



COUNCIL ASSESSMENT REPORT – MODIFICATION APPLICATION NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH-526 – 10.2017.201.5
PROPOSAL	S4.56 to modify condition 90 of the consent relating to Restriction on keeping of cats and dogs: subdivision of six (6) lots into one hundred and forty-nine (149) consisting of one hundred and forty five (145) residential lots, four (4) large residential lots and dedication of residual land to Council for public or drainage reserves
ADDRESS	LOT: 1 DP: 1166535, LOT: 229 DP: 755695, LOT: 9 DP: 111821, LOT: 227 DP: 755695 342 Ewingsdale Road, 22A and 22B Melaleuca Drive Byron Bay, Ewingsdale Road Ewingsdale
APPLICANT	Roseanna Meech
OWNER	NSPT Pty Ltd
MOD LODGEMENT DATE	17 June 2026
ORIGINAL DA DETERMINATION DATE	8 December 2020
APPLICATION TYPE	Modification Application under Section 4.56
REGIONALLY SIGNIFICANT CRITERIA	The original development was considered to be “regional development” as defined under Clause 20 of the SEPP (State and Regional Development) 2011 and Schedule 4A(3) of the EP&A Act 1979 as at the date of DA lodgement, specifically, “ <i>Development that has a capital investment value of more than \$20 million</i> ”.
CIV	\$25,000,000
CLAUSE 4.6 REQUESTS	Nil
KEY SEPP/LEP	<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> <i>Byron Local Environmental Plan 2014</i>
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	6 objections 17 in support 23 total

DOCUMENTS SUBMITTED FOR CONSIDERATION	Section 4.56 Modification report Recommended Reasons for Refusal Applicant's Legal Advice Applicant's Ecological Advice Applicant's Biodiversity Advice Applicant's Town Planning Advice
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Not applicable
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	N/A
SCHEDULED MEETING DATE	31 August 2026
PLAN VERSION	N/A
PREPARED BY	N/A
DATE OF REPORT	4 August 2026

EXECUTIVE SUMMARY

The modification application has been lodged pursuant to section 4.56 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') and seeks consent for amendments to a consent granted under DA 10.2017.201.1 approved by the NSW Land and Environment Court by way of consent orders on 8 December 2020. This consent approved the subdivision of six (6) lots into one hundred and forty-nine (149) consisting of one hundred and forty five (145) residential lots, four (4) large residential lots and dedication of residual land to Council for public or drainage reserves at 342 Ewingsdale Road Byron Bay, Ewingsdale Road Ewingsdale, 22B Melaleuca Drive Byron Bay and 22A Melaleuca Drive Byron Bay ('the site'). The modification application includes the relevant information required by section 100 of the *Environmental Planning and Assessment Regulation 2021* ('2021 EP&A Regulation').

The report on the original development application stated that "This proposal is considered to be "regional development" as defined under Clause 20 of the SEPP (State and Regional Development) 2011 and Schedule 4A(3) of the EP&A Act 1979 as at the date of DA lodgement, specifically, "*Development that has a capital investment value of more than \$20 million*". The proposed modification satisfies the criteria to be considered by the Panel in the Instruction issued pursuant to Clause 275(2) of the EP&A Regulation 2021 (formerly Cl 123BA of the Regulation 2000).

The proposed modification relates to condition 90 of the consent which requires a Section 88B Instrument, under the *Conveyancing Act 1919* to be submitted with the application for a subdivision certificate for each stage, with the final plan of subdivision for each stage and accompanying Section 88B Instrument required to provide, in part, for a restriction on the use of land on all residential lots and lots 146, 147, 148 and 149 which prohibits the keeping of cats and dogs other than official guide dogs or personal assistance dogs. The application proposes to modify the applicable part of condition 90 to require a restriction on the use of

land on all residential lots and lots 146, 147, 148 & 149 which manages the keeping of cats and dogs other than official guide dogs or personal assistance dogs at all times by:

- i. The erection and maintenance of dog-proof fencing within each lot.
- ii. Dogs being only permitted outside private fenced areas of each unit if they are on a leash and suitably controlled under the supervision of a responsible person; and
- iii. The keeping of cats within all units unless cats are confined to suitable enclosures.

The proposed modification is considered to satisfy the substantially the same development test required by Section 4.55 of the EP&A Act.

The application was placed on public exhibition from 2 to 29 July 2026, with a total of 23 submissions received including 6 objections and 17 in support.

Submissions in support of the proposed modification identified for example concerns with the condition in relation to restriction on the range who can access housing, it being discriminatory because it allows members of the public to bring dogs all over the roads, footpaths and public reserves and does not allow residents to keep a pet within their property, not allowing for responsible pet ownership to coexist with ecological care, the key human need for company and for many people pets, the supportive advice of the ecological experts, the sufficiency of the proposed management based approach to protect native fauna, the precedent of the neighbouring Solus development and the inconsistent standards.

Submissions objecting to the proposed modification identified for example the purpose of the restriction being to protect significant environmental values, the existing substantial loss and fragmentation of native habitat, introduction of additional domestic cats and dogs into this environment increasing disturbance, predation risk and stress on native wildlife, contradiction with the DCP requirement, responsible pet ownership and compliance measures not being easier to manage than the restriction, the existing noticeable increase in people walking dogs around the wetlands, the need for improved signage advising that dogs must remain on a lead, together with increased compliance and enforcement, the incorrect comparison with the Solus industrial site, Council's statement that the West Byron subdivisions public roads and reserves will be considered to be adopted as a Wildlife Protection Area (under the Companion Animals Act) which prohibits dogs from entering or being on all of the subdivisions public roads and reserves (including signage) thus providing consistency with the prohibition on residential lots and the supply of housing for local residents who wish to protect our wildlife.

These issues are considered further in this Report.

The key issues associated with the proposal identified in the assessment of the application included:

1. The application is not satisfactory having regard to section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* because it is contrary to the considerations under clause 2.10 of *State Environmental Planning Policy (Resilience and Hazards) 2021*, relating to development on land within the coastal environment area, given that the proposal is likely to cause an adverse impact in relation to fauna and their habitats.
2. The application is contrary to objectives of the R5, RE1, RE2, C2 and C3 Zone Objectives under Part 2 of *Byron Local Environmental Plan 2014*.
3. Prescriptive measure 9 of E8.10.5.1 Biodiversity and Vegetation Management of Byron Shire Development Control Plan 2014 – Chapter E8 – West Byron Urban

Release Area states that the keeping of cats and dogs other than guide dogs is to be prohibited.

4. The objectives of E8.10.5.1 Biodiversity and Vegetation Management of Byron Shire Development Control Plan 2014 – Chapter E8 – West Byron Urban Release Area in relation to potential impacts with respect to:
 - (a) Protecting biodiversity values of the site
 - (b) Maintaining or improving the ecological functions and values of Belongil Creek
 - (c) Environmental buffers to sensitive ecological areas
 - (d) Improving koala ecological values on the site.
5. The performance criteria of E8.10.5.1 Biodiversity and Vegetation Management of Byron Shire Development Control Plan 2014 – Chapter E8 – West Byron Urban Release Area in relation to potential impacts with respect to:
 - (a) Protection of potential and core koala habitat areas from development that would compromise habitat quality and integrity and enhance koala habitat to provide connectivity links to facilitate the natural movement of koalas.
 - (b) Protect, maintain and enhance key habitat corridors to improve linkages between habitats.
 - (c) Mitigation of direct and indirect impacts of development.
6. The significant likely significant ecological and biodiversity impacts of the development as modified including environmental impacts on the natural environments.
7. The suitability of the site has not been demonstrated for the development as modified.
8. Approval of the application in spite of the significant environmental, ecological and biodiversity impacts would not be in the public interest.

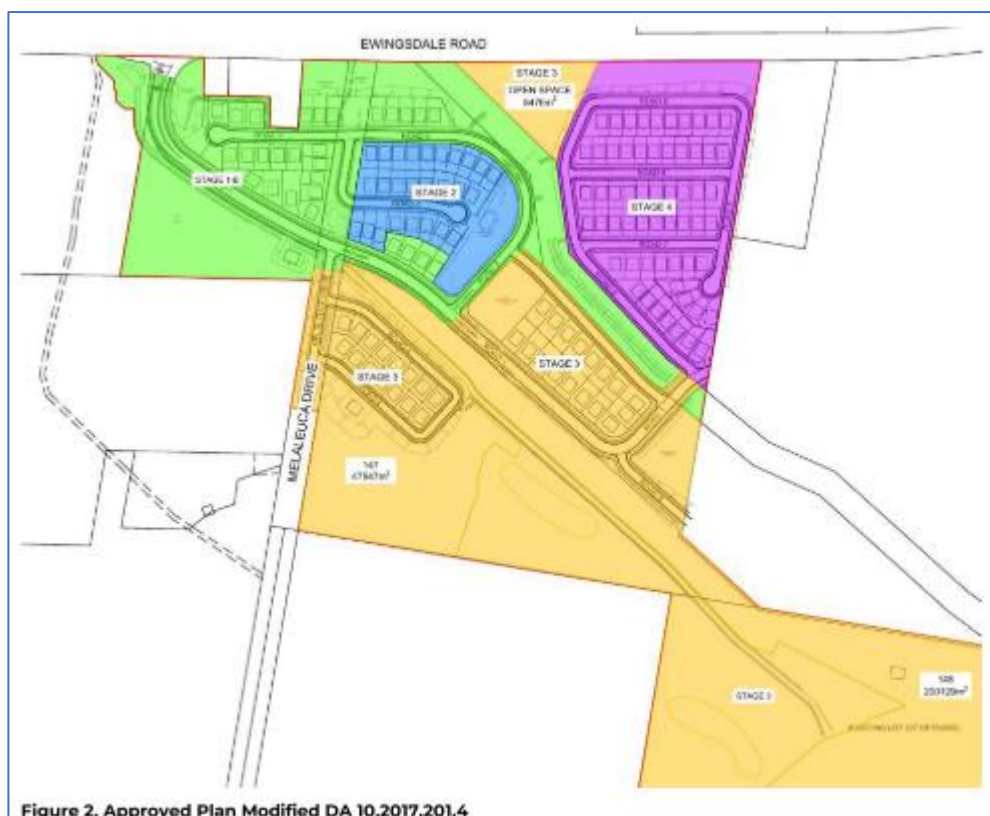
Following consideration of the matters for consideration under Section 4.15(1) and 4.55 of the EP&A Act, it is considered that the proposed modification should be refused.

1. THE SITE AND LOCALITY

1.1 The Site

The site is Lot 1 DP 1166535, Lot 229 DP 755695, Lot 9 DP 111821, Lot 227 DP 755695, Melaleuca Drive Byron Bay.

The Town Planning Report on this application provides the following site plan:



1.2 The Locality

The Council's report to the Regional Planning Panel on Section 4.56 Application No. 10.2017.201.3 provided the following description of the site's locality:

- To the immediate north is Ewingsdale Road and then the Byron Bay Arts & Industry Estate and the Sunrise Beach residential area;
- To the south is "coastal swamp forest" and at the terminus of Melaleuca Drive are three properties being the Planula Bed & Breakfast Retreat, the Temple Byron healing centre and the Vidal property;
- To the west is a former chicken processing plant and beyond this the Ewingsdale rural residential area; and
- To the east is the Belongil Fields caravan park, the proposed Site R&D subdivision (10.2017.661.1) and beyond this Belongil Creek (an intermittently closed and open lakes and lagoon).
- The site is 2.5km west of the Byron Bay Town Centre; 2.6km east of the Byron hospital; adjacent to the main road; primary and secondary schools are located within 6km.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposed Modification

- The application proposes to modify condition 90 of the consent relating to Restriction on keeping of cats and dogs.

Proposed Changes to Conditions

- Condition 90 of the consent is proposed to be modified from the existing to the proposed wording, both shown in full below (the proposed modified wording is highlighted):

Existing condition 90

90. Section 88B Instruments

A Section 88B Instrument, under the *Conveyancing Act 1919* is to be submitted with the application for a subdivision certificate for each stage. The final plan of subdivision for each stage and accompanying Section 88B Instrument are to provide for:

Dedicated Public Road Access

Dedication of suitable public road accesses to all proposed allotments.

Dedicated Public Pathway

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

Dedicated Public Reserve

Dedication of the proposed Lot(s) as public reserve.

Dedicated Corner Splays

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

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.

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*".

Drainage Reserves

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

Rights of Carriageway/Easement for Services

The creation of suitable rights of carriageway and easement for services over the access and services/service conduits to proposed Lot(s) 148 and 149 for the benefit of the lot owners; and suitable rights of carriageway and easement for services over the public land connecting the end of Road 2 with Lots 2 & 3 DP 551947, for the benefit of the lot owners and Byron Shire Council.

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.

Easement for Electricity

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

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*".

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*".

Easement for Support

The creation of suitable easements for support to suit the arrangement of retaining walls built as part of Stage 4 works, where the retaining wall at the rear of one lot supports the adjoining lot. The creation of a suitable easement for support to suit the arrangement of retaining wall/s built on Lot 146 supporting Road 1.

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 of at least 3000 litres 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.

Restriction on keeping of cats and dogs

A restriction on the use of land on all residential lots and lots 146, 147, 148 and 149 which prohibits the keeping of cats and dogs other than official guide dogs or personal assistance dogs.

Restriction on future subdivision of Lots 146, 147, 148 and 149

A restriction on the use of land that prohibits further subdivision of proposed lots 146, 147, 148 and 149.

Restriction on use of Lots 146, 147, 148 and 149

The restriction on the use of land applying to the entire area of proposed Lots 146, 147, 148 and 149 but for the areas identified as "Privately Managed Areas" on the Vegetation Clearing Plan (J6539_201, Rev 02, 22/5/20). The restriction shall prohibit, except as otherwise permissible by law, all of the following within the area covered by the restriction on user:

- 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 quality of any body of water or in the natural moisture regime of the area;
- the creation or maintenance 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

Proposed condition 90

90. Section 88B Instruments

A Section 88B Instrument, under the *Conveyancing Act 1919* is to be submitted with the application for a subdivision certificate for each stage. The final plan of subdivision for each stage and accompanying Section 88B Instrument are to provide for:

Dedicated Public Road Access

Dedication of suitable public road accesses to all proposed allotments.

Dedicated Public Pathway

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

Dedicated Public Reserve

Dedication of the proposed Lot(s) as public reserve.

Dedicated Corner Splays

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

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.

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"*.

Drainage Reserves

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

Rights of Carriageway/Easement for Services

The creation of suitable rights of carriageway and easement for services over the access and services/service conduits to proposed Lot(s) 148 and 149 for the benefit of the lot owners; and suitable rights of carriageway and easement for services over the public land connecting the end of Road 2 with Lots 2 & 3 DP 551947, for the benefit of the lot owners and Byron Shire Council.

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.

Easement for Electricity

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

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*".

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*".

Easement for Support

The creation of suitable easements for support to suit the arrangement of retaining walls built as part of Stage 4 works, where the retaining wall at the rear of one lot supports the adjoining lot. The creation of a suitable easement for support to suit the arrangement of retaining wall/s built on Lot 146 supporting Road 1.

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 of at least 3000 litres 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.

Restriction on keeping of cats and dogs

A restriction on the use of land on all residential lots and lots 146, 147, 148 & 149 which manages the keeping of cats and dogs other than official guide dogs or personal assistance dogs.

Keeping of cats and dogs in any part of the property is to be managed at all times by:

- i. The erection and maintenance of dog-proof fencing within each lot.
- ii. Dogs may only be permitted outside private fenced areas of each unit if they are on a leash and suitably controlled under the supervision of a responsible person; and
- iii. The keeping of cats within all units unless cats are confined to suitable enclosures

Restriction on future subdivision of Lots 146, 147, 148 and 149

A restriction on the use of land that prohibits further subdivision of proposed lots 146, 147, 148 and 149.

Restriction on use of Lots 146, 147, 148 and 149

The restriction on the use of land applying to the entire area of proposed Lots 146, 147, 148 and 149 but for the areas identified as "Privately Managed Areas" on the Vegetation Clearing Plan (J6539_201, Rev 02, 22/5/20). The restriction shall prohibit, except as otherwise permissible by law, all of the following within the area covered by the restriction on user:

- 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 quality of any body of water or in the natural moisture regime of the area;
- the creation or maintenance 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

The application is supported by **Legal advice** (refer to Attachment B to this Report) by Sharon Levy of Bartier Perry Lawyers, which provides the following Summary and Recommendations:

7. Summary and recommendations

- 7.1 Taken together, our review of the presently available information indicates that there is a sound legal and practical basis upon which modification of Restriction No. 10 and the corresponding Development Consent condition may be pursued. As presently framed, the restriction operates as a blanket prohibition on the keeping of pets within private residential lots, extends beyond accepted limits of planning control, operates inconsistently, and imposes a disproportionate burden on affected lot owners relative to any demonstrated benefit to Council or the surrounding area.
- 7.2 When considered against established principles concerning property rights and proportionality, particularly those articulated by the Court of Appeal in *Cooper*, the restriction is, in our view, difficult to justify in its current form.
- 7.3 Furthermore, the ecology-based justifications originally relied upon to support Restriction No. 10 no longer appear to warrant its continued operation as an absolute prohibition. Comparative development approvals, including the Solus Project subject to equal or greater environmental sensitivity, demonstrate that contemporary planning responses typically address ecological risk through targeted management and containment measures rather than blanket bans. Having regard to the information presently available, those approaches represent a more proportionate and evidence-based means of managing potential environmental impacts.
- 7.4 Finally, for the reasons set out in Section 6 above, the factual and ecological circumstances considered in *Helmich* are materially different from those applying at the Harvest Estate. In particular, NCAT's reasoning in *Helmich* was informed by a rural, bushland-embedded eco-hamlet with high conservation values and detailed site-specific evidence of ecological harm, features that are not present at the Harvest Estate.

The application is supported by **Ecological advice** (refer to Attachment C to this Report) by David Havilah of Cedar Ecology, which advises as follows:

Dogs and cats unrestrained (i.e. free-roaming) are to be confined to the designated allotments only.

Unrestrained cats and dogs will be securely contained within fully fenced and controlled areas within the property boundaries at all times. The fencing and enclosure arrangements are to be specifically designed to prevent cats and dogs from roaming beyond the property boundaries or accessing the surrounding bushland.

As the animals will remain confined within these enclosed spaces, they will not have the opportunity to hunt, chase, or otherwise disturb native wildlife populations of the retained areas of Harvest Estate, or adjoining bushland.

Dogs and cats shall not be permitted unrestrained in areas external to the designated allotments and are to be 'on-leash' at all times in the open spaces of the Estate.

Based on these controls, it is considered that the keeping of cats and dogs within fenced areas will not adversely affect local wildlife or surrounding ecological values.

In accordance with Byron Shire Council's Policy *Local Orders for the Keeping of Animals*, Harvest Estate does not occur within Council's 'No Dog Zone', therefore are allowed to occur within public places such as parks, footpaths and roads.

Cats and dogs are well established within the Byron locality, including residencies proximate to Harvest Estate. The keeping of cats and dogs confined within the allotments aren't likely to exacerbate predation threats compared to what is already existing in the locality.

I have personally been involved with the Harvest Estate for over 10 years and have regularly seen the general public and nearby residents walking their dogs along Melaleuca Drive, and the surrounding areas of WBURA. Furthermore, I have observed wild cats and dogs during previous ecological surveys of the site. As such, cats and dogs are not foreign to the site.

Recently, Council have approved an industrial subdivision (DA 10.2017.661.1) immediately west of the Harvest Estate site within the West Byron Urban Release Area. This approved development is known as the 'Solus development'.

Condition 70A of the consent was applied to the approved industrial subdivision which does not prohibit the keeping of cats and dogs but instead permits domestic animals subject to ongoing management and control measures at all times.

The condition adopted for the Solus development demonstrates an alternative approach that balances environmental protection objectives with practical and enforceable pet management requirements. The relevant condition is reproduced below:

70A Restriction on use - keeping of cats and dogs for protection of native fauna species

Documentary evidence is to be provided with the application for a Subdivision Certificate that a restriction on user, pursuant to the provisions of s88B of the Conveyancing Act 1919 has been registered on the title of the land. The keeping of cats and dogs on the subject property is to be managed to ensure protection of native fauna species. The restriction on user must restrict, except as otherwise permissible by law, all of the following within the area covered by the restriction on user.

- a. Keeping of cats and dogs in any part of the property is to be managed at all times by:
 - (i) The erection and maintenance of dog-proof fencing within each lot.
 - (ii) Dogs may only be permitted outside private fenced areas of each unit if they are on a leash and suitably controlled under the supervision of a responsible person; and
 - (iii) The keeping of cats within all units unless cats are confined to suitable enclosures at all times.

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

The complete ban of cats and dogs on Harvest Estate, while allowing them to occur on the adjoining Solus development site, is considered unreasonable.

The application is supported by **Biodiversity advice** (refer to Attachment D to this Report) by David Havilah of Cedar Ecology, which advises as follows:

It is noted that recent approved development on and around Harvest Estate has led to a reduction and degradation of surrounding fauna habitat values but not to the extent that controls on the keeping of cats and dogs are not warranted on the Harvest Estate site.

The proposed (revised) condition provides a more nuanced control measure in relation to the keeping of cats/ dogs and protection of native fauna species. It reflects the problematic nature of blanket bans on cats and dogs on development sites which are unlikely to succeed due to issues with enforceability and perceived impingement of landowner rights.

The revised condition adopts an approach encouraging residents to control free ranging cats and dogs. This condition is considered to be more likely to be adhered to by residents and easier to enforce by Council if required. It meets the intent of the previous condition and in my opinion is a better approach to the management of cats/ dogs on the site.

Implementation of the revised condition could be improved with the provision of signage around the Harvest Estate that encourages residents to report pet owners who are in violation of the adopted requirements in relation to the keeping of cats and dogs to Council.

My opinion is that the proposed (revised) condition is an improved control measure for the site to minimise potential impacts to local fauna from domestic dogs/ cats.

The application is supported by **Town Planning advice** (refer to Attachment E to this Report) by Roseanna Meech of Planit Consulting, which concludes as follows:

In conclusion, ecological and legal advice supports the proposed amendment to Condition 91(o), confirming it will not result in additional environmental impacts beyond those already assessed and approved. The proposed management-based approach is considered practical, enforceable and consistent with recent Council approvals, while still maintaining appropriate protections for native fauna. Aligning the condition with the approach adopted for the Solus development provides a fair and balanced outcome for the Harvest Estate.

The proposed modification is consistent with modern planning practice favouring targeted risk management over blanket prohibitions, as seen in comparable developments with similar ecological sensitivities. It would also remove unnecessary barriers to the occupation of approved lots and dwellings, improving the accessibility and effective use of existing housing stock in Byron Bay.

Pursuant to Sections 4.15 and 4.56 of the *Environmental Planning and Assessment Act 1979*, the proposed modification does not result in any inconsistency with the relevant State or local planning policies, environmental planning instruments, or strategic planning objectives considered under the original approval of DA 10.2017.201.1 and its subsequent modifications, nor with any policy instruments adopted since that time. The modification does not alter the approved subdivision layout, development yield, built form, or intended land use outcomes, and the development remains substantially the same as originally approved.

2.2 Background

A pre-lodgement meeting was not conducted prior to the lodgement of the application.

The original development application was approved by the NSW Land and Environment Court by way of consent orders on 8 December 2020.

The proposed modification application was lodged on 27 May 2026. A chronology of the modification application since lodgement is outlined below in Table 1:

Table 1: Chronology of the Modification Application

Date	Event
27 May 2026	Modification application lodged

2 July 2026	Exhibition of the application commenced
22 July 2026	Applicant advised that Council has sufficient information to be able to assess the application and that there is no necessity for Council to request further information
29 July 2026	Exhibition of the application concluded

2.3 Site History

- Council's report to the Regional Planning Panel on Section 4.56 Application No. 10.2017.201.3 provided the following description of the site's approval history:

Application	Detail	Outcome
10.2017.201.1	- Lodged - 10/5/2017 - Refused by NRPP – 8/4/2018 - Class 1 appeal lodged - 4/10/2019 - Conciliation – 20/8/2020 to 12/10/2020 - Amended proposal – August 2020 - Further conciliation – 6, 10 & 19 November 2020 - Approved NSW LEC consent orders 8 December 2020 (2019/310612) – Subdivision of 9 lots into 149 residential lots including: 145 smaller residential; 4 larger residential lots, 7 green infrastructure lots and associated works	Approved by NSW LEC
10.2017.201.2	- Modify staging timeframes and consequential amendments - Lodged 9/6/2021 - Public exhibition – 24/6/2021 to 21/7/2021 - Applicant amended proposal to retain 12 months groundwater monitoring between stages – 3/8/2021 - Applicant requested alteration of stage boundaries – 3/9/2021	Approved 4/11/2021

- 2 further modification applications are outlined in the table below:

10.2017.201.3	- Modify Conditions of Consent, to Staging, Time Between Stages and Stockpiling of Soil on Site - Lodged 14/11/2023 - Public exhibition – 22/11/2023 to 19/12/2023	Approved 27/5/2024
10.2017.201.4	- Modify Condition 1 of the Consent to establish Stage 4 Public Open Space during Stage 3 - Lodged 16/12/2024 - Public exhibition – 10/1/2025 to 23/1/2025	Approved 28/4/2025

3. STATUTORY CONSIDERATIONS

When determining a modification application, the consent authority must take into consideration the matters outlined in 4.56 of the EP&A Act in relation to modification of consents provisions, Section 4.15(1) of the EP&A Act in relation to matters for consideration for applications and Part 5 of the 2021 EP&A Regulation in relation to information requirements and notification. These matters are considered below.

3.1 Section 4.56 of the EP&A Act

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the consent if a number of matters are satisfactorily addressed pursuant to Section 4.55(2) of the EP&A Act. The matters include the following:

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) (s4.56(1)(a)), and*

The proposed modification is substantially the same development. There is no proposed modification to the design and layout of the approved subdivision.

- (b) *it has notified the application in accordance with—*
 - (i) *the regulations, if the regulations so require, and*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent (s4.56(1)(b)), and*

The proposed modification is contrary to prescriptive measure 9 of E8.10.5.1 Biodiversity and Vegetation Management of Byron Shire Development Control Plan 2014 – Chapter E8 – West Byron Urban Release Area, which is as follows:

- 9. The keeping of cats and dogs other than guide dogs is to be prohibited. Any plan of subdivision to include an appropriately worded S.88B instrument in relation to keeping such pets. The prohibition to also apply to community title and strata title subdivisions and to be incorporated into Strata Plans of Management and or Neighbourhood Management plans and the like. Appropriate conditions to apply for applications to residential development including multi dwelling housing, integrated housing, dwelling houses, dual occupancy and secondary dwellings.

- (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person (s4.56(1)(c)), and*

The application was placed on public exhibition from 2 to 29 July 2026, with a total of 23 submissions having been received including 17 in support of the proposal and 6 objecting to the proposal. This included notification to:

- a. land owners in accordance with the Community Participation Plan;
 - b. each person who made a submission in respect of the original DA by sending written notice to the last address known to Council of the objector or other person;
 - c. the Land and Environment Court.
- (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be (s4.56(1)(d)).*

The issues raised in the submissions are summarised and commented on in Section 4 of this Report.

- (e) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified (s4.56(1A)).*

The matters required to be considered include:

- Matters for consideration pursuant to Section 4.15(1) of the EP&A Act – these matters are considered below in Section 3.2 of this report; and
- Reasons given by the consent authority for the grant of the consent that is sought to be modified – see immediately below.

Reasons for Grant of Consent

The Land and Environment Court granted consent to the original development. Annexure A to the judgment of the Court included the Conditions of Consent, however these did not include reasons for the grant of the consent.

3.2 Section 4.15(1) of the EP&A Act

Section 4.15(1) of the EP&A Act contains matters which the consent authority must take into consideration in determining a development application and modification applications pursuant to Section 4.56(1A), which are of relevance to the application.

These matters include the following, which are considered in detail below:

- (a) *the provisions of—*
- (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*

- (b) *that apply to the land to which the development application relates, the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

3.2.1 **Section 4.15(1)(a) - Provisions of Environmental Planning Instruments, Proposed Instruments, DCPs, Planning Agreements and the Regulations**

The relevant provisions under s4.15(1)(a) are considered below.

(a) **Environmental planning instruments (s4.15(1)(a)(i))**

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *Byron Local Environmental Plan 2014*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 2** and considered in more detail below.

Table 2: Summary of Applicable State Environmental Planning Policies (Preconditions in bold)

EPI	Matters for Consideration	Comply (Y/N)
SEPP (Resilience & Hazards)	Chapter 2: Coastal Management - Section 2.7(4) – certain development in coastal wetlands or littoral rainforest on the <i>Coastal Wetlands and Littoral Rainforests Area Map</i> - Section 2.8(1) - Development on land in proximity to coastal wetlands or littoral rainforest - Section 2.10(1) & (2) - Development on land within the coastal environment area	N
LEP	Part 2 – Zone objectives	N
DCP	E8.10.5.1 Biodiversity and Vegetation Management of Chapter E8 – West Byron Urban Release Area of the Byron Shire Development Control Plan 2014 The keeping of cats and dogs other than guide dogs is to be prohibited	N

State Environmental Planning Policy (Resilience and Hazards) 2021 ('Resilience and Hazards SEPP')

Chapter 2: Coastal management

The provisions of Chapter 2 of *State Environmental Planning Policy (Resilience and Hazards) 2021* ('the Resilience and Hazards SEPP') were considered in the assessment of the Modification Assessment Report: "Harvest Estate"

development application. The site is mapped as being partly within areas of Coastal environment area (clause 2.10). The proposal is contrary to the relevant considerations, and is recommended for refusal, given that the proposal is likely to cause an adverse impact in relation to fauna and their habitats.

Byron Local Environmental Plan 2014

The relevant local environmental plan applying to the site is the *Byron Local Environmental Plan 2014* ('the LEP').

Zoning and Permissibility (Part 2)

The site is located within a variety of zones including R2, R5, SP2, RE1, RE2, C2 and C3 pursuant to Clause 2.2 of the LEP.

The proposal is considered to be inconsistent with the R5, RE1, RE2, C2 and C3 zone objectives under Part 2 of the LEP, and is recommended for refusal accordingly, for the following reasons:

Zone R5 Large Lot Residential

- The proposal would have a significant impact in terms of preserving, and minimising impacts on, environmentally sensitive locations and scenic quality.

Zone RE1 Public Recreation

- The proposal would have a significant impact in terms of protection and enhancement of the natural environment for recreational purposes.

Zone RE2 Private Recreation

The proposal would have a significant impact in terms of:

- protection and enhancement of the natural environment for recreational purposes.

Zone C2 Environmental Conservation

The proposal would have a significant impact in terms of:

- protection, management and restoration of areas of high ecological, scientific, cultural or aesthetic values.
- potential for damaging or otherwise having an adverse effect on those values.

Zone C3 Environmental Management

- The proposal would have a significant impact in terms of protection, management and restoration of areas with special ecological, scientific, cultural or aesthetic values.

(b) *Provisions of any Proposed Instruments (s4.15 (1)(a)(ii))*

There are no proposed instruments which are significantly applicable to the proposal.

(c) *Provisions of any Development Control Plan (s4.15(1)(a)(iii))*

The following Development Control Plan is relevant to this application:

- *Byron Shire Development Control Plan 2014* ('the DCP')

The application is not satisfactory and is recommended for refusal because it is contrary to:

- (1) prescriptive measure 9 of E8.10.5.1 Biodiversity and Vegetation Management of Chapter E8 – West Byron Urban Release Area of the DCP which states that the keeping of cats and dogs other than guide dogs is to be prohibited.
- (2) the objectives of E8.10.5.1 Biodiversity and Vegetation Management of Chapter E8 – West Byron Urban Release Area of the DCP in relation to potential impacts with respect to:
 - (a) Protecting biodiversity values of the site
 - (b) Maintaining or improving the ecological functions and values of Belongil Creek
 - (c) Environmental buffers to sensitive ecological areas
 - (d) Improving koala ecological values on the site.
- (3) the performance criteria of E8.10.5.1 Biodiversity and Vegetation Management of Chapter E8 – West Byron Urban Release Area of the DCP in relation to potential impacts with respect to:
 - (a) Protection of potential and core koala habitat areas from development that would compromise habitat quality and integrity and enhance koala habitat to provide connectivity links to facilitate the natural movement of koalas.
 - (b) Protect, maintain and enhance key habitat corridors to improve linkages between habitats.
 - (c) Mitigation of direct and indirect impacts of development.
- (d) **Planning agreements under Section 7.4 of the EP&A Act (s4.15(1)(a)(iia))**

There are no planning agreements which are significantly applicable to the proposal.

(e) **Provisions of Regulations (s4.15(1)(a)(iv))**

Any applicable provisions were assessed under the original development application and no modification is proposed in this regard.

3.2.2 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

The application is not satisfactory because of the likely significant ecological and biodiversity impacts of the development as modified including environmental impacts on the natural environments. Accordingly, it is considered that the proposed modification will result in significant adverse impacts in the locality and the application is recommended for refusal.

3.2.3 Section 4.15(1)(c) - Suitability of the site

The application is not satisfactory and is recommended for refusal because the suitability of the site has not been demonstrated for the development as modified.

3.2.4 Section 4.15(1)(d) - Public Submissions

These submissions are considered in Section 4.3 of this report.

3.2.5 Section 4.15(1)(e) - Public interest

The application is not satisfactory and is recommended for refusal because approval of the application in spite of the significant environmental, ecological and biodiversity impacts would not be in the public interest.

3.3 Part 5 of the 2021 EP&A Regulation

There are a number of matters required to be addressed in an application for modification of development consent pursuant to Division 1, 2 and 3 of Part 5 of the 2021 EP&A Regulation. These matters are considered in **Table 3** below.

Table 3: Consideration of the Requirements under the Regulation

Matter	Comment	Comply
Clause 100 Application for modification of development consent		
May be made by— (a) the owner of the land to which it relates, or (b) another person, with the consent of the owner of the land (CI 98(1))	The application is accompanied by owners consent.	Y
NSW Aboriginal Land Council consent required for land owned by a Local Aboriginal Land Council (CI 98(6)).	The land is not owned by a Local Aboriginal Land Council and consent.	N/A
Form approved by Planning Secretary and on portal (CI 99).	The application has been provided in accordance with the Regulation.	Y
Applicant details (CI 100(1)(a))	Provided on the NSW Planning Portal ('the Portal').	Y
Description of the development (CI 100(1)(b))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Address and title details (CI 100(1)(c))	Provided on the Portal and outlined in Section 1 of this Report.	Y
Description of the proposed modification (CI 100(1)(d))	Provided on the Portal and outlined in Section 2 of this Report.	Y
Whether to correct a minor error, mis-description or miscalculation, or some other effect (CI 100(1)(e))	The proposed modification is to modify the original consent under Section 4.56 and is not to correct a minor error, misdescription or miscalculation.	Y
Description of the expected impacts of the modification (CI 100(1)(f))	There is likely to be significant impacts resulting from the proposed modification as outlined in this report.	N
Undertaking that modified development will remain substantially same as development originally approved (CI 100(1)(g))	The modified development will remain substantially the same development as that originally approved. Refer to Section 3.1 of this Report.	Y

If accompanied by a Biodiversity development assessment report, the biodiversity credits information (CI 100(1)(h))	The proposal is not accompanied by a biodiversity development assessment report.	N/A
Owner's consent (CI 100(1)(i))	An undertaking has been provided on the Portal.	Y
Whether the application is being made to the Court (under section 4.55) or to the consent authority (under section 4.56) (CI 100(1)(j)).	This Application is made to the consent authority pursuant to Section 4.56(1) of the EP&A Act.	Y
BASIX Certificate (CI 100(3))	The proposed modification does not involve BASIX development.	N/A
Qualified designer statement for residential apartment development (CI 102)	The proposed modification does not involve residential apartment development.	N/A
Mining and petroleum development consents (CI 102)	The proposed modification does not involve mining and petroleum development consents.	N/A
Notification and exhibition requirements (CII 105-112)	Refer to Section 4.3 of this report.	Y
Notification of concurrence authorities and approval bodies (CI 109) (to be undertaken by Council)	The modification application has not been referred to concurrence or approval bodies.	N/A

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The modification application is:

- Integrated Development (s4.46)
- Designated Development (s4.10)

However a copy of the application was not required to be given to the integrated development approval body under (now repealed) Clause 109 of the 2021 EP&A Regulation because the modification does not affect the general terms of approval of the approval body.

4.2 Council Referrals

The modification application was referred to various Council officers for technical review as outlined in **Table 4**. The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

Table 4: Consideration of Council Referrals

Officer	Comments	Resolved
Ecologist	Council's Ecologist reviewed the submitted documentation and considered that there were objections to the proposed modification. Outcome: The advice by Council's Ecologist is considered below. It is recommended that the application be refused.	N

Council's **Ecologist** advised as follows:

1. The Solus development referenced by the application is a small subdivision of industrial land where people are not resident – roaming animals are unlikely to be an issue.
2. The prohibition condition relating to the subject development comes from the DCP.
3. The prohibition condition was nominated by the developer.
4. The prohibition condition was imposed by the Land and Environment Court.
5. The condition was accepted and a subsequent effort to 'wind back' the condition is not supported.
6. There is community concern in relation the West Byron developments and biodiversity issues, the community has expectations that Council will maintain its position and the proposed modification is not supported.

In relation to number 2 above, prescriptive measure 9 of E8.10.5.1 Biodiversity and Vegetation Management of Byron Shire Development Control Plan 2014 – Chapter E8 – West Byron Urban Release Area is as follows:

9. The keeping of cats and dogs other than guide dogs is to be prohibited. Any plan of subdivision to include an appropriately worded S.88B instrument in relation to keeping such pets. The prohibition to also apply to community title and strata title subdivisions and to be incorporated into Strata Plans of Management and or Neighbourhood Management plans and the like. Appropriate conditions to apply for applications to residential development including multi dwelling housing, **integrated housing**, dwelling houses, dual occupancy and secondary dwellings.

In relation to number 3 above, whilst a comprehensive search of all documents submitted with the original DA has not been conducted, it is noted that the:

- a. *Terrestrial Flora and Fauna Assessment*, prepared by Planit Consulting, dated March 2017 (Council Doc number E2017/32244) and submitted in support of the DA included the following assessment as part of its "Factors of Assessment 7-part":

RESTRICTIONS ON DOMESTIC ANIMALS

To mitigate the potential impact of domestic animals on resident fauna the following will be implemented:

- All cats and dogs other than guide dogs will be prohibited from the site.

The conclusion of the “Factors of Assessment 7-part” was as follows:

CONCLUSION

Based upon the above assessments, it is considered that a Species Impact Statement (SIS) is not required

- b. *Byron Development Control Plan 2014 – Chapter E8 West Byron Urban Release Area – Development Control Plan Compliance Table*, prepared by Planit Consulting, dated June 2020 (Council Doc number E2020/68953) and submitted in support of the DA included the following:

- Biodiversity Conservation Management Plan as required.
9. The keeping of cats and dogs other than guide dogs is to be prohibited. Any plan of subdivision to include an appropriately worded S.88B instrument in relation to keeping such pets. The prohibition to also apply to community title and strata title subdivisions and to be incorporated into Strata Plans of Management and or Neighbourhood Management plans and the like. Appropriate conditions to apply for applications to residential development including multi dwelling housing, integrated housing, dwelling houses, dual occupancy and secondary dwellings.
- Dogs and cats will be prohibited within the development, as outlined within applicable section 88B instrument provisions.

- c. Biodiversity Conservation Management Plan, prepared by Planit Consulting, dated August 2020 (Council Doc number E2020/68983) and submitted in support of the DA included the following:

3.6 Pest & Domestic Animal Management

Several feral pest species are known to occur at the site, with the Cane Toad and Common Myna most likely to benefit from the development of the site. Further, the introduction of domestic pets (cats and dogs) would also place pressure on native fauna.

As per the Byron Shire DCP (2014), all cats and dogs other than guide dogs will be prohibited from the site. To enforce this, a Section 88B instrument is to be prepared which will enforce the ban on cats and dogs (other than guide dogs) within the development site.

Signage stating the ban of cats and dogs are to be erected at the entrances of the site to ensure that the general public and visitors are aware.

In relation to number 4 above, the consent orders for the original DA, considered by both parties and issued by the Court in approving the DA, included the following conditional requirement reflecting the Terrestrial Flora and Fauna Assessment supporting the original DA, as follows:

Restriction on keeping of cats and dogs

A restriction on the use of land on all residential lots and lots 146, 147, 148 and 149 which prohibits the keeping of cats and dogs other than official guide dogs or personal assistance dogs.

This same conditional requirement is on the modified consent as follows:

Restriction on keeping of cats and dogs

A restriction on the use of land on all residential lots and lots 146, 147, 148 and 149 which prohibits the keeping of cats and dogs other than official guide dogs or personal assistance dogs.

The proposed modification is not consistent with these reasons for the decision on this consent nor the planning controls and expectations for the site given the ecological impacts of the proposal and concerns raised by Council’s Ecologist.

4.3 Notification and Community Consultation

The modification application was notified in accordance with Council's Community Participation Plan from 2 July 2026 until 29 July 2026. The notification included the following:

- A sign placed on the site;
- Notification on Council's website;
- Notification letters sent to adjoining and adjacent properties (approximately 104 letters sent);
- each person who made a submission in respect of the original DA by sending written notice to the last address known to Council of the objector or other person (approximately 460 letters sent, some of which are likely to be to the same recipients as the letters sent according to the previous bullet point); and
- the Land and Environment Court.

The Council received a total of 23 unique submissions, comprising 6 objections and 17 in support. The issues raised in these submissions are considered in **Table 5**.

The issues raised in the community submissions have been addressed in this Report. Recommended reasons for refusal are provided in **Attachment A**.

Table 5: Community Submissions

Issue	No of submissions	Council Comments
Submissions in support of the application Byron Bay is one of the most housing stressed local government areas in NSW. The condition unnecessarily restricts the range of people who can access housing. The is discriminatory because it allows members of the public to bring dogs all over the roads, footpaths and public reserves and does not allow	17	Council's Ecologist advised that the Solus development is a small subdivision of industrial land where people are not resident – roaming animals are unlikely to be an issue. The prohibition condition comes from a variety of sources, including the DCP, the original development application and the Court's consent. The modification is not supported by Council's Ecologist due to significant biodiversity issues. Outcome: It is recommended that the application be refused for the Recommended Reasons for Refusal included in Attachment A to this Report, including the likely significant ecological and biodiversity impacts of the development as modified.

residents to keep a pet within their property. Responsible pet ownership and care for ecology coexist with the right frameworks in place. A key human need is company and for many people their pet makes a profound difference to their quality of life each day. The ecological experts have not been able to identify an ecological basis for a blanket restriction. The application concludes that a management based approach is sufficient to protect native fauna. Cedar Ecology notes that blanket bans on pets in residential developments are "unlikely to succeed due to issues with enforceability and perceived impingement of landowner rights", and that the revised approach is more likely to be adhered to as well as easier for Council to enforce.		
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The neighbouring Solus development was approved by Council with this management based approach. Inconsistent standards are confusing for the community and distressing for residents in the Estate.		
Submissions objecting to the application The restriction was imposed to protect significant environmental values. There has been a substantial loss and fragmentation of native habitat. Introducing additional domestic cats and dogs into this environment would increase disturbance, predation risk and stress on native wildlife. Removing the prohibition and relying instead on pet management would not provide an improved	7	The modification is not supported by Council's Ecologist due to significant biodiversity issues. Outcome: The application is recommended for refusal for the reasons included in Attachment A to this Report.

environmental outcome. The proposal contradicts Council's prescriptive DCP requirement. Responsible pet ownership and compliance measures would not be easier to manage than the restriction. There has been a noticeable increase in people walking dogs around the wetlands, and it is common to observe dogs off-leash despite the area's sensitivity. There have been issues with owners failing to clean up after their pets. Council should be strengthening existing protections. Improved signage advising that dogs must remain on a lead, together with increased compliance and enforcement. The proposed modification appears to be driven by a desire		
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to make the remaining lots more attractive and marketable, but this should not come at the expense of biodiversity or environmental values. The comparison with the Solus industrial site is irrelevant. An Industrial site uses dogs for security. Council has stated that the public roads and reserves of the West Byron subdivisions will be considered to be adopted as a Wildlife Protection Area (under the Companion Animals Act) which prohibits dogs from entering or being on all of the subdivisions public roads and reserves (including signage). This is compatible with the prohibition on residential lots. The current restriction produces a supply of housing for residents who		
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wish to protect our wildlife. People who have bought into other subdivisions where dogs are prohibited have done so specifically because dogs are prohibited.		
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5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

1. The application is contrary to the considerations under clause 2.10 of *State Environmental Planning Policy (Resilience and Hazards) 2021*, relating to development on land within the coastal environment area, given that the proposal is likely to cause an adverse impact in relation to fauna and their habitats.
2. The application is contrary to objectives of the R5, RE1, RE2, C2 and C3 Zone Objectives under Part 2 of *Byron Local Environmental Plan 2014*.
3. Prescriptive measure 9 of E8.10.5.1 Biodiversity and Vegetation Management of Byron Shire Development Control Plan 2014 – Chapter E8 – West Byron Urban Release Area which states that the keeping of cats and dogs other than guide dogs is to be prohibited.
4. The objectives of E8.10.5.1 Biodiversity and Vegetation Management of Byron Shire Development Control Plan 2014 – Chapter E8 – West Byron Urban Release Area in relation to potential impacts with respect to:
 - (a) Protecting biodiversity values of the site
 - (b) Maintaining or improving the ecological functions and values of Belongil Creek
 - (c) Environmental buffers to sensitive ecological areas
 - (d) Improving koala ecological values on the site.
5. The performance criteria of E8.10.5.1 Biodiversity and Vegetation Management of Byron Shire Development Control Plan 2014 – Chapter E8 – West Byron Urban Release Area in relation to potential impacts with respect to:
 - (a) Protection of potential and core koala habitat areas from development that would compromise habitat quality and integrity and enhance koala habitat to provide connectivity links to facilitate the natural movement of koalas.
 - (b) Protect, maintain and enhance key habitat corridors to improve linkages between habitats.
 - (c) Mitigation of direct and indirect impacts of development.

6. The significant likely significant ecological and biodiversity impacts of the development as modified including environmental impacts on the natural environments.
7. The suitability of the site has not been demonstrated for the development as modified.
8. Approval of the application in spite of the significant environmental, ecological and biodiversity impacts would not be in the public interest.

6. CONCLUSION

This modification application has been considered in accordance with the requirements of the EP&A Act and the 2021 EP&A Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application cannot be supported.

The application is contrary to the considerations under clause 2.10 of *State Environmental Planning Policy (Resilience and Hazards) 2021* relating to the mapped coastal environment area, given that the proposal is likely to cause an adverse impact in relation to fauna and their habitats.

The application is contrary to objectives of the R5, RE1, RE2, C2 and C3 Zone Objectives under Part 2 of *Byron Local Environmental Plan 2014*.

The application is not satisfactory because it is contrary to prescriptive measure 9 of E8.10.5.1 Biodiversity and Vegetation Management of Byron Shire Development Control Plan 2014 – Chapter E8 – West Byron Urban Release Area which states that the keeping of cats and dogs other than guide dogs is to be prohibited. It is contrary to the objectives of E8.10.5.1 in relation to potential impacts with respect to protecting biodiversity values of the site, maintaining or improving the ecological functions and values of Belongil Creek, environmental buffers to sensitive ecological areas and improving koala ecological values on the site. It is contrary to the performance criteria of E8.10.5.1 in relation to potential impacts with respect to protection of koala habitat areas, protection, maintenance and enhancing of key habitat corridors to improve linkages between habitats, and mitigation of direct and indirect impacts of development.

The application is not satisfactory because of the significant likely significant ecological and biodiversity impacts of the development as modified including environmental impacts on the natural environments. It is not satisfactory because the suitability of the site has not been demonstrated for the development as modified. It is not satisfactory because approval of the application in spite of the significant environmental, ecological and biodiversity impacts would not be in the public interest.

It is considered that the key issues as outlined in Section 5 have not been resolved satisfactorily and it is recommended that the application be refused for the Recommended Reasons for Refusal included in Attachment A to this Report.

7. RECOMMENDATION

It is recommended:

- That the Modification Application No 10.2017.201.5 for S4.56 to modify condition 90 of the consent relating to Restriction on keeping of cats and dogs: subdivision of six (6) lots into one hundred and forty-nine (149) consisting of one hundred and forty five

(145) residential lots, four (4) large residential lots and dedication of residual land to Council for public or drainage reserves LOT: 1 DP: 1166535, LOT: 229 DP: 755695, LOT: 9 DP: 111821, LOT: 227 DP: 755695 Melaleuca Drive BYRON BAY be REFUSED pursuant to Section 4.56(1) of the *Environmental Planning and Assessment Act 1979* for the Recommended Reasons for Refusal included in Attachment A to this Report; and

- Pursuant to Clause 118 of the *Environmental Planning and Assessment Regulation 2021*, a notice of determination is to be prepared by Council following the Panel's determination of this modification application.

The following attachments are provided:

- Attachment A: Recommended Reasons for Refusal
- Attachment B: Applicant's Legal Advice
- Attachment C: Applicant's Ecological Advice
- Attachment D: Applicant's Biodiversity Advice
- Attachment E: Applicant's Town Planning Advice