



1 December 2023

Bundjalung of Byron Bay Aboriginal Corp (Arakwal)  
PO BOX 1555  
BYRON BAY NSW 2481

Email: [officemanager@arakwal.com.au](mailto:officemanager@arakwal.com.au)

Dear Sir/Madam

<b>DA No.</b>	<b>10.2021.575.1</b>
<b>Proposal:</b>	<b>Staged Subdivision to create One Hundred and Twenty Seven (127) Lots comprising of One Hundred and Twenty Three (123) Residential Lots, Three (3) Medium Density Lots, and One (1) Public Reserve, together with associated Vegetation Management Works (Tree Removal and Compensatory Planting), Earthworks and Construction of Infrastructure</b>
<b>Applicant:</b>	<b>Newton Denny Chapelle</b>
<b>Parcel No.</b>	<b>269888</b>
<b>Property:</b>	<b>LOT: 13 DP: 1251383, 15 Torakina Road BRUNSWICK HEADS</b>

Council resolved on 12 October 2023 under 23-454 (part 6) the following in relation to the residential Subdivision known as "Wallum" at Brunswick heads.

6. Consults with traditional custodians connected to the site about its cultural significance as also revealed by mapping held under a Memorandum of Understanding with Tweed Byron Local Aboriginal Land Council.

The development application for the subdivision was approved on 16 May 2023 by the Northern Regional Planning. A copy of the Cultural Heritage Site Inspection report submitted to Council in accordance with Condition 18 of the Consent.

Council seeks any further comments you may wish to make in response to item 6 of the resolution as quoted above.

The entire resolution is appended to this letter for your information.

Should you require any further information please contact me by return email or phone 02 6626 7136.

Your sincerely

Chris Larkin  
Manager Sustainable Development

Enc: Cultural Heritage Site Inspection Plan – Everick Heritage July 2023



**23-454 Resolved that Council:**

1. *Notes local and broader community concern that this area will be rendered uninhabitable for several Threatened native Species and Ecological Communities by this development, and that many other native Species whose futures point towards becoming "Threatened" also occur on the property, and notes that these concerns include:*
  - a) *whether the project will have, or is likely to have, a significant impact on any listed threatened species including on: Wallum Sedge Frog; Glossy Black-cockatoo; Koala; Mitchells Rainforest Snail; or Long-nosed Potoroo [refer EPBC Act Part 3 Subdivision C Sections 18 & 18A];*
  - b) *whether the project will have, or is likely to have, a significant impact on Koala habitat (see Figure 6 of the Byron Coast Comprehensive Koala Plan of Management);*
  - c) *whether the project will have, or is likely to have, a significant impact on habitat of Glossy Black-cockatoo, which have been recorded feeding and roosting on the site consistently (the so-called "Bruns trio");*
  - d) *whether the actions proposed includes any possibility of a "controlled action" [under EPBC Act Part 7 Division 1 Section 68(1)];*
  - e) *the likelihood of survival of the local population of Wallum Froglet, despite a lack of research or results proving that habitat replacement as currently proposed ("ponds" to be dug in surrounding landforms) is successful;*
  - f) *the true age of trees such as mature Scribbly Gums that have been allocated an age of 50 years, in conflict with evidence-based studies such as the "growth model method" [they are likely 200 to 400 years old];*
  - g) *whether any trees that will be impacted by the project are of cultural heritage, through for example scarring on such trees, and would be deemed "intangible cultural assets";*
  - h) *any other matters brought to light through for example (i) past submissions to various rounds of public exhibition, and (ii) recent claims of local environmental groups;*
  - i) *the drainage problem noted under Condition 11b (no slope in the proposed North South Drain) can be overcome at all, and whether the required minimum 0.25% gradient can be achieved (both under current sea levels and under those indicated for the future, including for the year 2100 and beyond and including the possibility that flood levels will be found to be higher after re-calibration of computer models following the 2022 flood event); and*
  - j) *there will be no change in the regime of stormwater flows leaving the developed site (with its impervious surfaces) compared to those that leave the site as is (with its flat gradients and sandy soils) for all frequencies of storms from 1-in-3-month through to rare floods; and*
  - k) *that the site is flood prone as demonstrated in the February 2022 flood.*
2. *Notes at least one request has been made (on 14 September 2023) notifying the NSW state Planning Minister Paul Scully and asking the federal Minister for the Environment, Tanya Plibersek, to call in the next development Stages of Bayside Brunswick (DA10.2021.575.1) under the Environment Protection and Biodiversity Conservation (EPBC) Act 1999 and to determine the project's impacts on Matters of National Environmental Significance (MNES) including nationally listed Threatened Species such as:*
  - a) *the critically endangered Mitchells Rainforest Snail; and*
  - b) *the Wallum Sedge Frog.**and priority species under the federal Threatened Species Action Plan including:*
  - a) *Koala; and*
  - b) *Australasian Bittern.*

3. *Writes to federal Minister for the Environment Tanya Plibersek requesting that she assess this project's impacts on MNES including those in Part 2 above and:*
  - a) *the following EPBC listed fauna: Wallum Sedge Frog; Glossy Black-cockatoo; Koala; Mitchells Rainforest Snail; Long-nosed Potoroo; Eastern Grass Owl; and Collared Kingfisher;*
  - b) *habitat for the following critically endangered species: Regent Honeyeater and Swift Parrot;*
  - c) *the EPBC listed Endangered Ecological Community - Swamp Sclerophyll Forest on Coastal Floodplains; and*
  - d) *the EPBC listed Pink Nodding Orchid (Geodorum densiflorum).*
4. *Writes to the NSW Minister for Planning Paul Scully requesting that he assess whether the project includes actions that are or may be "controlled actions" [under EPBC Act Part 7 Division 1 Section 69(1) and 70(1)].*
5. *Receives assessments of the Amended Management Plans submitted to Council for the development at Bayside Brunswick (DA10.2021.575.1) to ensure that those Plans comply with Consent Conditions set by the NRPP and with federal, state and local regulations, including separate assessments of Plans for:*
  - a) *Vegetation Management (Condition 6);*
  - b) *Wallum Froglet Management (Condition 7);*
  - c) *Construction Environmental Management (Condition 8);*
  - d) *Updated Surface and Groundwater Management (Condition 9);*
  - e) *Stormwater Maintenance Management (Condition 12);*
  - f) *Cultural Heritage Site Inspection (Condition 18).*
6. *Consults with traditional custodians connected to the site about its cultural significance as also revealed by mapping held under a Memorandum of Understanding with Tweed Byron Local Aboriginal Land Council.*
7. *Determines at a Council meeting the suitability of those Amended Plans and the efficacy of the proposed stormwater system, as pointed out in the note under consent condition 11b, after considering:*
  - a) *the assessments resulting from Part 5 above; and*
  - b) *return correspondence from the Federal Government resulting from Parts 2 and 3 above; and*
  - c) *return correspondence from the State Government resulting from Parts 2 and 4 above. Noted and to be within council remit*
8. *Seeks legal advice on avenues by which an appeal can be made against the approval granted in May 2023 despite being out of time. On 12 October 2023 Council resolved, inter alia, that Council seek legal advice on avenues by which an appeal can be made against the approval granted in May 2023 despite being out of time. On 19 October 2023 the requested advice was received and was forwarded to Councillors.*
9. *Seeks clarification from the Department of Planning and Environment around the process and the information on which the issue of the section 34a Certificate was based.*

*(Dey/Ndiaye)*