

<b>DATE OF DETERMINATION</b>	4 November 2021
<b>PANEL MEMBERS</b>	Paul Mitchell (Chair), Penny Holloway, Stephen Leathley and David Brown
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	<p>Stephen Gow declared a conflict of interest as he formed part of the Panel that refused the original development application, and he wished to avoid any perception that he had formed a view in relation to the modification application.</p> <p>Basil Cameron declared a conflict of interest as he has made public statements regarding the development.</p>

Papers circulated electronically on 20 October 2021.

#### **MATTER DETERMINED**

PPSNTH-96 – Byron - 10.2017.201.2 at 310, 342 and 394 Ewingsdale Road, Byron Bay – modify staging and timeframes (as described in Schedule 1)

#### **PANEL CONSIDERATION AND DECISION**

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

#### **Development application**

The Panel determined to approve the development application pursuant to section 4.56 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

#### **REASONS FOR THE DECISION**

The Panel determined to approve the application for the following reasons:

1. The Panel is satisfied that the proposed modification is substantially the same as the originally approved development.
2. The modified development remains consistent with relevant provisions of the Byron LEP and applicable SEPPs. Since the original approval the only consequential change in the applicable planning instruments is introduction of the Koala Habitat Protection SEPP 2021 which requires development proposals to be consistent with an approved Koala Plan of Management (KPoM). The modification application satisfies this provision because it is consistent with the Byron Coast Comprehensive KPoM.
3. The modified development will have essentially the same impacts on the natural environment as the approved development. In this respect the Panel notes that the layout of the proposal remains unchanged and involves only minor clearing which will be more than compensated for by restoration works which will improve habitat connectivity.
4. The impacts of the modified development on the aquatic environment including groundwater and wetlands will be essentially the same as those for the approved development because the disturbance area and management measures remain unchanged. In addition, the Panel notes that extensive monitoring of groundwater conditions will occur.
5. The modified development will be generally consistent with relevant provisions of the Byron DCP with the exception of the limitation on the size of individual subdivision stages being no more than

50 lots. In this case the combined stages 1B and 2 will be greater than 50 lots. Notwithstanding, the Panel believes the variation to the guideline is minor, will not inhibit orderly development, will not increase the area of land disturbance exposed at any one time and will have the beneficial effect of reducing the length of the construction period.

6. The modification application will enable more efficient delivery of housing thus contributing to improved choice and affordability and greater consistency with Council's draft Residential Strategy. These outcomes will be socially beneficial.
7. The Panel has carefully considered the issues raised by objectors and considers they are addressed by changes to the application and/or conditions imposed and that no residual issues warrant refusal of the application. Overall, the Panel believes that the impacts of the modified development will be positive, and that approval is in the public interest.

## CONDITIONS

The development application was approved subject to the conditions in the addendum Council assessment report with the following amendments:

- Changes to Condition 1 to be consistent with the revised staging
- Changes to the wording of Condition 3(a) and 3(B) to provide greater clarity
- Changes to the wording of Condition 10 to provide greater clarity
- Deletion of Condition 16 due to overlap with Condition 11
- Condition 26 amended to account for increased traffic in combined stages 1B and 2.





The approved modifications to the existing conditions of consent are attached at Schedule 2.

## CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel noted that issues of concern included:

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

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report and the conditions of consent imposed.

PANEL MEMBERS	
 Paul Mitchell (Chair)	 Penny Holloway
 Stephen Leathley	 David Brown

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-96 – Byron - 10.2017.201.2
2	PROPOSED DEVELOPMENT	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) 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.
3	STREET ADDRESS	342 Ewingsdale Road and 22A and 22B Melaleuca Drive, Byron Bay
4	APPLICANT/OWNER	Villa World Byron Pty Ltd / Telicove Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	Section 4.56 Modification Application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <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> <li>Byron Local Environmental Plan 1988</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Byron Development Control Plan 2014</li> </ul> </li> <li>Planning agreements: <ul style="list-style-type: none"> <li>(VPA) 2013/8948</li> </ul> </li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil</li> <li>Coastal zone management plan: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Council assessment report: 20 October 2021</li> <li>Addendum Council assessment report: 25 October 2021</li> <li>Written submissions during public exhibition: ten</li> <li>Total number of unique submissions received by way of objection: eight.</li> </ul>
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Final briefing to discuss Council's recommendation: 27 October 2021 <ul style="list-style-type: none"> <li><u>Panel members</u>: Paul Mitchell (Chair), Penny Holloway, Stephen Leathley and David Brown</li> <li><u>Council assessment staff</u>: Ivan Holland and Chris Larkin</li> <li><u>Department staff</u>: Amanda Moylan and Lisa Foley</li> </ul> </li> <li>Applicant Briefing: 27 October 2021 <ul style="list-style-type: none"> <li><u>Panel members</u>: Paul Mitchell (Chair), Penny Holloway, Stephen Leathley and David Brown</li> <li><u>Council assessment staff</u>: Ivan Holland and Chris Larkin</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>○ <u>Department staff</u>: Lisa Foley</li> <li>○ <u>Applicant representatives</u>: Anthony Aiossa, Luke Blandford, Andrew Wells and Daniel Martens</li> </ul> <p><u>Note</u>: Applicant briefing was requested to respond to the recommendation in the Council assessment report</p>
9	<b>COUNCIL RECOMMENDATION</b>	Approval
10	<b>DRAFT CONDITIONS</b>	Attached to the addendum council assessment report

## SCHEDULE 2

Condition 1 – modify (*The concept erosion and sediment control plans referred to in this condition need to be updated to address the contemporaneous construction of Stages 1B and Stage 2*).

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 C	Stage 1 Phase B Plan	Planit Consulting	22/10/21
0620 Rev C	Stage 2 Plan	Planit Consulting	22/10/21
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 (*To allow Stages 1B and 2 to be constructed simultaneously and 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*).

### **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 C, 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 C.

**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:crgref: 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. A maximum of one (1) stage may be under construction at any one time with only the following exceptions:

- a) Part of Stage 6 – Comprising 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, which must be carried out during Stage 1-A.
- b) Part of Stage 7 – Comprising 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, which must be carried out during Stage 1-A.
- c) Stage 1B and Stage 2 may be constructed simultaneously. A reference to Stage 1B or Stage 2 in the conditions of this consent should be taken to be a reference to the either or both stages where these two stages are constructed simultaneously.

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.

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 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 (Stage 1A), 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 condition 10, "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.

Condition 16 – deleted (*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.

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

Condition 26 – modify (*Addition of construction traffic limits and monitoring has been recommended to address the potential increase in construction traffic from the simultaneous construction of Stages 1B and 2*).

### **Construction Traffic Management**

Prior to the issue of a Subdivision Works Certificate for each stage, a Construction Traffic Management Plan (CTMP) specific for the proposed works is to be provided. The CTMP must address as a minimum:

- a. Construction traffic volumes/ day, as well as providing a commitment to a maximum number of truck movements on site per day the maximum size (length) of trucks and a program to monitor and report this to Council. The volume of trucks calculated must include both import of fill material and export of unsuitable materials, as well and all other traffic movements expected throughout the construction of the relevant stage of works;
- b. Planned construction routes and site entry points;
- c. Pedestrian and vehicle movement plan for the public;
- d. Hours of work;
- e. Noise and vibration;
- f. Dust mitigation; and
- g. Flora and fauna protection.

As a minimum, the CTMP is to commit to the following measures to reduce the impacts of construction traffic on Ewingsdale Road:

- a. Schedule the works involving the greatest volume of truck movements outside of school holiday or public holiday periods;
- b. Carrying out works only as per the approved working hours;
- c. The haulage route for trucks to be to/from the Pacific Highway and to avoid the Byron Bay town centre; and
- d. Trucks entering the site are not to exceed 10 trucks in any 1-hour period, or 5 trucks during the period 8.00 am to 9.00 am.

The CTMP is to commit to weekly monitoring of construction traffic movements during any phase of work which is predicted to involve more than 10 trucks per day entering or leaving the site.

For the duration of those works, the following must be recorded daily:

- a. The total number of construction traffic movements relates to the works (not including private vehicles transporting construction workers to the site);
- b. The number of vehicle movements relates to importing fill to the site;

- c. The number of vehicle movements relating to exporting unsuitable/excess material from the site;
- d. Any construction traffic incidents; and
- e. Any construction traffic complaints.

The CTMPs must address the proposed vehicle and pedestrian movements on Melaleuca Drive and show how residents on this road can safely gain vehicular and pedestrian access to, and from, Ewingsdale Road while the works are underway.