



Planning
Panels



COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION – Addendum Report

NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH-329 – Byron – 10.2017.661.2
PROPOSAL	Section 4.56 to modify condition of consent number five and staging of development located in the eastern section of the West Byron Urban Release Area (WBURA) in order to allow for Stages 11 and 12 in the western section of the site to proceed concurrently, separately and non-sequentially with stages 1-10.
ADDRESS	<ul style="list-style-type: none">• Lot 1 DP 201626 – Ewingsdale Road Byron Bay• Lot 2 DP 542178 – 394 Ewingsdale Road Byron Bay• Lot 1 DP 780242 – 412 Ewingsdale Road Byron Bay• Lot 2 DP 818403 – Melaleuca Drive Byron Bay• Lot 1 DP 520063 – 364 Ewingsdale Road Byron Bay• Lot 7020 DP 1113431 – Ewingsdale Road Byron Bay (swale drain)• Lot 105 DP 1297628 – 288 Ewingsdale Road Byron Bay
APPLICANT	Stuart Murray
OWNER	<ul style="list-style-type: none">• Gousse Holdings Pty Ltd• Telicove Pty Ltd• Mr DJ O'Connor & Mrs CF O'Connor• Byron Shire Council (swale drain)• Mr AR & Mrs JD Smith & Fletcher Project Developments Pty Ltd• Byron Bay Industrial Pty Ltd
MOD LODGEMENT DATE	12/07/2024
ORIGINAL DA DETERMINATION DATE	<ul style="list-style-type: none">• 8 March 2022, the judgment of <i>Site R & D Pty Ltd v Byron Shire Council</i> [2022] NSWLEC 1121 was

	<p>published and Development Consent 10.2017.661.1. was approved.</p> <ul style="list-style-type: none"> On 21 April 2022, the Conditions of Consent were filed
APPLICATION TYPE	Modification Application under Section 4.56
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Section 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021: General development over \$30 million
CIV	\$40,000.000
CLAUSE 4.6 REQUESTS	Not applicable
KEY SEPP/LEP	<p>Relevant Environmental Planning Instruments</p> <ul style="list-style-type: none"> State Environmental Planning (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 <p>Relevant Local Environment Plan</p> <ul style="list-style-type: none"> Byron Local Environment Plan 1988 <p>Proposed Local Environmental Plan</p> <ul style="list-style-type: none"> Byron Local Environmental Plan 2014 (Council Reference 26.2023.7.1 – West Byron Zone transition PP, Portal reference PP-2023_2829) <p>Relevant Development Control Plan</p> <ul style="list-style-type: none"> Byron Development Control Plan 2014
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	No submissions
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ul style="list-style-type: none"> Statement of Environmental Effects Ecological statement of support Amended Subdivision Plans
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Not Applicable
RECOMMENDATION	Approval

DRAFT CONDITIONS TO APPLICANT	Yes – copy of amended conditions sent to applicant			
SCHEDULED MEETING DATE	10 December 2024			
PLAN VERSION	Figure 15.1 Rev R	Stormwater Infrastructure Sheet 1	Stanhold Consulting Engineer/ BTE Consulting	17.10.2024
	15024-9R	Dimensioned Lot Size Plan	Abbott and Macro	21.10.2024
	Figure 22.1 Rev M	Staging Plan	Stanhold Consulting Engineer/BTE Consulting	Feb 2020
PREPARED BY	Chris Larkin			
DATE OF REPORT	9 December 2024			

ADDENDUM REPORT

Following the completion of the assessment report and uploading to the Northern Regional Planning Panel, the applicants have requested a late change to Condition 13A in relation the retirement of Biodiversity credits. The condition currently states:

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)*

Ecosystem	Credits
PCT 663 Banksia dry shrubland on coastal sands of the NSW North Coast Bioregion	42
PCT 780 Coastal floodplain sedgeland, 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

The applicants seek to have this amended to break the retirement of these credits into two parts reflecting the two precincts of the developments (eg Stages 1-10 the eastern precinct and Stages 11 and 12 the western precinct). The applicants have submitted the credits be split based on the Ecosystem types and potential threatened species that will be impacted by the development. The split in the credits between the two subdivision certificates can be supported based on the ecological attributes of the site, and those particular species and ecosystems that will be impacted by the development.

It is recommended that condition 13A be amended to read:

13A Retirement of Biodiversity Credits

Prior to the issue of a Subdivision Works Certificate [for Stage 11 and 12, and 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) [for that Stage.](#)*

Table 1 Ecosystem Credit Requirements

Ecosystem	Total Credits	Stage 11 & 12 Credits	Stage 1- 10 Credits
PCT 663 Banksia dry shrubland on coastal sands of the NSW North Coast Bioregion	42	0	42
PCT 780 Coastal floodplain sedgelands, rushlands, and forblands of the North Coast.	16	16	0

PCT 1064 Paperbark swamp forest of the coastal lowlands of the NSW North Coast Bioregion and Sydney Basin Bioregion.	396	183	213
PCT 1230 Swamp Mahogany swamp forest on coastal lowlands of the NSW North Coast Bioregion and northern Sydney Basin Bioregion.	41	0	41
PCT 776 Coast Cypress Pine shrubby open forest of the NSW North Coast Bioregion.	2	0	2

Table 2 Species Credit Requirements

Species	Total Credits	Stage 11 & 12 Credit	Stage 1-10 Credits
Wallum Froglet	12	12	0
Olongburra Frog	10	10	0
Southern Myotis	161	61	100
Common Planigale	205	77	128
Durobby (<i>Syzygium moorei</i>)	3	0	3

Other changes

Two other minor matters are also identified to tidy up conditions of consent as previously recommended. Condition 48(o) is to be amended to remove a minor typographical error and is to read:

[o. A landscape plan to be provided for the subject land within proposed Lot 151 and adjacent to Lot 2 DP878549 46 Melaleuca Drive, Byron Bay for Stage 11. The plan to be prepared in accordance with the requirements of this conditions with species dominated by native grasses indigenous to the local area \(North Coast of NSW/ South East Qld\).](#)

A second error was also uncovered with Condition 4F as it had not been updated to reflect the change in staging. It is recommended that it be amended to read:

4F Provision of amended engineering plans

Prior to the **issue** of ~~the first 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.

RECOMMENDATION

That the Section 4.56 Modification Application 10.2017.661.2 to modify condition of consent number five and staging of development in the West Byron Urban Release Area (WBURA) in order to allow for Stages 11 and 12 in the western section of the site to proceed concurrently, separately and non-sequentially to stages 1-10, and consequential amendments to development Consent DA10.2017.661.1 be approved pursuant to Section 4.16(1)(a) or (b) of the Environmental Planning and Assessment Act 1979 subject to the draft conditions of consent attached to this report at Attachment D.