certificate for that stage.

### **Water payments under the Water Management Act 2000**

Charges will be calculated based on the additional water and sewerage load that the proposed development generates, shown in Equivalent Tenements (ET) by the following table:

### **ADDITIONAL WATER & SEWER LOAD OF DEVELOPMENT** **(ET Policy No:13/005)**

Water	276.97 ET
Bulk Water	276.97 ET
Sewer	259.20 ET

NB: Information regarding Development Servicing charges can be found on the Byron Shire Council website (<http://www.byron.nsw.gov.au/development-contributions-plans-section-94-and-64>). These charges will enable you to calculate the total contribution charges payable when you are ready to pay them. Developer charges will be calculated in accordance with the Development Servicing Plan applicable at the date of payment.

### **Schedule: s7.11 Contributions**

The contributions payable to Council are set out in the following table.



Notes to above table:

Subject to the satisfactory completion of the works in each stage, Council may accept the works in lieu of the payment of a monetary contribution for the local open space and bikeways components of the plan.

**Notes**

**Generic Acid Sulfate Soil Management for landowners and developers of vacant residential lots**

Construction of dwellings and associated development, particularly including footings and earthworks, within with subdivision must be undertaken in accordance with the generic acid sulfate soils management plan (Martens and Associates Pty Ltd, October 2020 V02).

