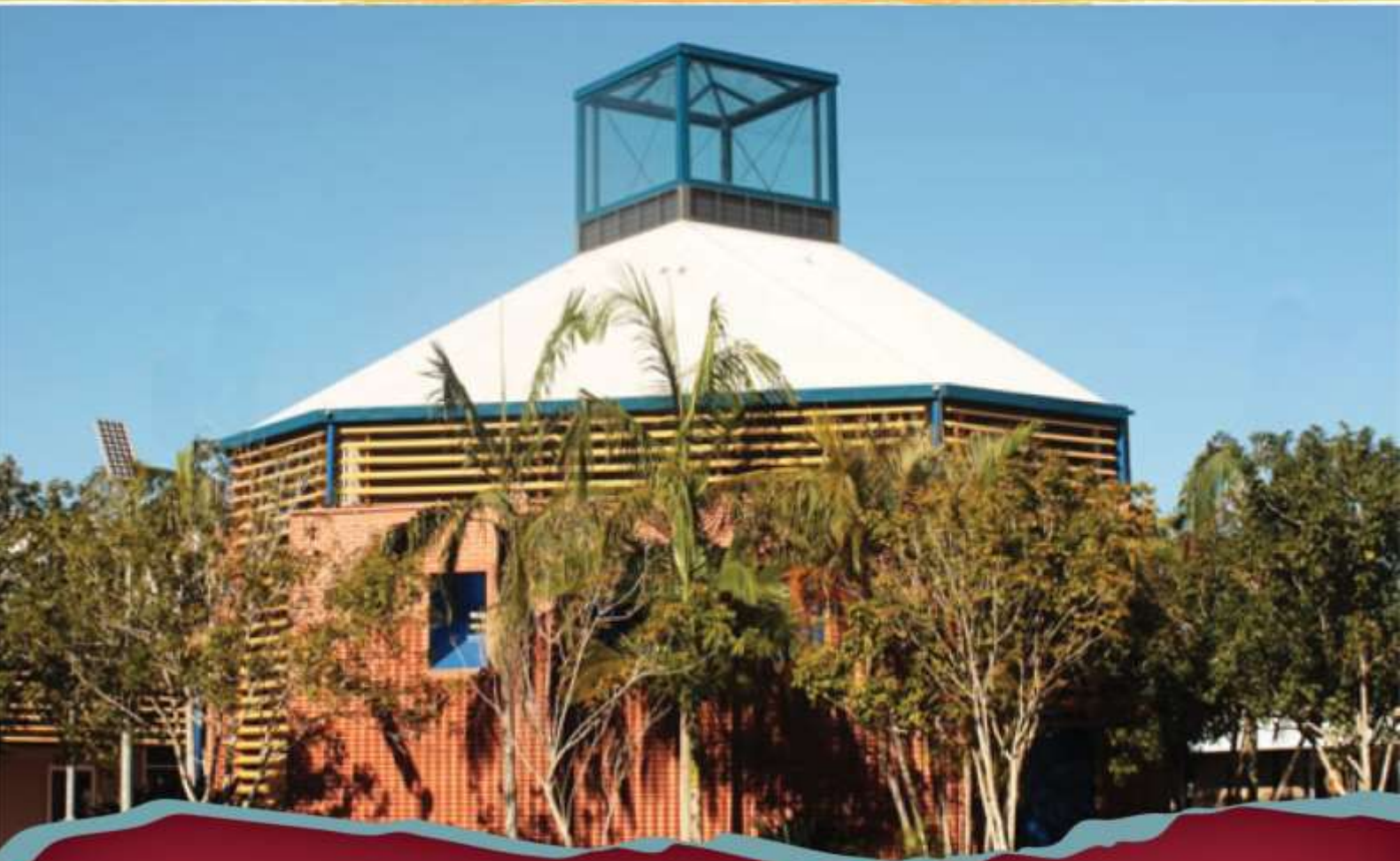




Byron Shire Council



Agenda

Extraordinary Meeting

Thursday, 6 July 2017

held at Council Chambers, Station Street, Mullumbimby
commencing at 4.00pm

Public Access relating to items on this Agenda can be made between 9.00am and 10.30am on the day of the Meeting. Requests for public access should be made to the General Manager or Mayor no later than 12.00 midday on the day prior to the Meeting.

Ken Gainger
General Manager

CONFLICT OF INTERESTS

What is a "Conflict of Interests" - A conflict of interests can be of two types:

Pecuniary - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

Non-pecuniary – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Local Government Act (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

Remoteness – a person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in Section 448 of the Local Government Act.

Who has a Pecuniary Interest? - a person has a pecuniary interest in a matter if the pecuniary interest is the interest of the person, or another person with whom the person is associated (see below).

Relatives, Partners - a person is taken to have a pecuniary interest in a matter if:

- The person's spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

N.B. "Relative", in relation to a person means any of the following:

(a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person's spouse;

(b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

No Interest in the Matter - however, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body, or
- Just because the person is a member of, or is employed by, the Council.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
 - (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
 - (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

No Knowledge - a person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

A Councillor is not prevented from taking part in the consideration or discussion of, or from voting on, any of the matters/questions detailed in Section 452 of the Local Government Act.

Non-pecuniary Interests - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in S451 of the Local Government Act apply (particularly if you have a significant non-pecuniary interest)

RECORDING OF VOTING ON PLANNING MATTERS

Clause 375A of the Local Government Act 1993 – Recording of voting on planning matters

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
 - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
 - (b) not including the making of an order under Division 2A of Part 6 of that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

BYRON SHIRE COUNCIL
EXTRAORDINARY MEETING

BUSINESS OF EXTRAORDINARY MEETING

1. PUBLIC ACCESS
2. APOLOGIES
3. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY
4. STAFF REPORTS

Sustainable Environment and Economy

- 4.1 2017NTH013 DA & DA 10.2017.201.1 Villa World - West Byron4

Councillors are encouraged to ask questions regarding any item on the business paper to the appropriate Executive Manager prior to the meeting. Any suggested amendments to the recommendations should be provided to the Administration section prior to the meeting to allow the changes to be typed and presented on the overhead projector at the meeting.

STAFF REPORTS - SUSTAINABLE ENVIRONMENT AND ECONOMY

Report No. 4.1 **2017NTH013 DA & DA 10.2017.201.1 Villa World - West Byron**

Directorate: Sustainable Environment and Economy

5 **Report Author:** Shannon Burt, Director Sustainable Environment and Economy

File No: I2017/935

Theme: Ecology
Development and Approvals

10

Summary:

15 A Development Application has been submitted for Stage 1 – Subdivision of nine (9) lots into two hundred and ninety (290) residential lots in nine (9) sub–stages, Stage 2 – Concept Plan for Residual Land including Medium Density Residential, Low Density Residential, Commercial, Industrial, Recreational and Environmental Management Precincts at 394 Ewingsdale Road, 342 Ewingsdale Road, Lot 227 Ewingsdale Road, Lot 7020 Ewingsdale Road, Lot 9 Ewingsdale Road, Lot 229 Ewingsdale Road, Lot 1 Ewingsdale Road, 22B Melaleuca Drive, 22A Melaleuca Drive Byron Bay.

20

The Development Application is currently on exhibition until 12 July 2017.

25 Byron Shire Council (Council) is the consent authority, and the Northern Region Joint Planning Panel (JRPP) has the function of determining the application due to the cost of construction being in excess of twenty million dollars (\$20,000,000).

The JRPP Operational Manual states:

10.11 Council representation to the planning panel

30 An elected council may make a submission on a DA within their LGA that is to be determined by a planning panel up to seven days before the planning panel meeting. The applicant may consider it appropriate to provide a briefing to council prior to the council framing its submission to the panel.

35 After the assessment report has been forwarded to the secretariat, it may be provided to the elected council to assist in its decision as to whether it will be making a submission to the planning panel. The elected council’s submission should not be prepared by persons involved in the assessment of the application, and should be prepared by another council officer, or a consultant.

40 A council submission should not be specifically addressed in the assessment report or recommendations prepared by the council staff. If council makes a submission, a staff representative or individual Councillors may register to address the planning panel at the meeting to express the views of council.

45 Councillors who are also panel members have an independent role because they have been nominated by their council as its nominee to the planning panel.

10.12 Code of Conduct considerations

50 All planning panel members are required to comply with the Planning Panels Code of Conduct when exercising their functions as a panel member and make merit-based decisions in accordance with statutory obligations.

55 To avoid any perceptions of bias, and to meet requirements of the Code of Conduct (section 3.22), councillors who have deliberated or voted on a matter that is to come before the panel (such as a submission from the council on a DA for regional development, a related voluntary planning agreement or a planning proposal) must stand aside from their place on the panel and allow council’s nominated alternative member to take their place. Alternatively, the member may choose

to not participate in the deliberations or voting on the matter at the council (or council committee) meeting. They should also not remain in the council chamber during the council's deliberations.

5 The purpose of this report is to provide councillors with a preliminary assessment of the Development Application as submitted with regard to its compliance with relevant environmental planning instruments and development control plan applicable to the site.

10 The report has been prepared by a person not involved in the assessment of the Development Application.

RECOMMENDATION:

1. **That Council prepare/not prepare a submission on the Development Application 2017NTH013 DA & DA 10.2017.201.1 Staged Development Application for Subdivision of Land West Byron.**
2. **That a Council staff member (not involved in the assessment of the Development Application in point 1) be requested to finalise a submission on behalf of Council objecting/supporting the Development Application 2017NTH013 DA & DA 10.2017.201.1 on the following grounds:**
 - a) (grounds to be inserted)
 - b) (grounds to be inserted)
 - c) (grounds to be inserted)
3. **That the Council submission be finalised and submitted up to seven days before any scheduled JRPP meeting on the Development Application.**
4. **That Council confirm a staff representative or individual Councillors, (name/s to be inserted) to be registered to address the planning panel at the scheduled meeting of the JRPP to express the views of Council.**
5. **That Council request the JRPP to hold a public briefing meeting after the exhibition has ended, and invite any person who made a submission to present, before the assessment report is finalised.**

15

Report

This is a **staged development application**, made pursuant to the provisions of s83A of the Environmental Planning and Assessment Act 1979.

5

It seeks approval for a residential subdivision of the land, in the form of:

1. A *concept proposal* for subdivision of the whole of the West Byron site (number and type of lots not specified); and
2. A *detailed proposal* seeking Development Consent for Stage 1 of the Concept, creating 290 lots (to be carried out in 9 stages).

10

Application documents can be found here:

<http://www.byron.nsw.gov.au/public-exhibition/2017/07/12/da-10-2017-201-1-290-lot-subdivision-and-concept-plan-for-residual-land>

15

The West Byron Bay Urban Release Area:



20

Summary of Issues:

1. Land Owners Consent

25

Consent has not been provided for most of the lots associated with the later stages. Given this staged application seeks approval for a Concept Plan, that consent is necessary.

The Stage 1 proposal involves works within a drainage reserve lot, which is Crown Land, and within the Melaleuca Drive road reserve, which is a road maintained by Council.

30

There is no owners consent for either of these properties.

2. Insufficient information

The application contains detailed information regarding the Stage 1 component of the application, but no information is provided to enable a proper assessment of the Concept Plan for the whole of the development.

5

The staged development application is submitted (under Section 83 of the Act) as a mechanism in lieu of a DCP (which is required by Cl.101 of BLEP1988).

10

In this circumstance, S83C (3) of the Act requires that “*any such development application is to contain the information required to be included in the development control plan by the environmental planning instrument or regulation*”.

In this case, the information required to be included in the DCP is outlined in cl.101(3) of BLEP.

15

The application addresses this information in relation to the detailed (Stage 1) subdivision proposal, but does not address it in relation to the Concept Plan proposed.

20

[Note: Council recently adopted the West Byron DCP, which contains the information required by cl. 101(3). The applicants could, if they chose, now withdraw the current staged DA application and resubmit the Stage 1 component only. At this time, they have not done so.]

3. Fill requirement

25

The engineering report indicates that a total of 168,800m³ of fill material will need to be imported to the site for the Stage 1 development (no indication given for total fill amount for overall Concept Plan).

The application indicates that fill material will be obtained from local quarries.

30

No information is provided to indicate that the required quantities are available locally in the timeframes required, and no information regarding numbers of trucks, haul routes or other potential impacts of bringing that quantity of fill to the site.

35

Given the high volume of fill material required, and the need for material with appropriate permeability, this information is important in order to fully assess the potential environmental impacts associated with the proposed development.

4. Traffic Impacts (State Environmental Planning Policy (Infrastructure) 2007 – Development with frontage to a classified road)

40

Ewingsdale Road is a classified road. The provisions of cl. 101 of the SEPP are therefore applicable (development with frontage to a classified road).

45

‘The consent authority must not grant consent unless it is satisfied that (amongst other things): *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development...*’

50

The traffic impact assessment report addresses the capacity of the proposed roundabout at Ewingsdale Road / Bayshore Drive, but does not appear to address the *safety, efficiency and ongoing operation* of Ewingsdale Road as a whole. Similarly, no assessment is provided of potential traffic impacts on the remainder of the road network through Byron Bay.

Given known traffic flow issues, it is considered that more assessment is required in this regard, in terms of both construction traffic (given likely numbers of trucks hauling fill), and traffic from subsequent residential development.

5. Biodiversity

Koala Impacts

The Byron Coast Koala Habitat Study maps this locality as an area of significant activity (see below).

5



State Environmental Planning Policy No 44 – Koala Habitat Protection

10 In accordance with the SEPP, identification of *potential koala habitat* is based on whether there is 15% or more koala food trees within areas of native vegetation.

15 The ecological assessment report concludes that the area does not contain potential koala habitat, because the quantum of koala food trees is less than 15% of the trees *across the whole of the site*.

15 This assessment is incorrect. Each of the areas of vegetation should be looked at individually to determine whether there is more than 15% of koala food trees in that stand of vegetation.

20 The assessment report concludes that a Koala Management Plan is not required.

West Byron DCP

E8.10.5.1 requires the preparation of a Koala Plan of Management (KPoM).

25 While the ecological assessment report provides detail on koala assessment and proposed mitigation measures, a KPoM is not provided.

Biobanking

30 A Biobanking Assessment Report has been provided. This relates to only a small portion of the site, located in the north-western part of the Stage 1 area (Lot 6 DP122674). It has been provided primarily to address the loss of paperbark swamp forest, which is an EEC and also a habitat area for the Olongburra Frog and Wallum Froglet.

The report identifies the credits that will be required to offset the loss of the paperbark swamp forest, and the two frog species, but there is no Biobanking Agreement in place to identify where and how those credits will be provided.

5 The application indicates that this would be agreed with Council and the Office of Environment and Heritage “in due course”.

Frog Habitat

10 As outlined above, an area of wallum froglet habitat is proposed to be removed, with a biobanking agreement suggested as an appropriate offset mechanism.

6. Residue Lots less than Minimum Lot Size

15 The land is subject to Byron Local Environmental Plan 1988 (BLEP1988). Most of the land is identified as the **West Byron Bay Site** on the Land Application Map, which is part of that LEP.

For that land, there is a clause in the LEP (cl. 83B), which relates to ‘split zone lots’ (i.e. lots partly zoned residential and partly environmental), which allows the residue part of those lots to have an area less than the specified minimum.

20 However, the residue of existing lots 227 and 229, will also contain land outside of the **West Byron Bay Site**, which is zoned partly 7(a) Wetland and partly 7(b) Coastal Habitat. The minimum lot size for land in those zones is 40ha, and the subdivision will result in lots with less than the required area in those zones.

25 It would be possible for the applicants to object to the need to adhere to this minimum lot size standard, using the provisions of *State Environmental Planning Policy No. 1 – Development Standards*. No such objection has been submitted.

7. State Environmental Planning Policy No 55 – Remediation of Land

30 Pursuant to this SEPP, a consent authority must not consent to the carrying out of any development unless it has considered whether the land is contaminated and, if so, whether remediation is required to make it suitable for development proposed.

35 The applicants note that this SEPP is applicable, but have provided no information or report to address the potential for contamination.

40 The potential for contamination was (presumably) addressed in the rezoning process, but no information has been submitted to demonstrate how (or whether) the extent of that assessment is suitable for the purpose of determining this development application.

8. West Byron DCP

Design Principles

A vibrant mixed use village centre to provide a community meeting place and to provide retail and commercial opportunities

45 Village components appear to be within Stage 2. No detail provided.

housing arrangements different to the existing model in Byron Shire including small lot housing and co-operative housing

50 Stage 1 development pattern very conventional. Some smaller lots, but no innovation or point of difference. Some medium density lots proposed, but no firm proposals for innovative housing forms or how that might be achieved.

Staging

Staging is not in accordance with DCP.

Street Hierarchy

5 Performance criteria:
Cul-de-sacs to be a maximum of 200m in length and for a maximum of 25 dwellings
 Road 10 significantly longer than this.

10 As the application was lodged prior to the adoption of the DCP, it does not include a detailed assessment against its requirements. With the recent adoption of the DCP, such an assessment should be required.

STATUTORY ASSESSMENT NOTES

Land Subject to Application:

15

	Property Description	Land Owner	Owners' Consent?
Stage 1:	Lot 6 DP1222674 ¹	NSPT Pty Ltd	Yes
	Lot 1 DP542178	NSPT Pty Ltd	Yes
	Lot 2 DP542178 ²	Telicove Pty Ltd	Yes
	Lot 227 DP755695	NSPT Pty Ltd	Yes
	Lot 9 DP111821	NSPT Pty Ltd	Yes
	Lot 229 DP755695	NSPT Pty Ltd	Yes
	Lot 1 DP1166535	NSPT Pty Ltd	Yes
	Lot 7020 DP1113431 ³	Crown Land	No
	Melaleuca Drive Road Reserve ⁴	Council land	No
Remaining Stages:	Lot 5 DP1222674	NSPT Pty Ltd	Yes
	Lot 2 DP818403	Mr A R Smith & Mrs J D Smith & Fletcher Project Developments Pty Ltd	No
	2/878549	Cosmic Arts Centre Pty Ltd	No
	10/1143215	Mr T T Hochgrebe & Ms W Hochgrebe	No
	1/780242	Gousse Holdings Pty Ltd	No

NOTES:

1. Appears to be incorrectly identified in the SEE as "portion of Lots 5 & 6 DP1222674". Plans show Stage 1 application over Lot 6 only, with Concept Plan applying to both lots 5 & 6.
2. Property is listed on the owners consent forms of both Telicove and NSPT Pty Ltd.
3. Council's records indicate this is Crown Land. Included in list of land for NSPT owners consent
4. Road reserve is Council maintained. Included in list of land for NSPT owners consent.

20

Land area is: 74.9ha (not checked)
 Property is constrained by: Acid Sulfate Soils (mainly Class 3, Class 2 on fringe)
 Bushfire prone land (Veg category 1 & buffer)
 Flood prone land
 High environmental value vegetation
 Eco Wetlands
 Threatened flora & fauna records
 Koala habitat
 Regional Wildlife corridor

PRELIMINARY S79C ASSESSMENT

5

a) State Environmental Planning Instruments

State Environmental Planning Policy No 1 - Development Standards

10 Within both the *Concept Plan* and the *Stage 1* area, parts of the land are located outside of the *West Byron Land Application Area*. That land is Deferred Matter under BLEP2014, and therefore retains the zoning under the BLEP1988, which is 7(a) & 7(b).

15 The minimum lot size for subdivision of such land is 40ha, and the subdivision would result in residue lots containing land within these two zones that are less than that size.

Accordingly, an objection is required under SEPP 1. The application does not contain this.

State Environmental Planning Policy No 14 - Coastal Wetlands

20 The residue parts of the site contain a mapped SEPP 14 wetland. The proposal does not involve works in this wetland area, as specified in the SEPP, and therefore the application is not designated development and the concurrence of the Director is not required.

State Environmental Planning Policy No 44 - Koala Habitat Protection

25 Applies. Addressed within ecological report. However, the ecological assessment report concludes that the area does not contain potential koala habitat, because the quantum of koala food trees is less than 15% of the trees *across the whole of the site*.

30 This assessment is incorrect. Each of the areas of vegetation should be looked at individually to determine whether there is more than 15% of koala food trees in that stand of vegetation.

The assessment report concludes that a Koala Management Plan is not required. Assessment of impacts and mitigation measures are outlined in the Assessment Report.

35 13 koala food trees are to be removed. Compensatory planting at ratio of 10:1 proposed in E2 zone area.

State Environmental Planning Policy No 55 - Remediation of Land

40 Applies. Applicant has not addressed this SEPP. It was (presumably) addressed in the rezoning of the land, but the Statement of Environmental Effects makes no comment on the potential for contamination.

State Environmental Planning Policy No 71 - Coastal Protection

Does not apply – see cl. 70 BLEP1988.

State Environmental Planning Policy (Infrastructure) 2007

Ewingsdale Road is a *classified road*. The provisions of cl. 101 are therefore applicable (development with frontage to a classified road).

5

The consent authority must not grant consent unless it is satisfied that:

a) *where practicable, vehicular access to the land is provided by a road other than the classified road*

Not practicable in this case.

10

b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development*

The traffic impact assessment report discusses the capacity of the proposed roundabout at Ewingsdale Road/ Bayshore Drive, but does not appear to address the *safety, efficiency and ongoing operation of Ewingsdale Road as a whole*.

15

Given known traffic flow issues, it is considered that more assessment is required in this regard.

State Environmental Planning Policy (State and Regional Development) 2011

20

The development is Regional Development for the purposes of this SEPP because it is subdivision of land within the coastal zone into more than 100 lots, where part of the land is within a sensitive coastal location (within 100m of SEPP 14 wetland). The JRPP is therefore the approval authority.

25

b) Byron Local Environmental Plan 1988
Zoning:

Stage 1 area R2 Low Density Residential
 RE1 Public Recreation
 E2 Environmental Conservation
 7(a) Wetlands
 7(b) Coastal Habitat
 1(d) Investigation

Remaining Stages: In addition to above:
 IN2 Light Industrial
 R3 Medium Density Residential
 B1 Neighbourhood Centre



5 Given that the application only includes detailed assessment for the Stage 1 component, the table below deals only with that aspect of the current application.

There is not enough information to enable an assessment of the likely impacts associated with the whole of the Concept Plan.

LEP - Summary of Requirements (Stage 1)	Comments
<p>Objectives of the R2 Low Density Residential zone</p> <ul style="list-style-type: none"> To provide for the housing needs of the community within a low density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. 	<p>The Stage 1 subdivision layout is generally consistent with a low density residential environment.</p>
<p>Permissibility of development in R2 zone</p>	<p>Subdivision is permissible within the West Byron Bay site by virtue of cl. 80(1). Roads and public utility infrastructure are permissible with consent in the zone.</p>
<p>Objectives of the E2 Environmental Conservation zone</p> <ul style="list-style-type: none"> to protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values, to prevent development that could destroy, damage or otherwise have an adverse effect on those values. 	<p>The subdivision plan shows no residential lots within the E2 zoned land. However, the application indicates that there are “two minor portions of proposed road and associated stormwater treatment/conveyance traversing the E2 zoned land”</p> <p>A detailed Ecological report has been provided and assessment of that report is continuing.</p>

<p>Permissibility of development in E2 zone</p>	<p>Roads are permissible with consent in the E2 zone. Clause 98A provides that water and stormwater infrastructure is permissible with consent in the E1 & E3 zones, subject to biodiversity assessment.</p>
<p>Clause 83B Exceptions to minimum lot size for split zones Relates to an original lot that contains part R2 and part E2 or E3 land. Allows the residue (i.e. that part zoned E2 or E3) to have an area less than the 40ha minimum.</p>	<p>Allows the subdivision as proposed. However, as outlined below, there are original lots that have parts outside of the West Byron Bay Site area, which retain environmental protection zoning. Residues of those lots will not comply with minimum lot size requirements.</p>
<p>Clause 84 Height of buildings The Height of Buildings Map specifies a 9m height limit across the site.</p>	<p>Application seeks to vary this to 13.6m for the nominated medium density lots. However, no buildings are proposed, no plans have been provided, and no assessment of the requested variation is provided.</p>
<p>Clause 88 Development in the coastal zone Various considerations generally reflective of SEPP 71.</p>	<p>Applicant has addressed requirements. Generally acceptable.</p>
<p>Clause 98B Earthworks Range of matters to be considered before granting approval to earthworks</p>	<p>Significant filling is required (168,800m³ of fill to be imported). While plans of the filling have been provided, no details included re: the source of the fill and any associated impacts of transporting that quantity of material to the site.</p>
<p>Clause 101 Development Control Plan Specifies that consent not be granted until a DCP has been prepared addressing the nominated matters.</p>	<p>Application was made before the recent adoption of the West Byron DCP. Application for Staged Consent made as a result. The Staged application provides information in relation to the nominated DCP issues for the Stage 1 component, but not for the overall Concept Plan.</p>
<p>Area outside West Byron Bay Site:</p>	
<p>Clause 11 Subdivision in rural areas for agriculture etc Parts of existing lots 227 and 229 are outside the <i>West Byron Bay Site</i>, and are zoned partly 7(a) Wetland and partly 7(b) Coastal Habitat. A 40ha minimum lot size development standard applies.</p>	<p>The subdivision as proposed will result in residue lots contains areas within these zones less than the development standard. Applicants have not addressed this (no SEPP 1 objection).</p>

c) Any proposed Instrument that has been the subject of public consultation and has been notified to the consent authority

Draft SEPP (Coastal Management) 2016

5 The Draft Coastal Management State Environmental Planning Policy (SEPP) proposes to establish a new, strategic land use planning framework for coastal management. It is intended to support the implementation of the management objectives set out in the Coastal Management Act 2016.

10 Once adopted, the Coastal Management SEPP will be the single land use planning policy for coastal development and will bring together and modernise provisions from SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection).

The aim of the Draft SEPP is to promote an integrated and co-ordinated approach to planning in the 'Coastal Zone', identifying four coastal management areas:

- 15
- coastal wetlands and littoral rainforests area
 - coastal environment area;
 - coastal use area; and
 - coastal vulnerability area.

20 The whole of the subject site will be mapped within the coastal use area. The draft provisions for consideration of development within this area generally reflect the existing matters for consideration currently outlined in Cl. 88 of BLEP1988. These matters are addressed above. The eastern fringes of the land, adjacent to Belongil Creek, are also mapped as *coastal environment area*. These areas, and the wetland areas in the southern parts of the subject lots, are mapped as *coastal wetlands* and *coastal wetlands 100m buffer*.

25

The application addresses the relevant matters required by this mapping.

d) Any planning agreement

30 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.

35

40 As the proposed development is located on the same site as the above VPA, the Department of Planning and Environment has advised that a new VPA is not required with the developer as part of the subject development application.

However, in accordance with Schedule 4 of the executed agreement, the developer is obligated to:

- 45
1. Pay \$7,000.00 (+ indexation) for each urban lot prior to the issue of each relevant subdivision certificate or strata certificate;
 2. Prepare a vegetation management plan for the Conservation Land prior to the issue of each subdivision certificate.

e) The regulations

50 The only relevant matters relate to the NSW Coastal Policy. The applicant has addressed the Policy and there are no substantive issues (other than those identified above).

f) Any coastal zone management plan

Not directly relevant.

5

g) The likely impacts of the development

Preliminary assessment indicates a range of likely impacts that have not been satisfactorily addressed. These are summarised above.

10

A full detailed assessment has not yet been completed, and there are potential additional impacts that might arise from completion of that assessment.

h) Suitability of the site for the development

15

The rezoning process effectively deemed the site to be suitable for development, in accordance with the concept plans that form part of the State Government's Major Projects approval.

i) Submissions made in accordance with the Act

20

At the time of completing this report, the public exhibition of the development application had not been completed (exhibition closes 12 July).

As at 30 June, five objections have been received. Reasons for objection include:

- 25
- Traffic impacts.
 - “The development should not even be considered without a separate access to the highway and through to the Suffolk Park area”
 - “Ewingsdale Road is the only direct access from the town to the hospital. To have even more traffic clogging up this emergency access is a recipe for disaster”
 - 30 • Insufficient green space in the proposed development.
 - No provision for reticulation of treated wastewater.
 - Concerns regarding quantity, nature and likely source of fill material (and associated traffic impacts).
 - Lack of public transport options.
 - 35 • Concerns about ‘sprawl’; development out of character with Byron Bay.
 - Byron Bay does not have the infrastructure to support the development.
 - Impacts on koalas.

j) The public interest

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The issues summarised above indicate that, based on this preliminary assessment, approval of the development application is not in the public interest.

45 In particular, issues to do with traffic and biodiversity have the potential to result in significant environmental and social impacts.

Financial Implications

N/A

50 Statutory and Policy Compliance Implications

Discussed in the report.