

**COUNCIL ASSESSMENT REPORT**

<b>Panel Reference</b>	PPSNTH-96
<b>DA Number</b>	10.2017.201.2
<b>LGA</b>	Byron Shire Council
<b>Proposed Development</b>	S4.56 to Modify Staging, Timeframes and Consequential Amendments to modify Amended Proposal: Subdivision of Six (6) Lots into One Hundred and Forty Nine (149) Lots 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
<b>Street Address</b>	342 Ewingsdale Road and 22A and 22B Melaleuca Drive, Byron Bay
<b>Applicant/Owner</b>	Villa World Byron Pty Ltd / Telicove Pty Ltd
<b>Date of DA lodgement</b>	9 June 2021
<b>Total number of Submissions Number of Unique Objections</b>	<ul style="list-style-type: none"> <li>• Ten (10) submissions in opposition</li> <li>• Nil (0) submissions in support</li> </ul>
<b>Recommendation</b>	<b>Approval</b>
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	The original proposal 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 Environmental Planning and Assessment Act 1979 (EP&A Act) as at the date of DA lodgement, the proposal was "Development that has a capital investment value of more than \$20 million".
<b>List of all relevant s4.15(1)(a) matters</b>	<p>Relevant environmental planning instruments</p> <ul style="list-style-type: none"> <li>• State Environmental Planning (Coastal Management) 2018</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (Koala Habitat Protection) 2019</li> <li>• State Environmental Planning Policy No. 44 – Koala Habitat</li> <li>• State Environmental Planning Policy No 55 – Remediation of Land</li> <li>• State Environmental Planning Policy No 14 – Coastal Wetlands</li> <li>• State Environmental Planning Policy No 26 – Littoral Rainforest</li> </ul> <p>Relevant local environment plan</p> <ul style="list-style-type: none"> <li>• Byron Local Environment Plan 1988</li> </ul> <p>Relevant development control plan</p> <ul style="list-style-type: none"> <li>• Byron Development Control Plan 2014</li> </ul> <p>Relevant planning agreement</p> <ul style="list-style-type: none"> <li>• (VPA) 2013/8948</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<p>Attachment A – Amended Staging Plan</p> <p>Attachment B - Development Engineer review</p> <p>Attachment C – Principal Engineer (Systems Planning) review</p> <p>Attachment D - Ecologist review</p> <p>Attachment E – Rural Fire Service General Terms of Approval</p> <p>Attachment F - Roads &amp; Maritime Services referral response</p> <p>Attachment G – Essential Energy referral response</p> <p>Attachment H – Applicant's response to submissions</p>
<b>Clause 4.6 requests</b>	Not applicable
<b>Summary of key submissions</b>	<ul style="list-style-type: none"> <li>• Changes to staging do not acknowledge the sensitivity of the site and the intent to ensure adverse effects on the environment are avoided</li> <li>• Opposed to reduction in duration of monitoring between stages from 12 months to 3 months as reduced timeframe is inadequate to detect impacts</li> <li>• Proposal does not thoroughly assess the impacts of the amendments sought</li> </ul>
<b>Report prepared by</b>	Ivan Holland
<b>Report date</b>	20 October 2021

**Summary of s4.15 matters**

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

---

**Legislative clauses requiring consent authority satisfaction**

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**  
*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

---

**Clause 4.6 Exceptions to development standards**

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Not applicable**

---

**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not applicable**  
*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

---

**Conditions**

Have draft conditions been provided to the applicant for comment? **Yes**  
*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

## EXECUTIVE SUMMARY

This application seeks approval to Modify Staging, Timeframes and other Consequential Amendments of DA 10.2017.201.1. The key change sought to the consent is for construction of the subdivision to occur in three (3) stages rather than seven (7) stages as currently approved. The applicant is also seeking the ability to carry out works in multiple stages simultaneously, alter the timing for provision of the updated Groundwater Management Plan and modify the drafting of several conditions largely relating to staging references. Initially the application also sought a reduction in duration of groundwater monitoring between stages however the applicant is no longer seeking to have this change approved.

The application was received by Council on 9 June 2021 and placed on public exhibition from 24/6/21 to 21/7/21. Council received ten (10) submissions in opposition to the modification application.

The Rural Fire Service provided an updated Bush Fire Safety Authority and general terms of approval for the modified proposal on 30 July 2021.

### Relevant environmental planning instruments

The modification application does not raise any new issues in relation to 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 State Environmental Planning Policy (Koala Habitat Protection) 2021 (2021 Koala SEPP) being the Byron Coast Comprehensive Koala Plan of Management (BCKKPoM). The modification application does not seek to change the subdivision layout, extent of works, tree removal or retention or environmental restoration works (except in relation to the timing of such activities). A detailed review of the proposal against the BCKKPoM has not been carried out but the modified proposal is generally consistent with the BCKKPoM.

But for development in the coastal zone (cl 88) and earthworks (cl 98B), the modification does not raise new any issues under the Byron Local Environment Plan 1988 that weren't previously addressed in the assessment of the original application and determination.

### Relevant development control plan

The modified staging proposed results in two stages with more than 50 lots, contrary to E8.10.1 of Byron Development Control Plan 2014. However, this change is not contrary to the relevant staging plan objectives and performance criteria which are largely focussed on ensuring orderly and co-ordinated development of the site.

### Likely impacts of the development

The likelihood and scale of any increase in adverse impacts on the coastal environment and ecosystems resulting from the proposed modifications has not been adequately determined particularly relating to the proposed reduction in the number, and corresponding increase in size of, development stages. The potential impact on habitat and fauna is likely to be exacerbated by the reduced timeline for the establishment of compensatory planting, prior to the removal of vegetation, that will result from the reduction in number of stages and corresponding shorter construction period.

### Submissions

Council received ten (10) submissions in opposition to the modification application including from neighbouring landowners. The key issues raised in submissions are considered to be:

- Changes to staging do not acknowledge the sensitivity of the site and the intent to ensure adverse effects on the environment are avoided.
- Opposition to the reduction in duration of monitoring between stages from 12 months to 3 months will result in an inadequate timeframe to detect impacts.
- Proposal does not thoroughly assess the impacts of the amendments sought.

***Note:** The following assessment report needs to be read in conjunction with the various attachments including submissions from government agencies and Council staff.*

## 1. INTRODUCTION

### 1.1. History/Background

#### Original development application (10.2017.201.1)

A brief history of the original development application is as follows:

- Lodged on 10 May 2017
- Refused by the Northern Regional Planning Panel on 8 April 2018 following a public meeting held on the same day.
- Class 1 appeal against the determination was lodged with the Land and Environment Court on 4 October 2019
- An initial conciliation conference between the Parties commenced on 20 August 2020 and was terminated on 12 October 2020.
- An amended proposal was lodged in August 2020 and was subsequently re-notified.
- A further conciliation conference between the Parties were held on 6, 10 and 19 November 2020 at which the Parties reached agreement as to the terms of a decision in the proceedings.
- Approval for the amended subdivision proposal was granted by way of consent orders on 8 December 2020 (2019/310612).

#### Current modification application (10.2017.201.2)

A brief history of the current modification application is as follows:

- Lodged on 9 June 2021.
- Placed on public exhibition from 24/6/21 to 21/7/21.
- Applicant sought to amend application on 3/8/21 to retain the requirement for 12 months of groundwater monitoring between stages.
- The applicant requested further changes to the proposed amendments to the staging on 3/9/21 which altered some of the proposed stage boundaries.

### 1.2. Description of the proposed development

This application seeks approval to Modify Staging, Timeframes and other Consequential Amendments of DA 10.2017.201.1. The key change sought to the consent is for construction of the subdivision in three (3) stages rather than seven (7) stages as currently approved (see **Attachment A**). The applicant is also seeking the ability to carry out works in multiple stages simultaneously.

Changes are also sought to the drafting of several conditions (largely relating to staging references) and the timing for provision of the updated Groundwater Management Plan.

The application (Planit Consulting, 06 May 2021) includes a summary of proposed amendments with reference to conditions that may require alteration (see Table 3). As noted above, the reduction in duration of groundwater monitoring between stages is no longer part of the modification application and further changes to staging are now sought.

### 1.3. Description of the site

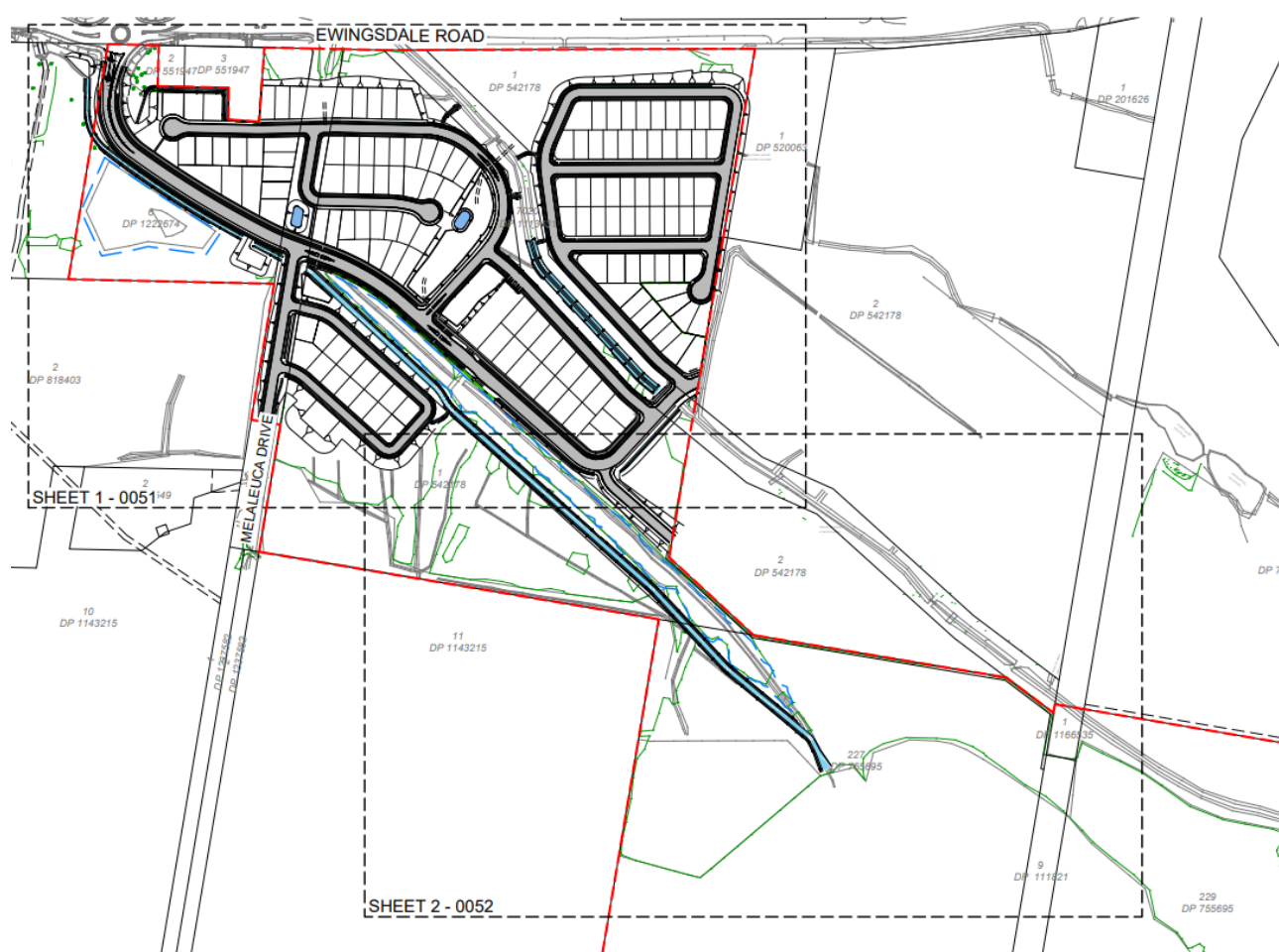
The following description of the site was documented in the assessment report for the original application and remains relevant:

<i>Land is legally described as</i>	<i>LOT: 1 DP: 542178, LOT: 227 DP: 755695, LOT: 7020 DP: 1113431 (portion of)(drainage allotment), LOT: 9 DP: 111821, LOT: 229 DP: 755695 (portion of), LOT: 1 DP: 1166535 (portion of), LOT: 5 DP: 1222674, LOT: 6 DP: 1222674 Portion of Melaleuca Drive adjacent to Lot 6 DP1222674</i>
-------------------------------------	--

<i>Parcel number/s</i>	114330, 114320, 241870, 238016, 114350, 241616, 268571, 268572
<i>Property address is</i>	342 Ewingsdale Road BYRON BAY, Ewingsdale Road EWINGSDALE, 22B Melaleuca Drive BYRON BAY, 22A Melaleuca Drive BYRON BAY
<i>Land is zoned:</i>	Development area: R2 Low Density Residential E2 Environmental Conservation RE1 Public Recreation Residual land: 7(a) Wetlands 7(b) Coastal Habitat 1(a) General Rural
<i>Land area is:</i>	Stage 1 – 27.355 ha Stage 2 – 5.959 ha (both confirmed by applicant on 6/8/18)
<i>Property is constrained by:</i>	<ul style="list-style-type: none"> <li>• Flood Liable Land (1 in 100 year)</li> <li>• Bushfire prone land (combination of Category 1 and Buffer)</li> <li>• Acid Sulfate Soils (Class 2 and Class 3)</li> <li>• High Environmental Value vegetation</li> <li>• Koala Habitat (Tertiary and Primary)</li> </ul>

*In general terms, the site is described as follows:*

- *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 – ICOLL).*



## 2. SECTION 4.56

<b>Section 4.56(1)</b>	<ul style="list-style-type: none"><li>• The development to which the consent as modified relates is substantially the same as the originally approved development in that no change to the number of lots or the lot layout for the subdivision is proposed.</li><li>• The application was publicly notified in accordance with Council's Development Control Plan.</li><li>• Council has notified, or made reasonable attempts to notify, each person who made a submission in respect of the original development application of the proposed modification by sending written notification to the last address known to Council.</li><li>• A consideration of submissions received is included in this report.</li></ul>
<b>Section 4.56(1A)</b>	A consideration of the matters referred to in Section 4.15(1) of the EP&A Act is included in this report as is the reasons for the grant of the original consent.

It was recently determined that a modification application under s.4.56(1) of the EP&A Act must seek to effect some change to the development and if the only modification sought was a change to the conditions of consent, the power to modify is limited to the power to correct a minor error, misdescription or miscalculation (*Ku-ring-gai Council v Buyozo* [2021] NSWCA 177). In this instance the applicant is proposing to change the development staging which will require consequential amendments to stormwater management and environmental monitoring, among other things, and as such is considered to be a change to the development to which s.4.56(1) applies.

## 3. ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2000

The application is considered to have met the relevant requirements under clause 115.

The relevant public participation requirements for this application pursuant to Clause 119 have been met as the application was advertised for greater than 14 days and in accordance with that of the original application. (Note: Clauses 117 and 118 are not considered to apply to this application as it has not been adequately demonstrated that the modification will be of minimal environmental impact and the application does not fall under one of the listed categories in clause 118(1)).

As noted below, the Rural Fire Service were provided a copy of the application as required by clause 120.

## 4. SUMMARY OF REFERRALS

Referral	Issue
Development Engineer	Not supported. (See <b>Attachment B</b> ).
S64 / Systems Planning Officer	No objections subject to conditions. (See <b>Attachment C</b> ).
Ecologist	Not supported. (See <b>Attachment D</b> ).
Rural Fire Service (100B)	The Rural Fire Service provided an updated Bush Fire Safety Authority and general terms of approval for the modified proposal on 30 July 2021 (see <b>Attachment E</b> ).
Department of Planning, Infrastructure & Environment	Provided the following response via the Planning Portal " <i>No role for DPIE Planning &amp; Assessment branch</i> ".
Roads & Maritime Services	No objections provided " <i>road upgrades are in place as planned</i> " and a Construction Traffic Management Plan is provided (see <b>Attachment F</b> ).



Referral	Issue
Essential Energy	No objections, no conditions requested, general comments only (see <b>Attachment G</b> ).
Department of Primary Industries – NSW Fisheries	Provided the following response via the Planning Portal “ <i>The modification with the staging and timeframes for delivering the urban release project does not change previous input</i> ”.
Natural Resources Access Regulator	No response received.
Bundjalung (Arakwal)	No response received.
Tweed Byron Land Council	No response received.

## 5. SECTION 79BA – BUSH FIRE PRONE LAND

The site is bush fire prone land. As noted above, the modification application was referred to the NSW Rural Fire Service (as the original application was integrated development), which provided an updated Bush Fire Safety Authority and general terms of approval for the modified proposal (see **Attachment E**).

## 6. SECTION 4.15 – MATTERS FOR CONSIDERATION – DISCUSSION OF ISSUES

Having regard to the matters for consideration detailed in Section 4.15(1) of the EP&A Act, the following is a summary of the evaluation of the issues.

### 6.1. State Environmental Planning Instruments

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). The modification application does not raise any new issues in relation to 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 State Environmental Planning Policy (Koala Habitat Protection) 2021 (2021 Koala SEPP) being the Byron Coast Comprehensive Koala Plan of Management (BCCKPoM). The 2021 Koala SEPP commencement prior to the lodgement of the modification application and as such is considered a relevant environmental planning instrument (clause 18).

The determination of the development application must be consistent with the approved koala plan of management that applies to the land (clause 10).

The management objectives for the West Byron Koala Management Precinct are “*to consolidate the existing sub-populations and improve the exchange of genetic material with other KMPs to the north and south*”.

The modification application does not seek to change the subdivision layout, extent of works, tree removal or retention or environmental restoration works. As such, a detailed review of the proposal against the BCCKPoM has not been carried out but is generally consistent with the BCCKPoM as the proposal:

- Has a limited area of mapped koala potential habitat;
- Will retain some of the habitat but also result in the removal of some mapped koala potential habitat (see Figure 3);
- Commits to environmental restoration and enhancement works on several areas of the site which are expected to improve habitat connectivity and wildlife corridors;
- Will use “fauna neutral” plant species near Ewingsdale Road to help reduce road-strike;
- Commits to environmental monitoring during and following construction; and



- Will restrict the keeping of cats and dogs through registration of a restriction of use on property titles.



**Figure 3. Aerial photo of development site with koala habitat under the BCCKPoM identified as green shaded areas.**

## **6.2. Byron Local Environmental Plan 1988 (LEP 1988)**

LEP 1988 is an applicable matter for consideration in the assessment of the subject application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the subject land and the proposal. The LEP 1988 clauses that are checked below are of relevance to the proposal:

But for development in the coastal zone (cl 88) and earthworks (cl 98B), the modification does not raise new any issues under LEP 1988 that weren't previously addressed in the assessment of the original application and determination.

### Development within the coastal zone (clause 88)

In relation to the original application, there was agreement that the matters set out in cl 88(2) were considered and the proposed development (as amended) satisfied the requirements of cl 88(3).

The key objective of cl 88(1)(b) of relevance to this modification application is:

*(i) protect, enhance, maintain and restore the coastal environment, its associated ecosystems, ecological processes and biological diversity and its water quality,*

Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered the relevant matters set out under sub (2), particularly in this case being:

*(b) the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*

*(i) the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*

*(ii) the location, and*

*(iii) the bulk, scale, size and overall built form design of any building or work involved, and*

*(e) how biodiversity and ecosystems, including:*

*(i) native coastal vegetation and existing wildlife corridors, and*

*(ii) rock platforms, and*

*(iii) water quality of coastal waterbodies, and*

*(iv) native fauna and native flora, and their habitats, can be conserved, and*

Of relevance to the consideration under this clause is whether the proposed reduction in the number, and corresponding increase in size of, development stages will result in an increase in adverse impacts on the coastal environment and ecosystems.

The applicant provided a letter of support for the proposed modification application from Dr Martens (principal Scientist and Engineer, Martens & Associated P/L) and Graham Dart (Senior Ecologist, Planit Consulting). Neither of the letters of support included any new data, analysis or evidence to support the opinions presented. Mr Dart recommended additional monitoring, associated with the frog habitat and the northwest of the site, be added to the approved Harvest Estate Acid Frog Management Plan (Australian Wetlands Consulting, Revision D, 26/8/2020).

Council's Ecologist is supportive of the additional frog monitoring proposed but does not consider the applicant has adequately demonstrated that the proposed alterations to staging will not cause an increase in adverse impacts on the coastal environment and ecosystems.

#### Earthworks (clause 98B)

A number of conditions were imposed on the original consent to manage the impact of earthworks, particularly on waterways) associated with construction of the proposed subdivision (cl 98B (1)).

Development consent must not be granted for earthworks unless the consent authority has considered the relevant matters set out under sub (3) particularly in this case being:

*(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*

*(e) the effect of the development on the existing and likely amenity of adjoining properties,*

*(i) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive land and measures to prevent sediment, building materials, waste or other pollutants from leaving the site and entering adjoining land, street gutters, drains or watercourses,*

*(j) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The applicant argues that the reduction in the number of stages will reduce the time taken to construct the subdivision and consequently exposure of the local area and residents to subdivision construction works and associated impacts (e.g., noise and dust).

The current approval includes conditions to manage the impacts of earthworks on waterways including specification of a maximum disturbed area (condition 20), management of drainage (condition 29), erosion and sediment control plan (conditions 45, 62 and 77) and receiving environment monitoring (e.g., condition 79). However, it should be noted that the management and mitigation set out in these conditions was based on the development being carried out in the approved seven stages.

### **6.3. Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority**

No proposed instruments were identified that are relevant to this application.

### **6.4. Byron Shire Development Control Plan 2014 (DCP 2014)**

DCP 2014 is an applicable matter for consideration in the assessment of the subject application in accordance with subsection 4.15(1) of the EP&A Act because it applies to the West Byron Urban Release Area (WBURA). The proposed change to the staging of the development is considered below under the relevant BDCP 2014 Parts/Chapters (note: other changes to conditions are considered under Item 8 below):

#### Chapter E8 – West Byron Urban Release Area

Chapter E8 of the BDCP2014 applies to land identified as the West Byron Bay Site which includes the subject land of this development application.

##### E8.10.1 Staging Plan

Many of the prescriptive measures for the staging plan can't be met by the proposed development due to the subdivision being separated into an eastern and western development with separate designs and applications in contrast to the staging envisaged by DCP 2014 (e.g., roundabouts, Main Spine Road, Village Centre Precinct).

However, of relevance to this proposal to modify the size and number of stages is Prescriptive Measure 7 (E8.10.1):

*Where more than 100 lots are to be released as part of a subdivision, a staging plan to be submitted with the development application breaking such land releases into stages of no more than 50 lots to enable the co-ordination and provision of necessary infrastructure and services.*

All approved stages will deliver less than 50 lots (see Figure 3 below). The amended Stage 1 and Stage 3 seek to deliver 55 and 59 lots respectively (see Figure 4 below) which is greater than the maximum specified however this change is not contrary to the staging objectives and performance criteria which are largely focussed on ensuring orderly and co-ordinated development of the site.

The applicant's modification proposal to combine Stage 1-A (which comprises the preliminary environmental restoration and enhancement and landscaping of the site) into a development stage is not supported. The requirement for the key environmental restoration and enhancement and landscaping of the site to be carry out not only first, but in advance of the construction works, was a key requirement for Council to support approval of the subdivision. This approach is also considered essential to ensure "*Rehabilitation and re-vegetation works are to be delivered in a timely manner ...*" as required by performance criteria 3. It is critical that compensatory planting occurs sufficiently in advance of vegetation removal to minimise habitat loss impacts on fauna.

The combination of Stage 7 with a preceding stage is supported as Stage 7 does not involve the creation of any additional lots and will require minimal earthworks, construction and infrastructure works.

As noted above, the consent limits the disturbed area to 5ha at any one time for each stage (condition 20). The applicant is not seeking to alter the area limit but is seeking the ability to carry out works in multiple stages simultaneously. This change is not supported as the environmental impact of works occurring in multiple stages simultaneously has not been assessed.



**Figure 3. Approved staging plan.**





Figure 4. Proposed staging plan.

#### 6.5. Any Planning Agreement or Draft Planning Agreement?

A voluntary planning agreement (VPA) 2013/8948 was executed on 21 October 2014 between the Minister for Planning and the Byron Bay West Landowners Association (the developer) on Lots described as 5/DP622736, 6/DP622736, 1/DP542178, 227/DP755695, 229/DP755695, 9/DP111821, 1/DP1166535, 1/DP201626, 2/DP542178, 1/DP780242, 2/DP818403 and 1/DP520063. The executed agreement facilitates the delivery of the developer's contribution towards the provision of regional infrastructure and to ensure conservation land is appropriately rehabilitated and maintained.

#### 6.6. Environmental Planning & Assessment Regulation 2000 Considerations

Clause	This control is applicable to the proposal:	I have considered this control as it relates to the proposal:	If this control is applicable, does the proposal comply?
92	No	N/A	N/A
93	No	N/A	N/A
94	No	N/A	N/A
94A	No	N/A	N/A

#### 6.7. The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

<b>Impact on:</b>	<b>Likely significant impact/s?</b>
<b>Natural environment</b>	The applicant has not adequately assessed the likelihood and/or scale of changes to the adverse impacts on the natural environment of the locality that may result from the combination of changes sought to the approved development in particular: <ul style="list-style-type: none"> <li>• Allowing works in multiple stages simultaneously;</li> <li>• Increased risk of biodiversity impacts associated with less, larger development stages; and</li> <li>• Reduced timeline for development will not provide adequate time for the establishment of compensatory planting to adequately offset tree removal.</li> </ul>
<b>Built environment</b>	No. The proposal will not have a significantly adverse impact on the built environment of the locality.
<b>Social Environment</b>	No. The proposal will not have a significant social impact on the locality.
<b>Economic impact</b>	No. The proposal will not have a significant economic impact on the locality.

No Council policies were identified that are directly applicable to the modification application.

#### **6.8. The suitability of the site for the development**

The proposed modification to the staging of the development is not considered to impact on the suitability of the site for the development.

#### **6.9. Submissions made in accordance with this Act or the regulations**

The application was publicly exhibited .

There were ten (10) submissions made on the application (see note):

- Nil (0) For
- Ten (10) Against

Note: One of the submissions was lodged against the original DA number and was not included in the original submission count.

<b>Key issues raised in Submissions</b>	<b>Consideration</b>
Changes to staging do not acknowledge the sensitivity of the site and the intent to ensure adverse effects on the environment are avoided	Discussed above
Opposed to reduction in duration of monitoring between stages from 12 months to 3 months. Inadequate timeframe to detect impacts	The applicant no longer seeks to reduce the duration of monitoring between stages (condition 4).
Proposal does not thoroughly assess the impacts of the amendments sought	Discussed above

The applicant provided a response to the submissions received by Council (see **Attachment H**).

#### **6.10. Public interest**

The proposal is unlikely to prejudice or compromise the public interest or create an undesirable precedent.

### **7. DEVELOPER CONTRIBUTIONS**

## 7.1. Water & Sewer Levies

Section 64 levies will be payable.

## 7.2. Section 7.11 Contributions

Section 94 Contributions will be payable.

### MODIFIED CONDITIONS OF CONSENT:

The conditions imposed on the original DA were based on numerous technical and environmental reports and were agreed by Council and the Applicant following a Land and Environment Court conciliation process. The proposed changes to the staging of the development is not supported by the same level of technical and environmental analysis.

Nevertheless, the consolidation of stage 7 with either Stage 3 or Stage 4 is supported along with several minor edits to better clarify the intent of conditions and/or correct potential misinterpretation.

Note: changes to the wording of conditions are identified by blue underline for additions and ~~blue strikethrough~~ for deletions.

#### Condition 1 – no change

The modification application seeks to remove the specific reference to the plans in this condition as this list is duplicated in the Notice of Orders made by the Court. This change is not supported as the listed plans are referenced in other conditions of the consent and this change would prevent the consent being a complete and concise approval.

Should an amended staging plan be approved, this condition would need to be modified to replace the referenced staging plans (see below).

0600 Rev B	Staging Plan	Planit Consulting	27/8/20
0610 Rev C	Stage 1 Phase A Plan	Planit Consulting	27/8/20
0611 Rev B	Stage 1 Phase B Plan	Planit Consulting	27/8/20
0620 Rev B	Stage 2 Plan	Planit Consulting	27/8/20
0630 Rev B	Stage 3 Plan	Planit Consulting	27/8/20
0640 Rev C	Stage 4 Plan	Planit Consulting	27/8/20
0650 Rev C	Stage 5 Plan	Planit Consulting	27/8/20
0660 Rev B	Stage 6 Plan	Planit Consulting	27/8/20

#### Condition 3 - modify

As noted above, the proposed changes to the staging of the development are not supported with the exception of the combination of Stage 7 with an adjoining Stage (either Stage 3 or Stage 4).



The applicant has requested an express allowance in this condition for the issue of multiple subdivision works certificates (SWC) within each stage. Council's Development Engineer does not support this amendment noting the following: *"Generally, the issuance of multiple SWC is permissible, however this does not require the specification of multiple subdivision certificate within the consent"*.

As noted above, the applicant's request for the ability to carry out works in multiple stages simultaneously is not supported as the environmental impact of works occurring in multiple stages simultaneously has not been assessed.

The preference of Council's Development Engineer is to modify condition 3 to allow discretion for the certifier to as to whether items required by conditions relate to the relevant stage rather than making specific references to individual stages in conditions. The later approach is considered to be more complicated and more likely to lead to omissions or further modification applications being required down-the-line.

### **Staged development**

The development is to be carried out in the following stages as per the approved staging plans (Planit Consulting, 0600, Rev B, 27/8/20):

**Stage 1-A:** The environmental restoration and enhancement and landscaping works within Stage 1, 6 and 7, including the Ewingsdale Road buffer. This is as referenced in the Rehabilitation Plan – Zone 5 (J5644-505), and is subject to the updated Landscape Plan required by condition 36.

**Stage 1-B:** Lots 1 – 18, 29 – 34, 58 - 61 and 146 including all swales and the permanent basin shown as Stage 1 works in Drawings 0610 Rev C and 0611 Rev B, noise/acoustic barriers for lots 1 to 11 and the items detailed at a) and b) below.

**Stage 2:** Lots 19 - 28, 35 – 50 including the permanent basin shown as Stage 2 works on Drawing 0620 Rev B.

**Stage 3:** Lots 72 – 86 and 147 including all swales shown as Stage 3 works on Drawing 0630 Rev B.

**Stage 4:** Lots 51 – 57, 62 – 71 including all swales shown as Stage 4 works on Drawing 0640 Rev C, the Main Drain embellishment works as described by the SWMP (Version E, 27/8/20) and Road 9 construction from the intersection with Road 01 to the boundary with the neighbouring land as shown in Drawing 0304 Rev B.

**Stage 5:** Lots 87 – 114 including all swales shown as Stage 5 works on Drawing 0650 Rev C. **Stage 6:** Lots 115 – 145 including all swales shown as Stage 6 works on Drawing 0660 Rev B and noise/acoustic barriers (as identified in the Environmental Noise Impact Assessment (Ref:crgrf: 16147 report rev.6 CRG Acoustics 25 August 2020)), subject to the detailed design requested by Conditions 36 and 38, excluding the items detailed at a) below.

**Stage 7:** Lots 148 and 149, excluding the items detailed at b) below.

The development is to progress sequentially as per the stages above, with the previous stages being complete to Council's satisfaction prior to works commencing on the next stage with the exception of Stage 7 which may be constructed with either Stage 3 or Stage 4. A maximum of one (1) stage may be under construction at any one time with only the following exceptions:

- a) Stage 6 – Landscaping, vegetation planting, drain embellishment, construction of pathways, cycle ways and other public recreation infrastructure within the Ewingsdale Road buffer area of Stage 6, in accordance with the relevant drawings and plans including Landscape Sections, J5644\_505, J6539\_101, J6539\_102, J6682, Landscape Masterplan, to be carried out during Stage 1-A.
- b) Stage 7 – Frog habitat creation and vegetation rehabilitation/enhancement within Stage 7, in accordance with the relevant drawings and plans including the Acid Frog Management Plan (Rev D, 26/8/20), Biodiversity Conversation Management Plan (Version E, 27/8/20) and Drawings J5644\_02, J5644\_03, J5644\_04, J5644\_503, J5644\_504, J6682, SK090, to be carried out during Stage 1-A.

Where roads terminate on stage boundaries, temporary turning heads in line with relevant requirements of the Northern Rivers Design Guides (<https://www.byron.nsw.gov.au/Services/Building-development/Plans-maps-andguidelines/Development-Design-Manuals> ) and the General Terms of Approval from NSW Rural Fire Service (Schedule 1) are to be provided to facilitate turning for all

vehicles.

Where conditions are required to be satisfied prior to a particular event, those conditions are the conditions relevant to the works being carried out in the stage.

~~For clarity, if a condition of consent requires a matter to be addressed prior to the issue of a Subdivision Works Certificate and does not specify a stage of development for the issue of that Subdivision Works Certificate, it is taken to be applicable to each separate stage. That is, the condition must be satisfied prior to the issue of a Subdivision Works Certificate for each stage.~~

The relevant conditions that are applicable to each stage are the conditions stated as being necessary for the completion of each stage in this consent., or, where pursuant to the issue of a Construction Certificate, the relevant consent authority.

#### Condition 4 – no change

As noted above, the applicant sought to amend the modification application on 3/8/21 to retain the requirement for 12 months of groundwater monitoring between stages.

#### Condition 10 – modify

The applicant's clarification of the definition of "substantially commenced" is supported with the addition of a specific reference to the planting required in the Ewingsdale Road landscape buffer.

#### **Environmental restoration and enhancement and landscaping works**

The environmental restoration and enhancement and landscaping works within Stage 1, Stage 6 and Stage 7, must be substantially commenced prior to the issue of a subdivision works certificate for Stage 1-B. The following must be provided to Council's Director of Planning (or nominee) to demonstrate compliance with this condition:

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

Note: For the purposes of this condition, "substantially commenced" means all 'trees' and 'small trees/shrubs' under the updated and approved VMP have been planted in all rehabilitation zones and all 'trees' and 'shrubs' under the amended and approved Landscaping Plan have been planted in the Ewingsdale Road landscape buffer. ~~proposed planting of vegetation and specified restoration and enhancement works have been completed.~~

#### Condition 11 – no change

The amendment sought by the applicant to delay the need to provide the updated Groundwater Management Plan to prior to the subdivision works certificate for the first construction stage of the subdivision is not adequately justified particularly as the required changes to the Groundwater Management Plan include monitoring of groundwater levels and quality for at least 12 months prior to the commencement of subdivision construction works (sub a.).

As noted above, the applicant sought to amend the modification application on 3/8/21 to retain the requirement for 12 months of groundwater monitoring between stages.

#### Conditions 13, 22, 24, 26, 27, 30 to 33, 42. k) iii), vii) and p), 51, 55 to 58, 64, 91, 92, 104 and 112 – no change

The changes sought by the applicant to Conditions 13, 22, 24, 26, 27, 30 to 33, 42. k) iii), vii) and p), 51, 55 to 58, 64, 91, 92, 104 and 112 are only required in the event the modified staging plan is approved. The alteration to the wording of condition 3 provides some discretion for the certifier to as to whether

items required by conditions relate to the relevant stage rather than making specific references to individual stages in conditions. Should a modification to the staging be approved, consequential amendments to these conditions will be required to reflect any changes to Stage boundaries and or numbering.

#### Condition 16 – modify

It is agreed with the applicant that the groundwater monitoring duration requirement in this condition duplicates and is inconsistent with that specified in condition 11 and should be deleted.

#### **Groundwater monitoring**

Prior to the issue of Subdivision Works Certificates for each stage of works that involves bulk earthworks, a suitably qualified and experienced hydrogeologist is to nominate locations of new monitoring wells to monitor the groundwater levels during the proposed earthworks.

The results from previous stage monitoring wells are to be provided to Council with commentary from the hydrogeologist relating to the groundwater levels and any mitigation measures or amendments required for future stages of works to ensure the groundwater is appropriately managed.

~~The monitoring of groundwater is to be continuous throughout the works from the commencement of Stage 1-A until 6 months after the completion of Stage 7.~~

This information is to be provided in the updated Groundwater Management Plan as required by condition 11.

#### Condition 20 – no change

The amendment to this condition to allow earthworks to occur in multiple stages simultaneously is not supported as the environmental impact of works occurring in multiple stages simultaneously has not been assessed.

#### Other condition alterations raised by the Applicant

Modification of conditions relating to site contamination and remediation (Conditions 14 and 90)

The applicant raised concerns that reference to “site” in these conditions could be interpreted to apply to the entire development site rather than the area of identified contamination. The reference to “site” in these conditions is intended to refer only to the area/s of identified contamination and not the development site as a whole. Modification of these conditions to address this possible interpretation is not considered warranted but is not opposed for example by replacing the reference to “site” with “remediated land”, in the appropriate location, to avoid potential misinterpretation.

The applicant presented the option of delaying provision of the Construction Traffic Management Plan (condition 26), Construction Environmental Management Plan (condition 35) and Amended Landscaping Plan (condition 36) to “prior to commencement of subdivision works” on the basis that this document would normally be prepared by the works contractor and that such appointment would likely occur after the issued of a subdivision works certificate. Delaying the provision of these plans to after the subdivision works certificate has been approved is not supported by Council. Council’s Development Engineer indicated that such an approach would be considered in relation to the Construction Traffic Management Plan provided the condition was amended to include more detailed commitments such as construction traffic limits/thresholds (based on robust data/modelling) and monitoring of those commitments. The Construction Environmental Management Plan is a compilation of environmental management, monitoring and mitigation commitments that should be prepared by a suitably qualified person, prior to issue of subdivision works certificates and provided to the works contractor prior to subdivision works commencing. Condition 36 requires amendments to the Landscaping Plan that include the Ewingsdale Road Landscape Buffer and consequently must be provided prior to the issue of the first subdivision works certificate for approval rather than prior to work commencing. No further correspondence was received from the applicant on this matter.

#### Schedule - Developer Contributions to be paid

Should the panel approve the modified staging, Council's Systems Planning Officer has prepared an updated calculation of Water payments under the Water Management Act 2000 (see **Attachment C**) that should replace the current schedule of the consent.

Schedule 1: Rural Fire Service General Terms of Approval

Should the panel approve the modified staging, the Rural Fire Service has provided an updated Bush Fire Safety Authority and general terms of approval (see **Attachment E**) that should replace the current Schedule 1 of the consent.

## **8. DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

Has a Disclosure Statement been received in relation to this application	No
Have staff received a 'gift' from anyone involved in this application that needs to be disclosed. Where the answer is yes, the application is to be determined by the Director or Manager of the Planning, Development and Environment Division.	No
Provide Disclosure Statement register details here:	Not applicable