



NSW GOVERNMENT
Department of Planning

**Report on the Assessment of
Development Application DA-10-2-2006-i
Pursuant to Section 80 of the Environmental Planning
and Assessment Act, 1979**

**Proposal by Becton to Demolish Existing Structures,
Erect a Tourist Facility and Carry-out Environmental
Repair to Create a Conservation Area at North Beach,
Byron Local Government Area**

August 2006

EXECUTIVE SUMMARY

The Becton Property Group, through its representative, S J Connelly Pty Limited (the Applicant) has lodged an application seeking staged development consent to construct and operate a tourist facility on land near North Beach, in the Byron local government area. It is estimated that the development will involve a capital investment of \$51 million and would generate employment for 150 people during construction and 16 people during operation.

The proposed development can generally be described as:

- Stage 1 - the construction, ongoing operation and maintenance of 117 unit tourist resort facility (with floor space not exceeding 22,762 m²) and the provision of environmental repair and habitat conservation measures over the site, Community Title subdivision and Strata Title subdivision.
- Future Stages – the construction, ongoing operation and maintenance of tourist resort facility with an additional 10,658 m² of floor space.

The assessment of any development proposal for the site is bound to be a complicated process involving strong competing views simply by virtue of the history of the site, more recent development proposals and the multi-layered planning regime that applies to the land. In particular, the site has a recent history (within the last decade) of several unsuccessful major development proposals for the site which have brought competing interests into direct conflict and generated a mindset of ongoing conflict between stakeholders. This conflict can be readily gleaned from the 1317 submissions made in response to the exhibition of the development application – 1299 in support, 11 in opposition and 7 silent on their views. While each of these submissions raises genuine and valid concerns over ecological impacts, the bulk and scale of the development, traffic generation, coastal erosion and a suite of other environmental issues, the most significant message from all of the submissions is that the site in question, and its future, are of substantial importance to many people in the Byron area.

In this context, the Department considers that the proposed development offers the opportunity to gain significant positive environmental outcomes. On balance, the Department is satisfied that the merits of the proposed development warrant the granting of development consent, subject to conditions. The Department recommends granting consent to Stage 1 of the development, and requiring a separate application, assessment and determination process for future stages, should the Applicant choose to proceed with those aspects of the proposal.

The proposal presents the opportunity to replace the existing development and planning approvals applicable to the site with a modern, well-designed and sustainable tourist facility worthy of the Byron area. The proposed development will refocus use of the land to those areas already largely disturbed by previous development and away from vegetation and habitat areas of conservation significance. The Department supports this approach.

Possibly the most significant issue of concern raised through submissions relates to impacts of the development on ecology. The region is characterised by an extensive list of threatened species, significant habitat and highly valuable ecological values. As a consequence, the Applicant prepared and submitted a Species Impact Statement for the development. The Statement was the basis of extensive debate between stakeholders during the assessment process, including between the Applicant and independent experts contracted by the Department to review the ecological impacts of the proposal. What this debate highlighted was that the Species Impact Statement was not perfect (nor was it expected to be), but

succeeded in achieving its intended purpose of adequately and appropriately assessing impacts on ecology, and demonstrating that the development would not have a significant (or unacceptable) effect in this regard. The residual impacts of the proposal on ecology, when viewed in the appropriate context of the current site, the fragmentation of habitat, previous environmental practices and the mitigation and off-set strategies proposed by the Applicant lends weight to a merit assessment supporting approval of the development.

Of particular note is that where parts of the site have been degraded by historical development, the Applicant proposes to revegetate and rehabilitate the land to provide new conservation areas, new community open space and improved habitat linkages. If the Minister determines to approve the development, the Department considers that these proposed works will generate a significant positive outcome which well outweighs any negative aspects of the development works. The Department recommends that the Minister impose the following conditions for the development:

1. demolition of existing cabins on Lot 6, DP 243218 and rehabilitation to produce a significant wildlife corridor;
2. revegetation of areas only the eastern side of the site to develop an additional habitat corridor;
3. dedication of 57 hectares of vegetated and rehabilitated land as a conservation area; and
4. enhancement of the ecological values of the site with local native vegetation landscaping.

The proposed development will also have a positive impact on the beach and dune area, through the closure of all but one beach access point (and an additional emergency access), removal of the Bayshore Building which currently exacerbates beach erosion problems and implementation of a comprehensive Dune Management Plan.

While the proposed development will result in a number of positive effects, there is potential for negative environmental impacts if the proposal is not constructed and operated in accordance with best practice. To this end, the Department has developed, and recommends that the Minister impose, a suite of stringent conditions to ensure that noise impacts, water quality, traffic generation and bush fire hazards are managed in a way that does not detract from the positive aspects of the proposal.

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1. INTRODUCTION

On 29 July 2005 S J Connelly Pty Limited, on behalf of Becton Property Group lodged a staged development application (DA-10-2-2006-i) with the Department of Planning seeking the Minister's staged consent to construct a tourist facility at Byron Bay. The proposal has a capital value of \$51 million and is expected to provide 150 construction positions and up to 16 full time positions once operational.

1.1 Existing Site and Development

Site and Locality Characteristics

The proposed development site is located approximately 4.7 kilometres to the north-west of Byron Bay Town Centre and is accessed via Bayshore Drive. The site is an irregular triangular shaped parcel of land having an area of approximately 89 hectares, with a maximum length of 2.5 kilometres and a maximum width of 700 metres. Figure 1 illustrates the context of the site and its locality, as it presently exists.

The site is bordered to the west by the North Coast Railway Line and further west by the residential area of Sunrise Beach Estate. To the east of the site is a strip of coastal vegetation, dunes and beach, being part of the main beach of Byron Bay. To the north and north-west of the site is the Tyagarah Nature Reserve, which contains heathland vegetation. To the south-east of the site is the Belongil Estuary.

The topography of the site is relatively flat in the central section with levels of RL1.8 to RL2.2. The land rises to the north in proximity to the beach dunes to RL 10 and to the south in proximity to the railway line to RL3. The site contains two main drainage lines, both draining to Belongil Creek and also contains several artificial water bodies.

The development site currently comprises 52 allotments ranging in size from 505.6m² to 32,080m² (32.08 hectares) and one closed road. The site is legally described as Lots 2-35 and 44 in DP1623, Lots 1-2, 6-13 in DP 243218, Lots 447, 449-450 in DP 812102, Lot 1 in DP 780243, Lot 2 in DP 620642, Lot 1 in DP 190757 and Lot 100 in DP 849102.

The site is burdened by two easements for drainage, one running north-west to south-east in the centre of the site and the second similarly oriented and located at the central portion of the site near the southern boundary. Further, two rights-of-way exist, one running parallel to the second described easement and one toward the centre of the southern boundary, running perpendicular to the North Coast Railway Line.

Figure 1 - Site and Locality Context



Existing Site Development and Approved Uses

The site is occupied by an existing tourist facility comprising 78 cabins, a restaurant and bar, conference rooms, wedding venues, activities room, a nine hole golf course, massage centre, pool, tennis courts, BBQ areas, walking tracks and 14 accommodation units.

The current development status of the site is the result of a mish-mash of planning approvals that have been granted with respect to the land since 1970. Full or partial implementation of each of these approvals has generated a miasma of overlapping, intermixed and in some cases conflicting development outcomes.

A summary of planning approvals granted with respect to the site can be summarised as follows:

- DA of 17/2/70 – comprising a landscaped caravan park (330 sites), 72 condominium holiday villas/ cabins, a sea (dude) ranch (for 40 persons), swimming pool, sea water lagoon, artificial sand beach, activities centre, beach club, refreshment kiosk, service station, general store and motel;
- BA113/73 – swimming pool;
- BA128/73 – refreshment kiosk and beach safety boat store (now known as the Bayshore Building);
- BA233/73 – recreation pavilion forming part of the caravan park courtyard complex;
- BA114/74 – ranch complex;
- DA81/943 – change of use of a bunkhouse to a primary school;
- DA82/479 – for a motel including seven single bedroom units, one two-bedroom unit and a two-bedroom manager's residence;
- BA510/84 – in-ground swimming pool;
- DA83/513 – stage 2 of the motel/ holiday cabin development comprising five two-bedroom units and a manager's residence/ office reception;
- DA87/0208 – the "Byron Bay Beach Resort", including 161 two- and three-bedroom cabins and the use of 32 existing cabins;
- DA95/197 – construction of a restaurant, bar and kitchen;
- DA96/0319 – extensions to the Lakehouse Conference facility; and
- DA10.2002.423.1 – change of use of a restaurant to a hotel.

The scope and extent of the relevant planning approvals can be established by reference to Figure 2. If the Minister determines to approve the subject development application, the Department recommends that the Minister require surrender of all existing planning approvals applying to the site, except for those relating to components of the existing development to be retained:

- DA95/197 – construction of a restaurant, bar and kitchen;
- DA10.2002.423.1 – change of use of a restaurant to a hotel.

The Department highlights the planning approval history of the site not because the assessment undertaken for each of those approvals is relevant to the current application, but because it provides a fundamental context in which to view the proposed development. Considering submissions and representations on the proposal in isolation of this context does in some cases paint a picture of the site and its surrounds as largely untouched by development and in a pristine state of environmental and ecological significance. This is clearly not the case. Similarly, the Applicant itself has perhaps not vigorously advertised the environmental damage that has been caused to the site over the past thirty years of development and occupation. While there are clearly significant environmental values still associated with parts of the site, the core proposed development area is not within these areas. The proposed development framed by the subject application generally affects areas of the site that have been previously cleared and subject to development, and

certainly does not extend laterally to the extremes that development has been approved and/ or undertaken in the past. This is an important context to bear in mind when considering the actual impacts of the proposed development, and if the Minister were not to approve the current application, what existing impacts on the site would continue regardless.

A number of public submissions received in response to the exhibition of the development application have raised concern that the conditions of previous development consents applying to the site have not been complied with nor enforced. In some instances, these submissions suggest that non-compliance and/ or non-enforcement should be taken into account when assessing the current proposal and should be a basis for refusal of development consent. The Department highlights that the Minister is not the consent authority with respect of those previous developments and has no formal role to play in the enforcement of their respective conditions. Further, the Department considers that compliance or otherwise with previous development consents is not a relevant consideration for the Minister when determining the subject development application.

Figure 2 - Existing Planning Approvals Applying to the Site



Legend

DA10/17/17/0	1	Half-serviced holiday apartments
	2	Salt water lake
	3	Restaurant
	4	Holiday Spa
	5	Administration Building
	6	Caravan Area
	7	Service Station
	8	Hotel
	9	Holiday Villas
	10	Sea Ranch Visitor Information Centre and heritage park
	11	Pools
	12	Holiday Villas
	13	Refreshment Kiosk
	14	General Store, shopping plaza
BA11/17/1	15	Swimming Pool
BA11/17/2	16	Refreshment Kiosk and Beach Safety House
BA21/17/3	18	Recreation Pavilion forming part of Caravan park security complex
BA11/17/4	19	Ranch Complex
BA11/17/3	21	Change of use - Bushhouses to Primary School
BA51/10/4	24	Inground swimming pool
DA87/2/08	27	Towel Facility, 65 x 72 and 3 bedrooms, cabin and the use of the existing gas fire
DA95/1/07	28	Erection of a Restaurant, Bar and Kitchen
DA88/1/11	29	Extensions to the Lakehouse Conference facility
DA10/2002/423.1	30	Change of use Restaurant to Hotel

DA10/2-2006-i
 SCALE: 1:1000
 DATE: 03/2005
 BY: [signature]

1.2 Recent Site Development Proposals

More recently, there have been a number of attempts to gain planning approval for (re)development of the site. Each of these attempts has failed generally on procedural grounds (as opposed to the technical merits of each proposal, which have not been tested).

1993 Club Med Tourist Resort Application

Club Med sought development consent from Council in 1993 for an integrated tourist facility on the site, to cater for approximately 928 guests in 416 rooms and additional accommodation for staff. The proposal also included a conference centre, an auditorium for 500 people, four restaurants with capacity for 700 diners, bars and theatre complexes to cater for 250 people, a terrace area with 250 seats, a mezzanine catering for an additional 80 people, and theatre auditorium seating for 390 people.

On 11 November 1993, Council purported to grant development consent to the proposal. However, subsequent proceedings in the Land and Environment Court led to a declaration that Council's purported development consent was void and an injunction restraining works pursuant to that consent. The application was withdrawn from Council in 1999 prior to valid determination.

2003 Master Plan Application

A (purported) master plan application (MP 12-7-2003) was lodged with the then Department of Infrastructure, Planning and Natural Resources on 2 July 2003 for a tourist development on the site. The application and accompanying information were publicly exhibited and attracted approximately 3000 submissions.

During the assessment of the master plan, question arose as to whether the provisions of SEPP 71 in fact applied to the development proposal and whether the preparation of a master plan was required. Notwithstanding these legal questions, the then Minister declined to adopt the purported master plan and instead adopted a set of "principles" to be addressed in development of the site. The Department considers that the current development proposal is generally consistent with these principles, as considered in detail in Appendix E.

2004 Tourist Resort Application

A staged development application was prepared in December 2004 for subdivision of land, a tourist resort and conservation works. At the time, question arose as to whether the local council or the Minister would be the appropriate consent authority for the application.

The Applicant sought a declaration from the Land and Environment Court that the then Minister for Infrastructure, Planning and Natural Resources was the consent authority for the development application. These proceedings were, however, dismissed by virtue of the fact that the Applicant had failed to seek and obtain land owner's consent in relation to Lot 100 in DP 849102 (a closed but formed road in the ownership of the Council). As a result, the development application had not been validly made by the Applicant and assessment and determination of the application did not proceed further.

2. SCOPE OF THE PROPOSED DEVELOPMENT

2.1 Staging of Development Works

The Applicant has lodged a staged development application comprising "stage 1" works (to be implemented immediately) and "future stages" to be the subject of a future development consent process. The total development envisaged by the Applicant at the completion of all stages of the development is 33,420 m² gross floor area of tourist facility.

Stage 1 of the development includes:

- construction of a 117 accommodation unit tourist resort (22,726m² gross floor area);
- retention of an existing building for use as a café/fish and chips shop;
- construction of a village centre incorporating the café, pool, café, shops, health spa, administration and reception;
- community title subdivision of part of the site into nine lots, as follows:
 - retention of existing Lots 11-13 in DP 243218 and Lot 6 in DP 243218 as separate torrens title lots;
 - dedication of Part Lots 9 for conservation and community use;
 - retention of Part Lots 1 as community property and to contain the village centre and some of the proposed roads;
 - development of Part Lots 2-8 for the purpose of the tourist resort;
- demolition of the Bayshore Building currently operating as a restaurant;
- creation of an easement for environmental repair and conservation over the eastern portion of Lots 11-13 in DP 243218;
- reconstruction of the portion of Bayshore Road within the site and dedication the upgraded road to Council; and
- carrying out environmental repair/ revegetation on Part Lot 9 in the proposed community title subdivision and existing Lots 11-13 in DP 243218.

Future stages of the development, to be the subject of a separate development consent in future would include an additional 10,694m² (gross floor area) of tourist resort development. As part of the future stages development, the Applicant also proposes to demolish the existing cabins on Lot 6 in DP 243218 and to revegetate that land to create a wildlife corridor.

The land earmarked for the future stages of the development is currently constrained by the requirements of the Bushfire Planning Guidelines, which require the future stages land to be used as an asset protection zone (APZ). The Applicant is confident that review of these Guidelines will, in time, result in a relaxation in APZ requirements for tourist facilities, thereby freeing up the future stages land.

While not part of the subject development application, it is important to note the Applicant's aspiration to potentially develop a 400-seat conference centre and motel facility on part of the site identified as "reserve lots". This land is currently constrained by coastal erosion hazards (as mapped), but it is the Applicant's expectation that Council's review of these hazards will allow development within the reserve lots in future. The Applicant has clearly stated in its application that development of the reserve lots, whether for use as a conference centre or otherwise, will only be contemplated in future if coastal erosion hazards are reviewed and resolved in its favour. If this is the case, a separate development application would be lodged with Council – the Applicant does not seek the Minister's approval for these development components as part of the subject development application.

2.2 Context of Proposed and Existing Development

To provide context to the total concept proposed by the Applicant across the site the subject of the staged development application, it is useful to consider the site as a series of “zones” as outlined in Table 1 and illustrated in Figure 3.

Table 1 - Proposed Land Use Outcomes by Zone

Proposed Use	Area (hectares)	Fraction of Total Site (%)
Dedicated for conservation/ community lot	58.108	64.8%
Easement for conservation/ community	4.734	5.28%
Neighbourhood community properties/ open space	7.889	8.80%
First stage development lands	8.452	9.43%
Future stage development lands	3.448	3.85%
Reserve lots	5.555	6.20%
Internal roads	1.474	1.64%

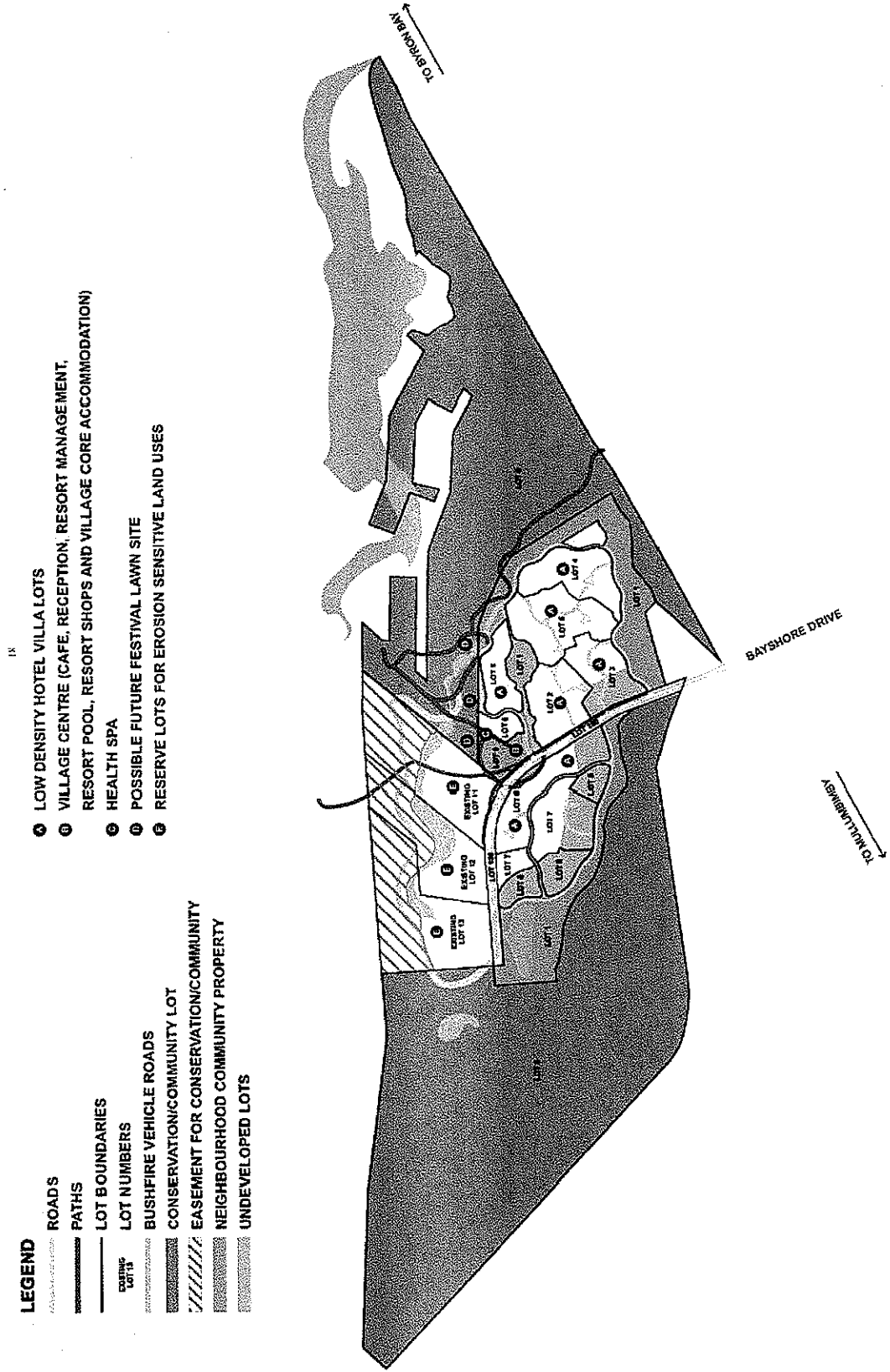
The Applicant’s decision with respect to areas to be developed or to be retained for conservation and community purposes has been largely based on the environmental and planning constraints of the site. Conservation areas and community lots are generally not developable as they are currently constrained by mapped SEPP 14 wetlands, coastal erosion effects and buffers around these areas. The total conservation/ community areas (some 62.8 hectares, or approximately 70% of the site) contain the most significant vegetation and ecological values characterising the overall site.

In comparison, the “neighbourhood community properties/ open space” is generally not characterised with significant vegetation and is largely disturbed. These open space areas have been designated by the Applicant within asset protection zones and other conservation buffers.

In addition, future development on the site is constrained by coastal erosion risks and bush fire risks. These factors have resulted in the allocation of “reserve lots” and “future stage development lands” respectively. Of these areas, only the latter has been earmarked by the Applicant as part of the staged development application for possible future development, if further investigation of bush fire hazards suggests that these areas can be safely developed. While there is potential that review of coastal erosion hazards in future may support development of all or part of the “reserve lots”, these areas have not been nominated in the subject development application as comprising future development stages. It is the Applicant’s “aspiration” that it may lodge an application with Council for a conference centre on the reserve lots at some point in future, if and when a review of coastal hazards results in the particular part of the site being deemed safe for development.

From aerial photographs included as part of the Statement of Environmental Effects, the Department highlights that current development on the site can be conservatively estimated as directly affecting in the order of eight hectares of land (or about 8-9% of the total site). Stage 1 of the redevelopment of the site will increase the level of development of the site only minimally in absolute terms, however, the lateral extent of development will increase, as will development density within affected areas. Stage 1 will however involve less than 10% of the site – if future stages are included and can be safely developed in future, total site development will still remain below 13.5% by area.

Figure 3 - Staging of Development and Site "Zones"



3. STATUTORY PLANNING FRAMEWORK

3.1 Permissibility

The proposed development is to be located on land zoned part 2(t) Tourist Area, part 7(a) Wetlands, part 7(b) Coastal Habitat and part 7(f1) Coastal Lands under the *Byron Local Environmental Plan 1988*.

With respect to Stage 1 of the proposed development:

- works within the 2(t) Tourist Area zone comprise a tourist facility, roads, food shop and general store, all of which are permissible with development consent;
- works within the 7(a) Wetlands and the 7(b) Coastal Habitat zones comprise environmental facilities and are permissible with development consent; and
- works within the 7(f1) Coastal Lands zone comprise environmental facilities, bushfire hazard reduction, beach and coastal restoration works and demolition of the Bayshore Building, all of which are all permissible with development consent.

The future stage works (tourist facility, demolition and habitat restoration) proposed by the Applicant lie on land zoned 2(t) Tourist Area, and are all permissible with development consent. The Applicant has not sought consent for the future stage works at this time because the tourist facility component of the future stages lies on land specified under the Bushfire Planning Guidelines as necessary for an Asset Protection Zone (APZ). In this light, the Applicant does not consider it could justify the merits of the future stages development unless and until a review of the Guidelines resulted in a reduction in the required APZ for tourist development.

As noted earlier in this report, the Applicant's aspiration of a 400 seat conference centre and motel does not form part of the development application under consideration by the Minister. These works would lie in the 7(f1) Coastal Lands zone and are currently prohibited. The Applicant would not seek to lodge an application for these works with Council until such time as the zoning of the land had changed (if that ever occurs).

3.2 Minister's Role

On 29 July 2005, the Applicant lodged an application for the proposed development in state pursuance of the then *State Environmental Planning Policy (State Significant Development) 2005*. The Applicant was of the view at the time that the proposed development met the requirements of that Policy to constitute State significant development.

On 19 December 2005, the Minister for Planning formed the request opinion under the then *State Environmental Planning Policy (State Significant Development) 2005* that the proposal did in fact meet the requirements of the Policy and was therefore declared to be State significant development. In particular, the Minister formed the opinion that the proposal is both:

- development for the purpose of a tourist related facility with a capital investment value of more than \$5 million and located in an environmentally sensitive area of State significance (Schedule 1, clause 17c)); *and additional and separately*
- development within the coastal zone for the purpose of tourist facilities that is wholly or partially in a sensitive coastal location and that provide accommodation for any number of persons (Schedule 2, clause 1(1)(f)).

3.3 Legislative Context

In accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000* the proposed development is State significant development (refer to section 3.2 of this report), integrated development and threatened species development.

Integrated Development

The proposed development constitutes "integrated development" because in addition to development consent, the following approvals are required:

- a permit from the Department of Natural Resources under the *Rivers and Foreshores Improvement Act 1948*;
- an authorisation from the Rural Fire Service under the *Rural Fires Act 1997*; and
- consent from Byron Shire Council under the *Roads Act 1993*.

The development application and accompanying documents were forwarded to each of these integrated approval bodies, as were copies of submissions received in response to the exhibition of the application. Each integrated approval body has indicated its willingness to grant the relevant integrated approval, if the Minister determines to approve the subject application, and has issued General Terms of Approval accordingly. The General Terms of Approval from each integrated approval body have been incorporated into the recommended instrument of consent.

Threatened Species Development

The Applicant has prepared and submitted a Species Impact Statement as part of the subject development application. In doing so, the Applicant has suggested that the proposed development is not likely to have a significant effect on threatened species, populations or ecological communities or their habitats, but that the *Threatened Species Conservation Act 1995* does not preclude the preparation of a Species Impact Statement nonetheless. The Applicant has, in effect, prepared a Species Impact Statement as a conservative, precautionary measure.

The Department generally supports the Applicant's proactive approach to ensuring that impacts on threatened species, populations or ecological communities or their habitats are comprehensively assessed as part of the subject development application. However, the Department disagrees with the Applicant that a Species Impact Statement would not in itself be required as a result of the impacts of the development. In particular, the Department considers that the proposed development, in the absence of any mitigation (through measures applied to the proposal by either the Applicant or imposed by the Minister) is likely to have a significant effect on threatened species, populations or ecological communities or their habitats, having regard to the heads of consideration under section 5A of the *Environmental Planning and Assessment Act 1979*. The Department has therefore notified and assessed the application as "threatened species development".

The Applicant sought and obtained the requirements of the Director-General of the Department of Environment and Conservation (National Parks and Wildlife Service) for the preparation of the Species Impact Statement. The DEC was consulted during the assessment of the application and at times sought additional information and clarification of aspects of the Species Impact Statement. The DEC has stated that it is satisfied that the Species Impact Statement complies with its Director-General's requirements and has recommended conditions of consent, should the Minister determine to approve the application. These recommended conditions have been included in the recommended instrument of approval.

3.4 Relevant Environmental Planning Instruments

The following environmental planning instruments and other documents are relevant to the assessment of the proposed development:

- *State Environmental Planning Policy No. 14 - Coastal Wetlands;*
- *State Environmental Planning Policy No. 26 – Littoral Rainforests;*
- *State Environmental Planning Policy No. 44 – Koala Habitat Protection;*
- *State Environmental Planning Policy No. 71 - Coastal Protection;*
- *State Environmental Planning Policy No. 55 – Remediation of Land;*
- *North Coast Regional Environmental Plan 1988;*
- *Byron Local Environmental Plan 1988;*
- *Byron Draft Local Environmental Plan for the Byron Bay Area;*
- *Byron Development Control Plan No. 18 – Becton Site and Adjoining Lands Byron Bay;*
- *Byron Development Control Plan 2002;*
- *NSW Coastal Policy 1997;*
- *Coastal Design Guidelines for NSW;*
- *Coastline Management Manual;*
- *North Coast Design Guidelines;*
- *Tourism Development Along the NSW Coast Guidelines;*
- *Tourism Development Near Natural Areas Guidelines; and*
- *Minister's Principles for Development of the Site.*

Consideration of the proposed development in the context of the objectives and provisions of these environmental planning instruments and other relevant documents is provided within the Appendices of this report.

3.5 Nature of Recommended Approval

As previously noted, the Applicant has lodged an application for staged development and seeks approval for "Stage 1" at this time, with future stages to be the subject of separate development consent in future. The issue of staging the development and the level of detail provided by the Applicant with respect to future stages has been highlighted as a significant concern in many public submissions.

With respect to Stage 1, the Department is satisfied that the Applicant has provided sufficient information to enable an appropriate level of assessment of the initial stage of development. Further, the Department is satisfied, as outlined in this report, that the merits of the Stage 1 development warrant the granting of development consent.

The Department agrees with the submitters who have highlighted that the development application does not provide detailed information of the future stages of the development. Other than a generally description of what is intended, an indication of the location of future stages and preliminary concepts of the interaction between Stage 1 and the future stages (for example, road connectivity), the Applicant has not undertaken a detailed assessment of the future stages. This is, however, what Division 2A, Part 4 of the *Environmental Planning and Assessment Act 1979* intends to achieve – future stages of the development need only be in a conceptual form with detailed information and assessment for those future stages undertaken at a later date. The Department considers that the Applicant has outlined, in concept, what is intended for future stages and has committed to a further assessment and approval process in future, if those stages proceed.

It is important to note that the Minister is not bound to make a determination of the future stages at this time, whether that be approval or refusal. In fact, the Department suggests that there is insufficient information to establish whether the

future stages should be approved or refused – this information will only be provided when seeking consent for the future stages. The Department is therefore satisfied that the Minister could grant staged development consent in the manner sought by the Applicant, noting that future stages will be the subject of an additional application, assessment and determination process.

As a consequence of temporal separation of the first stage and future stages of the development, it is necessary to clearly delineate the extent of each stage of the development. Plans and diagrams of the proposed total development, with both detailed (Stage 1) and conceptual components (future stages) have been provided by the Applicant. The Department recommends that the plans and diagrams be updated to separate the stages of the development and to provide only details of Stage 1 on a single plan. To facilitate this, the Department recommends the granting of deferred commencement consent, subject to adequate update of the plans and drawings for Stage 1, to exclude (at this time) those aspects of the proposal relating solely to the future stages. A deferred commencement consent also permits the further development of revegetation and rehabilitation plans for conservation areas.

The Department therefore recommends that the Minister grant staged and deferred commencement consent to the proposed development.

4. ISSUES RAISED IN SUBMISSIONS

The development application was publicly exhibited between 3 March 2006 and 13 April 2006. In response to the exhibition of the development application, the Department received 1317 submissions from the public, local government and State Government bodies and a petition of 1072 signatures. These submissions are summarised in brief in Table 2.

Submissions were received from the Department of Environment and Conservation, the Department of Natural Resources, the Department of Primary Industries, the Department of Lands, the Marine Parks Authority, the Rural Fire Service and Byron Shire Council. With the exception of Council, none of these agencies objected to the proposed development and offered recommended conditions of consent (and General Terms of Approval in the case of integrated approval bodies), which have been reflected in the recommended instrument of consent. Council objects to the proposal based on issues including the level of information in the application, land use planning (EPI and DCP compliance), building and infrastructure design, traffic generation, ecological impacts, noise impacts and visual amenity. Notwithstanding, Council has issued General Terms of Approval and without-prejudice recommended conditions of consent, which the Department has considered and incorporated into the recommended instrument of consent.

Of the public submissions received, 1299 (98.6%) supported the proposed development for reasons including employment, economic benefits, improved beach access and environmental rehabilitation. There is evidence to suggest that the Applicant actively solicited these submissions in support of the proposal. As is standard practice for all submissions (whether in support or opposition), the Department has considered the merit issues raised in these submissions as part of its assessment, and notes the actual number of submissions received simply to give context to the breadth of community response.

Submissions in opposition to the proposed development numbered 11 (0.84%). Opposition to the proposal was generally based on the scale and intensity of the development, the nature of the proposed land use (tourist versus quasi-residential), lack of detail in relation to future stages, traffic generation, ecological impacts, flooding and bushfire hazards.

Table 2 - Summary of Issues Raised in Submissions

Submitter	Position	Key Issues
<p>Department of Environment and Conservation</p>	<p>Raises concerns and seeks conditions and additional information</p>	<p>First Submission</p> <ul style="list-style-type: none"> • Understand the Minister will formally consult with the Minister for the Environment in relation to its recommendation prior to determination. • Population density of stage 1 is higher than DCP • Acknowledge extent of revegetation proposed, dedication of land proposed • No impact assessment of future stages is provided • No eight part test for the Endangered Ecological Communities has been conducted • Concerned the extent of vegetation removal for bushfire hazard reduction has not been fully identified • No overlay of components of proposal on maps showing threatened species and ecological communities • No information provided of details of vegetation type, land use, fire history, zonings, land tenure and SEPP for whole study area to broad level for context • Maps are provided at differing scales and orientations preventing direct comparisons • No discussion of existing fragmentation in the initial assessment • SIS complies with the requirement to identify subject species • Considered that habitat has been underestimated in its extent, with point location records for many species shown outside mapped habitat • Don't accept some statements provided as explanations for not addressing information and assessment requirements such as no habitat will be removed or impacted, proposal is similar in scale to existing resort, proposal will not result in increased visitation to Cape Byron Headland • A map showing APZ at a suitable scale should be overlaid with vegetation and threatened species records and habitat maps • Not accepted that there will be no impacts on threatened biodiversity, sections 5.1, 5.2, 5.3, 6 and 7 are key requirements of the DGRs and should be addressed • No mapping is supplied to illustrate the "reconstruction of a wildlife corridor, approximately 100-200m wide from the coastal boundary of the site westward" • Impacts on shorebird nesting area at the mouth of Belongil Creek will only be partly manageable and increased human activity adjacent to these environments will exacerbate existing management problems. • Support management recommendations for Aboriginal cultural heritage.

	<ul style="list-style-type: none"> • Recommend condition requiring engagement of EPA accredited site auditor to arrange further soil sampling and testing in the area of the existing resort washroom identified as containing elevated concentrations of heavy metals, and to develop a remediation action plan if required. • Support proposed service of buildings with rainwater tanks and provision of non-potable water supply to hot water system and seeks condition for preparation and implementation of a soil and water management plan for the construction phase prepared in accordance with Managing Urban Stormwater: Soils and Construction (Landcom). 	
<p>Final Position</p> <p>As a result of the issues raised in the first letter, the Applicant prepared supplementary material responding to specific issues that were raised and forwarded this to DEC and the Department. DEC confirmed that the SIS and supplementary information dated 22 June 2006 meets the Director-General requirements issued by the DEC for the project. The DEC recommends the following conditions of consent:</p> <ul style="list-style-type: none"> • Consent to be restricted to "Stage 1" development only. • The development must be implemented in accordance with all undertakings provided in the development application and related documentation, including the SIS and supplementary information dated 22 June 2006. • Approximately 57 hectares of vegetated and rehabilitated land in the north and west of the site is to be formally handed over for perpetual conservation and community use. • The proponent must implement management measures for Aboriginal heritage as outlined in the development application. These measures are to include further investigations, licence application and continued consultation with the Aboriginal community and regular inspections of landscape disturbance during construction. • The volume of sewage discharged to the Byron Shire Council sewage system from the development must not exceed the current Council sewage entitlement for the premises. • An EPA accredited site auditor must be engaged to arrange further soil sampling and testing for heavy metals in the vicinity of the existing resort washroom and, if necessary, develop and implement a remediation action plan. 		
<p>Department of Natural Resources</p>	<p>Requests conditions and amendments</p>	<ul style="list-style-type: none"> • The first stage development is well landward of the projected maximum 100 year erosion hazard zone. Through the provision of buffers to Belongil Creek and the SEPP 14 wetlands the proposed development lands have adequate setback from the long-term entrance fluctuations impacts of Belongil Creek. • The existing Bayshore Building is located in an area deemed to be at immediate threat from beach erosion and Belongil Creek entrance migration and its proximity to the top of the existing creek embankment/dunal escarpment results in a significant portion of the building being situated in an area of

		<p>reduced foundation capacity. It should therefore be removed/ relocated and the existing consent surrendered as part of the site planning</p> <ul style="list-style-type: none"> • A Part 3A Permit would be required for excavations associated with the civil works such as road and stormwater outlet construction – conditions are recommended • The Dune Management Plan should be amended to reflect the current administration body (Department of Lands not DIPNR), to reflect the current development applications, to propose rehabilitation measures for Zone 5 that fully accord with the natural environment and prevailing natural processes occurring in the area and to remove conflicts with the SEE in relation to use of beach access points. Consent for the works on Crown lands will be required. • The application adequately addresses flooding and drainage issues • The Aquatic Habitat Protection Unit is generally satisfied with the Waterbody Management Plan • The construction of watercourse crossings may trigger the provisions of sections 198-202 and/or 219-220 of the Fisheries Management Act 1994. If triggered the crossings would need to be designed to be "fish friendly". • The approach of using geo-textile sand pillows and the current approach of dumping vegetation in the Zone 5 area under the DMP are not supported. • The area subject to the North Beach Dune Management Plan (DMP) should be extended to include Zone 5 • More thorough assessment is required within the DMP of the manner of closure of the Belongil estuary track, enhanced construction of existing track, future management of new unauthorised tracks and vandalised areas, performance indicators, schedules of work and community education • The question of the long term responsibility for implementation of the DMP needs clarification, including who is responsible for implementation and for how long, will there be monetary surety to address default and what management regime is envisaged after expiration of the Crown licence • It is requested that a condition require the amendment of the DMP and approval of the Department prior to commencement of works and finalisation of the DMP prior to occupation of the site. • The location of the Asset Protection Zones and the management of storm and waste water comply with the current government policy.
Department of Primary Industries	Conditional support	<ul style="list-style-type: none"> • Submission of 12/05/06 • S138 of the Roads Act General Terms of Approval will not be issued for the road works due to a lack of information and non-compliance with Council guidelines • Submission of 16/06/06 • Application should not be approved until the following issues are resolved and amended application renotified:
Department of Lands	Request conditions	
Byron Shire Council	Object	

<ul style="list-style-type: none"> • Insufficient information on overall future size of development; • The proposal does not adequately address SEPP 55 and demonstrate the site is not contaminated or whether it is suitable for tourist development; • Does not comply with Clause 8 of SEPP 71; • Does not comply with Clauses 15, 29A, 32B of North Coast Regional Environmental Plan; • Proposal is not consistent with the NSW Coastal Policy; • Proposal is not consistent with the NSW Tourism Development Near Natural Areas Guidelines; • Proposal is not consistent with the Coastal Design Guidelines for NSW; • The development does not comply with Clauses 2, 36 and 63 of LEP 1988; • The development is not consistent with Clauses 9, 14, 15, 19, 32, 33 and 39 of DLEP for Byron Bay, Suffolk Park & Ewingsdale; • The proposal does not comply with Part G of DCP 2002; • The proposal does not comply with the objectives of Part 2, Part 3 or Part 6 of DCP 18; • The proposal does not comply with Section 79C(a)(i), (ii), (iii), (b) and (c) of the EPA Act; • The proposal does not adequately address light spill or noise impacts; • The proposal does not comply with Council's policies and Australian Standards regarding the design of footpath areas; • The proposed road and cycleway have not been designed in accordance with Council's AustSpec Design & Construction Manual, Australian Standards and AustRoads. • The traffic report inadequately addresses the impacts on the intersection of Ewingsdale Road and Bayshore Drive and traffic management within Sunrise Boulevard for all stages; • The NSW Rural Fire Services GTA's will result in adverse effects on land adjoining the site that contains EEC Littoral Rainforest in the NSW North Coast, Sydney Basin and South East Corner bioregions; • The proposal does not comply with the aims and objectives of SEPP 44; • Assessment should not be based on previous approvals; • If consent is to be given Council request the opportunity to provide a list of conditions; • The Minister is requested to note photos depicting flooding in the 1980's; • The Minister is requested to consider the removal of the cabins on Lot 6 in DP 243218 to establish a wildlife corridor; • The proposal does not comply with DCP 18; • The proposal does not comply with the DG's requirements for the SIS; • The proposal does not adequately address the need for alternative emergency evacuation exit; 		
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		<ul style="list-style-type: none"> The strata subdivision of holiday units will create a right of separate occupation of the units which is indistinguishable from the residential use of the units which is prohibited.
Marine Parks Authority – Cape Byron Marine Park	Object	<ul style="list-style-type: none"> The buffer zone of 5m for Waterbodies 4 and 5 appears inadequate given their connection to the Marine Park, and a much wider strip of vegetation is required to adequately buffer the special purpose zone of Belongil Estuary
The Conservation Council of NSW	Object	<ul style="list-style-type: none"> Application should comply with DCP
Proforma letter – 240 residents and local businesses	Support	<ul style="list-style-type: none"> Support community and cultural aspects including permanent Festival Space, improved access and parking provision for beach goers
Proforma letter - 504 residents and local businesses	Support	<ul style="list-style-type: none"> Support tourism and economic impacts including attraction of families to area, marketing of Byron Bay, 50 new jobs, \$800,000 boost to local economy, 150 construction jobs
Proforma letter - 552 residents and local businesses	Support	<ul style="list-style-type: none"> Support environmental initiatives including closure of golf course, planting of 850,000 native trees and shrubs, closure of existing resort access to beach and creation of new boardwalk away from Belongil estuary, designed to minimise impact on environment
Petition – 1072 signatures	Support	<ul style="list-style-type: none"> Support proposal as it is low density, 75% of site will be environmentally rehabilitated, creation of permanent Writer's Festival venue, improved access to the beach and parking, economic benefits to area
Public Submitter	Object	<ul style="list-style-type: none"> Scale of development is excessive Concerned units will be used as dwellings Lack of detail on future stages
Public Submitter	Support	<ul style="list-style-type: none"> Appropriately downsized from previous proposals and will improve employment opportunities
Public Submitter	Object	<ul style="list-style-type: none"> Too many buildings Impacts on traffic and socially Drainage runoff impact on estuary Inadequate information on future stages
Public Submitter	Support	<ul style="list-style-type: none"> Looks forward to more people enjoying the area
Public Submitter	Object	<ul style="list-style-type: none"> Scale of development is excessive Impact on environment Impact on traffic and infrastructure Should be determined by Council

Public Submitter	Object	<ul style="list-style-type: none"> • Should be assessed by Council • Inadequate information on future stages • Inadequate community consultation and no fee to Council for assessment • Does not comply with DCP • SIS does not meet Director General's requirements and there is inadequate environmental assessment • Inadequate assessment of traffic impacts • Concern with compliance with previous approvals • Subdivision would prevent appropriate management of the site • Concerned units will be used as dwellings • Concern about coastal erosion and impacts of climate change • Need for evacuation plans to deal with coastal erosion risks
Public Submitter	Object	<ul style="list-style-type: none"> • Size is excessive and is bigger than adjoining suburb • Concerned units will be used as dwellings • Inadequate information about future stages • Impact of additional traffic and lack of parking near shopping centre – delays to emergency services • Should be assessed by Council • Proposal is incompatible with "clothing optional" beach to the north
Public Submitter	Strong objection	<ul style="list-style-type: none"> • Doesn't comply with DCP • Inadequate information about future stages • Concerned will be used as dwellings • Scale unacceptable • Impact on intersection at Bayshore Drive • Loss of access to beachfront by residents
Public Submitter	Conditional support	<ul style="list-style-type: none"> • Proposal looks good in its own right but should only go ahead in conjunction with structural changes to traffic flow, addressing issues of parking and sewerage treatment • Concerned about loss of access to the beach
Public Submitter	Object	<ul style="list-style-type: none"> • Overdevelopment of sensitive site which risks increased estuarine and flood inundation • Not consistent with DCP
Public Submitter	Strongly objects	<ul style="list-style-type: none"> • Application is deceptive as it doesn't adequately detail future stages; • The proposed "1st stage" represents the maximum development that can occur on the site; • Inadequate assessment has been made of the significance or impacts on threatened species or

		<p>endangered ecological communities;</p> <ul style="list-style-type: none"> • DEC claims the SIS is not legally valid; • The SIS does not satisfy the DG's requirements and is inadequate and misrepresents agreements made; • The proposal should be referred to the Federal Environment Minister for consideration under the Environment Protection and Biodiversity Conservation Act; • DCP 18 has been ignored by the development which proposes a density in excess of the controls and provides inadequate buffers; • The units are capable of occupation as a separate domicile and thus are dwelling-houses and are prohibited; • Subdivision is not in accordance with allowable uses of LEP and is contrary to current consent conditions for consolidation; • Strata titling allow exclusive occupation and is legally equivalent to residential use and is prohibited; • The opening of the estuary mouth enables the site to be maintained but is a precarious situation that puts residents as significant risk; • The coastal recession lines identified by WMB Oceanics are understated; • No structures should be approved seaward of the current 100 year erosion line; • A horizontal buffer of 100m needs to be applied to the estuary; • Any horizontal buffer should be applied to a vertically defined buffer of 3.6m to enable the full natural range of water level conditions which would exclude the site from development; • At the least, any further development should be precluded for 300m from the MHW level until a floodplain management plan is prepared; • The flood is inadequate and based on unrealistic assumptions; • No floodplain management plan has been prepared; • The failure to address global warming means the surrounds will be flooded more frequently than identified; • The traffic assessment understates the impact of the development; • The APZs have not been applied consistently with the requirements of the controls; • The bushfire risk assessment doesn't address the cabins on Lot 6 in DP 243218; • Inadequate assessment of groundwater contamination; • The stormwater management modelling is flawed and doesn't deal with the site being waterlogged; • The proposal will increase antagonism towards tourists;
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		<ul style="list-style-type: none">• The consents have not been enacted properly and as such only the cabins on Lot 6 in DP 243218 have consent;• The DMP is inadequate as it has been prepared without consultation with the land owners
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5. CONSIDERATION OF ENVIRONMENTAL PLANNING ISSUES

The Department has undertaken a detailed review of information supplied by the Applicant in the Statement of Environmental Effects and Species Impact Statement, together with a series of additional information requests, and issues raised in submissions received in response to the public exhibition of the staged development application. Assessment against the heads of consideration under section 79C of the *Environmental Planning and Assessment Act 1979* is provided in Appendix A to this report.

In addition to the general assessment of environmental impacts under section 79C, the Department has identified, in light of the information provided with the development application and in response to issues raised in submissions, that a number of matters need more detailed consideration. These "key" environmental assessment issues are as follows:

- impacts on ecology;
- built form and density;
- traffic generation and impacts;
- impacts on infrastructure and services;
- flooding and drainage impacts;
- coastal processes, beach access and uses;
- nature of the development.

5.1 Ecological Impacts

Applicant's Position

The Species Impact Statement indicates that the impacts on flora and fauna are acceptable.

Issues Raised in Submissions

The Species Impact Statement has provided an inadequate assessment of endangered and threatened species and communities and the impacts of the proposal are unacceptable.

Department's Position

The Department contracted an independent team of expert ecologists to assess and advise on the potential impacts of the proposed development on ecology, as presented in the Applicant's Species Impact Statement. A copy of the experts' assessment of the proposal is provided as Appendix F. As the experts' report is highly critical of the Applicant's work in a number of areas, the Department considered it important in the context of procedural fairness that the Applicant be provided an opportunity to respond to these criticisms. The Applicant's response forms Appendix G to this report.

General Adequacy of Species Impact Statement

It is apparent from issues raised in public submissions, correspondence from the Department of Environment and Conservation, Byron Shire Council and the independent ecological experts appointed by the Department that the ecological implications of the proposal are a significant issue and a key concern for stakeholders. Each of these parties has, at various times throughout the assessment period, raised concern over the voracity of the information and assessment presented by the Applicant in its Species Impact Statement. In some cases it has been suggested in submissions that the Species Impact Statement was completely inadequate and should result in refusal of development consent for this proposal.

The Department's own consideration of the Species Impact Statement echoes a number of the concerns raised in submissions, and the Department agrees that in hindsight, the Applicant could have been more proactive in clearly articulating the outcomes of its ecological impact assessment in the Species Impact Statement. However, the Department does not agree that components of the Statement in which the Applicant may not have been perfect in presentation are so flawed so as to undermine the integrity of the assessment process or preclude resolution of ecological impacts in an appropriate and acceptable manner. In short, the Department is satisfied that the Species Impact Statement and additional clarifications provided by the Applicant during its assessment are sufficient to inform to appropriate level of merit assessment in accordance with section 79C of the *Environmental Planning and Assessment Act 1979*. The Department also notes that the Department of Environment and Conservation has indicated that it is satisfied that the Species Impact Statement has complied with the requirements set by its Director-General for that document.

Context of the Site

At the outset, the Department considers it important to place the site in context. Considering issues raised in submissions in isolation gives the impression that the land to be developed is in an almost pristine and untouched condition – that in an ecological context, the site could be elevated as a prime example of ecological values. This is not the case. The site is the subject of a mishmash of development consents granted over several decades, many of which have been implemented, or partly implemented under various phases of development. The most significant of these development consents was issued in 1987 for 162 new accommodation cabins (two and three bedroom) and use of 32 existing cabins. The consent has commenced and has been partially acted upon, with 74 of these cabins currently existing on the site – the remaining approved cabins, if progressed by the landowner would significantly encroach on higher-value vegetation and into unstable areas of beach erosion. The Applicant has committed to surrender of this approval if development consent is granted to the subject application – in effect, “drawing back” the development envelope from that permitted under existing approvals. Similarly, the Applicant has committed to demolition of the beach kiosk approved in 1973 (and surrender of the development consent), which is currently enhancing erosion along the dune (and is now unsafe for occupation as a result).

The site also hosts the Byron Bay Writers Festival over four days each year, during which a flood of attendees and tourists are brought to the site. This, combined with existing cabin accommodation, sees the site and its ecology subjected to human influences including noise, litter and vegetation/ dune access. It is therefore inappropriate to suggest that any human influence attributable to the proposed development would be novel.

The net outcome of decades of piecemeal development is a site characterised by large areas devoid of vegetation and existing accommodation cabins interspersed with fragmented vegetation of variable quality. Further, orientation of existing development and clearing patterns has substantially disrupted habitat corridors along the east and west of the site that would ordinarily connect much higher value habitats to the north and south. In short, there is significant *potential* to achieve a net positive ecological outcome on the site, compared with its current state. The question remains whether the proposed development, as presented by the Applicant or as modified by conditions of consent that may be imposed by the Minister can realise this potential. The Department considers that it can, subject to the imposition of conditions detailed in the recommended instrument of consent.

Key Assessment Issues

The Department considers that issues raised by the various parties with respect to the Species Impact Statement and ecological impacts can be grouped into three broad categories: administrative issues; impacts that are readily addressed through conditions of consent; and other impacts that are unacceptable, or through the application of the Precautionary Principle must be taken to be unacceptable in the absence of information to the contrary.

As noted above, the Department agrees that a number of the "administrative issues" raised in submissions (including the scale of maps, typographical errors or criticism over the line-spacing of the document) are not fundamental to the outcomes of the merit assessment of the proposed development and do not require further detailed consideration. The Department does add, however, that it does not consider any of these formatting-related concerns to have been so significant as to undermine the ability of a reasonable person to interpret information in the Species Impact Statement and to form a view on the impacts of the proposed development on ecology. A number of the issues raised in the expert review of the ecological impacts of the proposal (refer to Appendix F) are points of clarification, which the Department considers the Applicant has now adequately addressed (Appendix G). The Department does not consider it necessary to address these minor issues further.

The Department considers, however, that a number of more significant ecological impact issues are identified through the expert's report, and responded to by the Applicant, which must be given greater weight in the merit assessment of the proposal. These issues can generally be summarised as follows:

- impacts of filling the drainage line currently linked to a SEPP 14 wetland;
- impacts on aquatic flora and fauna;
- minimisation of impacts to vegetation, and impacts on koalas;
- certainty and quality of revegetation and rehabilitation.

The Department considers that the Applicant has not adequately assessed the potential impacts from the proposed filling of the open central drainage line which runs in a north south direction through the site. This drainage line currently drains wetlands in the adjoining Tyagarah Nature Reserve which form part of a SEPP 14 designated wetland. Given that the drainage line has been in place for approximately 100 years, the wetlands would have adapted to the current hydrological regime. The development application does not assess the potential hydrological impact of filling the drain on the SEPP 14 wetland within the nature reserve and therefore the Department has recommended that this drainage line remain in its current state and not filled as part of the proposed development. While the Department does not oppose restoration of the natural hydrology of the wetland, in principle, the Applicant has not demonstrated that filling the drain will not in fact have adverse flow-on effects. The Department notes that this matter may be addressed by the Applicant as part of any application for the future stages of the development, if the Applicant decides to pursue filling the drain.

Concern was raised with respect to impacts on aquatic flora and fauna, particularly in relation to water bodies currently on the site and their eventual drainage to Belongil Creek. The Department recognises that these waterbodies have the potential to accommodate threatened flora and fauna. The principal mechanisms through which the proposal may impact on these species is through water contamination or through inappropriate management of riparian zones. The Department considers that in the case of the former, conditions such as those recommended in the instrument of consent are sufficient to ensure the management of surface water quantity and

quality during construction and operation so as to minimise potential impacts to acceptable levels.

The proposed development has been designed, and is recommended to be conditioned, to minimise impacts on significant vegetation. This includes retention of all Koala feed trees and fencing off of significant vegetation prior to the commencement of construction to prevent accidental impacts. Although there is currently vegetation interspersed within the existing development, the Department does not consider this vegetation to be of significant ecological value compared with the vegetation to be retained and/ or enhanced on the site. Residual impacts in these areas are therefore considered to be acceptable.

To ensure that revegetation and rehabilitation occurs and that the significant positive benefits represented by aspects of the development come to fruition, the Department recommends imposition of a comprehensive suite of conditions that require:

- dedication of no less than 57 hectares of land as a conservation area;
- demolition of existing cabins on Lot 6 and rehabilitation as a wildlife corridor;
- establishment of an additional wildlife corridor along the eastern boundary of the site;
- landscaping the site with local native species.

The Department considers that on balance, the proposed development will not have a significant net impact on ecology. While it is accepted that there will be residual impacts, particularly on vegetation currently in close proximity to existing development and within the footprint of the proposed development, the above listed revegetation and rehabilitation requirements are considered to substantially outweigh the negative residual impacts. The Department reinforces that it is important to consider the impacts of the development in the context of the history of the site, the existing development and the substantial mitigation and off-sets imposed. In this context, it is clear that the proposed development will not have a significant negative impact, and is likely to actually improve ecological values on the site and surrounds in the longer term.

5.2 Built Form and Density

Applicant's Position

The provisions of DCP 18 are divided into objectives, prescriptive measures and controls and the application satisfies the objectives, despite breaching the prescriptive measures and controls.

Issues Raised in Submissions

Concern was raised that the application did not comply with the controls of DCP 18 in relation to density.

Department's Position

A detailed assessment of built form and density is provided in the independent review included as Appendix H.

Development Control Plan 18 provides guidance on development densities for the site, and acts as a focus for the assessment of this aspect of the proposal. The DCP divides the site into Precinct 1 and Precinct 2. A comparison of the proposed development against the performance outcomes outlined in DCP is provided in Table 3.

Table 3 - Assessment of Development Against DCP 18

Criterion	Precinct 1		Precinct 2	
	DCP Specification	Proposed Development	DCP Specification	Proposed Development
Floor space ratio (FSR)	0.07:1	0.137:1	0.17:1	0.171:1
Bedrooms per hectare	14	23.2	28	28.4

From the above table, it is clear that the proposed development is consistent with the requirements of DCP in Precinct 2. In the case of Precinct 1, the proposed FSR is approximately twice that envisaged by the DCP and bedroom density is about 1.6 times the DCP specification.

The Department considers that the DCP did not anticipate the style of accommodation to be provided on the site and appears to underestimate the need for larger three bedroom tourist accommodation to appeal to the higher end of the tourism market. In this regard, the Department considers it appropriate to provide some flexibility in FSR and bedroom densities on the site, particularly in relation to Precinct 2. Flexibility, however, is dependent on achieving the other outcomes of the DCP, particularly the requirement that Precinct 2 is a lower density than Precinct 1, and that development should not have an unacceptable impact on surrounding sensitive land and wildlife.

The DCP provides that additional development densities (over those referred to in the table above) may be appropriate and could be approved if existing cabins on Lot 6 DP 243218 are demolished. In this manner, the DCP includes provision for density incentives to encourage removal of cabins on Lot 6 and rehabilitation of that land as a wildlife corridor. As part of its application, the Applicant has foreshadowed demolition of cabins and rehabilitation of Lot 6 as part of the future stages of the development.

The Department considers that provided existing cabins are removed from Lot 6, then the increase in densities proposed by the Applicant in Precinct 1 would be appropriate. Further, the Department considers it important to encourage the Applicant to undertake these works as rehabilitation of Lot 6 will provide significant ecological benefits with the restoration of a significant wildlife corridor. As such, the Department recommends that the Applicant be required to demolish the cabins on Lot 6 once Stage 1 of the development is 70% constructed, or within three years of the commencement of construction, whichever is the sooner.

The independent review of the urban design of the development suggests that for privacy reasons, deletion of four of the proposed buildings in Precinct 1 would be necessary. The Department concurs with the independent review on this point, but rather than automatically deleting the buildings in question, recommends that the Minister, through conditions of consent, provide the Applicant with the opportunity to demonstrate a modified design or building orientation to achieve the same privacy outcomes. This may be achieved, for example, by rotating buildings, altering window locations and altering the relative locations of rooms within the particular buildings.

5.3 Traffic Generation and Impacts

Applicant's Position

The additional traffic resultant from the proposal is minor and will have no significant impact to the level of service of intersections or the capacity of the roads.

Issues Raised in Submissions

Concerns were raised in relation to:

- the use of the residential area of Sunrise Beach by traffic from the development.
- the appropriate development standard for Bayshore Drive.
- the need for upgrading of the crossing over the railway line.
- the need for the upgrade of the intersection of Bayshore Drive and Ewingsdale Road.

Department's Position

Comments, including recommended conditions were received from the Roads and Traffic Authority in response to the required referral under SEPP 11. This response indicated that the proposal would have an impact on the capacity of the intersection of Bayshore Drive and Ewingsdale Road and that the developer should make a contribution towards the upgrade of that intersection by Council. Further, it was indicated that it would be appropriate to upgrade the level crossing of the railway line to the north of the site given the increase in usage. Conditions reflecting these recommendations have been included in the recommended instrument of consent.

Discussions between Council and the Applicant in relation to the other two issues raised in Council's submissions have resulted in an agreed level of works to Bayshore Drive and to address concerns in relation to the use of the residential area of Sunrise Beach by through traffic.

Council has issued its General Terms of Approval under the *Roads Act 1993*, which have been incorporated into the conditions of consent.

5.4 Impacts on Infrastructure and Services

Applicant's Position

The Council has advised that the local sewage treatment plant has sufficient capacity for the proposed Stage 1 development.

Issues Raised in Submissions

Concern the development cannot be serviced with a sewer connection.

Department's Position

Council has advised that the local sewage treatment plant has sufficient capacity for the proposed Stage 1 development and as such the site can be appropriately serviced in regard to sewage.

The *Byron Section 94 Development Contributions Plan 2005 (incorporating Amendment No. 1)* applies to the application. This Plan requires contributions to be paid by tourist developments for a series of community facilities and services. The contributions are calculated on the basis of the number of beds within the tourist facility and it is Council's practice (though not included in the Plan) that each bedroom has two beds. Such a practice is reasonable for a tourist resort. Also part of the contribution is chargeable on the basis of the number of staff employed, though this is limited to certain types of facilities.

The proposal provides for 291 bedrooms, and assuming each bedroom has two beds, the total bed count for the proposed development is 582. Division by 2.6 (the assumed occupancy rate of a unit under the plan – known as an SDU) yields a total of 223.85 SDU's. Additionally, staff rates of 1/20m² and 1/40m² apply for commercial and retail development respectively and with 514m² of retail and 375m² of

commercial use, 12.85 and 18.75 employees, respectively apply for the calculation. The employee numbers are multiplied by a figure of 0.38 to give 12 SDU's.

The existing development has 116 bedrooms (including Lot 6 in DP 243218). When the number of beds are multiplied by 2 and then divided by 2.6, the accommodation units result in a total of 89.23 SDU's. Additionally, staff rates of 1/20m² and 1/40m² apply for commercial and retail development respectively and with 600m² of retail and 290m² of commercial use, 15 and 14.5 employees, respectively apply for the calculation. The employee numbers are multiplied by a figure of 0.38 to give 11.21 SDU's.

In order to calculate the final applicable SDU's for the development the existing SDU's need to be subtracted from the proposed SDU's, giving 134.62 SDU's for the accommodation units and 0.79 SDU's for employees. It should be noted that the employees contribution is only applicable for roads, and civic and urban improvements.

Using the rates per SDU for calculation of contributions, the following contributions are payable. Given the extensive area of land to be rehabilitated and to be covered by a voluntary conservation agreement and the land to be rehabilitated offsite in the dune area, the provision of a contribution for open space is considered unreasonable. Further, given the extensive works required to Bayshore Drive and the cycle way connection required, it is similarly considered unreasonable to require the separate payment of a contribution for road works or cycle ways.

Table 4 - Calculation of Contributions to Infrastructure and Services

Type of Contribution	SDU's	Rate	Contribution
Community Facilities	134.62	\$1,498.73	\$201,759.03
Open Space	134.62	\$8,586.32	\$0
Roads	Per trip	\$761.49	\$0
Car Parking	Per space	N/A	\$0
Cycle Ways	134.62	\$695.66	\$0
Civic and Urban Improvements	134.62	\$1,538.55	\$207,119.60
Rural Fire Services	134.62	N/A	\$0
Lifesaving Facilities	134.62	\$25.01	\$3,366.85
		TOTAL	\$412,245.48

5.5 Flooding and Drainage Impacts

Applicant's Position

The flooding report has taken into consideration both global warming and sea level rises and is conservative in estimating impacts. Such impacts off-site are so small as to be insignificant and the proposal has been appropriately designed with regard to flooding.

Issues Raised in Submissions

The proposal is located in a flood prone area and inadequate regard has been taken of the impacts of sea level rises and global warming.

Department's Position

A report addressing flooding and drainage has been prepared for the development by Maunsell Australia Pty Ltd, entitled Flooding and Drainage – An Assessment of Flooding and Drainage Requirements, dated 2005.

The report identifies potential flooding events as a result of inundation from elevated ocean levels and Belongil Estuary. The report identifies the 1% AEP flood event as

being determined by a combination of a 1% AEP design ocean level (stormtide) and a 1% AEP flood from Belongil Creek. The report indicates the site is classified as Low Hazard Flood Storage.

The proposal to erect the buildings on stumps above the Probable Maximum Flood (PMF) level will result in no significant decrease in flood storage area and as such will ensure no significant increase in flood levels on other land.

The buildings are adequately flood proofed, being above the PMF, the flood waters are not unacceptably restricted, being only slowed, and there is no significant increase in flood depth on adjoining properties.

Comments received from the Department of Natural Resources indicate that the application adequately addresses flooding issues and comments from Council's Engineer indicate that the flood report is generally supported.

5.6 Coastal Processes, Beach Access and Use

Applicant's Position

The proposed tourist development within Stage 1 is to be outside the identified coastal processes risk area.

It is proposed to reconstruct Bayshore Drive and dedicate it to Council as a public road. Parking spaces are to be provided off Bayshore Drive for use by the public travelling to the beach. A single access path to the beach is to be provided, which will have an easement for public access created over it.

Issues Raised in Submissions

The proposal has not adequately considered the future impacts of coastal erosion due to climate change and the rising sea level.

Concern was also raised that current access to the beach (informal) will be lost.

Department's Position

The proposed tourist development within Stage 1 is to be outside the identified coastal processes risk area and is appropriate. The Department considers that the proposed development is sufficiently distanced from the coast such that climate change and rising sea levels will not impact on the development for a significant period of time.

The proposal of the applicant is appropriate subject to recommended conditions as to the number of parking spaces, construction of Bayshore Drive and type of access path appropriate across the dunes.

5.7 Nature of the Development

Applicant's Position

The management regime required in the Community Management Statement will ensure the site is operated as a tourist resort. The separate ownership by way of strata titling does not give the owners the right to occupy the accommodation units as residences contrary to the development consent and contrary to the Community Management Statement.

Issues Raised in Submissions

Concern was raised that the accommodation units have been designed so as to allow permanent occupation as dwellings (quasi-residential development, rather than a tourist resort).

Department's Position

Whilst the accommodation units are designed such that they *could* be occupied as dwellings by permanent residents, the requirements of Council's controls for the site are such that any development complying with those design requirements would necessarily be capable of occupation as dwellings.

As a means to ensure that the development is in fact utilised for tourism rather than permanent or semi-permanent residential occupation, the Department recommends that the Minister impose specific conditions on the proposal requiring a Community Management Statement with the following specifications:

- the management of the accommodation units through one agent.
- each unit is to be occupied by the owner or resort guest for no more than 90 days in each calendar year.
- the agent to keep a record of usage and length of stay for each unit (a copy of a summary of use for each unit is to be provided to Byron Shire Council and the Community Association on a yearly basis at the end of each financial year).
- the Community Association is to be required to take action against any owner breaching the Community Management Statement requirements for length of stay.
- the Community Management Statement is to include a provision requiring written consent from Byron Shire Council to amend these provisions within the Statement.

The Department considers that this provides an appropriate level of control to prevent permanent occupation as dwellings.

6. SECTION 79C CONSIDERATION

Section 79C of the *Environmental Planning and Assessment Act 1979* sets out matters that a consent authority must take into consideration when it determines a development application. The Department has assessed the development application in the context of Section 79C of the Act, having regard to the identified heads of consideration. This consideration is provided in Appendix A. The Department is satisfied that the merits of the proposed Stage 1 development warrant approval subject to the recommended measures outlined in this report. The Department satisfied that it is appropriate for future stages to be the subject of a separate, future application, assessment and determination process.

7. RECOMMENDED CONDITIONS OF CONSENT

The Department is generally satisfied that the proposed Stage 1 development could be constructed and operated within appropriate environmental, economic and social impacts subject to the imposition of conditions. As a consequence of not determining future stages at this time, plans and design drawings will need to be updated to reflect consequent alterations to the subdivision, demolition of buildings, the proposed road layout, and additional revegetation work to create a wildlife corridor.

To facilitate the amendment of development plans to reflect these alterations, the Department recommends granting deferred commencement consent based on submission of updated plans. This approach would provide the Applicant with certainty in relation to the development consent, while providing the Minister, through the Department, an opportunity to ensure that detailed plans comply with the requirements of the consent.

8. CONCLUSIONS

The proposed Stage 1 development is an appropriately low scale and low density form of tourist development that has an appropriate regard for its potential impacts upon the sensitive locality in which it is located. The design is innovative, appropriately addresses ESD principles, sits well within the natural environment and appropriately responds the North Coast architectural style.

The hazards of the site are appropriately addressed with the Stage 1 development being located outside the 100 year coastal erosion hazard zone and having appropriate Asset Protection Zones for bushfire protection. The design appropriately responds to the onsite flooding hazard and provides a suitably designed evacuation route in the event of a PMF event. Appropriate servicing is available and proposed for the development.

The environmental initiatives including the restoration and revegetation works to the dune system, the golf course and the riparian areas of the site are appropriate and will improve these areas significantly and will further protect the adjoining sensitive coastal, estuarine and wetland environments. However, given the proposed density of the southern portion of the site, the retention of the development on Lot 6 in DP 243218 is inappropriate, allowing for inadequate wildlife movement to the south. Accordingly, a condition of consent is recommended requiring the demolition of the cabins and the revegetation of this portion of the site to form a wildlife corridor.