



C O N S U L T I N G

# Section 4.56 Modification

Harvest Estate – Modification to DA 10.2017.201.4

Prepared for Villa World Byron Pty Ltd

By Planit Consulting Pty Ltd

(v1.0) - June 2026

Job No: J7148A

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Villa World Byron Pty Ltd

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## Executive Summary

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The Harvest Estate was approved in December 2020 under A 10.2017.201.1 by way of consent orders issued by the NSW Land and Environment Court in *Villa World Byron Pty Ltd v Byron Shire Council* [2020] NSWLEC 1612. Since the original consent, several modification applications have been approved to amend the project staging and associated works.

This Modification Application seeks approval under Section 4.56 of the *Environmental Planning and Assessment Act 1979* to amend Development Consent to DA 10.2017.201.4 by updating the wording of a condition relating to the keeping of cats and dogs.

Condition 91(o) of the Consent currently restricts the keeping of cats and dogs on “residential lots” within Harvest Estate. However, there are no restrictions on cats and dogs upon the public roads, footpaths and reserve areas. This effectively is creating a situation where residents of the estate are unfairly discriminated against by not being permitted to keep cats and dogs within their “residential lots” when other members of the public are free to bring their cats and dogs throughout the public areas of the estate.

This Modification Application seeks a minor amendment to Condition 91(o) to amend the restriction of cats and dogs to an appropriate management condition.

Importantly, the original ecological assessments prepared for DA10.2017.201.1 (and subsequent modifications) did not rely upon the cat and dog prohibition in concluding that the development was suitable for approval, nor was the restriction fundamental to the environmental outcomes or biodiversity management framework established for the Estate.

Since the registration and release of residential lots, the restriction has created an unfair discriminatory situation for residents compared to the general public. The current restriction is also reducing the supply of housing for many local residents who have pets which is limiting the uptake and occupation of approved residential land and undermining the broader objectives of the West Byron Urban Release Area to deliver housing opportunities within a serviced urban environment.

This Modification Application does not remove controls relating to domestic animals. Rather, it seeks to amend Condition 91(o) from a blanket prohibition to a practical and enforceable management-based approach requiring the responsible containment and supervision of cats and dogs. This approach is consistent with conditions recently applied by Council to comparable development within and adjoining the West Byron Urban Release Area, including the approved Solus subdivision and the 268 Ewingsdale Road, Byron Bay Planning Proposal. In fact, the Modification Application is seeking to adopt the exact same wording as Council adopted in its approval of the Solus subdivision.

Ecological and legal advice accompanying this application support the proposed amendment and conclude that the modification will not result in additional environmental impacts beyond those already assessed and approved. The supporting advice notes that managed pet ownership, combined with appropriate containment and control measures, provides a balanced and enforceable mechanism for protecting biodiversity values while recognising the realities of residential living.

The proposed modification is considered minor in nature, maintains appropriate protections for native fauna, aligns with recent Council determinations, and will improve the occupation and long-term success of Harvest Estate without altering the fundamental character or environmental outcomes of the approved development.

# 1 The Site

## 1.1 Site Description

The Harvest Estate at West Byron, is located approximately 2km west of the Byron Bay Town Centre and opposite the Byron Arts and Industry Estate. The Harvest Estate forms part of the WBURA and comprises 149 urban allotments.

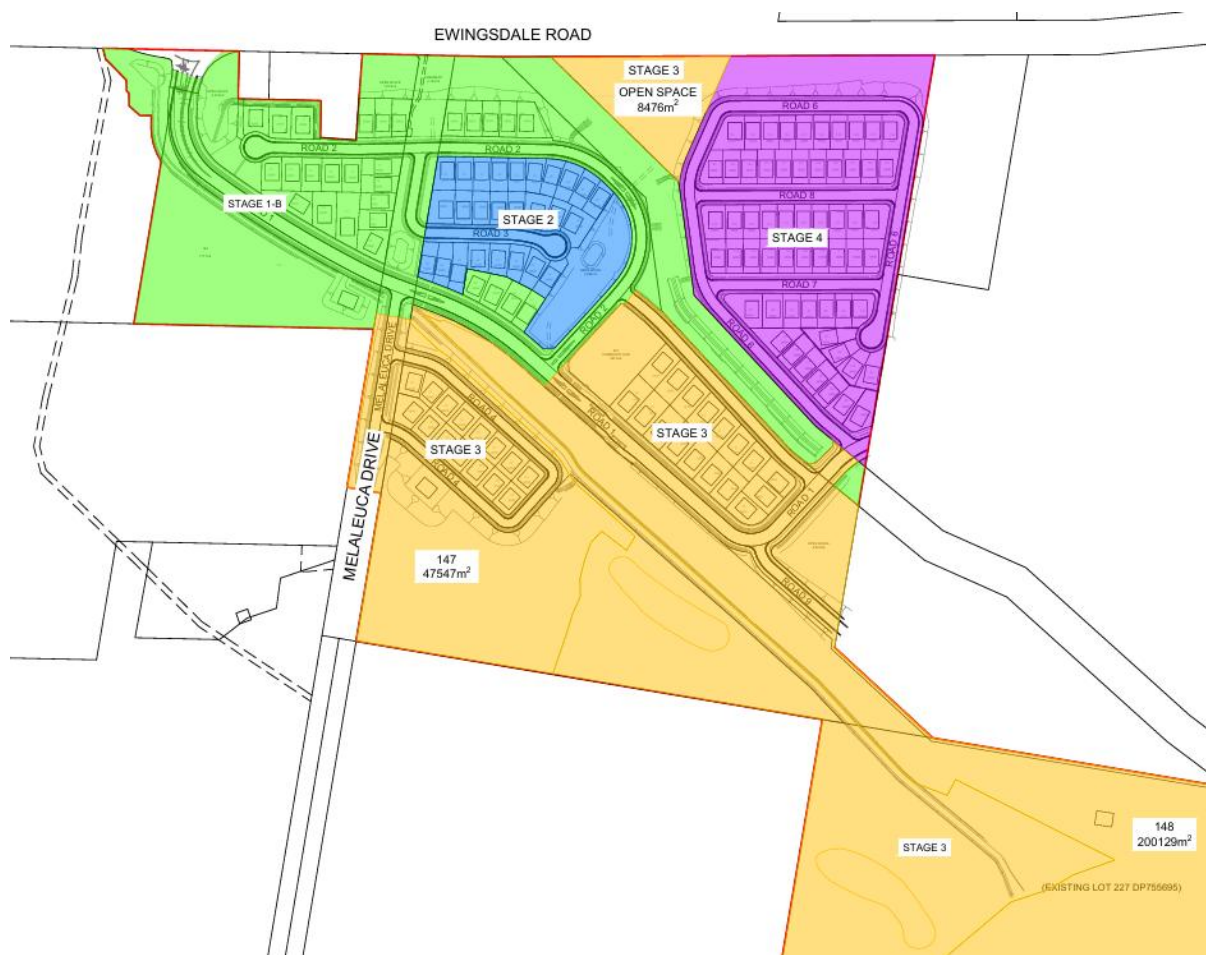
## 1.2 Approval History

Development Consent DA 10.2017.201.1 was granted in 2020 by the NSW Land and Environment Court for a staged subdivision creating 149 residential lots, four large lifestyle lots, and associated infrastructure works at Harvest Estate, Byron Bay.

Since approval, several modification applications have amended the staging, timing, soil stockpiling arrangements, and delivery of public open space, with the latest approved in April 2025.

The first residential stage was completed in August 2024 and new homes are now appearing.

In March 2026 detailed engineering plans for the next release stage were submitted to Council.



**Figure 2. Approved Plan Modified DA 10.2017.201.4**

## 2 Proposed Modification

### 2.1 Description of the Modification to the Development Consent

The proposed modification seeks to amend Condition 91(o) of Development Consent DA 10.2017.201.4, which was applied to prohibit the keeping cats and dogs within Harvest Estate in accordance with Chapter E8 of the Byron DCP 2014.

#### 2.1.1 Existing Condition 91(o) and Restriction on Title

Condition 91(o) of the consent currently reads as:

***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 **prohibits** the keeping of cats and dogs other than official guide dogs or personal assistance dogs.*

As a result of Condition 91(o), a restriction on title was imposed. The current restriction on title is as follows:

**10(a)** *The owner of the lot burdened shall not keep any cat or dog on the lot burdened other than an official guide dog or personal assistance animal.*

#### 2.1.2 Proposed wording of Condition 91(o) and Restriction on Title

It is noted that the adjoining Solus development was approved by Council on the 12 December 2024. The Solus project immediately adjoins mapped Coastal Wetland areas and a frog habitat area. In this approval, Council did not impose a prohibition on the keeping on cats and dogs but rather imposed a condition requiring the appropriate management of cats and dogs. The approved condition is as follows:

**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.

This Modification Application seeks an amended Condition 91(o) to adopt the exact same wording as Council applied in its approval of the Solus development as drafted below.

***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:*

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- 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*

Once Condition 91(o) is amended, the existing restriction on title can then be amended to reflect this modified wording.

Justification for the proposed modification to Condition 91(o) is detailed below.

## 2.2 Justification for the Proposed Modification

The proposed modification is justified on the following basis:

1. Ecological – the current restriction is not required by any ecological justification. The original ecological assessments prepared under DA10.2017.2011.4 acknowledged the Byron DCP 2014 provision requiring a covenant restricting the ownership of cats and dogs within the WBURA. Importantly however, the assessments did not rely upon this measure in reaching their conclusions, nor was it used to justify avoiding targeted species investigations. The ecological assessments were able to conclude that the development was suitable and would deliver a net benefit for wildlife management and protection independent of the covenant restriction. A further ecological assessment is provided with this modification confirming that the proposed amended wording will not create any adverse ecological impacts whatsoever.
2. Consistent Management – the current situation is creating different rules for people and is not consistent. The proposed modification will set in place appropriate management standards for residents and the public and will also be consistent with the adjoining Solus project.
3. Discriminatory – the current restriction unfairly discriminates future residents within the estate as compared with members of the public who are free to bring pets throughout public areas of the Estate.
4. Housing Supply – the Byron Bay region is currently experiencing high levels of housing stress and low levels of housing supply. The current restriction limits housing supply to only persons who do not wish to keep cats or dogs. The proposed modification will increase the availability of housing to wider range of the local community.
5. Legal – a legal opinion has been obtained by Bartier Perry Lawyers and is attached to this modification. This advice concludes that the current *“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”*.

This Modification Application therefore seeks to align the condition with the contemporary approach now applied to Solus and the adjoining West Byron Industrial Lands site (this is discussed in more detail below). The proposed amendment does not remove the management of domestic animals but instead shifts the focus from outright prohibition to responsible ownership and management. Under the revised approach, cats and dogs would be permitted within lots subject to appropriate controls intended to protect local amenity, public safety, and biodiversity values.

The following provides several considerations supporting and justifying the proposed amendment.

### Recent Council Determinations

#### Solus Development

The recently approved Solus industrial subdivision (DA 10.2024.57.1) forms part of the WBURA and sits immediately west of the Harvest Estate. Importantly, the condition does not impose a blanket prohibition on the keeping of cats and dogs. Rather than imposing a blanket prohibition on cats and dogs, this consent imposed a management-based Condition 70A that permits domestic animals subject to ongoing control measures designed to ensure responsible pet ownership and minimise potential impacts on surrounding environmental values.

Rather than relying on an outright ban, the condition applied to Solus focuses on practical and enforceable requirements, including the containment and supervision of animals within private property boundaries intended to prevent roaming or uncontrolled access to environmentally sensitive land.

### Sunnybrand Planning Proposal

Planning Proposal PP-2024-2684 relates to the land immediately west of the Solus Estate, being 268 Ewingsdale Road. This land comprises the former Sunnybrand/Inghams poultry facility and sits outside of the mapped West Byron Urban Release Area boundary. The Planning Proposal seeks to amend the Byron LEP 2014 by rezoning part of the subject land from RU2 Rural Landscape to E4 General Industrial, C2 Environmental Conservation and C3 Environmental Management. At the Ordinary Council Meeting held on 16 April 2026, Council resolved to support the implementation of a domestic animal condition consistent with the approach adopted for the approved Solus development, as discussed above.

We consider the conditions applied to Solus and 268 Ewingsdale Road provide a more balanced approach, maintaining environmental protection while applying practical and enforceable pet management requirements. We support amending Condition 91(o) to align with the management requirements in Condition 70A, which we consider a fair and appropriate approach for the Harvest Estate.

### **Local Orders for the Keeping of Animals Policy**

The Byron Shire Council *Local Orders for the Keeping of Animals Policy* informs the community of the main statutory restrictions and acceptable limits which apply to the keeping of certain animals for domestic purposes.

Council's powers to control and regulate the keeping of animals are provided under Section 124 of the *Local Government Act 1993* and the *Local Government (General) Regulation 2021*. The Policy prohibits the taking of dogs (controlled or not) into public places within these areas identified as wildlife protection areas. It also prohibits the keeping of cats and dogs on private properties within Estates with restrictive covenants established at the time they were developed and approved.

The Harvest Estate has not been identified within this Policy as a prohibited area for the keeping of cats and dogs. As discussed within the Ecological advice that supports this modification, 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.

The current arrangement is inconsistent, as non-residents are permitted to walk dogs throughout Harvest Estate, while prospective residents are prohibited from keeping and responsibly managing dogs within the confines of their own lots. This outcome appears contradictory to the intent of the prescriptive measure contained within the Byron DCP 2014, particularly where appropriate pet management and control measures can be implemented to minimise impacts on surrounding environmental and residential amenity values.

### **Supporting Documentation**

This statement has been prepared with input from a number of technical documents which have been prepared to accompany this modification application. These documents are included as attachments to this statement and are identified in Table 1 below.

**Table 2 Supporting Advice**

| Document Name              | Prepared by           |
|----------------------------|-----------------------|
| <b>Biodiversity Advice</b> | Cedar Ecology         |
| <b>Ecological Advice</b>   | Planit Consulting     |
| <b>Legal Advice</b>        | Bartier Perry Lawyers |

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Both Planit Consulting and Cedar Ecology acknowledge that surrounding urban development has resulted in some reduction and fragmentation of local habitat values; however, they conclude that the implementation of ongoing management controls for domestic pets remains appropriate and necessary to minimise potential impacts on native fauna and surrounding ecological values.

The advice supports the proposed modification of the condition relating to the keeping of cats and dogs at Harvest Estate, concluding that managed domestic pets would not adversely impact local wildlife or ecological values.

Ecological advice prepared by Cedar Ecology is attached with this application. Cedar Ecology is a well regarded local operator who has been independent to the WBURA and Harvest Estate DA. The advice supports the proposed modification to the existing condition applied at Solus.

Planit Consulting's Ecological Unit, who were involved in the original Development Application, have also provided specialist advice on the matter and an assessment of the proposed modification. The advice supports the amendment to the existing condition, concluding that potential ecological impacts associated with domestic animals can be appropriately managed and mitigated through a practical management-based approach. Importantly, Planit's ecological assessments through DA 10.2017.201.4 did not rely upon this measure in reaching their conclusions, nor was it used to justify avoiding targeted species investigations. The ecological assessments were able to conclude that the development was suitable and would deliver a net benefit for wildlife management and protection independent of the covenant restriction. A further ecological assessment is provided with this modification confirming that the proposed amended wording will not create any adverse ecological impacts whatsoever.

The legal review from Bartier Perry Lawyers concludes that there is a strong legal and practical case to modify the consent and associated Restriction No. 10 on title, as it is an overly broad and inconsistent ban on pets in private homes that may exceed reasonable planning control and unfairly burden property owners. It is likely disproportionate when assessed against property rights principles from *Cooper v The Owners – Strata Plan No 58068 [2020] NSWCA 250 at [77]*. The advice suggests that the original environmental justification appears outdated, with modern planning practice favouring targeted risk management over blanket prohibitions, as seen in comparable developments with similar ecological sensitivities.

Overall, the advice concludes that the proposed controlled management approach is appropriate, consistent with recent Council approvals, and unlikely to increase risks or ecological impacts beyond existing local conditions. The advice highlights that the revised condition provides a more balanced, practical and enforceable mechanism for protecting native fauna, while improving likely resident compliance compared to the existing blanket ban.

## 3 Statutory Considerations

### 3.1 Planning Assessment in Accordance with Section 4.15(1) Matters for Consideration

In accordance with s4.55(3) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) this Modification Application has been assessed in accordance with the relevant matters for consideration listed in section 4.15 of the EP&A Act as detailed below:

*(1) Matters for consideration—general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—*

*(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),*

*(v) (Repealed)*

*that apply to the land to which the development application relates,*

*(b) the significant 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.*

#### ***(i) any environmental planning instrument***

##### State Environmental Planning Policies

A detailed consideration of the applicable environmental planning instruments was provided in the Commissioner's Judgement on the original application (*Villa World Byron Pty Ltd v Byron Shire Council* [2020] NSWLEC 1612).

Since that time, the State Environmental Planning Policies (SEPPs) referred to have been incorporated into the consolidated 2021 SEPPs. The modification application does not raise any new issues in relation to most of the environmental planning instruments applicable to the original development application.

In relation to koala habitat protection, the subject site now falls within the area of an approved Koala Plan of Management under the SEPP (Biodiversity and Conservation) 2021, being the Byron Coast Comprehensive Koala Plan of Management (BCCKPoM).

The BCCKPoM discusses the prohibition of dogs and the use of restrictions on title for subdivisions; however, it also provides that Council may consider exemptions where:

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- a) it can be demonstrated that any dog(s) have permanently resided on the land for a minimum of 12 months prior to subdivision;
- b) the movement of domestic dogs is restricted by a suitable fence or enclosure that effectively contains the dogs and excludes koalas; and
- c) the fence is located an appropriate distance from trees to ensure koalas cannot climb over the fence to access the enclosed area.

The proposed modification seeks to balance the protection of the koala population with the ability for dogs and cats to remain part of the household through a management-based approach. It is considered that the measures incorporated within the proposed modification are consistent with the above exemptions. In addition, the BCCKPoM states that Councils play a leading role in the management of domestic dogs through:

- increasing compliance activities to respond to roaming domestic dogs in areas with a resident koala population;
- education and community awareness programs promoting responsible dog ownership and koala protection; and
- providing incentives and support for responsible dog owners.

The proposed modification is considered consistent with the intent of the BCCKPoM as it adopts a management-based approach to minimise risks to koalas while allowing domestic pets to remain within the residential lots. The modification incorporates measures consistent with the exemption provisions of the BCCKPoM, including animal containment, appropriate fencing, and responsible pet ownership requirements to prevent roaming and reduce interactions with koalas.

#### Byron Local Environmental Plan 1988

Since the Court approved development application, a planning proposal was successful in the rezoning of the land located within the WBURA. The land as previously zoned under the *Byron Local Environmental Plan 1988* (LEP 1988) is now identified within the *Byron Local Environmental Plan 2014* (LEP 2014).

The proposed modification is assessed under the relevant provisions of the current Byron LEP 2014, notwithstanding that the original development consent was issued under the Byron Local Environmental Plan 1998.

#### Byron Local Environmental Plan 2014

The Harvest Estate now comprises the following land use zones:

- Zone R2 Low Density Residential
- Zone R5 Large Lot Residential
- Zone E4 General Industrial
- Zone RE1 Public Recreation
- Zone RE2 Private Recreation
- Zone C2 Environmental Conservation
- Zone C3 Environmental Management
- Zone SP2 Infrastructure

The Byron LEP 2014 zones collectively aim to manage land use and development in a way that balances residential living, economic activity, recreation, environmental protection, and essential infrastructure.

There are no other development standards, planning controls, or heads of consideration relevant to this modification application. The proposed modification does not alter the approved development in a manner that would trigger additional assessment matters under the applicable provisions of the LEP.

***(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)***

The NSW Government recently sought feedback on the proposed Climate Change and Natural Hazards State SEPP however, this proposed instrument is not considered applicable to the proposed modification.

***(iii) any development control plan***

Byron Shire Development Control Plan 2014

*Chapter E8 – West Byron Urban Release Area of the Byron Development Control Plan 2014*

The Byron Shire DCP 2014, Chapter - E8 West Byron Urban Release Area includes prescriptive measures in relation to Biodiversity and Vegetation Management (E8.10.5.1). The proposed modification is not consistent with the following prescriptive measure:

*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.*

Where the proposed modification is inconsistent with the statement above, it is noted that precedent has been established within other developments in the WBURA where the keeping of dogs has not been expressly prohibited and this prescriptive measure has not been enforced. Instead, the management of cats and dogs within the associated allotments has remained the responsibility of the individual lot owners.

As discussed within the attached Ecological and Biodiversity Advice, the complete ban of cats and dogs on Harvest Estate, while allowing them to occur on the adjoining Solus development site, is considered unnecessary and unreasonable (See **Section 2.2**). As mentioned by Cedar Ecology in their Biodiversity Advice “The proposed (revised) condition provides a more nuanced control measure in relation to the keeping of cats/ dogs and protection of native fauna species”. In addition, 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.

The modification would align Harvest Estate with the contemporary planning and environmental management outcomes now being applied across the broader WBURA, while continuing to achieve the underlying objective of minimising impacts on native fauna and surrounding ecological values.

***(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***

There has been no existing or draft Planning Agreements relevant to the proposed modification.

***(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)***

In accordance with s4.15(1)(a) the *Environmental Planning and Assessment Regulation 2000* prescribes several matters that will continue to be addressed through existing conditions despite the modification. The consent conditions relating to environmental monitoring, management and protection remain unchanged, ensuring that environmental outcomes of the development, as modified, will not be different that that as approved.

***(b) the significant likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality***

In accordance with s4.15(1)(b), while the proposal introduces a variation to the approach outlined within Byron Development Control Plan 2014 Chapter E8 the modification is unlikely to have any unreasonable adverse impacts on either the natural or built environments, or the social and economic conditions in the locality.

With regard to the consideration of the environmental impacts in relation to restrictions on the keeping of cats and dogs, the variation is considered justified in the circumstances having regard to the detailed assessment contained within this report, the evolving application of comparable conditions within the WBURA, and the absence of evidence demonstrating that the existing prohibition is necessary to achieve positive ecological outcomes. The proposed amendment instead adopts a responsible pet ownership framework consistent with surrounding developments, balancing biodiversity protection objectives with practical residential occupation outcomes.

The proposed modification is further supported by ecological and legal advice and is considered to achieve an appropriate planning outcome having regard to the public interest, housing delivery considerations, and the orderly and economic use of approved residential land within Byron Shire.

***(c) the suitability of the site for the development***

In accordance with s4.15(1)(c) of the EP&A Act, the site is considered suitable for the proposed modification for the following reasons:

- The proposed modification relates solely to the approved Condition 91(o) associated with the keeping of cats and dogs on individual lots and does not alter the approved built form, land use, subdivision layout or residential density of the development.
- The proposed modification will not increase demand on existing infrastructure, utilities or public services.
- Ecological advice confirms that permitting the keeping of cats and dogs on the lots, subject to the existing management and environmental protection measures that continue to apply under the consent, will not result in any additional environmental impacts beyond those already assessed and approved.
- The site remains compatible with the approved residential development and the character of the surrounding area, with the proposed modification maintaining the ongoing residential amenity of both the estate and adjoining properties.
- The proposed modification will provide greater flexibility for residents in relation to pet ownership and remove unnecessary barriers to the occupation of approved lots and dwellings within the Harvest Estate, thereby supporting the effective utilisation of existing housing stock within Byron Bay.

***(d) any submissions made in accordance with this Act or the regulations***

In accordance with s4.15(1)(d) of the EP&A Act, it is acknowledged that submissions arising from the public notification of this modification application will need to be considered by the Consent Authority in its assessment.

***(e) the public interest***

In accordance with s4.15(1)(e), the proposed modification is considered to be in the public interest for the following reasons:

- The proposed modification relates only to amendments to the approved conditions associated with the keeping of cats and dogs on individual lots and does not alter the approved land use, built form or overall development outcome.

- The proposed modification remains consistent with the relevant State and local strategic planning framework and does not result in any inconsistency with the applicable planning controls.
- The proposed modification is not anticipated to result in any adverse environmental, social or economic impacts as justified by ecological advice, subject to appropriate management measures and ongoing compliance with the conditions of consent.
- The proposed modification provides greater flexibility for future residents while maintaining an appropriate balance between residential amenity, responsible pet ownership and the orderly development of the land.

## 3.2 Section 4.56 Evaluation

Section 4.56 of the Act allows a consent authority to modify a development consent granted by it, if:

- a) *it is satisfied that the development to which the consent as modified relates is the same or 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), and*

The proposed modification to the condition relating to the keeping of cats and dogs on the property does not result in any change to the approved development, built form, site layout, subdivision yield, or intensity of use. Rather, the application seeks to amend the wording of Condition 91(o) to align with the updated form of condition that has subsequently been applied to similar developments within the WBURA and adjoining land. Accordingly, the amended proposal remains substantially the same development as that originally approved.

In relation to the established 'threshold tests' for modification applications, the proposal does not result in an "intensification, qualitative or quantitative change of land uses" (*Moto Projects (No 2) Pty Ltd v North Sydney Council* [1999] NSWLEC 280), nor does it constitute a "radical transformation at the site" (*Michael Standley & Associates Pty Ltd v North Sydney Council* [2005] NSWLEC 358). It is therefore submitted that the development, as modified, will remain substantially the same as the development originally approved

- 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, and*
- 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, and*
- 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.*

It is acknowledged that the modification application will be required to be notified in accordance with the relevant provisions of the Regulations and any applicable DCP requirements. It is also understood that persons who made submissions in relation to the original development application may be notified and that any submissions received during the notification period will be considered as part of the assessment of the proposed modification.

The proposed amendment is appropriately characterised as a modification under section 4.56 of the EP&A Act, as the development will remain substantially the same as originally approved, with the management of domestic animals remaining the responsibility of individual landowners in accordance with applicable legislation and the conditions of consent.

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## 4 Conclusion

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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.



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Town Planner



C O N S U L T I N G