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Harvest Estate: Modification to Condition 91(o) - Keeping of Cats and Dogs

Planit Consulting has engaged Cedar Ecology to review a proposed modification of Condition of Consent 91(o) in relation to Development Application no. 10.2017.201.1 for the Harvest Estate, Byron Bay. A Modification is being sought for an alteration to this condition under Section 4.56 of the *Environment Planning and Assessment Act 1979*.

On the 8th December 2020 the following orders (and/ or directions) were made by the NSW Land and Environment Court (LEC):

4. *Development Application no. 10.2017.201.1 for the staged subdivision of 9 lots into 149 residential lots (comprised of 145 smaller residential lots and 4 large lifestyle lots) and the creation of 7 green infrastructure lots, together with associated works including vegetation removal, earthworks, landscaping, creation of public reserves, roads, environmental management and protection and stormwater works at 342 Ewingsdale Road, 22A and 22B Melaleuca Drive, Byron Bay is approved, subject to the conditions of consent at "Annexure A"*

Condition 91 of Annexure A states:

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:

o) Restriction on keeping 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.

It is proposed that the above Condition be replaced with the condition below which has been adopted by Byron Shire Council for a number of recent Consents provided for nearby development sites at 268 and 294 Ewingsdale Road, Byron Bay.

Restriction on use – keeping of cats and dogs for protection of native fauna

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 dwellings 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.

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.

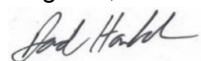
The revised condition adopts an approach encouraging residents to control free ranging cats and dogs. This condition is considered to be more likely to be adhered to by residents and easier to enforce by Council if required. It meets the intent of the previous condition and in my opinion is a better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

Please feel free to contact me if you require further information in relation to the above.

Regards,



David Havilah
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