

Our Reference: J7217C

Tuesday, 24 October 2023

Section 4.55(1A) Application to Modify Development Consent 10.2022.107.1
Subdivision One (1) Lot into Three (3) Lots
23 Bayshore Drive Byron Bay

1 Overview

Planit Consulting is engaged by the Infrastructure Services Division of Byron Shire Council to provide town planning and engineering services relating to the development of Council-owned land known as Lot 12 Bayshore Drive, Byron Bay.

The subdivision of Lot 12 was approved by way of Development Consent 10.2022.107.1 on 8 September 2022, providing for the creation of three (3) lots and associated works.

The property is known as Lot 12 DP 1189646, located at 23 Bayshore Drive. It has an area of approx. 5.22ha, with frontages to Bayshore Drive and Wallum Place.



Figure 1 | Lot 12 (Source: Near Maps, 2023)

As shown in Figure 2, the eastern part of the site is zoned E3 Productivity Support under Byron Local Environmental Plan 2014. The remainder of the site is deferred, retaining the zoning of 4(a) Industrial and 2(v) Village under Byron Local Environmental Plan 1988.

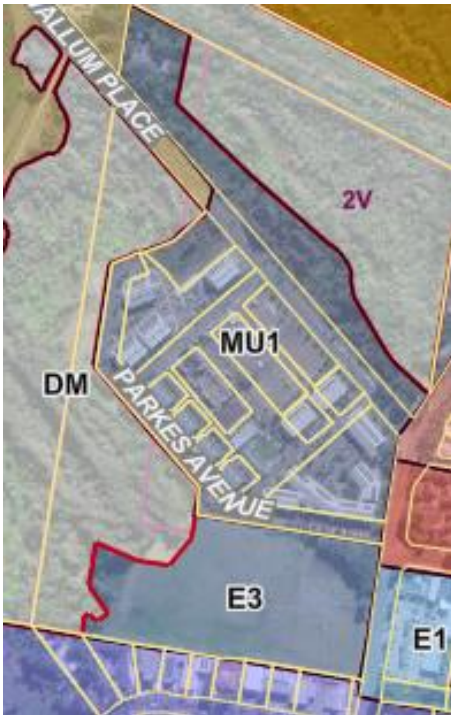


Figure 2 | Zoning (Source: Byron Shire Council Web Map, 2023)

2 Proposed Modification

Development Consent 10.2022.107.1 approved the subdivision of the land into three lots, as shown in Figure 3.

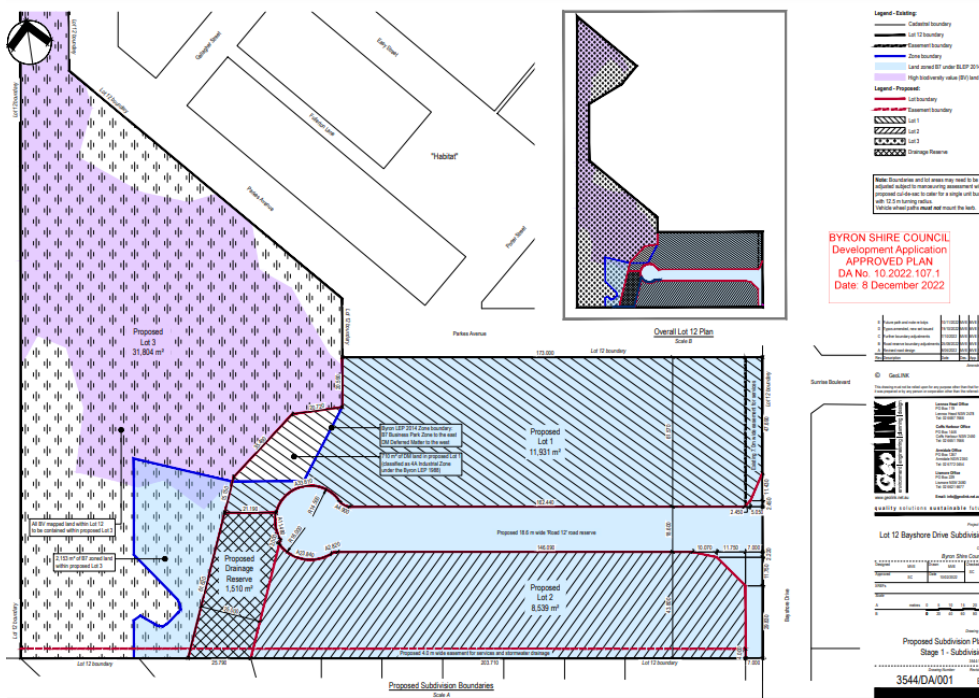


Figure 3 | Approved Subdivision

Lot 12 Subdivision

Subdivision One (1) Lot into Three (3) Lots

Byron Shire Council

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The approved lots are:

- Proposed Lot 1 – 12,608m² – a vacant lot proposed for future development for employment uses;
- Proposed Lot 2 – 10,858m²; - the western part of the lot contains the recently constructed TAFE NSW campus; the eastern part of the lots is proposed for future development for employment uses.
- Proposed Lot 3 – 31,789m² – a vacant lot containing native vegetation to be retained and enhanced for conservation purposes.

The approval also provides for the dedication of a new road off Bayshore Drive, with a roundabout at the intersection as Stage 2 works.

This modification application proposes to amend conditions of the consent to:

- clarify timeframes for implementation of vegetation management works, including compensation works required in association with a previous consent; and
- provide for future stormwater management works within a 25m ecological setback at the western end of approved Lot 1.

2.1 Suggested changes

Table 2-1 sets out the changes proposed by this application, with changes highlighted in **blue** text:

Table 2-1 | Suggested changes to conditions

No.	Current Condition	Proposed Amendment
9	<p>Habitat compensation works required by development consent 10.2015.177.1 to be substantially completed</p> <p>Certification from a suitably qualified ecologist to be submitted to Council prior to the issue of the Subdivision Works Certificate. certifying that Plantings and/or restoration works required as compensation for the clearing of native vegetation approved by development consent 10.2015.177.1 are to be substantially implemented in accordance with the approved plan titled 'Vegetation Management Plan – Lot 12 DP11189646 – Bayshore Drive, Byron Bay' prepared by Blackwood Ecological Services and dated 28/07/2015.</p> <p><u>Note:</u> for the purposes of this condition, 'substantially implemented' means that all primary weed control and planting works required by the approved plan referenced above have been completed.</p>	<p>Condition to be deleted</p>

Discussion:

Figure 4 shows the location of the two (2) habitat restoration zones described in the Blackwood VMP referenced in this condition. Zone A is located within the subject site, whereas Zone B is located on the adjoining Byron Bay STP site.

Condition 10 of the subject consent requires the preparation of a new Vegetation Management Plan (VMP), which must (among other things) incorporate the ongoing monitoring of the Blackwood VMP.

In preparing the VMP required by Condition 10, GeoLINK noted that, since the previous VMP was approved, there had been regeneration of native vegetation in some areas of restoration Zone A. Given that, the updated VMP prepared by GeoLINK (Vegetation Management Plan 23 Bayshore Drive, Byron Bay, Ref. 3544-1080, dated 01/02/2023) included some variations in the vegetation restoration prescriptions previously proposed. In addition, the planting species list has been updated to better represent the native plant communities that currently occur at the site.

The GeoLINK VMP recommended 6 Management Zones. As shown in Figure 5, Management Zones 2 and 3 overlap with the Blackwood Restoration Zones A & B.

The updated VMP was submitted to Council in February 2023. It is currently being updated further to reflect the modifications requested in this application and will be submitted for Council approval shortly.

Implementation of the revised VMP has commenced, with Council's Bush Regeneration Team underway with the works described in the GeoLINK VMP for Management Zones 1, 2, 3 and 4. This will ensure that the previously approved habitat compensation works are undertaken.

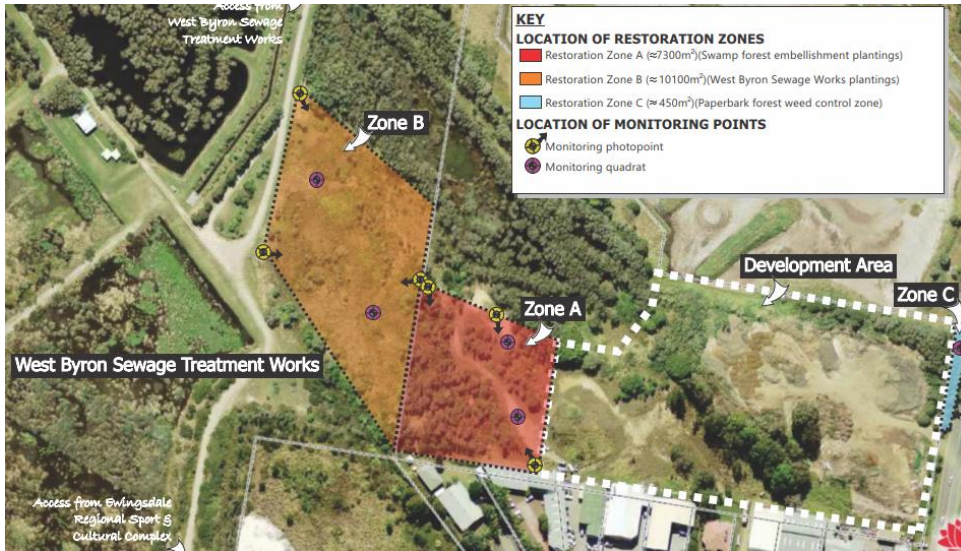


Figure 4 | Blackwood VMP Restoration Zones



Figure 5 | GeoLINK VMP Management Zones

No.	Current Condition	Proposed Amendment
40	<p>Section 88B Instrument – Infrastructure</p> <p>A Section 88B Instrument and one (1) copy are to be submitted with the application for a subdivision certificate. The final plan of subdivision and accompanying Section 88B Instrument are to provide for:</p> <p>a) Ecological Buffer – Lot 1</p> <p>A 25 metre ecological buffer be provided over Lot 1 from the western boundary with Lot 3 to prohibit any development in this area other than VMP works.</p>	<p>Section 88B Instrument – Infrastructure</p> <p>A Section 88B Instrument and one (1) copy are to be submitted with the application for a subdivision certificate. The final plan of subdivision and accompanying Section 88B Instrument are to provide for:</p> <p>a) Ecological Buffer – Lot 1</p> <p>A 25 metre ecological buffer be provided over Lot 1 from the western boundary with Lot 3 to prohibit any development (with the exception of works associated with stormwater management) in this area other than VMP works.</p>

Discussion:

Future development within proposed Lot 1 will require the implementation of stormwater management measures, likely to be in the form of a retention/ treatment basin, to ensure that impacts on the adjoining frog habitat can be avoided, as required by Condition 12 of the consent.

The primary intent of the 25-meter buffer is to provide a physical separation between development within proposed Lot 1 and the high environmental value vegetation in proposed Lot 3. Stormwater management works can be compatible with the ecological setback as they can incorporate native vegetation and help to ensure that buildings and other works planned for proposed Lot 12 will not encroach within the setback.

The compatibility is reflected in part b) of Condition 40, which specifically allows for such works to be located within the easement for conservation within Lot 3.

No.	Current Condition	Proposed Amendment
53	<p>Completion of Vegetation Management Plan Works</p> <p>Prior to the issue of a Subdivision Certificate for Stage 1, a monitoring report from a qualified and experienced ecologist and/or bush regenerator certifying that primary works as defined within the approved Vegetation Management Plan (VMP) for the site have been completed must be submitted and approved by Council.</p> <p>Prior to the completion of Stage 2 works a monitoring report from a qualified and experienced ecologist and/or bush regenerator certifying that vegetation works up to Year 3 as defined within the approved Vegetation Management Plan (VMP) for the site have been completed must be submitted and approved by Council.</p>	<p>Completion of Vegetation Management Plan Works</p> <p>Prior to the issue of a Subdivision Certificate for Stage 1, a monitoring report from a qualified and experienced ecologist and/or bush regenerator certifying that primary works as defined within the approved Vegetation Management Plan (VMP) for the site have been completed must be submitted and approved by Council.</p> <p>Prior to the completion of Stage 2 works a monitoring report from a qualified and experienced ecologist and/or bush regenerator certifying that vegetation works up to Year 3 as defined within the approved Vegetation Management Plan (VMP) for the site have been completed must be submitted and approved by Council.</p>

Discussion

The second part of this condition is unnecessary, given the requirements of Condition 56, which states:

Replanting and restoration works must be undertaken and continued until the performance criteria have been achieved in accordance with the approved Vegetation Management Plan for a minimum period of five years, during which annual monitoring reports must be submitted to Council for approval.

3 Merit and Environmental Impact Considerations

3.1 Minimal environmental impact – Section 4.55(1A)(a)

The amendments proposed primarily relate to the timing of rehabilitation works specified within a project-specific Vegetation Management Plan (VMP). The amendments do not alter any physical aspects of the approved development or generate any additional works.

The VMP will still meet the requirements of the consent, ensuring the protection and enhancement of the high environmental value vegetation within proposed Lot 3.

Providing for stormwater management measures within the 25-meter ecological setback will not alter the function of that setback as a separation buffer, ensuring that future buildings within proposed Lot 1 do not encroach into areas of high environmental value.

As such, the amendments do not create any environmental impacts.

3.2 Substantially the same development – Section 4.55(1A)(b)

As outlined above, the amendments proposed do not alter any physical aspects of the approved development, nor do they reduce the vegetation management measures that will be undertaken on the site.

No change will result to the number or configuration of lots approved or the road upgrades proposed as Stage 2.

It is concluded that the development as modified will be substantially the same as that approved.

4 Conclusion

The proposal is substantially the same development as that which has been approved and satisfies the provisions of s4.55 of the EP&A Act.

The modifications will allow for a site VMP that incorporates the restoration and ecological compensation works previously proposed for the site in an updated and contemporary plan that ensures works will be undertaken and appropriately maintained.

As highlighted above, these restoration works are well underway, managed by Council's Bush Regeneration Team.

Providing for stormwater management measures within the 25-metre ecological setback within proposed Lot 1 will not impact the performance of this setback and will allow the stormwater measures to be sited in a way that minimises impacts on both future development within proposed Lot 1 and the environmental values within proposed Lot 3.

Yours sincerely



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Senior Town Planner