



Planning &  
Infrastructure

**TRANSITIONAL PART 3A PROJECT  
ASSESSMENT:**

***Bayside Brunswick Residential  
Subdivision, Bayside Way, Brunswick  
Heads (Concept Plan)  
(05\_0091)***



Director-General's  
Environmental Assessment Report  
Section 75I of the  
*Environmental Planning and Assessment Act 1979*

July 2013

## ABBREVIATIONS

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BSC	Byron Shire Council
CIV	Capital Investment Value
Council	Byron Shire Council
Department	Department of Planning and Infrastructure
DGRs	Director-General's environmental assessment requirements
Director-General	Director-General of the Department of Planning and Infrastructure, or delegate.
EA	Environmental Assessment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
LEP	Local Environmental Plan
MD SEPP	State Environmental Planning Policy (Major Development) 2005
Minister	Minister for Planning and Infrastructure
OEH	Office of Environment and Heritage
Part 3A	Part 3A of the <i>Environmental Planning and Assessment Act 1979</i>
PPR	Preferred Project Report
Proponent	Codlea P/L or the body entitled to act on this approval
SEPP	State Environmental Planning Policy

Cover Photograph: Aerial view of subject site

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## EXECUTIVE SUMMARY

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Codlea Pty Ltd (the proponent) is seeking concept plan approval for a residential subdivision at Brunswick Heads in the Byron local government area. The application is a transitional Part 3A project under the Savings and Transitional provisions of the *Environmental Planning and Assessment Act 1979*.

The proposal is to subdivide the site into 163 residential lots, including 2 'lifestyle' lots and one future medium density lot that will contain approximately 16 dwellings.

The estimated cost of the project is \$20 million and around 20 construction jobs will be created.

During the exhibition period (20 September until 31 October 2011), the department received a total of 44 submissions, including eight from public authorities and 36 submissions from the general public and special interest groups.

With the exception of the Roads and Maritime Service who did not object to the proposal, the other public authorities either provided conditional support or raised issues of concern. With respect to the public submissions, 23 objected to the project, three supported the project and 10 did not object but raised concerns.

In response to the issues raised in submissions, the proponent prepared a Preferred Project Report. The amendments included a reduction of lots in Stage 4A to provide an adequate asset protection zone and preserve some significant trees, changes to tree retention on the site to address safety issues and revision of road widths to address current design standards and accommodate bus routes.

Key issues considered in the department's assessment included:

- stormwater management;
- flora and fauna, particularly impacts on Wallum Froglets and Koalas;
- flooding;
- bushfire;
- lot sizes;
- use of a Crown road;
- indigenous heritage; and
- traffic.

The department has assessed the merits of the project and is satisfied that the key issues associated with the proposal can be appropriately managed through the proponent's Statement of Commitments and the recommended terms of approval. Key recommended conditions include a requirement to prepare a revised stormwater management concept for the site in order to protect core Wallum Froglet habitat; a requirement to retain all vegetation in the north west of the site to provide greater connectivity for Koalas either through consolidation of lots or dedication as a public reserve; and a requirement to prepare a vegetation management plan to manage all vegetation that is to be protected on site within a public reserve.

The concept plan is expected to provide for the future orderly development of the site, whilst ensuring protection of the most significant native vegetation and threatened species habitat. On these grounds, the department recommends the concept plan application be approved, subject to the recommended terms of approval.

# 1. PROPOSED PROJECT & SITE DESCRIPTION

## 1.1 The Site

Codlea Pty Ltd (the proponent) proposes to develop a 163 lot residential subdivision as a transitional Part 3A project known as Bayside Brunswick, at Bayside Way, Brunswick Heads, Lot 1 DP 871039 in the Byron local government area. The site forms a part of the broader area known as the Bayside Estate, the remainder of which was developed over the last 10 -15 years.

The site is located on a sandy plain behind coastal dunes. A drainage line runs north-south through the middle of the site, with groundwater generally found 0.3 – 0.8m depth, see Figure 4.

Immediately north of the subject site is the remainder of the Bayside Brunswick estate which was developed in the late 1980s and 1990s. To the south is native vegetation on coastal plains and dunes under private ownership. To the west are 3-4 dwellings and the Pacific Highway. To the east is Tyagarah Nature Reserve. The eastern boundary of the subject site is Simpsons Creek which is a Sanctuary Zone of the Cape Byron Marine Park.

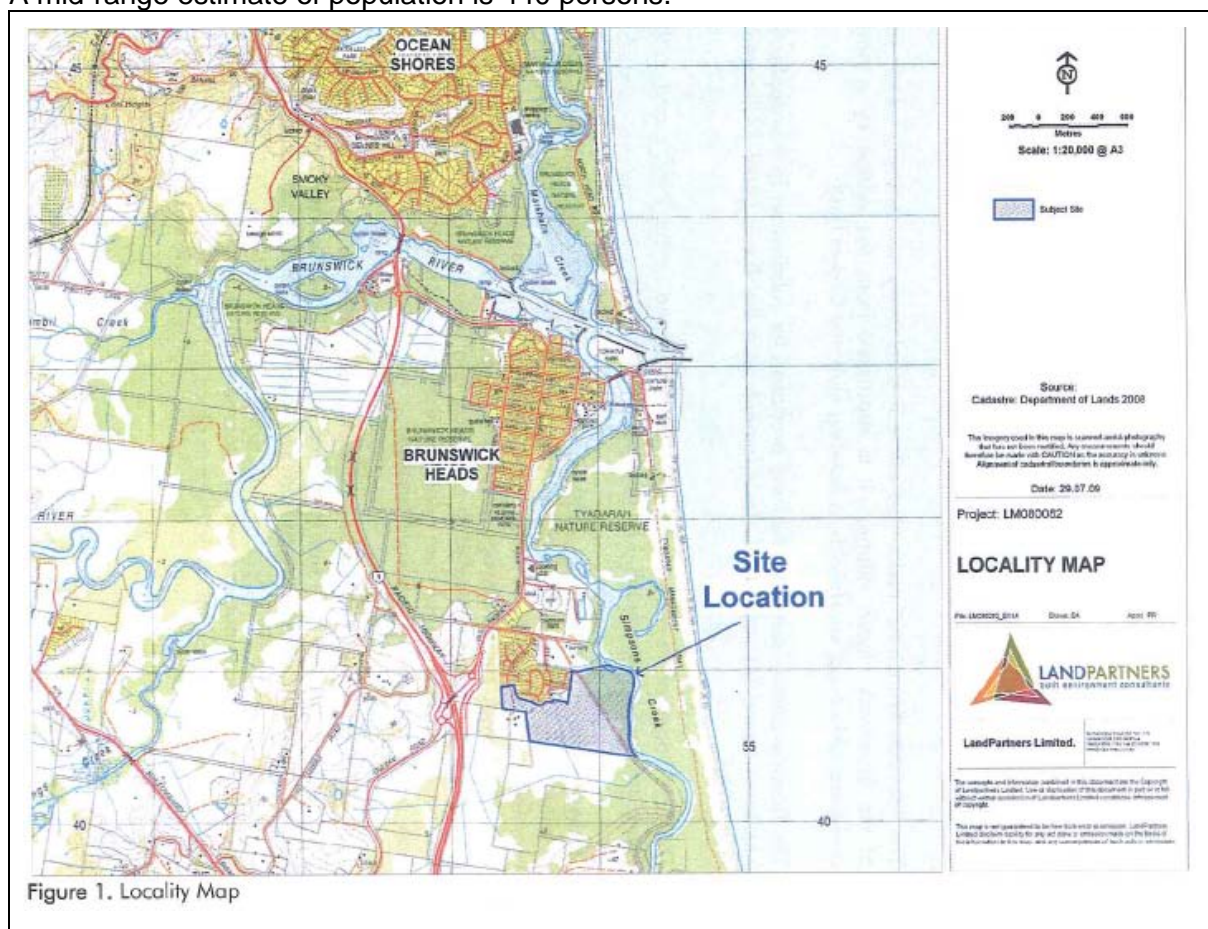
The project location and proposed layout is shown in Figure 1 and Figure 2. Figure 3 shows an aerial view of the site and existing vegetation cover.

## 1.2 The Proposal

The proposal (see Figure 2) is a concept plan for a future torrens title subdivision of land for:

- 160 residential lots ranging in size from 457m<sup>2</sup> to 1136m<sup>2</sup>;
- 2 'lifestyle' lots of 0.7 and 1.2 ha that contain endangered ecological communities; and
- 1 medium density lot that provides for approximately 16 dwellings.

A mid-range estimate of population is 440 persons.



**Figure 1 – Project Location**

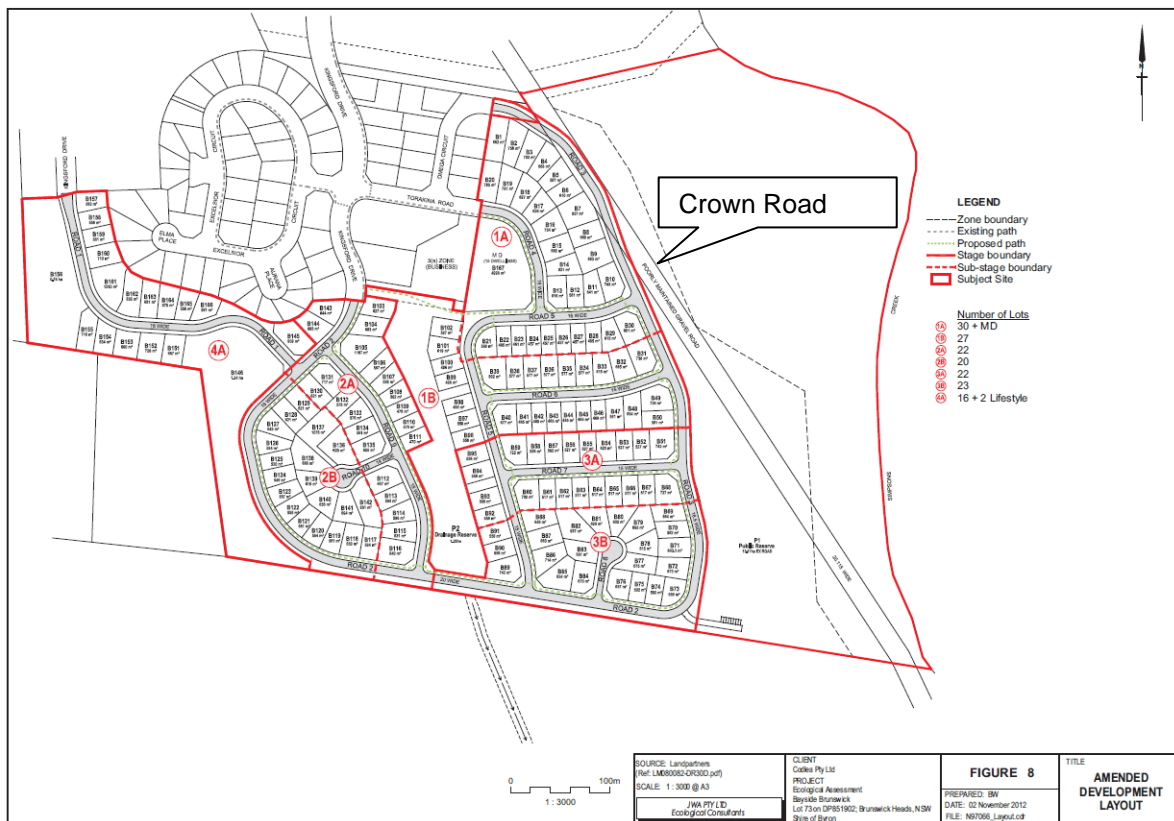


Figure 2 – Proposed lot layout showing proposed staging



Figure 3 – Aerial View of the Site

A 13.17 ha parcel of land is proposed to be protected as a public reserve. The reserve adjoins Simpsons Creek and Tyagarah nature reserve. The parcel contains endangered ecological communities and habitat for threatened species including koala and Wallum Froglet. The parcel will be subject to a Vegetation Management Plan and dedicated to Byron Shire Council after five years. The proposal is to create 1.2 ha of Wallum Froglet habitat to compensate for the loss of Wallum Froglet habitat due to the re-alignment of the central drainage channel. The proposal is to then transfer the land containing the habitat and stormwater channel to Byron Shire Council.

The development will impact on approximately 12 ha of native vegetation. The project site is 31.26 ha with a development footprint of approximately 16 ha.

The CIV is \$20,000,000 and 20 jobs will be created during the construction phase.

### 1.3 Site History

The site is part of the Bayside Brunswick estate which was zoned for residential development in 1988. Since then, approximately 170 dwellings have been constructed in the estate. The remainder of the estate is the subject of this Concept Plan. A development application for subdivision was previously lodged for the site with Byron Shire Council, but was refused, primarily on the grounds that sewerage was not available.

The majority of the subject land appears to have been periodically slashed, although mature trees are evident in several stands.

There appears to have been no previous urban uses of the site.

The site is currently vacant. A drainage line running through the site carries stormwater from the existing Bayside Brunswick estate (north of the subject site) to Everitts Creek south of the subject site.



**Figure 4 – Wallum vegetation on the subject site and the central drainage channel (looking south)**

## 2. STATUTORY AND STRATEGIC CONTEXT

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### 2.1 Major Projects SEPP

The proposal is a major project under the transitional provisions of Part 3A of the *Environmental Planning and Assessment Act 1979* because it is subdivision of land in a residential zone into more than 25 lots under the now repealed Schedule 2, clause 1(1)(i) of State Environmental Planning Policy (Major Projects) 2005. Therefore the Minister for Planning and Infrastructure is the approval authority.

Part 3A of the EP&A Act, as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A to the EP&A Act, continues to apply to transitional Part 3A projects. The Director-General's environmental assessment requirements were issued in respect of the project prior to 1 October 2011. The concept plan application has consequently been assessed as a transitional Part 3A project.

### 2.2 Approval Authority

Under the Minister's Instrument of Delegation dated 27 February 2013, the Executive Director – Development Assessment Systems and Approvals may determine the application as:

- the project is consistent (in the opinion of the delegate) with the Far North Coast Regional Strategy; and
- council has not made an objection; and
- a political disclosure statement has not been made; and
- there are less than 25 public submissions in the nature of objections.

### 2.3 Statement of Compliance

As of 24 August 2012, transitional Part 3A projects are not required to comply with Section 75I of the EP&A Act. Notwithstanding the department is satisfied that the Director-General's environmental assessment requirements have been complied with.

### 2.4 Permissibility and Zoning under Local Environmental Plan

The part of the site proposed for residential subdivision is zoned 2(a) residential zone under Byron Local Environment Plan (LEP) 1988 (see Figure 5a)). Subdivision within this zone is permissible with development consent. The LEP does not contain minimum lot sizes, building envelopes or floor space ratios.

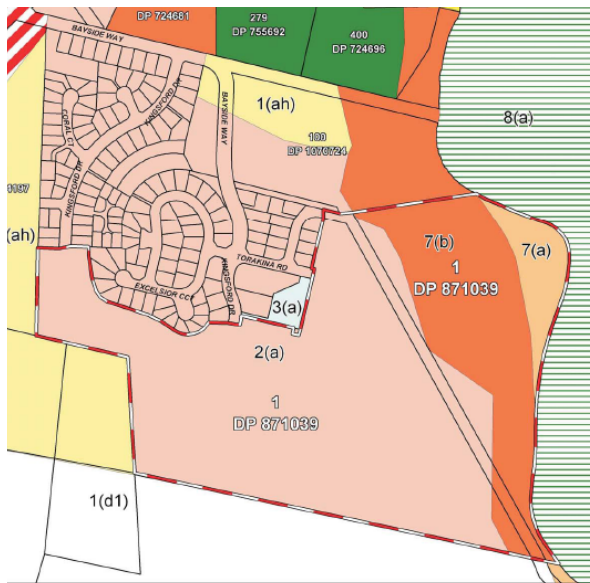
The eastern portion of the site is zoned 7(a) Environmental Protection (Wetlands) and 7(b) Environmental Protection (Coastal Habitat). The proposal does not include any development or residential subdivision within the 7(a) or 7(b) zones.

In 2008, a draft LEP was reported to council, although it did not proceed to exhibition. This LEP proposed a range of zones across the site including R2 Low Density Residential, E2 Environmental Conservation and E4 Environmental Living zones (see Figure 5b)). The proposed development was inconsistent with this proposed plan in the following ways:

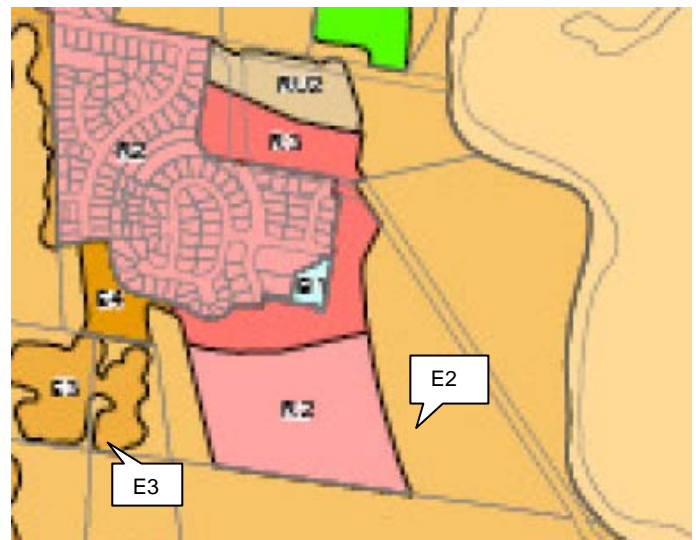
- the minimum lot size in the residential zone was 500m<sup>2</sup>, whilst the proposed development has 16 lots that are less than 500m<sup>2</sup>;
- the proposed E4 zone located over an area in the west of the site is proposed to have 14 lots that range in size from 581m<sup>2</sup> to 1213m<sup>2</sup> whilst the minimum lot size is 2000m<sup>2</sup>; and
- the proposed E2 zone located over an area in the east of the site is proposed to have approximately 40+ residential lots of between 457m<sup>2</sup> and 1000m<sup>2</sup> whilst the minimum lot size is 40ha.

In September 2012, the Minister announced a review of all proposed E2 and E3 environmental zonings for all far north coast LEPs, including the draft Byron Shire LEP 2012. Until the review is complete and the use of environmental zones determined, these areas have been deferred from the LEP 2012 and the underlying 1988 zones still apply. Accordingly, when the draft LEP 2012

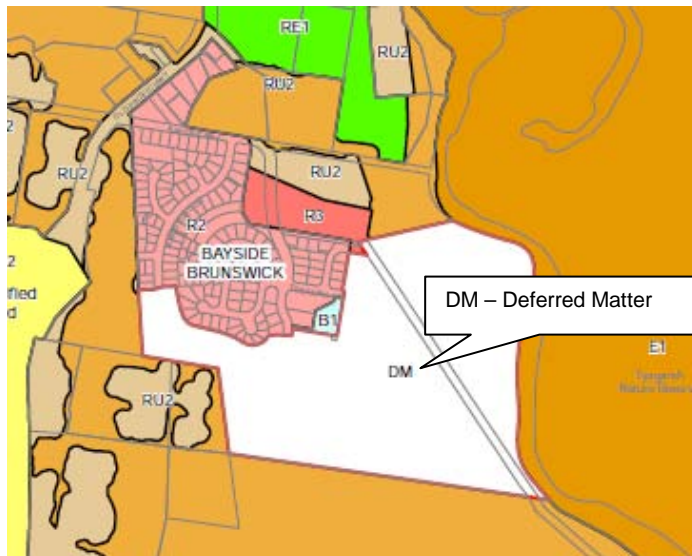
was exhibited in late 2012, the subject site was shown as a deferred matter (see Figure 5c)). The concept plan aims to establish the boundaries of land suitable for residential development and identify that part of the site that should not be developed, but conserved. The concept plan will override the zoning of the site and is a merit assessment to establish the overall appropriate development footprint.



a) 1988



b) 2008



c) 2012

Figure 5 – Byron Local Environmental Plan – a) 1988 (current), b) 2008 (not exhibited), c) 2012 (exhibited)

## 2.4 Environmental Planning Instruments

The department's consideration of other relevant EPIs (including SEPPs) is provided in Appendix C. The proposal is generally consistent with the relevant requirements of the EPIs.

The proposal as submitted by the proponent had the potential to be inconsistent with one of the aims (g) of SEPP 71 Coastal Protection which is “to protect and preserve native coastal vegetation.” The department has proposed a modification to the project which will significantly reduce the impact of the proposal on native vegetation and habitat for threatened species such that

the project will be consistent with this aim. Impacts to native vegetation are discussed in section 4.2 of this report.

## 2.5 Objects of the EP&A Act

Decisions made under the EP&A Act must have regard to the objects of the Act as set out in Section 5 of the Act. The proposal is generally consistent with the objects of the Act. The proposal as submitted by the proponent had the potential to be inconsistent with object (vi) which relates to *"the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats aims"*. The department has proposed a modification to the project which will significantly reduce the impact on native vegetation and habitat for threatened species such that the project will be consistent with this aim. Impacts to native vegetation and threatened species are discussed in section 4.2 of this report.

## 2.6 Ecologically Sustainable Development

The EP&A Act adopts the definition of ecologically sustainable development (ESD) found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes.

The department has considered the project in relation to the ESD principles. The Precautionary and Inter-generational Equity Principles have been applied in the decision making process via a thorough and rigorous assessment of the environmental impacts of the project. The proposal is considered to be consistent with ESD principles subject to modifications to the project to address potential ecological impacts.

## 2.7 Strategic Context

The Department considers that the proposal is consistent with and/ or supports the following local, state and regional strategies:

- the development of the site supports NSW 2021: A Plan to Make NSW Number One by providing housing choice and employment on the State's north coast;
- the site is identified in the Far North Coast Regional Strategy as an existing urban area due to its 2(a) residential zoning;
- residential development of the site is consistent with the Brunswick Heads Settlement Strategy 2004;
- the proposed development is broadly consistent with the layout proposed in Chapter 6 of the Byron DCP 2010; and
- the development is generally consistent with the Far North Coast Settlement Guidelines. Impacts to biodiversity values have been minimised through the modifications to the concept plan.

# 3. CONSULTATION AND SUBMISSIONS

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## 3.1 Exhibition

Under Section 75H(3) of the EP&A Act, the Director-General is required to make the environmental assessment (EA) of an application publicly available for at least 30 days. The EA for the project was publicly exhibited from 20 September until 31 October 2011. Notification of the exhibition, including information on how to make a submission was circulated in local publications Byron Shire Echo and Byron Shire News. Letters were sent to all adjoining and nearby landowners notifying of the exhibition and inviting a submission.

The EA was also made available to the public on the department's website and at the following exhibition locations:

- **Department of Planning & Infrastructure** - Information Centre, 23-33 Bridge Street, Sydney;

- **Byron Shire Council** – Administration Centre, 70-90 Station Street, Mullumbimby; and
- **Byron Bay Library** – 10 Lawson Street, Byron Bay.

A Preferred Project Report (PPR) was lodged on 21 December 2012. As the changes to the nature of the project were not considered to be significant, the proposal was not re-exhibited. It was, however, made available to the public on the department's website and referred to council and those agencies that made a submission on the original EA.

The department received 44 submissions during the exhibition of the EA, including eight from public authorities and 36 submissions from the general public and special interest groups.

With the exception of the Roads and Maritime Service who did not object to the proposal, the other public authorities either provided conditional support or raised issues of concern. With respect to the public submissions, 23 objected to the project, three supported the project and 10 did not object but raised concerns.

A summary of the issues raised in submissions is provided below.

### 3.2 Public Authority Submissions

Submissions were received from eight public authorities, as addressed below. Due to the number of issues raised regarding the Environmental Assessment Report, the Preferred Project Report was also provided to agencies for review. Comments made on the EA and the PPR are identified below.

#### **Byron Shire Council (BSC)**

BSC made a submission on the EA and a second submission on the PPR. The EA submission stated support for substantial residential development on the site. However, that submission and the second submission on the PPR raised the following concerns:

- the number of small lots (less than 600m<sup>2</sup>) should be no more than 20%;
- there will be adverse impacts to Wallum Froglet habitat and the offset package is inadequate;
- there will be adverse Impacts on koala habitat;
- BSC recommended that the development footprint be in accordance with the draft LEP which zones more of the site to E2 and E3;
- the widths of Road 1 should be increased from 7 to 8m;
- stormwater should not be directed onto proposed lot B156 and instead should be directed east;
- there is a need for an easement over the existing drainage channel on the land to the south to carry stormwater from the subject land to Simpsons Creek;
- the minimum lot levels should be 4.1m AHD;
- APZs should not be located on the proposed P1 reserve; and
- The keeping of cats and dogs should be prohibited via a s88B instrument.

#### **Roads and Maritime Services (RMS)**

The RMS reviewed the Environmental Assessment and does not object to the proposal.

#### **Department of Primary Industries – Crown Lands Division**

The DPI did not object but identified that the following issues should be resolved prior to development approval:

- those sections of road forming part of the development road network should be transferred to the control of council;
- the road reserve cannot be considered an environmental offset as access may need to be maintained; and
- the contention that the outcomes for the Crown Road can be resolved at a later stage of development (eg Construction Certificate) is not supported.

**Rural Fire Service**

The RFS advised in relation to the PPR that Drainage Reserve P2 and perimeter roads should be maintained as APZs; all lots to be maintained as APZs until developed; and perimeter roads to have minimum 8m kerb to kerb.

**Department of Primary Industries – Fisheries / Agriculture**

The DPI – Fisheries raised concerns regarding:

- the need for a 100 m buffer from the edge of the coastal wetland habitats; and
- drain cleaning of Everitts Creek.

Fisheries subsequent submission on the PPR acknowledged that it is satisfied with the information provided and expect to be consulted when the drain outlet to Everitts Creek is required.

**Department of Primary Industries – Marine Parks Authority (MPA)**

The MPA raised concerns about the impact of stormwater on Simpsons Creek and recommended that stormwater modelling should demonstrate that the development will not cause significant degradation to water quality in Simpsons Creek. The MPA supports the use of pedestrian access only to Simpsons Creek and the proposed buffer zone to Simpsons Creek.

**Department of Primary Industries – NSW Office of Water (NOW)**

NOW's initial submission advised of the need to line bio-retention swales and detention basins with an impermeable liner. Subsequent consultation advised that this was no longer required due to the groundwater study showing that stormwater will not migrate from the central drainage corridor to the sensitive environments. On review of the PPR material, NOW acknowledged that the development would be consistent with the new aquifer interference policy, however interception of groundwater will require licensing.

**Office of Environment and Heritage (OEH)**

The OEH reviewed the EA and provided conditional support to the proposal, subject to the following changes:

- redesign to retain more koala habitat in the east and west of the site;
- protection of wallum froglet habitat of at least 50m either side of the central drainage line. If this is not possible an offset should be provided using the Biometric assessment method and should be independently reviewed by an expert;
- domestic animals should not be able to be kept within the development; and
- the Statement of Commitments be updated to address the disturbance of Aboriginal objects or remains.

The OEH re-iterated this position when commenting on the PPR.

**3.3 Public Submissions**

Thirty six (36) submissions were received from the public. This included submissions from the following special interest groups:

- Friends of the Koala;
- Conservation of North Ocean Shores Inc. (CONOS); and
- Foreshore Protection Group.

Of the 36 public submissions, 23 (63.9%) objected to the project, three (8.3%) supported the project and ten (27.8%) did not object but raised concerns.

Issue	% (no) submissions
<b>Flooding and drainage</b> Property flooding, future flooding caused by Enhanced Greenhouse Effect and the capacity of the current drainage to withstand runoff.	55% (20)
<b>Threatened Species/Endangered Ecological Communities (EEC)/Flora and Fauna</b> Direct/indirect impacts on threatened species, fauna & flora. In particular Wallum froglet and Koala. Areas of EEC underestimated.	53% (19)
<b>Lot configuration and density</b> Number of lots are below the Byron Shire Council minimum lot size (600 m <sup>2</sup> ). Concerns over neighbourhood relations and congestion.	28% (10)
<b>Introduction of predators of native fauna such as cats and dogs</b> Impacts of introduced predators on fauna. Ban on pets is needed.	28% (10)
<b>Increased traffic and access via one main road only</b> Increase of traffic in the local area. Provision of an alternative entry road into the subdivision besides Bayside Way.	28% (10)
<b>Slashing of Wallum vegetation</b> Slashing of the site is not allowing the native vegetation to regenerate and is misguiding EEC calculations.	25% (9)
<b>Increase in population and pressure on local services</b> Further pressure on local services such as child care centres and playgrounds.	22% (8)
<b>Health of Simpsons Creek</b> Degradation of Simpsons Creek through erosion impacts and further input of polluted runoff from the development.	22% (8)
<b>Removal of habitat trees</b>	22% (8)
<b>Affordable housing cannot be guaranteed by the smaller lot sizes</b>	19% (7)
<b>Impact on Cape Byron Marine Park and Tyagarah Nature Reserve</b>	17% (6)
<b>Other Issues (raised by a smaller number of submissions)</b>	
• Safety at the T-intersection of Bayside Way and Old Pacific Highway	11%
• Increased risks to the Child Care Centre on Kingsford Drive	11%
• Adequate bushfire buffers and provision of a perimeter road	11%
• Noise and dust during construction	11%
• Acid Sulfate Soils	11%
• Inconsistencies of the report	11%
• Lack of wildlife corridors connectivity	11%
• Lack of parking and access into the Brunswick Head CBD	5%
• Removal of tree stumps to reduce termite infestations	5%
• Pressure on the council staff to care for median strips and parklands	3%
• Detention ponds as breeding habitat for disease carrying insects	3%
• VMP assessment and consideration prior project approval	3%

A number of these issues were addressed as part of the original EA and not discussed further in the PPR. Where further information or clarification was required, the proponent provided a

response to the issues as part of its PPR. The department has fully considered the issues raised in submissions in its assessment of the project (see section 4).

### 3.4 Proponent's Response to Submissions and Preferred Project Report

The proponent provided a response to the issues raised in submissions. The response includes a Preferred Project Report which made the following changes:

- reduced the number of lots from 167 to 163 in order to accommodate an APZ and retain some significant trees in an endangered ecological community; and
- removed the protection for significant trees within some of the smaller lots. Of the 573 significant trees, the PPR states that 320 will be retained (55%) compared to 427 (74%) in the proposal previously submitted; and
- changed some road widths.

The PPR also requested that the Minister determine under s75P(1)(c) of the Act that no further environmental assessment be required for the project. In effect this would mean that a separate development application for subdivision would not be required and the proponent could then seek a construction certificate and then a subdivision certificate for the subdivision. As discussed in sections 3 and 4 of this report, there are a number of significant issues that were not adequately resolved by the PPR. As such, final approval cannot be given. It is therefore recommended that the Minister not make such a determination under s75P(1)(c) of the Act.

## 4. ASSESSMENT

The department considers the key environmental issues for the concept to be:

- stormwater management;
- flora and fauna;
- flooding;
- bushfire;
- lot size;
- Crown road;
- indigenous heritage; and
- traffic.

### 4.1 Stormwater Management

#### Context of Key Issue

Stormwater management on the site is a key issue due to the sensitivity of terrestrial and aquatic ecosystems and the high permeability of the sandy soils. The stormwater management system proposed in the PPR (see Figure 6) was identified as a concern by OEH, council, DPI and the department due to direct impacts on flora and fauna and in particular, the impact to Wallum Froglet habitat in the proposed central north-south drainage channel.

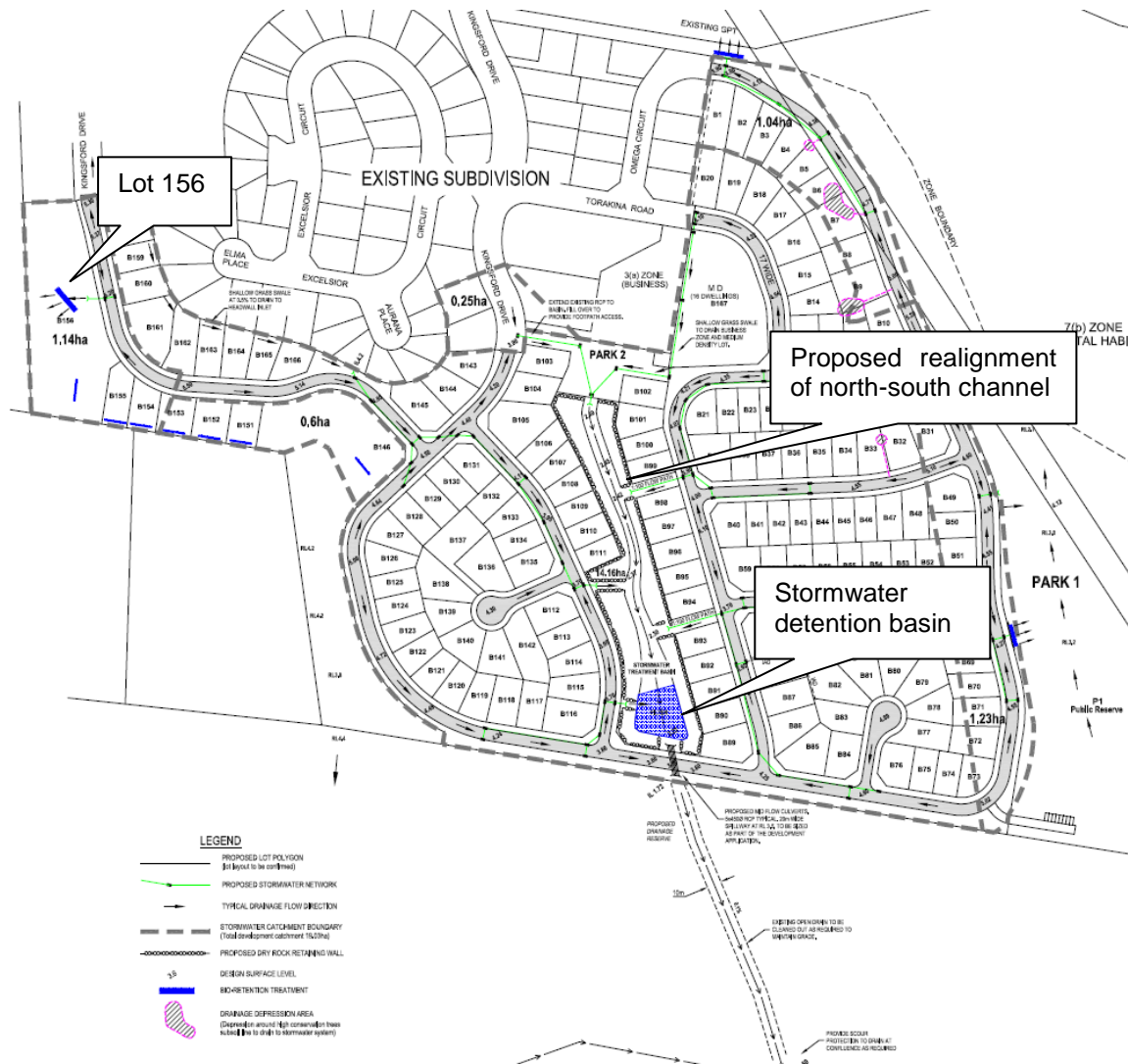


Figure 6 – Proposed Stormwater Management Concept

The stormwater management system in the PPR has two main treatment streams. Most of the residential areas (approximately 140 lots) will have stormwater channelled through Gross Pollutant Traps (GPT) and then into a central stormwater channel and treatment basin before discharging off-site to the south. The proposal is to re-align and widen the existing 10m wide central north-south channel to create a 40-60m wide x 1.8m deep stormwater management system that will contain both high-flow and low-flow channels. A low-flow channel (30-40m wide) within the broader channel will take the first flush stormwater and is proposed to provide forage habitat for Wallum Froglet. On either side, a high flow channel (3-9m wide on both sides) will be designed to provide core Wallum Froglet habitat by excavating 'melon holes' that will contain groundwater. A detention basin is proposed at the southern end of the central drainage channel, which discharges off-site to an existing channel on adjoining land.

The remaining lots (approximately 26) will have stormwater either channelled into bio-retention swales and disposed of on the individual lot, or piped to a bio-retention swale that will service several lots and then disposed to one of three locations (lot B156, lot P1 and a stormwater channel to the north of the site).

In the PPR, integral to the stormwater treatment system was the approach to dealing with Wallum Froglets. The approach adopted was to excavate the Wallum Froglet habitat located within the central drainage corridor and then rehabilitate a wider channel with species and habitat forms designed for Wallum Froglet (see section 4.2 below for further detail).

The proponent contracted Dr Arthur White, an expert in acid frog ecology, to review the proposed Wallum Froglet Rehabilitation Plan. Dr White acknowledged the potential for some aspects to be successful, however it was concluded the Rehabilitation Plan was essentially experimental. The Rehabilitation Plan was also likely to place significant maintenance costs onto council. The department asked the proponent to investigate alternative stormwater arrangements that would not impact on the frog's habitat. The proponent provided an alternative solution that would somewhat reduce the direct impact to the Wallum Froglet habitat, but overall, the impact was still considered too great.

As this was a matter that could potentially lead to the refusal of the concept plan, the department engaged Mr Tony Weber of BMT WBM to investigate a stormwater solution that maintained the existing drainage line and flow rates (and hence minimise the impacts on Wallum Froglet habitat) whilst still achieving the stormwater management and water quality objectives of Byron Shire's DCP 2010.

The alternative stormwater treatment concept prepared by BMT WBM proposes the use of bio-filtration beds to achieve the stormwater objectives in Byron Shire DCP 2010 and has some similarity to the concept proposed in the PPR. However the BMT WBM concept does not involve the excavation and rehabilitation of Wallum Froglet habitat in the central drainage channel. Whilst it does involve the creation of 0.24 ha of bio-filtration beds on Wallum Froglet habitat, this is significantly less than the habitat that would be lost under the stormwater concept proposed in the PPR. Figure 7 shows the BMT WBM proposed stormwater management concept solution.



Creek. This is due to the stormwater channel being lower than natural 'wetland' flow channel 250m to the east. The stormwater is therefore unlikely to affect these ecosystems.

The Office of Water has confirmed that the development is not inconsistent with the NSW Aquifer Interference Policy, however there are licensing requirements for groundwater bores and basins that intercept the aquifer. The proponent acknowledged these when submitting the PPR. The BMT WBM solution will maintain stormwater flows to pre-existing conditions and is therefore also unlikely to have an impact on groundwater.

#### Impacts on Cape Byron Marine Park

In terms of surface water quality, stormwater is proposed to leave the site via the detention basin into the channel to the south of the site and then discharge to Everitts Creek and finally Simpsons Creek which is part of Cape Byron Marine Park. The Marine Parks Authority recommends modelling that demonstrates the development will not cause significant degradation of water quality in Simpsons Creek. The MUSIC model run for the treatment of stormwater (including both the concept in the PPR as well as the alternative BMT WBM concept) shows that the proposed methods of stormwater treatment will achieve the targets set out in Byron Shire Council's DCP. The development does not have any direct discharges to Simpsons Creek and all stormwater will be treated prior to release from the site. This, plus the relatively small contribution of flows to Simpsons Creek means that impacts to the ecology of Simpsons Creek are unlikely as a result of the development.

#### Legality of discharging stormwater to the south

There is an existing drainage channel that runs through the centre of the site from north to south. Stormwater drains to this channel where it is conveyed off the site to the south into an existing open channel. The legality of the proposed discharge point to the south of the site was raised by council. The proponent argues that stormwater from the existing Bayside Estate has been discharging to this drainage system for some time and the proponent has provided advice that the channel to the south has been in existence for at least 40 years and is therefore an existing watercourse. Council recommends that an easement be placed over the drainage channel from the development site through to Simpsons Creek (ie, across lot 4 DP 576360) to allow for maintenance of the drain.

The proposal as submitted by the proponent would also require deepening of the channel to the south by approximately 0.4m and installation of scour protection where it meets Everitts Creek. It is not clear if the BMT WBM solution would also require such excavation. The environmental impact of these works would require further consideration as the proponent assumes them to be the responsibility of council. There is no agreement from council that they are willing to undertake this initial drainage work on lot 4 DP 576360 and typically all works associated with a proposal are assessed in the EA. If the works are still required in order to implement an alternative drainage solution (such as the BMT WBM solution), the proponent will need to discuss these works with council and the landowner of lot 4 DP 576360 to determine who will be responsible for the works and assessing the associated impact. The department recommends a future assessment requirement that requires the proponent to provide an updated stormwater management system that provides details of all works required to satisfactorily drain the site.

#### Discharge to lot B156

Council raised concerns regarding the disposal of stormwater from a section of Road 1 and two lots onto lot B156. Lot B156 is located in the north west of the subdivision (see Figure 6) and includes vegetation of high conservation value. Council advised that this should be directed off lot B156. This issue will need to be addressed to the satisfaction of Council in a revised Stormwater Concept Plan and a detailed Stormwater Management Plan for each stage of subdivision. The stormwater management concept is recommended to be modified and includes a requirement for minimising urban stormwater impacts on this lot.

### Costs to Byron Shire Council for maintenance

The department's consultant, BMT WBM, provided a comparison between the costs associated with the stormwater solution proposed by the proponent and its own solution. Factoring in costs for acquisition, maintenance and establishment, BMT WBM calculated it would cost approximately \$1.2m for its solution and \$900,000 for the proponent's solution. Maintenance costs would be approximately twice as expensive with BMT WBM's solution at around \$42,000 per year.

Notwithstanding this difference, these costs do not factor in the ongoing maintenance costs associated with the proponent's proposed Wallum Froglet compensatory package, which are unknown.

The department has recommended a number of modifications to the concept plan as well as future assessment requirements for development applications to address stormwater management across the site. These recommendations as they relate to Wallum Froglets are discussed in the following section, however, in essence, they require the proponent to maintain the existing north-south drainage channel with a 20 metre buffer either side; ensure that there is no significant change to the flow regimes from the pre-development regime; and ensure that stormwater management is consistent with the objectives in the Byron Shire Development Control Plan 2010.

As the erosion and sediment control concept submitted with the application also proposes to utilise the existing north-south drainage channel, the department has recommended a modification to the concept plan that ensures erosion and sediment control is managed in accordance with the Landcom 2004, 'Blue Book' and ensures that there is no erosion and sediment control infrastructure located within the channel, or 20 metres either side.

## 4.2 Flora and Fauna

The subject site is largely Wallum vegetation which is a habitat type found on nutrient poor sand deposits on the north coast of NSW and the south coast of Queensland. Whilst this provides habitat for numerous threatened species, there are two species of most concern for this development: Wallum Froglet and Koala.

Impacts to EECs and habitat for other species are not significant. The proponent proposes to dedicate a significant area of high quality habitat (the P1 Reserve in the east of the site) to Council following rehabilitation in accordance with a Vegetation Management Plan (VMP). This will ensure long-term protection and management of this valuable area. The Statement of Commitments states that the VMP is to be prepared as a condition of consent and be submitted to Council prior to issue of the first Construction Certificate.

### Wallum Froglet

The Wallum Froglet is listed as Vulnerable under the *Threatened Species Conservation Act 1995* (TSC Act) and has been recorded on the subject site in six surveys since 1996. They have been recorded in the central drainage line where water is available for long periods as well as on the adjoining low closed heath. Whilst the drainage line has been mapped as "core habitat" and the heath as "potential habitat" by the project ecologists, the evidence of Wallum Froglet in both areas over several surveys indicates the drainage line and heath are serving as Wallum Froglet habitat.

Council, the department and OEH have raised concerns regarding the offset package to compensate for the loss of this habitat in the PPR (described below) including the likelihood of successful rehabilitation, the adequacy of the rehabilitation as compensation for the loss, and the on-going management responsibility.

Following exhibition of the EA, the department advised that the layout should be amended so that a 50m wide riparian buffer either side of the channel should be retained for Wallum Froglet habitat. In effect this would require removal of the 23 lots between Roads 5 and 9.

The proposed development as described in the PPR did not change the layout in accordance with the above advice and will result in the destruction of the Wallum Froglet habitat in the central drainage line as that area is proposed to be excavated.

The Wallum Froglet Compensatory Package involves the recreation of habitat in the central drainage channel (see Figure 8 below) and the protection and management of habitat in the P1 Reserve. Figure 8 also shows the extent of excavation of the central drainage channel. Habitat recreation was to involve the establishment of 'melon holes' which are depressions that intercept the groundwater table and therefore hold water. The surrounding area would be vegetated with suitable vegetation. In terms of likelihood of success, the proponent engaged Dr Arthur White of Biosphere Environmental Consultants to review the compensatory package. Dr White's assessment concluded that whilst the package is not an unreasonable proposition, it is essentially experimental and vulnerable to poor water quality from the residential areas. Dr White advised that the likelihood of success was high for area 1 (contained within one of the 'lifestyle lots'), moderate for area 3 (within lot P1) and a lower chance of success for area 2 which is the central drainage line.

In terms of adequacy, the proponent suggests that the retention of existing core Wallum Froglet habitat (4.99ha) plus the construction of the new habitat (1.2ha) will result in a net gain of 0.7ha assuming a loss of core habitat of 0.5ha. This is a ratio of 12:1 (habitat retained/ constructed to habitat loss). However this does not take into account the impact to 'potential' habitat which is probably better defined as foraging habitat as almost all of the Wallum Froglet records were taken from the 'potential' habitat. If all Wallum Froglet habitat was counted, there will be retention of 9.72 ha plus re-establishment of 1.2ha (total of 10.9ha) compared to a loss of 12.29ha, which gives a ratio of less than 1:1.



**Figure 8– Proposed creation of Wallum Froglet habitat (PPR)**

The OEH advised that if impacts cannot be avoided, they should be offset in accordance with the Biobanking Assessment methodology (BBAM). The BBAM requires habitat offset ratios of around 2.2 to 1 for Wallum Froglet, meaning impacts of 12.29 ha would require an offset of around 27 ha. In this sense, the compensatory package is inadequate. There is also no provision of what to do if the creation of habitat does not lead to presence of Wallum Froglet.

As the impact is neither avoided nor adequately offset, an alternative solution is required to avoid significant impact to Wallum Froglet. The department therefore recommends a modification as follows:

- retain the existing alignment of the north-south drainage which provides breeding habitat for the Wallum Froglet;
- retain 20m of existing wallum vegetation either side of the channel to provide Wallum Froglet foraging habitat (giving a habitat area of approximately 45-50m width given the channel is around 5m wide);
- bio-retention structures should be located outside of the channel and 20m buffer foraging habitat; and
- any on-line stormwater detention basin to the south of the site is acceptable as there have not been any sightings in this location.

This modification to the concept plan is consistent with the North Coast Settlement Planning Guidelines which recommend that development on areas of high or medium environmental risk (such as for biodiversity values) be avoided where possible. Of the existing 27 records of Wallum Froglet on the site, 66% of them were made within 20m of a watercourse or drainage line.

It is noted that the protection of a 45-50m wide corridor is a decrease on the habitat currently available to the Wallum Froglet and is less than the 50m buffer either side (ie, 100m in total) of the drainage line as previously discussed. Notwithstanding, the department is satisfied that with the modifications proposed to the concept plan to provide both breeding and foraging habitat for the species in this location; a commitment to improve the wallum habitat in the P1 reserve; and acknowledgement of the existing residential zoning over much of the site, a suitable balance between residential development and protecting valuable habitat is made.

The resulting habitat area and location of the bio-retention facilities will reduce the number of lots achievable between Roads 5 and 9. Until the final stormwater design is undertaken it is not possible to accurately determine the number that will be lost, however it is likely to be between 8 and 16 or between 5% and 10% of the proposed lots.

### Koala

The Koala is listed as Vulnerable under the TSC Act 1995 and as a Vulnerable population in NSW under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*. The proponent's ecology report identifies 8.06ha of koala habitat on the site, including 2.79ha of Primary Koala Habitat and 5.27ha of Secondary Koala habitat (based on presence of koala food trees). There is evidence of koala usage of both the Primary and Secondary habitat (scats and scratches on trees) and one sighting of a koala in the north of the site near Aurora Place in January 2011.

The proponent's ecologist states that the site contains potential koala habitat as defined in State Environmental Planning Policy No. 44, but does not contain core habitat due to the lack of records of a resident population with breeding females. The OEH dispute this interpretation and state that the evidence of scats indicates this should be considered core habitat.

The Byron Shire Koala Habitat Study 2012 identifies the site as having "other" koala habitat, but no Primary, Secondary (A) or Secondary (B) habitat, although this mapping is carried out at a broader scale than the individual site assessment for this proposal.

Mapping of koala habitat and searches for koala indicate that land to the south of the subject site contains primary and secondary koala habitat and a greater density of occurrence of scat and scratching of trees. Of the 8.06 ha of koala habitat mapped by the ecologist, 6.72 ha (84%) will be retained (see Figure 9).

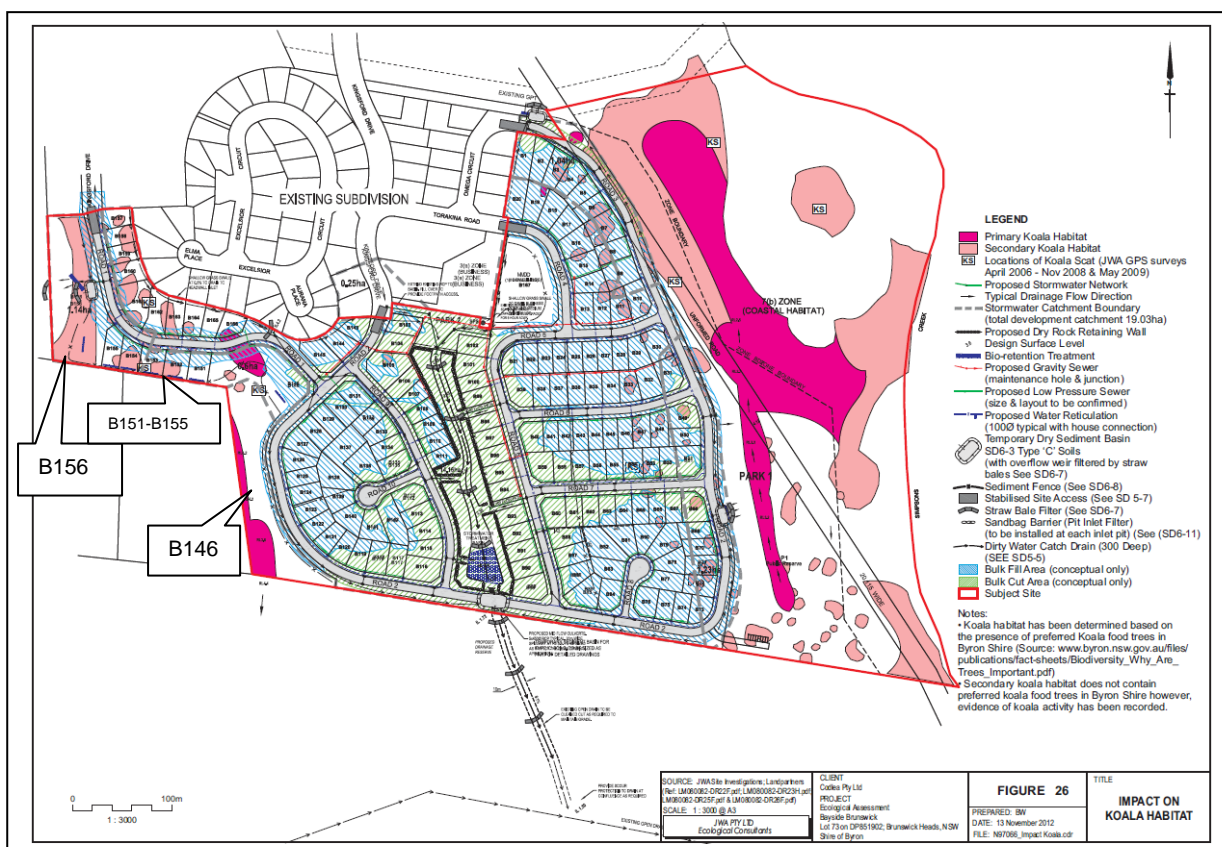
Most of this will be contained in the 7(b) Environmental zone to be dedicated to Council as the P1 Reserve. A Statement of Commitment provides for a Vegetation Management Plan to be prepared and implemented for a 5 year period, including replacement of lost koala food trees at a ratio of 2:1.

The OEH and council are critical of the impact to koala habitat and the mitigation measures. Both recommend maintaining better connectivity in the north west and the eastern part of the site.

In terms of the eastern habitat and connectivity, whilst the development will impact on mature trees that may be utilised by koala, the protection, rehabilitation and management of the 13.17 ha P1 Reserve is considered an adequate corridor for koala movement in this area.

In the north-west corner of the site (ie, west and south of Road 1) 7 lots will be created with two of these lots being large 'lifestyle' lots (see Figure 9). Koala scats have been recorded in this area by ecological studies in 2006 and 2009. The creation of the five smaller lots (B151-B155) will sever the koala habitat connectivity through this area. This outcome was not supported by Council or OEH and was raised as a concern by the department during the review of the EA, however the PPR has not resolved the issue.

As this area contains significant trees and provides a habitat link for koala, a modification to the design is recommended. The department recommends the subdivision layout be modified to remove lots B151 to B155 from the proposal and either add these into B146 or B156, dedicate the land as a public reserve or consolidate these lots.



**Figure 9 Impacts to Koala habitat (PPR)**

To further minimise risks to koalas, council also recommends the perimeter roads, being roads 1, 2, 3 and 5, be speed limited (for example through speed humps or chicanes) to ensure vehicle speeds cannot exceed 40 km/hr. As this application is for a concept plan, the details of road treatments can be dealt with at the development application stage. As a further assessment requirement, the department recommends the proponent submit with its future development applications, details of road treatments to minimise impacts to koalas, such as through speed limiting devices.

### Future Cats and Dogs Ownership

The PPR states that the keeping of cats will be prohibited via a positive s88B instrument under the *Conveyancing Act 1919* to prevent harmful encounters with threatened fauna. The proponents do not however extend this exclusion to dogs. The proponent states that dogs will need to be kept in fenced lots and confined or restricted within the lot between 6pm and 6am (peak fauna activity).

The OEH and council advise that the keeping of cats and dogs should be prohibited due to the conflict between these animals and koala safety. The department concurs with OEH and council and has recommended a covenant under s88B of the *Conveyancing Act 1919* be imposed in the recommended instrument of approval that prohibits both cats and dogs.

### Vegetation Management Plan

As discussed above, the proponent proposes to prepare a Vegetation Management Plan to detail the management of the P1 reserve and submit this for approval with the first construction certificate. The department supports the preparation of a Vegetation Management Plan for this area, however, requires it to be submitted as part of the first development application. Furthermore, due to the recommended modifications to the stormwater management of the site resulting in the retention of the north-south drainage channel, the department recommends that this land form part of the public reserve system to be dedicated to council and also be covered by the Vegetation Management Plan. Similarly, should lots B151-B155 in the north-west of the site be dedicated as a public reserve, this land should also be subject to the Vegetation Management Plan.

## 4.3 Flooding

The subject site is a relatively low lying coastal area, with its eastern portion in the proposed P1 Reserve being affected by the 100 year flood event.

Proposed cut and fill will occur on the areas to be developed, however these are located on elevated, largely flood free lands. Flood modelling of 20 year, 100 year and PMF all show that the developed lands (ie, after proposed filling has occurred) will be flood free under the 20 year, 100 year and PMF scenarios.

The flood report by BMT WBM used the DECCW 1:100 year flood plus climate change flood level of 3.5m at the intersection of Everitts Creek and the north-south drain. 500mm freeboard would put the flood planning level at 4.0m. BMT WBM also modelled flooding using Council's climate change parameters to give a flood level of 3.6m AHD at the intersection of Everitts Creek and the north-south drain. 500mm freeboard on this would put the flood planning level at 4.1m AHD. In its review of the PPR, Council advise that the minimum lot levels throughout the site should be 4.1m AHD.

The lowest level of lots in diagram LM080082-DR24 (Roads and Levels) is 3.7m. The PPR shows 24 lots adjoining the north-south drain are proposed to be partially below this level by up to 0.3m following earthworks which will 'cut' in this area. As the lot layouts and the cut/ fill requirements in this area are likely to change to achieve the Wallum Froglet habitat protection described in section 4.2 of this report, the department is satisfied that the flood planning level of 4.1m AHD can be achieved across the site. A recommended modification to the approval requires the flood planning level to be 4.1m AHD.

## 4.4 Bushfire

The site is bushfire prone with bushfire risk from the east, south and west. A Bushfire Assessment made recommendations regarding asset protection zones. The proposed development is generally consistent with these recommendations other than in the vicinity of Road 3 (the eastern boundary of the footprint). The bushfire report states that the APZ along Road 3 should be 27m and can be included as part of the road reserve and a 7m setback on the properties on the western side of the road. The lot layout plans provided with the PPR however shows 4m of the APZ occurring within the P1 Reserve which is to be dedicated to council. Council has advised that the APZ should be outside the P1 Reserve so that council do not have the liability of maintaining an APZ. The department concurs with council that APZs should be maintained within the road reserve and setbacks on lots rather than in a public reserve. Further bushfire assessments will be required to

confirm this has been achieved for each stage of subdivision and has been included as a further assessment requirement in the recommended instrument of approval.

#### 4.5 Lot Sizes

The development proposes 163 lots, including 160 residential lots ranging in size from 457m<sup>2</sup> to greater than 1136m<sup>2</sup>, plus one lot for medium density development (16 dwellings) and 2 'lifestyle' lots of 0.7 and 1.2 ha.

Byron Shire Council raised concerns regarding the number of small lots (450m<sup>2</sup> – 600m<sup>2</sup>) in the proposal. The proposal provides for 82 lots (51% of the total) in this range. These concerns were raised in the review of the PPR, but not in Council's submission on the EA.

Two chapters of Byron Shire DCP 2010 provide some context. Chapter 1B Subdivision sets a minimum lot size of 600m<sup>2</sup> for urban subdivision. Chapter 6 relates specifically to the Bayside Brunswick Estate and states that at least 10% of dwelling house subdivision lots should be less than 450m<sup>2</sup>. Despite these DCP provisions, Council recommend that a maximum of 20% of lots should fall into this range (which would be 32) in its comments on the PPR.

The proponent has based the lot size mix on a combination of physical constraints and market demand, stating that real estate agents believe there is 'solid' demand for lots 450-500m<sup>2</sup> and 'high' demand for lots 500-600m<sup>2</sup>.

Given the policies of Chapter 6 of the DCP which acknowledge the acceptability of some small lots, the likely demand for small lots, the environmental constraints of the site which have reduced the yield from land zoned for residential use and the lack of identified problems for such lots, it is concluded that the lot sizes proposed are acceptable provided no more than 50% of the lots are within the range of 450m<sup>2</sup> – 600m<sup>2</sup> and no lot is less than 450m<sup>2</sup>.

#### 4.6 Crown Road

A Crown public road reserve runs north-south through the subject site providing access to recreational opportunities and properties to the south, see Figure 2.

The northern part of the road reserve is to be used for Road 3 in the proposal and will be transferred to Byron Shire Council. The remainder falls on land that will be part of the P1 Public Reserve also to be dedicated to Byron Shire Council. The Crown Lands Division of the Department of Primary Industries has raised concerns about the long-term arrangements for the road reserve, including access to recreation and properties to the south of the subject land.

The proponent states that issues relating to the road can be resolved prior to the issue of a Construction Certificate and have included a Statement of Commitment that *"Subdivision design is to ensure unfettered access is provided from a road/s within the development to the existing road reserve that extends south from the site, near Simpsons Creek"*.

The Crown Lands Division seeks resolution of this issue as part of the concept plan application rather than prior to issue of a Construction Certificate. The department is satisfied that this issue can be adequately resolved in principle prior to approval of the first subdivision application. Accordingly, the department recommends as a future assessment requirement, that for any development application that includes the use, obstruction or closure of the Crown road, the proponent must provide details that demonstrate how properties to the south of the site will retain legal access.

#### 4.7 Archaeology

Appropriate surveys have been undertaken on the land proposed to be cleared and no sites of Aboriginal archaeological significance were found. Due to low visibility of the surface in the heavily vegetated environmental protection zones, additional survey may be required if any ground disturbance is to be undertaken. It should be noted that the proposal does not include any such clearing, however the proponent has committed to undertaking the surveys and stopping work if any items are found. The OEH is satisfied with the archaeological assessment of the project. This issue has been satisfactorily addressed.

#### 4.8 Traffic

The subject site will be accessed from an existing intersection on the Old Pacific Highway. The proponent's Traffic Study confirms that the intersection satisfies capacity requirements for the projected traffic volumes. The RMS did not object to the proposal. The proposed development satisfactorily addresses traffic issues.

Council notes that Road 1 is proposed to have a 7m wide pavement rather than the 8m as displayed in the traffic impact assessment report. Council advises that Road 1 should be 8m to accommodate bus routes. The Rural Fire Service also recommends that all perimeter roads have a pavement of 8m kerb to kerb. Road 1 should therefore be increased to a width of 8m. This is included as a modification to the concept plan and as a further assessment requirement stating that plans submitted with future Development Applications are to show all perimeter roads with a pavement width of 8m.

### 5. CONCLUSION AND RECOMMENDATION

The Bayside Brunswick project will deliver housing for part of the Byron Shire where ecological values and flooding limit the amount of land available for housing supply. The development is generally consistent with the strategic planning framework including the Far North Coast Regional Strategy, Byron Shire LEP and DCP and can be serviced by water, sewerage and other forms of infrastructure.

The environmental significance of the site is high, particularly the eastern portion of the site (which is proposed to be dedicated as a public reserve), the north-south drainage line which is habitat for Wallum Froglet, and the koala habitat along the western boundary which provides connectivity through the landscape. Whilst some areas of environmental sensitivity will be impacted by the development, these impacts have been minimised through modifications recommended by the department to protect the areas mentioned above. These modifications include a:

- requirement to prepare a revised stormwater concept plan that avoids alteration to the north-south drainage channel and requires high water quality standards to be met; and
- restriction on removing vegetation within lots B151 to B155 in the north west of the site as well as a requirement to merge these lots with adjoining lots, consolidate in to one lot or dedicate as part of a public reserve.

This will result in a loss of lot yield of somewhere between 11 and 20 lots depending on the final approved stormwater solution. These areas were clearly identified for conservation in correspondence with the proponent following submission of the Environmental Assessment and before preparation of the PPR.

Overall, the department considers the proposal will achieve a satisfactory level of environmental performance and is in the public interest. It is therefore recommended that the concept plan (05\_0091) be approved subject to the recommended terms of approval provided at Appendix B.

Report prepared on behalf of the Director-General  
by David Bonger, Eco Logical Australia Pty Ltd

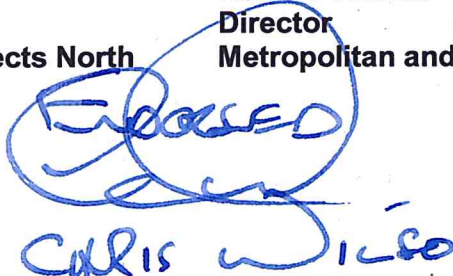
Endorsed by:



Joanna Bakopanos  
Team Leader  
Metropolitan and Regional Projects North



Heather Warton  
Director  
Metropolitan and Regional Projects North



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## **APPENDIX A     RELEVANT SUPPORTING INFORMATION**

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The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Infrastructure website as follows.

1. Environmental Assessment  
[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=1062](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=1062)
2. Submissions as above
3. Proponent's Response to Submissions as above
4. Preferred Project Report as above
5. Director-General's environmental assessment requirements as above

## **APPENDIX B    RECOMMENDED INSTRUMENT OF APPROVAL**

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## APPENDIX C      CONSIDERATION OF ENVIRONMENTAL PLANNING INSTRUMENTS

The concept plan application has been assessed against the following environmental planning instruments:

### State Environmental Planning Policy (Major Projects) – 2005

On 3 December 2012, the Director-General, as delegate of the Minister declared the proposal for a 208 lot residential subdivision in the coastal zone to be a major project as it met the criteria of the now repealed Schedule 2, clause 1(1)(i) of the Major Projects SEPP being subdivision of land in a residential zone into more than 25 lots.

### State Environmental Planning Policy (SEPP) 71 – Coastal Protection

SEPP 71 aims to protect the natural, cultural, visual values of the NSW coast. It does this by ensuring specific matters are taken into consideration when preparing LEPs or assessing developments within the coastal zone.

The following clauses of the SEPP are relevant to the proposal.

SEPP 71	Criteria	Complies	Department Comment
Part 2, s 8	a) The aims of the policy	Yes	The proposal is generally consistent with the aims of the policy
	b) Public access	Yes	Existing public access to the coast is not affected.
	c) Opportunities to provide new access	Yes	New public access was considered but withdrawn following advice from Marine Parks Authority.
	d) Suitability of development	Yes	Residential development is generally suitable to the site.
	e) Amenity	Yes	The development will not overshadow or have an impact to the scenic amenity of the beach.
	f) Scenic quality of the coast	Yes	The development will not be visible from the beach.
	g) Biodiversity	Yes	The proposed Concept Plan may have impacts on habitat for Wallum Froglet and Koala. Modifications have been recommended to ensure this criteria is met.
	h) Aquatic	Yes	The proposal will not impact on aquatic threatened species listed under the Fisheries Act.
	i) Wildlife corridors	Yes	The Concept Plan may have impacts on Koala corridor. Modifications have been recommended to ensure this criteria is met.
	j) Coastal processes	Yes	Housing will not be affected by flooding, including increases due to climate-change.
	k) Land and water based activities	Yes	There are no water based activities associated with the development.
	l) Aboriginal heritage	Yes	No Aboriginal sites or objects will be impacted.

	m) Water quality	Yes	Water quality objectives of the Byron Shire DCP 2010 can be met.
	n) Heritage	Yes	No European heritage will be impacted.
	o) Compact towns	Yes	Land is already zoned for residential use.
	p) Cumulative effects and energy use	Yes	Providing the recommended modifications are adopted, the development will not lead to a significant cumulative impact.
Part 4, s14	Public access	Yes	The development will not impede or diminish the physical land based right of access of the public to the foreshore provided adequate arrangements are in place for the Crown Road.
Part 4, s15	Effluent disposal	Yes	The development will dispose of effluent via a reticulated system
Part 4, s16	Stormwater	Yes	The development will treat stormwater to a standard consistent with the Byron Shire DCP

#### State Environmental Planning Policy 44 – Koala habitat

SEPP 44 Koala Habitat aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline:

- (a) by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and
- (b) by encouraging the identification of areas of core koala habitat, and
- (c) by encouraging the inclusion of areas of core koala habitat in environment protection zones.

The SEPP requires an assessment of whether a site contains potential or core koala habitat. If core koala habitat is present, a Koala Plan of Management must be prepared. Appendix B of the Preferred Project Report states that whilst the site contains potential koala habitat, it does not contain core koala habitat as no resident population or breeding female koalas have been recorded in the fauna surveys.

The proposal avoids impacts to the majority of koala habitat on the site which exists within the 7(b) lands that are to be dedicated to Byron Shire Council in a Public Reserve. This area provides habitat and connectivity in a north-south direction. The western connectivity would be severed by the creation of five lots (B151 to B155) and it is therefore recommended that these lots not be created and that the habitat on this land be conserved. The proposal is therefore generally consistent with this SEPP.

#### State Environmental Planning Policy 14 – Coastal Wetlands

The aim of this policy is to ensure that the coastal wetlands are preserved and protected in the environmental and economic interests of the State. There are no SEPP 14 wetlands on the subject site. The nearest SEPP 14 wetlands are to the east of Simpsons Creek which forms the eastern property boundary. These wetlands are separated from the residential area by Simpsons Creek and the proposed P1 Conservation Reserve which is between 185 and 250m in width. Stormwater from the site will not hydrologically connect to the SEPP 14 wetlands either by surface or groundwater. The development will therefore have no impact on SEPP 14 wetlands.

### North Coast Regional Environmental Plan (a deemed SEPP)

The aims of the North Coast REP are:

- (a) to develop regional policies that protect the natural environment, encourage an efficient and attractive built environment and guide development into a productive yet environmentally sound future,
- (b) to consolidate and amend various existing policies applying to the region, make them more appropriate to regional needs and place them in an overall context of regional policy,
- (c) to provide a basis for the co-ordination of activities related to growth in the region and encourage optimum economic and social benefit to the local community and visitors to the region, and
- (d) to initiate a regional planning process that will serve as a framework for identifying priorities for further investigation to be carried out by the Department and other agencies.

There are four clauses which are relevant to residential development in the coastal zone. As shown in the table below, the development is consistent with the development controls of the SEPP.

NC REP	Criteria	Complies	Department Comment
29A	Consent should not be granted for clearing of native vegetation in environmental protection zones	Yes	No vegetation in the 7(b) lands are proposed for clearing.
32B	ensuring development does not impede public access or create over-shadowing of the foreshore	Yes	No over-shadowing or restriction of access to the foreshore will occur
43	ensuring residential development has appropriate density, road widths, public transport access and sedimentation / erosion controls	Yes	The density, road widths, public transport and sedimentation and erosion controls have been assessed as being adequate and suitable for this site
66	ensuring adequate community and welfare services	Yes	The development is not expected to raise the need for community and welfare services beyond those that exist in Brunswick Heads.

### **Byron Shire LEP 1988**

The aim of this plan is to promote sustainable development in Byron Shire by furthering the objects of the Environmental Planning and Assessment Act 1979, particularly in regard to:

- (a) the application to proposed development of guiding principles for the management, development and conservation of natural and human made resources (including natural areas, forests, coastal areas, water, agricultural land, extractive resources, towns, villages and cultural amenities) for the purpose of promoting the social and economic welfare of the community, protecting ecological and cultural heritage and achieving a better environment,
- (b) the promotion and coordination of the orderly and economic use and development of land,
- (c) the provision and coordination of community services and facilities,
- (d) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities and their habitats, and
- (e) the provision of increased opportunity for public involvement and participation in environmental planning and assessment.

The subject site is zoned 2(a) Residential under Byron LEP 1988. The proposed development is generally in accordance with the objectives of the 2(a) Residential zone and the Byron Shire DCP 2010. Where the Concept Plan contains outcomes that are inconsistent with Aim (d) above, this report proposes modifications to minimise impacts to threatened species habitat.

## APPENDIX D DISCLOSURE OF CONTACT WITH LOBBYISTS

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