



Item 8.1

**DA 2018/381
Lot 2, DP 1065811
404 Old Byron Bay Road, Newrybar**

**Attachment 7
Public Submissions**

Ordinary Meeting 28/11/2019

Martin Scott

From: Leanne Cramp <leannecramp@yahoo.ca>
Sent: Monday, 16 July 2018 21:30
To: Ballina Shire Council
Subject: Unauthorised Road Construction at 404 Old Byron Bay Rd Newrybar

Attention; Paul Hickey, Matt Wood, Vince Hunt, Andrew Smith

Dear Council Staff,

This letter is being written out of absolute frustration, but with the hope that I may be provided with some clarity, answers and a way to negotiate the way forward.

I will keep it brief and in dot points so that I may get tot the point.

1. December 2016 - I returned to my property after a long absence to find major roadworks occurring on the spur at property 404 Old Byron Bay Rd. I rang the council and was informed that no DA was in place for the road construction.

2. I was informed that a DA was not necessary. I questioned this with council but did not get a clear response. I was informed that the road was existing and was being re-surfaced. I disputed this as I have lived here for 26 years. There is an existing road, but the 'new road' was nowhere near it. The owners of 404 then admitted that the existing road was not adequate and therefor decided to build a new one.

3. I spoke to the excavator and he advised me that he made a 'new cutting' and created a new road.

4. More phone calls and letters to council.

5. A DA is received by council for a large ridge-line development at 404 Old Byron Bay Rd, Newrybar.

6. I am informed by council that they are unable to make a determination on the legality of the disputed road until the DA process is resolved. I was advised to keep my objections regarding the DA to the dwelling only, as the road wasn't a part of the application.

7. I was confused by this as I was unclear how such a DA could be put forth when the road hadn't been approved, hadn't been included in the DA and really didn't exist !!!!

8. The Whites withdrew their application.

9. I was informed by council that the issue of the illegal construction of the road was being referred to the councils Compliance Department.

10. I was advised by council that the Whites had been asked to provide information regarding the road construction and they were to be given the opportunity to 'clean up' around the creek crossing and place 'better drainage' on road. I, like my neighbours asked why the road wasn't closed and repatriated. We were asked by the compliance section to document the road use and keep a log of how often the Whites were using the road. This was done.

11. I was asked to provide photos of the original road to the council. This was done.

12. I sent several emails to Stephen Rendall and I also attempted tp speak to him on ten occasions, leaving messages and requesting a response to my on-going enquiries. I had one verbal response and just recently received a letter on the 29th June stating that a new DA has been lodged, 2018/381. Therefore the Compliance Section is not longer attending to the case of the road.

13. The new DA refers to the road as 'existing' and in fact it will be up-graded !!!!

Can I refer to this illegality in my next submission ? Will this infer that the council has not shown due diligence and therefore my objection to the current DA will be omitted?

I was informed that I need to be patient but now my patience is very thin and I am now faced with the added stress of responding to the new DA. This is a diabolical situation and as a long term resident and ratepayer, I feel as if my

concerns are being totally overlooked. The beautiful spur has been permanently scarred by an un-lawful road construction, the natural habitat has been disrupted, the wild-life corridor split in half and now they want to construct a house on the top of ridge !!!!!

Please advise me at your earliest possible convenience what is happening about the road, its legality and how the current DA could possibly proceed whilst there are so many unanswered questions.

Please respond to my questions at your earliest convenience. I can also be reached on MOB; 0423356833

Yours truly,

Leanne Cramp

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382 Old Byron Bay Rd
Newrybar 2479
20 July 2018

Attn: Paul Hickey
General Manager
Ballina Shire Council

Dear Mr Hickey

Re: DA 2018/381 – 404 Old Byron Bay Rd, Newrybar – Objection.

Thank you for the opportunity to comment on this newly submitted DA, replacing DA 2017/584 which was withdrawn in November 2017 after neighbours raised a number of substantial issues. The DA is for a new two storey house on the ridgeline of the Newrybar Scenic Escarpment, with associated swimming pool and other works, optimistically costed at \$630,000.

The new DA, although more detailed and verbose, does little or nothing to address the issues raised by neighbours with the previous DA, nor does it provide information requested by Council before the last DA was withdrawn. And surprisingly given the level of opposition to a ridgeline development in the Newrybar Scenic Escarpment Zone, it does not not move or modify the proposed dwelling to alleviate this issue. To all intents and purposes, this is the same proposal as originally submitted.

This Objection outlines why I submit that Council has no choice but to refuse this DA, by outlining six specific Grounds for Refusal.

GROUNDS FOR REFUSAL OF DA 2018/331.

Grounds for Refusal 1 – The DA does not comply with Zone Objectives.

Grounds for Refusal 1 evaluates this proposed development as measured against the LEP Objectives of Council for this zone. As Council's Clause 9 (7) states. "Council shall NOT grant consent to the carrying out of development of land to which this plan applies unless the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out". This clause does not leave any "wriggle room" - either it is consistent with all objectives, or it should be refused.

These objectives are not assessed individually in the submitted DA. My initial overview comments, sufficient to justify refusal of this DA, are outlined below: this Objection submission contains further supporting material in sections which follow.

PRIMARY OBJECTIVES (extracted from Council's LEP for this zone)

(a) to protect and enhance areas of particular scenic value to the local government area of Ballina

RESPONSE – this two storey ridgeline development with associated substantive roadworks, swimming pool and associated facilities, visible from North, South, East and West clearly detracts from the scenic value of the Newrybar Scenic Escarpment and is contrary to this objective. The proposed development neither protects nor enhances this area of scenic value.

(b) to encourage the productive use of land within the zone and enable development ancillary to agricultural land uses, particularly dwelling-houses, rural worker's dwellings and rural industries

RESPONSE – the development does nothing to support this objective

(c) to ensure development within the zone maintains the rural character of the locality and minimises any scenic impact

RESPONSE - the proposed development has major scenic impact on the area, and detracts from the rural character of the scenic escarpment by imposing a two storey dwelling, with associated asphalted roadworks, turning bays, passing lanes, septic systems and trenches, water tanks, a swimming pool and associated ancillary structures on the ridgeline: accompanied by extensive earthworks. This cannot be construed to be minimising the scenic impact.

(d) to ensure development within the zone is of a scale and nature that will not adversely impact on the existing amenity of the area

RESPONSE – the proposed development, including substantial roadworks and earthworks, significantly affects visual amenity from many neighbouring properties and from public places. Its scale and nature is not consistent with the Objectives of the zone.

Summary. This clear failure to meet the primary objectives of the zone gives immediate grounds for refusal of this DA. Council's reasons for establishment of a Scenic Escarpment Zone (7d1) with the Objectives outlined above were to protect the scenic values of this area. This proposed development does the opposite.

Grounds for Refusal 2. DA 2018/331 does not comply with Development Controls (ref Sec 4.1.3 of DA)

The application is clearly a ridgeline development: indeed, although responses to one section (4.1.3) of the DA submission semantically avoid this description, other sections of the DA (The Visual Impact Assessment, Sect.3.1) make clear that this is ridgeline and refers to it as such. Should there be any doubt, the plans indicate that the house is visible from north, south, east and west of the ridge. The plans indicate a ridgeline development.

Clause 3.2.3 (ii) of the relevant section of Ballina's DCP states:

“Buildings and works should not be sited on ridgelines unless it can be demonstrated that no suitable alternative location is available”.

Therefore it is incumbent upon the developer to explain in detail that no suitable alternative site exists. The DA does not do this, or address this absolutely mandatory need in any detail.

A clear alternative location exists on any property with an existing dwelling: the site of the current dwelling. In this case it is also 2 storey, and could be demolished to build a new home if required. The developer should begin by explaining why a house cannot be built on the site where a substantial house has already been built: a very difficult argument indeed. But as well, numerous other alternative sites exist in the general area of the current dwelling and elsewhere on this large rural block. The owner might prefer to build on the ridgeline, but that is irrelevant in relation to abiding by DCP requirements. They must demonstrate that no alternative exists.

The DA response here also makes the claim that the new DA is “two metres lower than the previous DA” while not giving any detail explanation on how or why this is so.

While there might be unusual perspectives in which this claim might apply, from Old Byron Bay Road to the west, where most immediately affected neighbours are, the following development heights exist on the plans submitted, compared to the previous DA.

South western corner Old DA - 7.5 metres above ground (incl atrium) 5 metres above ridgeline
New DA – 7 metres above ground, 5 metres above ridgeline
North Western Corner – Old DA – approx. level with ridgeline. New DA – approx level with ridgeline.

So it can be seen that from this comparison – the dominant perspective for residents from Old Byron Bay Road – the new dwelling is not 2 metres lower. It also has a 7 metre building height above ground level in the SW corner: in excess of what is recommended for this zone.

Additionally the dwelling is, in all major dimensions, unchanged from the previous DA.

Summary: Quite clearly, the dwelling is inappropriate for a ridgeline in a 7d1 Scenic Escarpment Zone, and alternative sites exist. No amount of additional information or vegetation screening is going to change this primary reason for refusal of this DA.

Grounds for Refusal 3 – No Statement of Environmental Effects (ref Sect 4.1.7 of DA)

The application ignores the requirement – also requested from the owner in a letter from Council of Nov 10 2017 – for a Statement of Environment Effects – claiming instead that no vegetation removal is proposed and therefore there is no problem or need for any environmental statement.

However, as Council requested in a letter to the applicant in a letter dated November 10 2017, the DA must address Councils DCP requirements relating to natural areas and habitat, including wildlife corridors. This has not been done despite Councils specific request and the clear requirement for this information as outlined in the DA guidelines.

Clearly no ecologist has been consulted in preparing this response. This is a known wildlife corridor, and the proposed DA could affect it substantially. The proposed road, to be widened and asphalted, cuts through rainforest areas, and then proceeds to create a barrier (made worse by current use of electric fencing) to wildlife using this corridor. A mapping of species known to be in the surrounding area would seem to be a basic requirement, and the requirements of the Commonwealth Environmental Protection and Biodiversity Conservation Act of 1999 is also relevant. This wildlife certainly includes wallabies, eagles, echidnas and most probably koalas, and many other species known in the neighbouring area, including threatened migratory species such as the Cattle Egret which thrive on pastoral land. A basic understanding of the nature of wildlife corridors has not been demonstrated in this application, and there is clear evidence that the development as proposed would affect the wildlife corridor.

If there was any serious intention to consider this DA further, we believe it is essential that a thorough assessment be carried out by a qualified ecologist as regards this before any development proceeds; and indeed this is a requirement for development approval: SEPP 44 (State Environmental Planning Policy No. 44 - Koala Habitat Protection). SEPP 44 applies to land greater than 1 ha. Only a qualified ecologist can undertake the SEPP 44 assessment.

The Koala is listed as vulnerable under the Biodiversity Conservation Act (BC ACT 2016), and if a development is going to impact the Koala, then the BC Act also needs to be addressed. The BC Act provides the requirements for site ecological assessments, and provides questions to be answered by a qualified ecologist. A flora and fauna assessment should be included in all proposals where Koalas could be impacted.

Summary: The applicant has failed to demonstrate that the development will not have significant impacts on the ecology of the site or the locality. We do not point this out with the intention of requiring additional information to be provided: we point this out as further evidence of the inadequacy of this DA and the applicant's reluctance to address this matter. This is additional grounds for refusal.

Grounds for Refusal 4 – Unacceptable Visual Amenity and Other Impacts (ref Appendix A – Visibility and Visual Matters Report - of DA)

The basic premise of this DA seems to be that the only visual impact will be from the proposed dwelling itself, whereas the DA also requires a new 450 metre long asphalted road clearly visible along the ridge, and 6 metres wide in sections. The failure to adequately address the visual impact of the road as a significant issue is one of the major flaws of the analysis in this section.

The report by Design Team Ink also uses some unusual methodologies and low levels of consultation and research to justify the dwelling.

Part of the justification for the unusual drone assessment methodology for assessing impacts on neighbouring properties is the statement that “the owners requested access from neighbouring properties but were refused”. In our case at least, this was not the case: an email we received requested access, to which we replied asking politely if there were any changes proposed from the previous DA; and suggesting that if this were not the case, adequate information and documents were available for assessing impact on the Councils website in response to the previous DA. We did not get any response to this email.

It is clear the materials submitted in response to the previous DA as regards visual impact were not assessed or utilised. We have included as Appendix A to our Objection some of the materials previously submitted, because they provide better factual evidence of the visual amenity situation than some sections of this report.

Section 3.1 of this report accurately describes the proposed house site as being on a scenic ridgeline (see previous sections of this Objection which point to the specific conditions Council attaches to such developments.)

Section 4.1 describes a methodology for assessing impact, based on a height of 5 metres above ground in the south western corner of building. But the plans submitted show a height of 7 metres above ground in this corner, It could be deduced from this methodology that some of the calculations made are inaccurate.

Calculations of the distance of dwellings are also perhaps not accurate: eg the distance of our house (382 Old Byron Bay Rd) from the proposed dwelling was previously calculated as 255.49 metres, not 289 metres as indicated in the table in this report.

The assessment of visual impact for 382 Old Byron Bay Road is also very wrong. The report states “It is clear from the montage below that only a small portion of the roof and western wall are visible from this dwelling.”

This is a long way off the mark. According to plans submitted, we would see about 95% of the roof line, and an estimated 55% of the western wall!

It also claims that tree plantings will alleviate this further: But as our eyesight level is approximately level with the ridgeline at the new construction, and the plantings are below the ridgelines, it will be decades before such filtering comes into play from our perspective. These trees are planted on a SW facing slope, poor growing conditions for vegetation, and will take a long time to mature. But even so: no amount of plantings could change the inappropriateness of the proposed two storey development on the ridgeline of a scenic escarpment.

Many of the problems with this report could have been avoided. A simple answer to our email requesting whether changes to the siting of the development were being envisaged would have rendered better information. Accessing visual photos and information plans in submissions to the previous DA would have given more scientific assessments of visual impact. Photos taken by Council Officers from our house and on Council files would add to the evidence.

We would be surprised if there were not other substantial inaccuracies but will leave it to others to comment on specifics as regards their own properties.

But to summarise our individual position:

The proposed dwelling in our case blocks ocean views. It will be visible from our bedroom (even from in our bed), our bathroom, our kitchen, our dining room, our lounge room, our deck, and from other rooms. The impact is substantial: this is a scenic escarpment which until this proposal offered peaceful rural views: and is zoned to protect this ambience. We object strongly to this being transformed into a residence with associated major road development, and would expect our property value to be significantly devalued if such a proposal was allowed to proceed. It would impact our visual amenity, substantially affect our privacy, and erode our property value.



Fig 1 – Sunrise from our house. The proposed dwelling site is in the centre of this photograph where the first light is strongest in the photo and between the clump of trees to the south and the more scattered trees to the north.

There are also problems with the assessment of views from Old Byron Bay Road. The assessment evaluates visual access for car drivers to the house site only. It does not cover pedestrian access on this popular walking area for both locals and visitors to the area which provides different criteria altogether for assessment of visual amenity. These have not been addressed. The road is also a popular scenic route for cyclists.

Another substantial flaw in this Visual Assessment Guide is that it pays attention to the dwelling, but not to other changes proposed to the landscape which for some residents will have greater impact. For instance, a 6 metre wide (in sections) 450 metre long asphalted road running the length of a scenic escarpment area, clearly visible to many neighbours, barely rates a mention. No evaluation of the visual amenity affects of such a substantial construction is a major omission and renders this report as less than satisfactory – even if there were no other problems.

Summary: The visual amenity considerations put forward in this DA are incomplete and often inaccurate. The impact of the proposed major road development is barely considered: the details are often inaccurate when it comes to visual amenity from specific properties. But it is not lack of detail which is the primary flaw – it is the lack of a primary understanding that any development on this scenic escarpment ridgeline, with accompanying major roadworks along the ridge, will impact on the visual amenity, the personal privacy, and the property values of neighbouring properties. No additional vegetation screening or information will alter this and this is further grounds for refusal of this DA.

Grounds for Refusal 5 – Road Access Issues not addressed (ref Appendix C (and B) of DA

Access is clearly a major part of any development – especially for a dwelling requiring 450 metres of access road from the existing public road. It is therefore surprising to see that this is addressed in an Appendix rather than as part of the document proper.

The Appendix perpetuates the description of an “existing road”. As Council knows, this has been the subject of some controversy, so it is surprising to see that in the section devoted to seeking approval for a road, the only justification given for this description is that the engineer employed in the construction of the road says “there was an existing road”. No details on how this was assessed by the engineer are given whatsoever: no independent verification for this assumption is included in this DA.

The original earthworks for construction of this road took place in 2017, and was the subject of immediate complaints by neighbours to Ballina Shire Council. The road was then included, described as an existing road, in DA 2017/584. The DA suggested that the road was previously existing; however, this description was disputed by neighbours who have lived in the area for a long time, and by historic aerial photographs and other evidence presented. Council wrote to the owners of 404 Old Byron Bay Rd questioning this assumption on November 10 2017: shortly after this the DA (2017/584) was withdrawn, and the road issue was handed to Compliance Division of Council.

Council referred to this in correspondence to the owner dated February 9 2018 as “unauthorised earthworks, including construction of an internal road”. We are unaware of details of correspondence between Council and the owners from that point on, but are aware of remediation works being requested. However the status of the road would appear, from this DA, to still be an unresolved matter.

In these circumstances, and given that the existing unauthorised earthworks including construction of an internal road will when upgraded create a substantial scar on the scenic escarpment, we believe the DA must be assessed on the basis that the proposed road is a new development, not any existing facility. The DA does not address this.

We also note that Appendix B (Bushfire Report) requires construction of a road with passing bays, which are being planned along the ridgeline and in the entry area of the rainforest gully. A requirement for a 6m by 8m turning bay also appears in this report. It does not appear in the plans submitted. This is a substantial additional impact on the ridgeline development not included in the DA plans. The DA also does not address issues for neighbours arising from car headlights and vehicular traffic noise.

We also note the requirements of Section 4.1.3 for electrical services. The applicant has given very few details of his proposed solar system, its levels of output, backup generators etc, so it is not clear whether this complies. We also note its requirements that power lines be underground if used.

Summary: Regardless of the status of the road, no formal application for roadworks is made in this DA. But it is evident that a substantial upgrade and new works are required to provide asphaltting, overtaking bays, turning circles, and erosion control over a distance of 450 metres and clearly interrupting rural views of the scenic escarpment for neighbouring properties. The only purpose for this road would be to provide access to a dwelling in an inappropriate location which is also contrary to Council requirements for this zone. The lack of proper attention to this question and the difficulties the applicant has demonstrated in understanding the basic requirements for access provision presents further grounds for refusal.

Grounds for Refusal 6 – Earthmoving, Levels of Construction Noise and Other Factors

Construction on this ridgeline would create both temporary and permanent impacts. The ridgeline development is not just a house, but an access road 6 metres wide in parts, a 6m by 8m turning bay, a swimming pool, absorption trenches on the ridgeline, on site septic, water tanks, and doubtless other temporary and permanent ancillary structures.

The building process will require power supply. The DA works on the basis on a dwelling not connected to the grid: so we can assume a large power generator utilising fuel will be used on site during this process. The DA is scant on details as to the amount of earthworks involved in a dwelling partially cut into the ridgeline; and traffic levels during construction will be substantial and noisy. We do not believe that temporary power poles along the proposed road should be allowed to facilitate construction.

We note that the siting for channels for treated effluent are on top of the ridge, further adding to the substantial earthworks in this area.

Summary: The amount of development and earthworks required is totally inappropriate for a scenic escarpment. Required detailed information is lacking, but in this case would do nothing to render an inappropriate dwelling location as appropriate. This sort of development in this location must be refused.

SUMMARY OF REASONS FOR REFUSAL

1. The proposed development does not meet the Objectives of Council's 7d1 zone as stated in the LEP; rather, it detracts from the Objectives of the zone and should be refused.
2. This is a ridgeline development. Ballina Shires DCP clearly states that this is only allowed in the Newrybar Scenic Escarpment Zone if no alternative exists. It is clear that alternatives exist, and the DA should be refused because it does not and can not address this issue.
3. No Statement of Environmental Effects is included.
4. Calculations on visual amenity are very inaccurate in parts when better information is available. Visual amenity consideration for the new 450 metre long access road to the ridgeline are not considered in the bulk of this statement.
5. The proposal affects our visual amenity, blocks ocean views, affects our privacy, and would reduce our property value.
6. The access road is only addressed in an Appendix, when this has been the subject of much correspondence with Council. Scant evidence, and no independent evidence, is presented for the claim that this is an existing road: Council has described this as “unauthorised earthworks, including the construction of an internal road”. We believe the road must be assessed as a new development; in which case the scale and impact would have to be addressed more substantially.

If this was the first DA submitted for this particular proposal, there might be grounds to suggest that it would be appropriate to request further information from the applicant and delay any decision making until such information was provided. But this is not the case: Council has in the past requested information which has not been provided, and information which was clearly required for this DA was not provided. This lack of information detracts from the validity of the DA submission. However, we do not believe it constitutes grounds for Council to delay a decision while requesting further information from the applicant.

Rather, we submit that the above Objection outlines six grounds, each valid in their own right, for immediate refusal of the DA. The applicant should be clearly told that no dwelling in this location is allowable under Ballina's Development Control Plan for the Newrybar Scenic Escarpment, and we can save ourselves from another round of excessive documentation, paperwork and unnecessary expense for the developer, Council, ratepayers and neighbours if Council acts promptly to say that this is so.

Sincerely,

Ian Peter

Appendix A – Previously submitted scans on visual amenity not taken into account by this DA. These documents were submitted to the last DA and clearly show site perspectives and visual issues from various neighbouring properties.



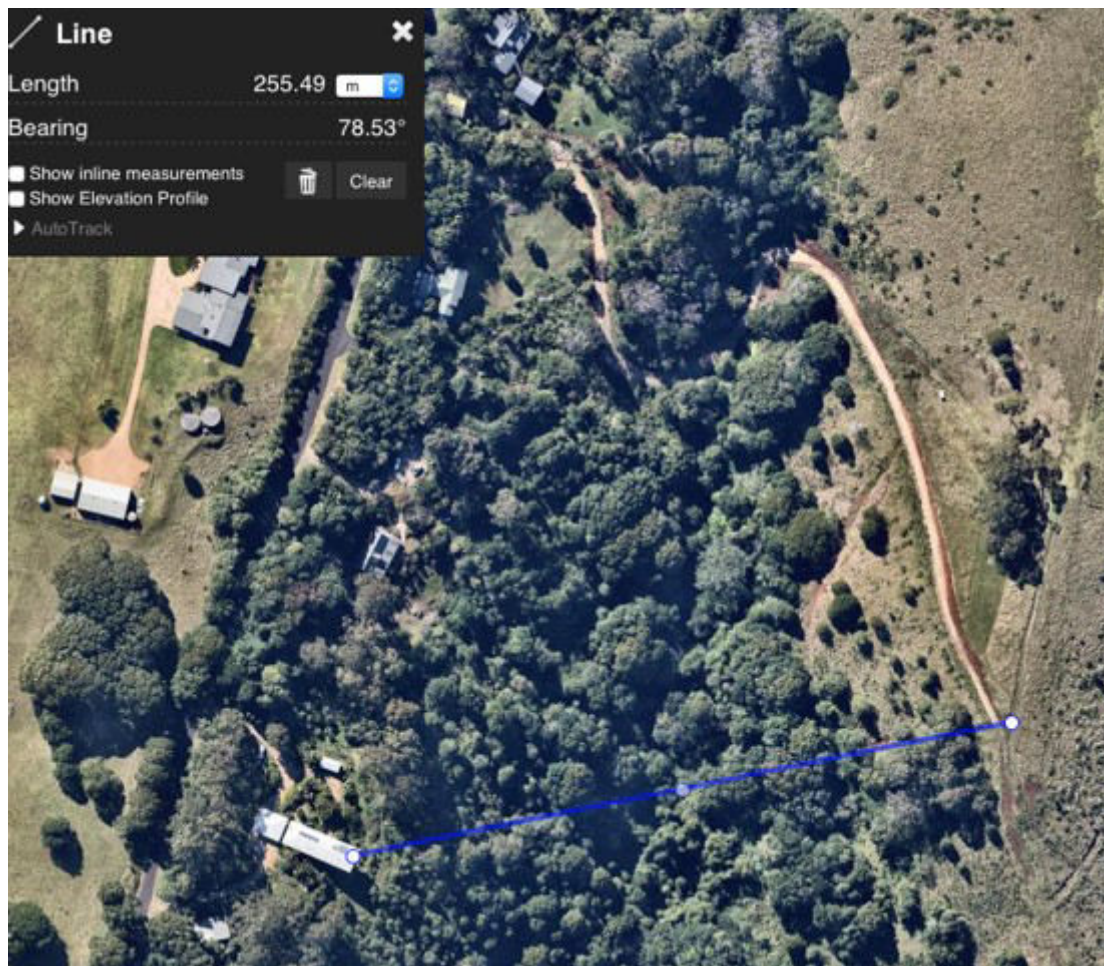


Fig 1,2,3 – Perspectives from 382 Old Byron Bay Rd.

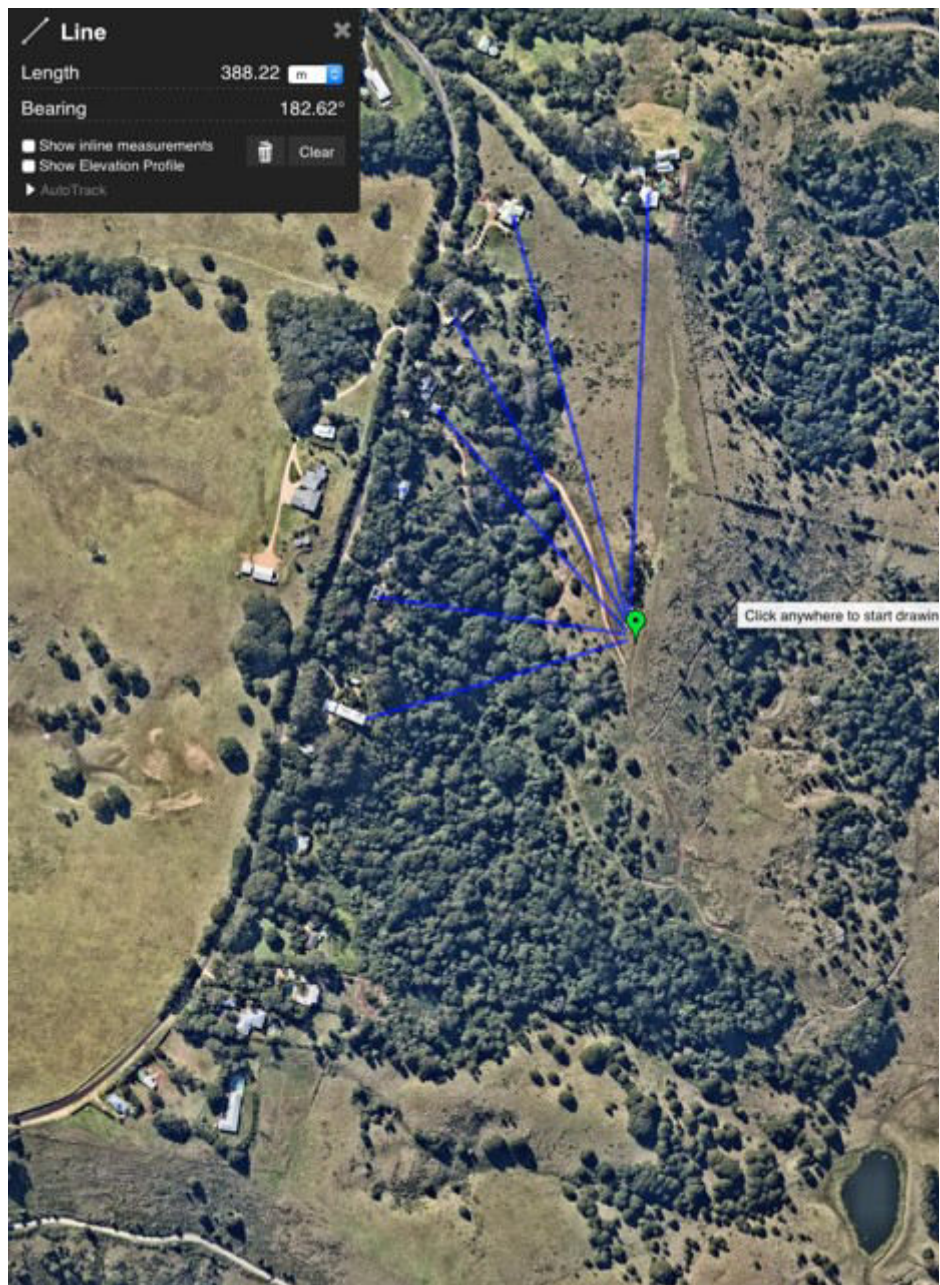


Fig 4 – perspectives from neighbouring properties on Old Byron Bay Rd



Fig 5 – Perspectives from neighbouring properties on Old Byron Bay Rd

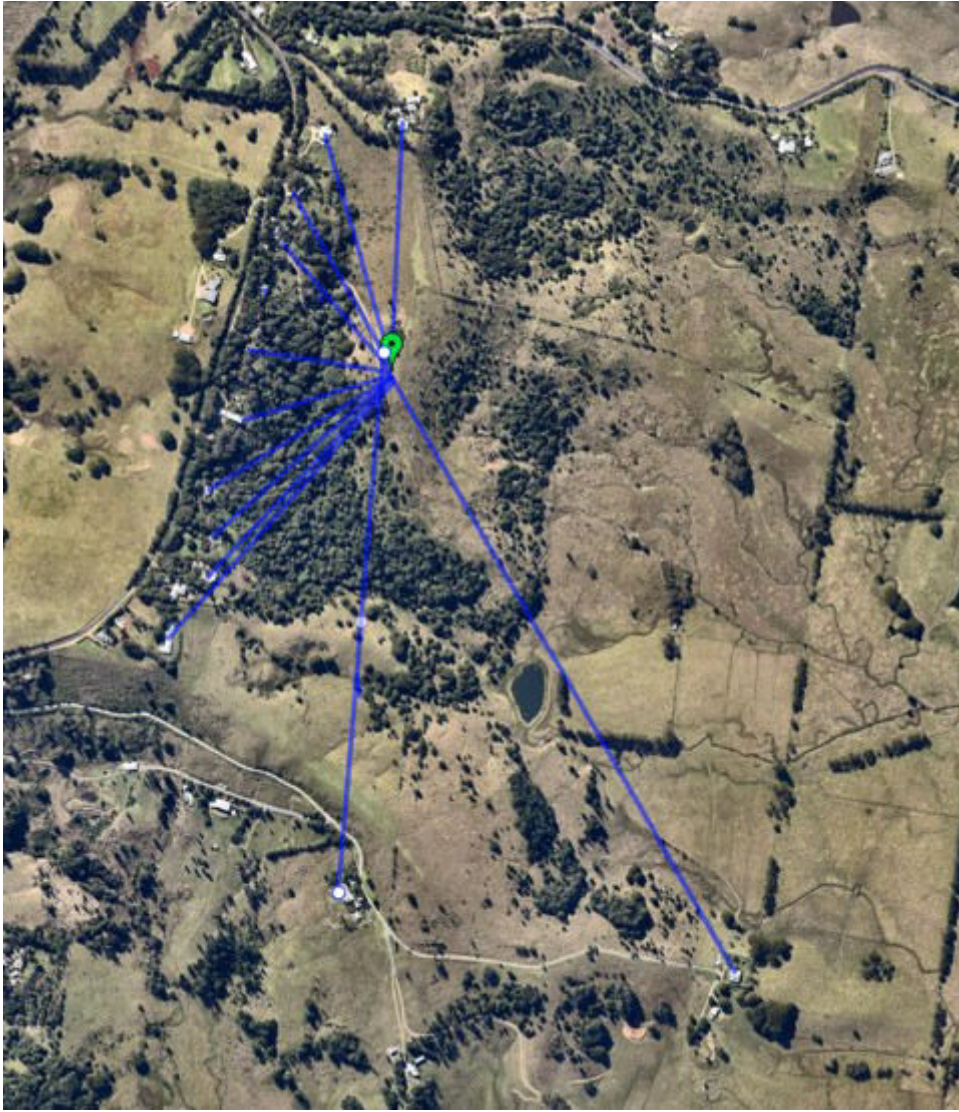


Fig 6 – Perspectives from various neighbouring roads and properties

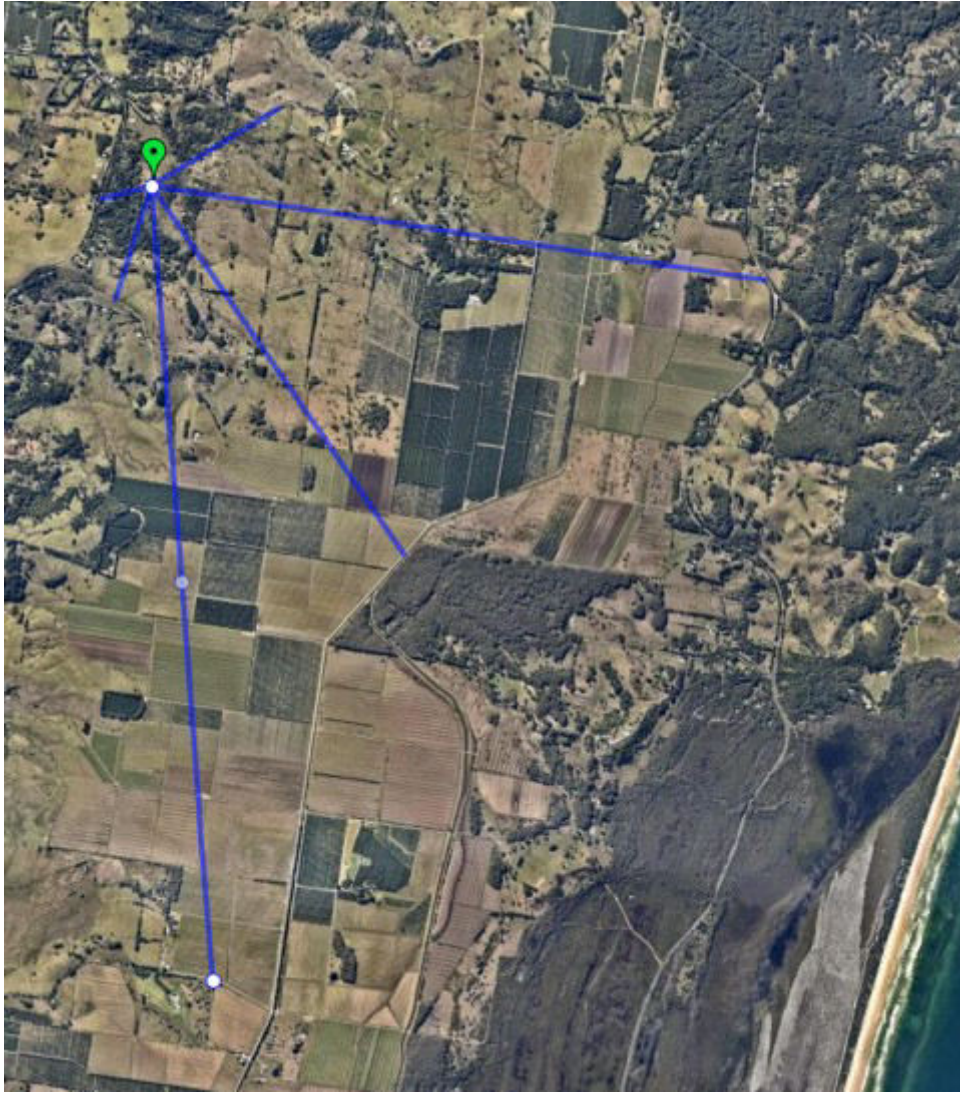


Fig 6 – perspectives from more distant properties

20 July 2018

Attention: Mr Paul Hickey
General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

Dear Mr Hickey,

Re: Development application 2018/381.1 (404 Old Byron Bay Rd, Newrybar 2479 NSW; Lot 2 DP1065811).

I am a director of ML Cupper Pty Ltd, owner of Lot 100 DP815068, which abuts the east boundary of Lot 2 DP1065811 for almost 1000 m. The entire allotment (and proposed activity area) is visible from Lot 100 DP815068.

The board of ML Cupper Pty Ltd has examined and supports development application 2018/381.1 to construct a new dwelling and swimming pool at Lot 2 DP1065811. The activities proposed are sympathetic to the general neighbourhood character of Old Byron Bay Rd, Newrybar and would not unacceptably contribute to cumulative alteration of the environment and aesthetics of its landscape setting. They would involve additional and appropriate capital expenditure and employment in the Shire, and as such, are an desired investment in the sustainable development of the region.

All the best,



Dr Matt Cupper
Director
ML Cupper Pty Ltd

RECEIVED
26 JUL 2018
RECORDS

426 Old Byron Bay Rd
Newrybar N.S.W 2479
23.7.14

General Manager

Dear Sir,

This letter is a letter of formal disapproval of the proposed development at 404 Old Byron Bay Rd Development no DA 2018/381.

I purchased my property some 40 years ago on the understanding that the Newrybar Semi Escaped Environmental Protection Zone (7d) would be adhered to. This application 2018/381 shows no regard or respect to this protection zone.

If this application was to be approved it would open the gates for industrial development along the entire ridge line. This is NOT acceptable.

Regards

Bill Shappell



The General Manager
Ballina Shire Council
PO Box 450
BALLINA NSW 2478

Karen and Richard Hagley
372 Old Byron Bay Road
NEWRYBAR NSW 2479

26 July 2018

Attention: Martin Scott

Dear Sir

DA 2018/381 – Proposed dwelling and pool - Lot 2 DP: 1065811, 404 Old Byron Bay Road NEWRYBAR

Thank you for your letter of 16 July 2018 advising that the subject development application has been submitted for Council's consideration. In response please consider this as a submission in regards to the subject development application.

In making this submission we can confirm that we have never made a reportable political donation or gift to any local Councillor or employee of Ballina Shire Council.

We live on Old Byron Bay Road about 400 metres south of the subject property and the eastern boundary of our property (Lot 3 DP 245971) adjoins part of the subject property. We have resided at this address for over twenty-seven years. During this time, we have been involved in community campaigns associated with the "Four Winds" tourist facility proposal (DAs 2001/760, 2002/874) and the Tintenbar to Ewingsdale Pacific Highway upgrade to ensure that the environment and amenity of this special part of Ballina Shire is protected from inappropriate development.

In order to clearly define appropriate and community acceptable development within the 7(d1) zone of the Newrybar scenic escarpment and to protect the scenic value and amenity of the zone, Council in 2002 prepared an LEP amendment (no. 82) and an accompanying development control plan (DCP). Preparation of both the LEP amendment and the DCP involved broad community consultation and participation to ensure community support. As residents we were party to this consultation.

The primary objectives of the LEP amendment sought to strengthen the agricultural and rural residential land use of the zone, to maintain the rural character of the locality and to protect the existing scenic amenity of the area. Both the LEP amendment and DCP are now incorporated into the current Ballina Shire LEP 1987 (which applies to the 7(d1) zone referred to as '*deferred matter*' within the Ballina LEP 2012) and Ballina Shire DCP 2012.

We have read the development application form, accompanying plans and associated documents and note that DA 2018/381 seeks Council approval for:

- A new two storey dwelling house and swimming pool on an undeveloped ridgeline;
- A 450-metre access road from Old Byron Bay Road to the new dwelling site;

- Associated works for on-site waste water management and water storage; and
- De-commissioning of the existing dwelling house adjacent to Old Byron Bay Road.

It is noted that within the supporting material for the development application there is no Statement of Environmental Effects for the proposal. In this regard it is difficult to assess the proposal against the planning instruments and its impact on the environment, ecology, social and amenity of the locality.

Notwithstanding the absence of environmental assessment material, the following comments are provided on the development application for consideration by Council:

1. **Ridgeline Development**

The proposed dwelling and swimming pool are to be located on a ridgeline adjacent to the main coastal escarpment. This ridgeline is mapped as ridgeline under Ballina Shire Council Development Control Plan 2012. The building envelope also falls within a designated Wildlife Corridor as mapped under Ballina Shire Development Control Plan 2012.

Currently there is no development on this ridgeline and it offers a purely natural vista to many homes located along Old Byron Bay Road including our home. If the development was to proceed then this natural scenic vista and wildlife corridor would be compromised and the development would intrude into views not only from public spaces of Old Byron Bay Road but also Midgen Flat Road and the Coast Road.

The visual impact of the proposed development from our property is shown at Attachment A.

No information is provided on provision of power to the site which could involve unsightly poles and wires extended from the current lines along Old Byron Bay Road.

2. **Access Road**

In 2017 when construction of the access road commenced we were alerted to this activity by neighbours. On subsequent enquires we were advised that the works were to provide access to the eastern sections of the property and were formalising an existing access. During our twenty-seven years of living at our address we are unaware of any access road or track at this location. The 2016 Google Earth aerial photo at Attachment A shows the absence of any access road as constructed.

The works as they currently exist are considered unsightly and negatively impact on our predominately rural views to the north-east. This impact would be heightened should the proposed widening and sealing of this road be allowed. In addition, use of the access road by vehicles, quad bikes provide an unwanted disturbance.

As the access road crosses a first order stream, it is considered that the crossing works constitute Integrated Development requiring permits/approval under the Fisheries Management Act (s219) and the Water Management Act 2000 (s91 – controlled activity).

The impacts of the current and proposed works on both upstream and downstream water users and waterway function should be assessed and remedial works undertaken where necessary.

3. Decommission Existing Dwelling

The development application proposes that the existing dwelling on the property adjacent to Old Byron Bay Road be decommissioned to become a storage facility for farm equipment. What guaranteed is given that this scenario would occur into the long term and that the dwelling would not be converted into rental or holiday accommodation.

4. Ballina Local Environmental Plan (LEP) 1987

The property is zoned 7(d1) Environmental Protection (Newrybar Scenic/Escarpment) under the Ballina Shire LEP 1987 which is the pertinent planning instrument for this land. Accordingly, any proposed development should comply with the objectives of the zone.

The development application proposes the construction of a dwelling and swimming pool on a ridgeline that is currently undeveloped and is used predominantly for agricultural activities. The proposed dwelling and pool together with the recently constructed access road would be/are visually prominent when viewed from Old Byron Bay Road and from Midgen Flat Road. Accordingly, the proposal is considered to conflict and not comply with the following primary objectives of the 7(d1) zone:

(a) to protect and enhance areas of particular scenic value to the local government area of Ballina; and

(c) to ensure development within the zone maintains the rural character of the locality and minimises any detrimental scenic impact; and

(d) to ensure development within the zone is of a scale and nature that will not adversely impact on the existing amenity of the area.

It is also considered that the proposal and in particular the recently constructed access road conflicts with the following secondary objectives of the zone:

(a) to minimise soil erosion from escarpment areas and prevent development in geologically hazardous areas of excessive gradient; and

(b) to ensure that development within the zone does not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities and services.

5. Ballina Shire DCP 2012

The Ballina Shire DCP 2012 is the principal development control plan for the shire and establishes the standards, controls and guidelines that apply for development and building work proposals. In regards to the subject development application it is considered that the following DCP chapters are of particular relevance:

Chapter 2 - General and Environmental Considerations.

It has been established that the proposed development is located within the Newrybar Scenic Escarpment and is also within the Wildlife Corridor mapped under the DCP. Accordingly, *Section 3.2 Ridgelines and Scenic Areas* and *Section 3.3 Natural Areas and Habitat* of this chapter documents planning objectives and

development controls that apply to all development within these areas. In particular the proposal needs to comply with the following development controls:

3.2.3i. Development must be designed to be compatible in appearance with the natural environment and scenic qualities of the land and the immediate locality;

3.2.3ii. Buildings and works should not be sited on ridgelines unless it can be demonstrated that no suitable alternative location is available;

3.3.3v. Development applications relating to land to which this section applies are to be accompanied by an ecological assessment report prepared by an appropriately qualified and experienced professional.

The proposed development is considered incompatible with the natural environment and scenic qualities of the locality. Alternative building envelopes exist on the property, particularly at the existing dwelling location.

The development application fails to address the ecological impact of the proposal, particularly in the absence of any Statement of Environmental Effects. This land is a designated wildlife corridor with wallabies, bandicoots, possums, echidnas frequenting the area. Birds also abound and close to 100 species of birds have been recorded at our property.

Chapter 7 – Rural Living and Activity

Under *Section 3.8 Roads, Vehicular Access and Parking* of this chapter the following development controls are considered applicable for the recently constructed access road:

3.8.3iv. Internal vehicular access must:

- *Be suitable for access of emergency service vehicles;*
- *Be of all-weather dust free construction and be suitable for traversing by standard 2-wheel drive vehicles;*
- *Be sealed in sections where grade exceeds 12%;*
- *Not exceed a grade of 25%.*

3.8.3v. A suitable and safe connection must be provided between the existing road network and any proposed internal vehicular access infrastructure.

3.8.3vi. A development application must address any potential environmental impacts caused by vehicular accesses including erosion and sedimentation, dust, noise traffic generation, amenity and visual impacts and vegetation removal with appropriate mitigation measures identified.

The recently constructed access road conflicts and does not comply with many if not all of the above development controls.

As detailed above, our objections to the proposed development can be summarised as follows:

- The proposed two-storey dwelling, swimming pool, access road and ancillary works are located on an undeveloped ridgeline within a mapped wildlife corridor;
- The proposal would negatively affect the visual amenity and scenic quality we enjoy of a natural vista to the north east of our property;
- No Statement of Environmental Effects or ecological assessment is included;

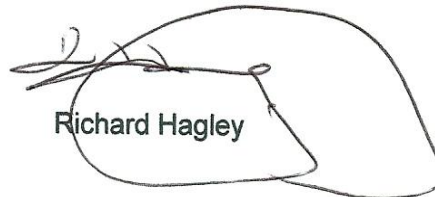
- The proposal conflicts and does not comply with many of the objectives and provisions of the Ballina LEP and Ballina Shire DCP for development within the 7(d1) zone.

In conclusion, for the reasons given above, determination of the subject development application in its current form should be by way of **REFUSAL**.

Yours faithfully

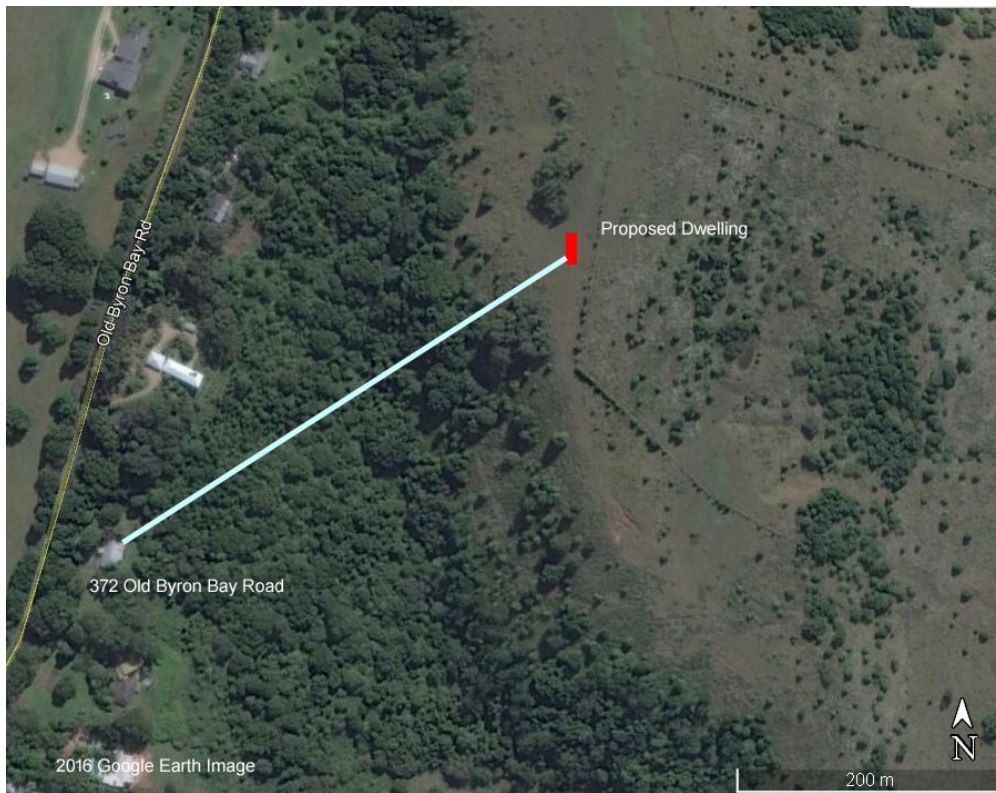


Karen Hagley



Richard Hagley

ATTACHMENT A



Visual Impact of proposed development from 372 Old Byron Bay Road.



BYRON BAY PLANNING & PROPERTY CONSULTANTS
Enhance the Social, Financial & Environmental Value of your Property

Manentia Ubicumque

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27 July, 2018

**Objection to Construction of New Dwelling Residence,
and In ground Swimming Pool
AND
Decommissioning of Existing Dwelling, to form an
Ancillary Farm Building.**

**DA 2018/381
Lot 2, DP 1065811
No. 404 Old Byron Bay Road, Newrybar, NSW, 2479.**



1 INTRODUCTION

This objection, in the strongest terms, has been commissioned by the owners of an adjoining property directly to the north of, and sharing a boundary, with Lot 2 DP 1065811 No 404 Old Byron Bay Road Newrybar, upon which Development Application 2018/381, seeks Decommissioning the existing Dwelling to Form an Ancillary Farm Building, and the proposed Construction of a New Dwelling House to Form a Two-Storey Residence, and installation of an in-ground New Swimming Pool.

Although this is revised application following the refusal of the similar DA 2017/584, nothing has changed to overcome the prohibited and non complying nature of this proposal.

The new dwelling component of the proposed development is to occur almost directly upon the dominant Ridge line within the property, at a location immediately to the East of the ridge crest. Also proposed is an additional OSWM (On Site Storm Water Management) system.

This development is proposed to occur within a 7 (d1) Environmental Protection (Newrybar Scenic/Escarpment) Zone, which falls under the provisions of Ballina Shire Council Local Environmental Plan (LEP) 1987 and Development Control Plan (DCP) 2012.

My clients have strong objections in relation to the loss of their existing scenic views, in particular those to the south, to the iconic Lennon Headland, which are panoramic in nature.

Furthermore, views of this scenic escarpment area, and the natural character of the area, will be adversely impacted upon in general by the proposed dominant ridgeline development.

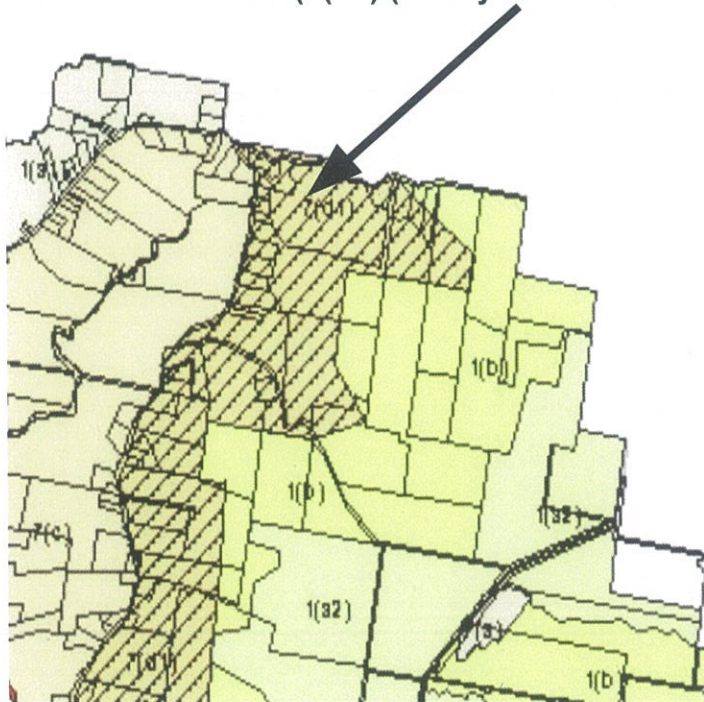
The proposed development will thus have a significant adverse impact to the amenity of the area, my clients views, and the general rural and scenic character of this protected 7(d1) Environmental Protection (Newrybar Scenic/Escarpment) Zoned area.

There is clearly the potential for the proposed development to block, intrude and hinder through the agglomeration of built form, almost directly upon the ridgeline and scenic escarpment, the views to the south of my clients land, and those to the east of other properties further south along Old Byron Bay Road.

As stated, sight line from my clients home enables direct sight of the proposed new two-storey residential development, new in-ground pool and vehicle accommodation, and this sight line is over the current sight line enjoyed by them of Lennox Head.

Additionally, the decommissioning of the existing Dwelling to become an Ancillary Farm Building, and the construction of a New Dwelling Residence is contraindicative of the development controls established to protect this 7 (d1) Environmental Protection (Newrybar Scenic Escarpment) zone.

Ballina Shire LEP 1987 (7(d1) (Newrybar Scenic/Escarpment Zone)





To clearly show the degree to which the proposed development is at odds with Councils Statutory Planning provisions, this objection will test the proposal against the statutory controls of both Ballina LEP 1987 and Ballina DCP 2012.

Ballina Shire LEP 1987.

Part 1, Clause 2- Aims, objectives:

(1) The general aims of this plan are to encourage the proper management, development and conservation of natural and man made resources, to promote the social and economic welfare of the community and to provide a better environment.

Response: The proposed Development Application is at odds with the general aims of the LEP 1987, insofar as “the proper management, development and conservation of natural and man made resources” has not been demonstrated by the DA, with significant information missing. Additionally, the general aim “to promote the social and economic welfare of the community and to provide a better environment” is not met.

Part 1, Clause 2- Particular Aims (f) states:

(f) to take account of the physical nature of the environment of the Shire of Ballina so that development is in harmony with scenic and ecological resources.

Response: The proposed Development Application is again at odds with this Particular aim of the LEP 1987, as “it is not adequately demonstrated that “development is in harmony with scenic and ecological resources”.

Provisions of Ballina Local Environmental Plan 1987

Clause 9 Zone objectives and development control table

(1) The objectives of a zone are set out in the Table to this clause under the heading “Objectives of zone” appearing in the matter relating to the zone.

(4) A development application to carry out development (not being designated development referred to in subclause (2) (c) shall be accompanied by an environmental impact report which contains:

- (a) a full description of the development proposed by the development application,
- (b) a statement of the objectives of the proposed development, and how those objectives relate to the objectives of the zone,
- (c) a full description of the existing environment likely to be affected by the proposed development, if carried out,
- (d) identification and analysis of the likely environmental interactions between the proposed development and the environment,
- (e) analysis of the likely environmental impact or consequences of carrying out the proposed development,
- (f) justification of the proposed development in terms of environmental, economic and social considerations,
- (g) measures to be taken in conjunction with the proposed development to protect the environment and an assessment of the likely effectiveness of those measures,
- (h) any feasible alternatives to the carrying out of the proposed development and reasons for choosing the latter, and
- (i) consequences of not carrying out the proposed development.

Response: The proposed Development Application is at odds with these specific requirements of the Ballina LEP 1987, insofar as the DA has been submitted with significant information missing. As such it does not meet the requirements of Clause 9(4) of the Ballina LEP, and to this end Council has no choice but to refuse this application.



Clause 9 (7) “Except as otherwise provided by this plan, the council shall not grant consent to the carrying out of development on land to which this plan applies unless the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out.”

Response: The proposed Development Application is at odds with these specific Objectives of the 7 (d1) Environmental Protection (Newrybar Scenic Escarpment) zone Ballina LEP 1987. As seen in the following section of this objection.

As detailed within **Clause 9 (7)** “**council SHALL NOT grant consent to the carrying out of development on land to which this plan applies unless the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out**”.

This Clause does not say you can just satisfy some of the objectives, you must satisfy the objectives. Even a minor inconsistency with this clauses’ Statutory Force, means that Council CANNOT by law approve the proposed ridgeline two storey dwelling.

Zone No 7 (d1) Environmental Protection (Newrybar Scenic/Escarpment)

Zone Objectives

A The primary objectives are:

(a) to protect and enhance areas of particular scenic value to the local government area of Ballina, and

Response: The two storey ridge top development will detract from the areas scenic value, and as such the application must be refused.

(b) to encourage the productive use of land within the zone and enable development ancillary to agricultural land uses, particularly dwelling-houses, rural workers’ dwellings and rural industries, and

Response: The two storey ridge top development and the retention of the existing dwelling may detract from the productive use of land, however insufficient information was submitted with the DA (Contrary to the requirements of Clause 9) of the LEP, and to this end the application must be refused.

(c) to ensure development within the zone maintains the rural character of the locality and minimises any detrimental scenic impact, and

Response: The two storey ridge top development will detract from the rural character of the locality and **maximises** detrimental scenic impact, and as such the application must be refused.

(d) to ensure development within the zone is of a scale and nature that will not adversely impact on the existing amenity of the area.

Response: The two storey ridge top development will detract from the areas scenic value due to the large and dominating scale of the development, which will significantly detract from the existing amenity of the area, and as such the application must be refused.

B The secondary objectives are:

(a) to minimise soil erosion from escarpment areas and prevent development in geologically hazardous areas and areas of excessive gradient, and

Response: The two storey ridge top development does not address soil erosion of the geology of the site. As previously stated, insufficient information was submitted with the DA (Contrary to the requirements of Clause 9) of the LEP, and to this end the application must be refused.

(b) to ensure that development within the zone does not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.

Response: The two storey ridge top development and the retention of the existing dwelling may indeed create unreasonable and uneconomic demands on public amenities and services, however insufficient information was submitted with the DA (Contrary to the requirements of Clause 9) of the LEP, and to this end the application must be refused.

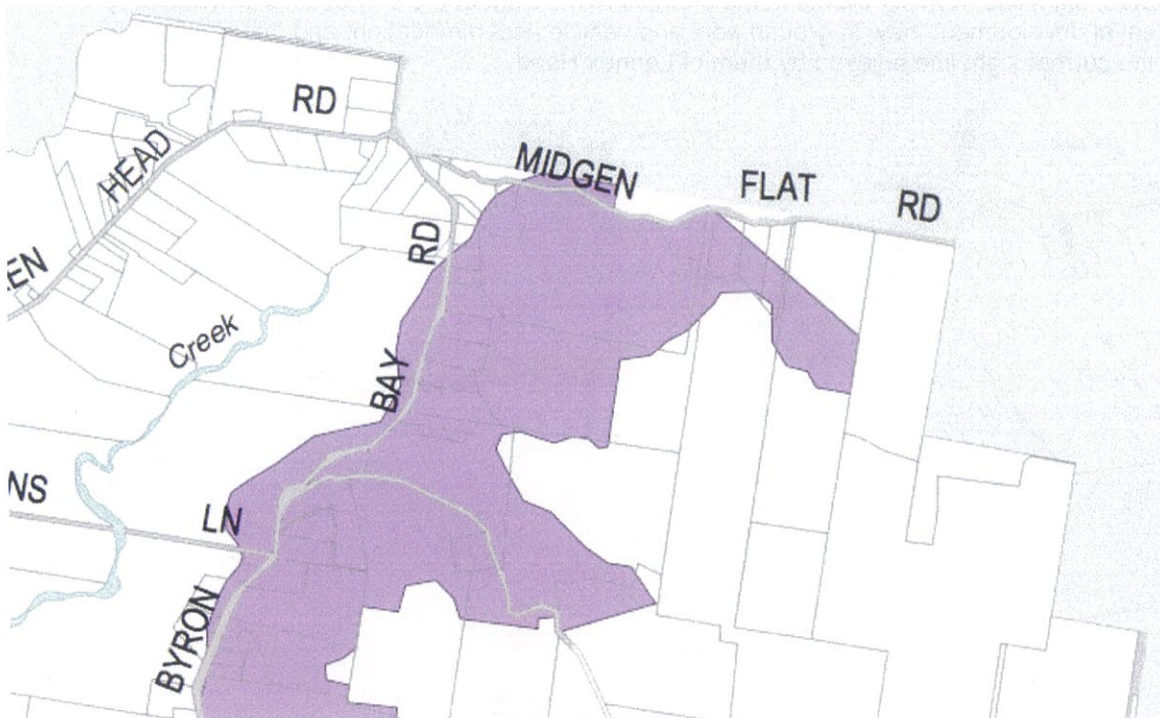


C The exception to these objectives is development of public works and services, outside the parameters specified in the primary and secondary objectives, but only in cases of demonstrated and overriding public need and subject to the visual impact being minimised as much as is reasonably practicable.

Not Applicable in this instance.

Ballina DCP 2012

Further to the preceding LEP provisions, which are not met by the proposed development, the proposed New Dwelling Residence is contraindicative of the development controls established to protect this 7 (d1) Environmental Protection (Newrybar Scenic Escarpment) zone under the Ballina DCP 2012.



Source: "Ridgelines and Scenic Areas Map" Ballina DCP 2012..

Ballina DCP 2012 states:

Ballina Development Control Plan 2012.

Chapter 2 – General and Environmental Considerations 3.2 Ridgelines and Scenic Escarpment Areas.

3.2.2 Planning Objectives

- a. Protect and enhance those areas of particular scenic value to the Ballina Shire;
- b. Encourage development that minimises intrusion into the skyline when viewed from public land;
- c. Encourage retention of prominent vegetation along ridgelines and visually prominent areas; and
- d. Encourage development that maintains the rural character of the locality and minimises any adverse scenic impacts.

Response:

- a). The scenic escarpment and naturally occurring ridgeline will not be enhanced by the proposed New Dwelling being located atop the natural feature of this 7 (d1) Environmental Protection (Newrybar Scenic Escarpment) zone.



- b). The development does not minimise intrusion into the skyline when viewed from public land; as it will be visible from the public Old Byron Bay Road, and potentially Midgen Flat Road, and Broken Head Road to the east also.
- c). Retention of prominent vegetation along ridgelines and visually prominent areas seems to occur, as there are no details of the site plan regarding proposed landscaping species, it is possible this retention of the ridgelines and visually prominent area will not occur.
- d). The development does not maintain the rural character of the locality, nor does it minimise any adverse scenic impacts due to the sitting, location of the New Dwelling House, In Ground Pool and potential landscaping of species non-native to this 7 (d1) Environmental Protection (Newrybar Scenic Escarpment) zone.

As stated, sight line from my clients home enables direct sight of the proposed new two-storey residential development, new in-ground pool and vehicle accommodation, and this sight line is over the current sight line enjoyed by them of Lennox Head.



View Line from 448 Old Byron Bay Rd to Lennox Head, obstructed by Proposed Dwelling on 404 Old Byron Bay Road

Conclusion:

Council has no alternative than to Refuse this DA, as it clearly does not meet the aims both general and particular of the LEP 1987.



Additionally 3.2.3 Development Controls

Development must be designed to be compatible in appearance with the natural environment and scenic qualities of the land and the immediate locality;

1. Buildings and works should not be sited on ridgelines unless it can be demonstrated that no suitable alternative location is available. Where it can be clearly demonstrated that there is no suitable alternative site for the building or works, the following measures are to be incorporated into the design of the development to minimise its potential visual impact:
 - Site selection should focus on areas that avoid the need for vegetation removal;
 - Buildings should be clustered in less visually prominent areas of the site when viewed from **public land**;
 - Buildings should not intrude into the skyline when viewed from **public land**;
 - Building materials and colours are to mitigate potential adverse visual impacts. Materials should be non-reflective and earthy colours and tones are to be used; and
 - Landscaping comprised predominately of native species endemic to the subject locality should be used to screen the buildings or works from **public land** and surrounding properties. Where existing vegetation will not adequately screen the development, a landscaping plan shall be submitted detailing proposed planting to augment existing vegetation.

Response:

“Buildings and works should not be sited on ridgelines unless it can be demonstrated that no suitable alternative location is available. Where it can be clearly demonstrated that there is no suitable alternative site for the building or works, the following measures are to be incorporated into the design of the development to minimise its potential visual impact”. It has not been clearly demonstrated that there isn’t an alternative location.

The proposed New Dwelling is visible from public land, both by road from Old Byron Bay Road, and potentially Midgen Flat Road and Broken Head Road. Furthermore, the dwelling will “intrude into the skyline when viewed from public land” the and on foot by the use of the surrounding farmland as open public space.

Critically, “Landscaping comprised predominately of native species endemic to the subject locality should be used to screen the buildings or works from public land and surrounding properties. Where existing vegetation will not adequately screen the development, a landscaping plan shall be submitted detailing proposed planting”. No Landscape Plan has been submitted, there are no details of the species proposed to be planted, therefore the “screen landscape to ridge” is undefinable.

It is apparent that the proposed site of the construction of a New Dwelling Residence, and Inground Swimming Pool has not been demonstrated as the **only** suitable site.

The proposed New Dwelling location is directly atop the ridgeline and proposed to cut into the east of the ridge. It is far from being exclusively the only site appropriate for a new residential dwelling house, and considering the property holds acres of developable land there are alternatives that require investigation and consideration as being more suitable.

Conclusion:

Council have no alternative than to Refuse this DA, as it clearly does not meet the aims both general and particular of the Ballina DCP 2012. (See previous Ridgeline Map)

Whilst the existing one-storey Dwelling is afforded existing approval, the application to decommission it as a Dwelling (and reclassify it as an Ancillary Farm Building) and replace it with a dwelling of two (2) storey four (4) bedroom, two (2) media rooms, two (2) bathrooms and one



water closet (WC) with Double Lock up Garage accommodation is not proposed on a necessary site for development of this magnitude to occur, and it is suggested that there are far more appropriate sites within this parcel of rural 7 (d1) Environmental Protection land.

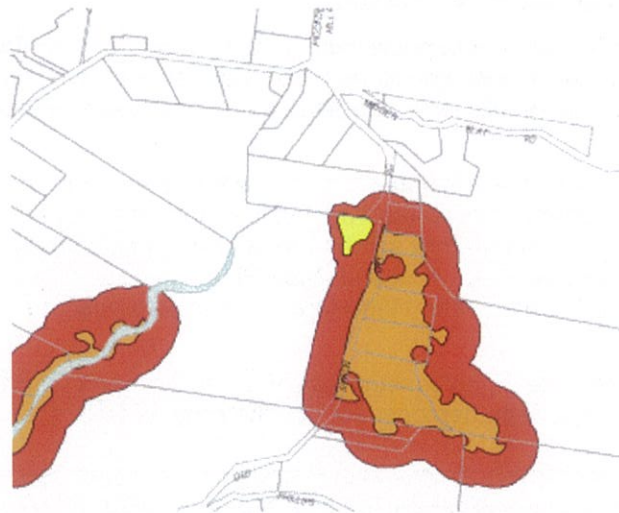
There is approximately only fifty (50) metres between the proposed development site and my clients home, which share a common boundary. Their home currently enjoys the peace and quiet enjoyment of a large lot Environmental Protection Zone, with Scenic escarpment identification. It is obvious that the existing uninterrupted 360 degree panoramic views of the natural landscape will be significantly compromised by this proposed development. My clients direct and uninterrupted views to the South and South-West will be extinguished by the proposed development.

As stated, the sight line from my clients home to the south east, will be a direct view of the proposed new two-storey residential dwelling, new in-ground pool and vehicle accommodation development. The significant South East sight line, is their line of sight to Lennox Head, and this will be lost.

In addition to this objection, and the developments non compliance with the Statutory objectives of the LEP and DCP, the next most significant of concerns is the significant lack of supporting documentation and information required for the DA, namely a Statement of Environmental Effects (SEE), BASIX certification, a complete Bush Fire Assessment Report and BAL Rating, Landscaping Plan, APZ Management and Protection, a Landscaping Schedule including proposed Species List to be used in the proposed "screening landscape design". This is at odds with the requirements of Clause 9 of the LEP, and Schedule 1 of the EPA Act Regulations, and the application should be rejected on these ground alone.

Whilst the proposed New Dwelling Residence, and Inground Swimming Pool (and) the Decommissioning of the Existing Dwelling are located outside the Bushfire Prone Land Map, it is in a proximate location, and the bush fire risk and management should have be addressed in the DA submitted.

As such the application is at odds with the legal requirements of Planning for Bushfire Protection 2006, and as such has to be refused.



Source: Ballina LEP 1987.

In terms of visual impact assessment, it is notable that the trees and landscaping proposed to be planted along the ridge is without any details, void of a landscape plan or sediment controls with no information listed on DA 2017.584.1. This is contrary to Clause 9 requirements, and todate these details have not been provided for comment , despite submissions listed as closing on the November 14th 2017 by Ballina Council.



In the current form, the design has a significant adverse impact on the adjacent dwellings to the north, west and south, primarily through loss of amenity, loss of views and view sharing, loss of skyline views, detrimental impact on the ridge line, and a pernicious impact upon the environmental protection area as a parcel of scenic escarpment zoned land.

It is strongly suggested that to permit the owners of the adjoining property to suffer the permanent loss of elevated views to their southern and southeastern skyline will be injurious.

Due to the dramatic adverse impact the proposed New Dwelling Residence, and Inground Swimming Pool (and) the Decommissioning of the Existing Dwelling is likely to have not only on my clients, but significantly the impact on this Environmental Protection, Newrybar/ Scenic Escarpment, then Council needs to issue a Refusal of Consent.

The sitting involves significant potential loss of amenity to the character of the area through its non-sympathetic design, monocultural nature, and numerous breaches of Councils Statutory Development Control Plan 2012, and Local Environmental Plan 1987 requirements. It is also contrary to the Statutory Objectives of the Environmental Protection, Newrybar/ Scenic Escarpment 7 (d1) Zone within which the properties are located.

The visual screening could clearly be inadequate, in the absence of a Landscape Plan not only could the proposed New Dwelling Residence, and Inground Swimming Pool (and) the Decommissioning of the Existing Dwelling offend the amenity of the area as a result of its bulk and scale, but the design will also cause a significant loss of amenity to the adjacent residences to the north and south, with a high risk of long term losses as a result of the location of the two-storey New Dwelling and Pool.

On the basis of this design fault, it is imperative that Council take into account the major impact this landuse will have on the visual and residential amenity of the area, and specifically on the adjacent dwelling to the north.

The landscape plantings and proximity of the screening has been designed to be at odds with not only the existing ridgeline, and scenic escarpment but additionally to the design guidelines set within DCP 2012 and the Ballina LEP 1987. The loss of natural landscape, its impact on adjacent neighbouring dwellings creates a development totally at odds with the scenic design guidelines, where environmental protection of scenic escarpment is paramount. As such the design is at odds within the Ballina LEP 1987 and DCP 2012 provisions.

For these reasons, this objection is made in the strongest terms as it is evident, following our assessment of the proposal, that the resultant development will totally and adversely detract from the amenity of this rural area, particularly in relation to the views enjoyed by the adjoining Dwelling to the north.

As Council is aware, the specific objectives of the 7 (d1) Zone, within which the site is located, require that any proposed development be tested against its ability to achieve Environmental Protection.

Ballina LEP Clause 25 Development within Zone No 7 (d), 7 (d1) or 7 (i)

- (1) This clause applies to land within Zone No 7 (d), 7 (d1) or 7 (i).
- (2) A person shall not erect a building on land to which this clause applies without the consent of the council.
- (3) The council shall not grant consent to the erection of a building on land to which this clause applies unless it has made an assessment as to whether it should impose conditions relating to:
 - (a) the height and location of the building, and
 - (b) the colour of materials, so as to ensure that the building blends with the surrounding landscape and other development and preserves or enhances the scenic quality of the land.

Response:

This Development Application 2017.584.1 results in a significant loss of scenic escarpment characteristics, through its inappropriate scale, size and design, which is thus at odds with the



Zone Objective Requirements that development within the zone be assessed and that Council not grant consent to the erection of a building on land applies unless it has made an assessment as to whether it should impose conditions relating to:

- (a) the height and location of the building, and
- (b) the colour of materials, so as to ensure that the building blends with the surrounding landscape and other development and preserves or enhances the scenic quality of the land.

As such this proposal is contrary to the statutory provisions of Clause 25 of the Ballina LEP 1987, and should be refused.

2. Sec. 79C(1)(a) ZONING - Zone 7 (d1) Environmental Protection Newrybar Scenic/Escarpment.

The design is at odds with Ballina LEP 1987.

See previous comments which address LEP 1987 requirements. These assessments conclude that the specific objectives of the 7 (d1) Zone, within which the site is located, which Clause 9 requires that any proposed development be tested against, have not been met by the proposal, and as such it will have a significant adverse Environmental impact.

The landscape plantings and proximity of the screening has been designed to be at odds with not only the existing ridgeline, and scenic escarpment, but additionally to the design guidelines set within DCP 2012 and the Ballina LEP 1987. The loss of natural landscape, its impact on adjacent neighbouring dwellings creates a development totally at odds with the scenic design guidelines, where environmental protection of scenic escarpment is paramount.

The visual screening could clearly be inadequate, in the absence of a Landscape Plan not only could the proposed New Dwelling Residence, and Inground Swimming Pool (and) the Decommissioning of the Existing Dwelling offend the amenity of the area as a result of its bulk and scale, but the design will also cause a significant loss of amenity to the adjacent residences to the north, west and south, with a high risk of long term losses as a result of the location of the two-storey New Dwelling and Pool.

The proposed Development Application is at odds with the general aims of the LEP 1987, insofar as “the proper management, development and conservation of natural and man made resources” has not been demonstrated by the DA, with significant information missing. Additionally, the general aim “to promote the social and economic welfare of the community and to provide a better environment” is not met.

Part 1, Clause 2- Particular Aims (f) states:

(f) to take account of the physical nature of the environment of the Shire of Ballina so that development is in harmony with scenic and ecological resources.

Response: The proposed Development Application is again at odds with this Particular aim of the LEP 1987, as “it is not adequately demonstrated that “development is in harmony with scenic and ecological resources”.

Furthermore the proposed New Dwelling Residence is contraindicative of the development controls established to protect this 7 (d1) Environmental Protection (Newrybar Scenic Escarpment) zone under the Ballina DCP 2012 which states:



2.2 Development Control Plan 2012.

Chapter 2 -Part 3.2 Ridgelines and Scenic Areas.

PRESCRIPTIVE MEASURES

Planning Objectives

1. Protect and enhance those areas of particular scenic value to the Ballina Shire;
2. Encourage development that minimises intrusion into the skyline when viewed from public land;
3. Encourage retention of prominent vegetation along ridgelines and visually prominent areas; and
4. Encourage development that maintains the rural character of the locality and minimises any adverse scenic impacts.

Development Controls

1. Development must be designed to be compatible in appearance with the natural environment and scenic qualities of the land and the immediate locality;
2. Buildings and works should not be sited on ridgelines unless it can be demonstrated that no suitable alternative location is available. Where it can be clearly demonstrated that there is no suitable alternative site for the building or works, the following measures are to be incorporated into the design of the development to minimise its potential visual impact:
 - Site selection should focus on areas that avoid the need for vegetation removal;
 - Buildings should be clustered in less visually prominent areas of the site when viewed from public land;
 - Buildings should not intrude into the skyline when viewed from public land;

PROPOSALS COMPLIANCE WITH D.C.P

Scenic value of Ballina Shire by the proposed two (2) storey development on the proposed site does not enhance the scenic value of the area.

Intrusion of the skyline, is severe and prohibitive of view sharing. When viewed from public land, there is no optimisation of the natural scenic escarpment.

The absence of a Landscape Plan prohibits any clearly defined proposed Landscaping along the ridge line. These tree species could be contrary to this objective.

Adverse Scenic Impact results.

Objective is not met, and the application should be refused.

The proposed development is not designed to be compatible in appearance with the natural environment, scenic qualities of the land or immediate locality.

Significant adverse impact from this site, which proposes buildings sited on the ridgeline. It is **not** demonstrated that no suitable alternative location exists on this large rural acreage which is a significant size.

Visual impact is detrimental, with skyline penetration, shared views degraded, and the ridgeline permanently altered and easily viewed from public land.

This is totally at odds with the Performance Criteria set.

Objective is not met, and the application should be refused.

Material details information is very basic- timber



- Building materials and colours are to mitigate potential adverse visual impacts. Materials should be non-reflective and earthy colours and tones are to be used; and panel, stone feature, framed glass, colour bond roof (no colour specified) Slab retaining walls (no colour specified) aluminium frames windows and doors (no colour specified). Could be reflective roof (no colour specified).
- Landscaping comprised predominately of native species endemic to the subject locality should be used to screen the buildings or works from public land and surrounding properties. Where existing vegetation will not adequately screen the development, a landscaping plan shall be submitted detailing proposed planting to augment existing vegetation. No Landscape details provided.
NO Landscape Plan.
No Species List.

Detrimental impact to the microclimate is undeniable.

Impact to amenity, privacy, views and view sharing.

Objective is not met, and the application should be refused.

3. Sec. 79C(1)(c) SUITABILITY OF THE SITE

As stated previously in the Statutory assessment of this proposal, the design of the New Dwelling House and Inground Pool does not demonstrate compliance with all necessary development standards, and the lack of a suitable siting of the dwelling results in the proposal's inability to satisfy the basic design objectives set within LEP 1998 and DCP 2012, as they relate to residential development in an Environmental Protection Zone generally, and specifically the amenity, view sharing, visual intrusion into the existing skyline, visual intrusion into the scenic escarpment and the permanency of the alteration of the landscape.

This takes the proposal beyond acceptable development limits in terms of visual impact, aural, social impact, inter-allotment view sharing, and critically environmental impact and protection measures and standards.

It is thus inconsistent with the character of the area in terms of its scale, design, and lack of consideration for the precautionary principle.

In terms of Scenic value of the Ballina Shire, the proposed two (2) storey development on the proposed site does not enhance the scenic value of the area.

Intrusion into the skyline, is severe and prohibitive of view sharing. When viewed from public land, there is no optimisation of the natural scenic escarpment.

Also, the absence of a Landscape Plan prohibits any clearly defined proposed Landscaping along the ridge line. These tree species could be contrary to this objective.

The conclusion is that Adverse Scenic Impact results. As such, the proposed use will detract from the character of the area, and represents an inappropriate over development of the site.

LEP Objectives are not met, and the application must be refused.

4. Sec. 79C(1)(e) PUBLIC INTEREST

As indicated, due to the fundamental design problems raised by this submission, my client urges Council to refuse this application, or to require by Consent Conditions that the location be remedied, and that the significant environmental protection of this scenic escarpment be paramount.



If such conditions are not imposed, then the design is not only contrary to the public interest, but it also represents an over development of this site, one which fails to meet amenity, environmental needs and the existing rights of the adjacent dwelling to the north.

This is particularly so in relation to amenity, skyline penetration and views, and permanency of the alteration of the ridgeline as previously noted within this objection.

The outcome from this proposal as presented, is not only a New Dwelling house which will create immediate and long term problems, and threatens inter-allotment view sharing, but the combination of all the preceding factors, will result in a significant loss of amenity due to the skyline being changed in a permanent manner, thus being totally at odds with the Character planned for this area by its 7 (d1) Environmental Protection (Newrybar/Scenic Escarpment) Zoning.

As such public interest will not be served by the current design and sitting being permitted to be constructed. On this basis Council has no option but to refuse this application.

5. CONCLUSIONS

As stated, my clients have strong objections to the loss of privacy resulting from their views to Lennox Head being permanently impacted, the ridgeline being altered by a permanent structure, and the skyline being intruded into by a two storey dwellings, and yet to be detailed ancillary plantings.

We request that Council enforce the provisions of the LEP and DCP and either refuse this application, or impose an off ridgeline alternative location for the proposed New Dwelling, to minimise these impacts.

The proposed DA is visually out of character with the area, contra-indicative of environmental integrity and is likely to result in significant amenity and privacy loss. The design as it exists is thus flawed, and not only results in general non compliance with Council and North Coast design criteria, but will detract significantly from the visual and environmental integrity of the area, and reduce the residential amenity of my clients dwelling, which sits within a designated 7 (d1) Environmental Protection (Newrybar Scenic Escarpment) zone.

As detailed within **Clause 9 (7) of Ballina LEP 1998, “council SHALL NOT grant consent to the carrying out of development on land to which this plan applies unless the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out”**.

This Clause does not say you can just satisfy some of the objectives, it says you must satisfy ALL of the objectives. Even a minor inconsistency with this clauses' Statutory Force, means that Council CANNOT by law approve the proposed ridgetop two storey dwelling.

For these reasons, this objection is made in the strongest terms as it is evident, following our assessment of the proposal, that the resultant New Dwelling and In ground Pool will totally and adversely detract from the amenity of this Environmental Protection /Scenic Escarpment area, and will in the long term compromise inter-allotment view-sharing, particularly in relation to the Dwelling to the north.

The proposed development is thus at odds with the Objectives of the 7(d1) Zone, and cannot be approved by Council under the provisions of Clause 9 of the Ballina LEP 1987.

Yours Sincerely

CHRIS LONERGAN. B.A. (Town Planning U.N.E.)
27th. July 2018.

Ms Sue Taylor
Old Byron Bay Road
NEWRYBAR 2479
27 July 2018

Ballina Shire Council
Attn: General Manager, Mr Paul Hickey

cc: Martin Scott – Planner, Vince Hunt - Planning department, Ian Gaskell – Ecologist,
Compliance division

From Ballina Shire Council's charter:

- *"To properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development.*
- *To have regard to the long term and cumulative effects of its decisions."*

SUBMISSION of OBJECTION

DA 2018 / 381 - 404 Old Byron Bay Road NEWRYBAR

I object to the application on the following grounds:

The development does not comply with the objectives of the Newrybar Scenic Escarpment Zone - 7 (d1).

**NSW Government Planning Legislation;
The Ballina LEP**

Environmental Protection -- Newrybar Scenic/Escarpment Zone - 7 (d1)

1 Objectives of the Zone

A The primary objectives are:

- *(a) to protect and enhance areas of particular scenic value to the local government area of Ballina,*

Reason for Refusal: The development would have a negative impact on the Scenic Escarpment locality. The development would have a negative impact on the visual amenity of surrounding properties as well as from public roads, adversely impacting scenic views looking from Old Byron Bay Road to the coast, as well as impacting views of the escarpment from the coast road. The road to access the development would impact the visual amenity of a number of properties located on Old Byron Bay Road.

- *(b) to encourage the productive use of land within the zone and enable development*

ancillary to agricultural land uses, particularly dwelling-houses, rural workers' dwellings and rural industries

Reason for Refusal: The development does not promote or encourage 'productive' land use within the zone. The development does not provide a dwelling house for the purpose to encourage 'ancillary agricultural land uses', or rural industries.

- *(c) to ensure development within the zone maintains the rural character of the locality and minimises any detrimental scenic impact*

Reason for Refusal: The proposed dwelling and the 450 metre access road would have a negative impact on the rural character of the Scenic Escarpment / Environmental Protection Zone. The development is 'out of context' in a rural setting and would have a negative impact on the scenic quality of the escarpment environment.

Comment: A 450 metre, asphalted road, with 6 metre passing bays could not be considered to 'minimise' the scenic impact on the escarpment or rural setting. The development can be seen from all surrounding properties including from public roads.

- *(d) to ensure development within the zone is of a scale and nature that will not adversely impact on the existing amenity of the area.*

Reason for Refusal: The development would adversely impact the existing amenity of the area.

Comment: The bulk and scale of the development on the ridgeline -- and the 450 metre, asphalted road with 6 metre passing bays, a concrete dwelling protruding into the skyline on the ridge, with reflective glass windows, swimming pool, tanks, trenches, excavation, and road traffic, and extensive excavation is out of context to the rural setting in an environmental protection, scenic escarpment, natural habitat area. (7 (d1) Zone).

The unauthorised earthworks (Council's own term, 9 Feb. 2018) has currently had a negative impact on the scenic escarpment area including a negative impact on the privacy and visual amenity of residents near the earthworks (unauthorised road).

From the number of objections to Council regarding the previous proposal for the site it is clearly evident most residents along Old Byron Bay Road do not want inappropriate development that impacts on their outlook, the scenic beauty of the

escarpment, the quiet rural setting or on the unique and sensitive natural environment of the protection zone.

Reason for Refusal: The development would not “preserve or enhance” the scenic quality of the land on which it is proposed. The development would have a negative impact on the scenic escarpment and a negative visual impact on the ridgeline.

Comment: The development proposed is a distance from Old Byron Bay Road requiring over 450 metres of roadworks to access the building site on the ridgeline. The development would be viewed from all directions; north, south, east and west, including the coast road.

Other property owners in the Newrybar Scenic Escarpment Protection Zone have built their dwellings on or near Old Byron Bay Road. This enables privacy among residents, easy access to services and no impact on the scenic escarpment or the environment. These dwellings are in keeping with the protection of the escarpment area.

Reason for Refusal: The development would have a detrimental impact on the wildlife corridor on which the site is located. The road would have a detrimental impact on the movement of wildlife through the corridor.

Comment: According to the DCP maps (see references at the end of this document) the land is in an identified wildlife corridor. Natural habitat areas and wildlife corridors require diligent ongoing protection if we are to maintain populations of native fauna within the shire.

B The secondary objectives of the zone - (LEP)

- *(a) to minimise soil erosion from escarpment areas and prevent development in geologically hazardous areas and areas of excessive gradient.*

Reason for Refusal: The 450 metre road which would be required to access the dwelling site, the swimming pool, the tanks, the sewage treatment, the excavation for the dwelling etc. would have a destabilizing impact on the steep gradient of the site - requiring a huge amount of earthworks and digging into the ridge.

Comment: Excavation on the ridge has (already) destabilized the land. Soil erosion has already occurred on the site due to “unauthorised earthworks” (Council’s term, 9 Feb 2018). A road was preemptively excavated into the side of the ridge. The road which is used daily by the developer is unauthorised, has destroyed the privacy and visual amenity of neighbours and is an ongoing issue of contention with many

residents.

Photos of erosion and landslips in relation to the (unauthorised) road construction have been submitted to Council. There was also land clearing of vegetation and trees during the construction of the road.

- *(b) to ensure that development within the zone does not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.*

Reason for Refusal: Services to the development site do not exist. There is no power to the site on the ridgeline.

Comment: It is unclear where the power for the construction of the dwelling would be coming from. The developer may need to use a generator which would be loud and have a detrimental impact on neighbours.

Services are already provided to the 4 bedroom house located on the road, easily accessed, at 404 Old Byron Bay Road. There is no need to service the ridgeline in a natural habitat protection zone.

The development does not comply with the objectives and controls of the Ballina Shire Development Control Plan 2012;

The Ballina DCP

1. Objectives for rural living - DCP

Objectives of Ch. 2:

- *a. Ensure that applicable considerations are taken into account in the siting and design of development;*

Reason for Refusal: The site of the proposed development is not compliant with the objectives of the DCP chapter 2, Rural Living. There is one if not several suitable alternative sites.

Comment: The site of the proposed development is on a highly visible ridgeline in the Newrybar Scenic Escarpment - Environmental Protection Zone (LEP). Development on the site is also controlled and constrained by being located within the Ballina Shire Natural Areas and Habitat map and identified as within a Wildlife Corridor. (See links to DCP maps at the end of this document). The site of the

proposed development has numerous controls associated with it.

There is a perfectly adequate, easily accessed and serviced house site on 404 Old Byron Bay Road, where the current 4 bedroom house is located. It is private, established, serviced and does not impact on neighbours or community views and would have minimum impact on the protected environment 7 (d1) zone.

It is the responsibility of the developer to identify controls and constraints on land on which they are hoping to develop. If the controls are such that the development is not allowable due to planning objectives and legislation set out in the LEP and DCP or State Government policies, it is the responsibility of the developer to reconsider their plans in relation to their property, either before purchase -- or before submitting inappropriate plans. This would save Council time and expense and would save the community unnecessary concern.

- *b. Ensure that development is undertaken in a manner that is compatible with the physical and environmental characteristics of the land;*

Reason for Refusal: The development is not compatible with the physical and environmental characteristics of the land.

Comment: To gain access to the ridgeline the developer has (already) had a negative impact on the environment and the scenic escarpment. Excavation along the ridge, and the dumping of tons of gravel with heavy machinery on what was previously natural habitat has already caused land-slips, and impacted adversely on the wildlife corridor and the natural habitat. Council has referred to this activity as “unauthorised earthworks” in correspondence dated 9 February 2018. Note: Council has photos of relevant landslips and environmental damage.

Reference: Erosion and Landslips; Vic Gov, link below:

<http://agriculture.vic.gov.au/agriculture/farm-management/soil-and-water/erosion/landslips>

- *c. Protect significant environmental and natural resources.*

Comment: Environmental resource protection: the protection and management of “Environmental Resources” refers to the impact humans have on the natural environment, the interface of human activity and the natural environment and the need to protect the environment from the impact of human activity for future generations. (ie. Sustainability).

Comment: Natural resources refers to: land, water, soil, plants and animals, with a focus on how land management and planning affects the quality of life for both present and future generations.

- Please refer to my previous Comments and Reasons for Refusal in relation to the negative impact on the land, the soil, plants and wildlife from this proposal.

2. Ridgelines and Scenic Areas - Part 3.2, DCP

3.2.2 Planning Objectives - Ridgelines and Scenic Area:

- *a. Protect and enhance those areas of particular scenic value to the Ballina Shire.*
- *b. Encourage development that minimises intrusion into the skyline when viewed from public land.*
- *c. Encourage retention of prominent vegetation along ridgelines and visually prominent areas.*
- *d. Encourage development that maintains the rural character of the locality and minimises any adverse scenic impacts.*

Reason for Refusal: The development does not comply with the objectives outlined in Part 3.2 DCP, Planning Objectives for Ridgelines and Scenic Areas.

- a. The development does not protect or enhance The Newrybar Scenic Escarpment.
- b. The dwelling and associated structures would intrude into the skyline.
- c. The land has already been altered due to preemptive landscaping on what was previously a natural wallaby habitat, and daily use of the (unauthorised) road cutting through a vegetated wildlife corridor. There is also extensive use of electric fencing in the habitat/ wildlife corridor preventing wallabies from foraging between treed and open vegetation.
- d. The development does not maintain the rural character of the locality and would have a an adverse impact on the unique and special scenic views of the escarpment.

The Development does not comply with Part 3.2.3, ii - DCP

- *“Where it can be clearly demonstrated that there is no suitable alternative site for the building or works, the following measures are to be incorporated into the design of the development to minimise its potential visual impact”:*

Reason for Refusal: The property has an existing 4 bedroom home located on Old Byron Bay Road with current access to services and a functional driveway to the house.

Comment: This existing house site could be utilised. It would not have a negative impact on neighbors, the community or public land. The existing house site is serviced and has an existing driveway.

The proposed development cannot be adequately screened due to the location of the proposal on a predominate ridgeline. The 450 metre road to access the dwelling site is visible from a number of properties as well as from the public road. This 450 metre road is unnecessary as there is a house site with a driveway - in close proximity to Old Byron Bay Road.

Part 3.3 Natural Areas and Habitat

3.3.2 Planning Objectives on land identified as Natural Areas and Habitat

- *a. Protect and enhance ecologically significant areas;*
- *b. Provide for development that is compatible with ecological values and that minimises risk to ecologically sensitive environments; and*
- *c. Encourage development that contributes to the maintenance, enhancement or rehabilitation of environmental values and ecologically sensitive areas.*

Reason for Refusal: The proposed development does not comply with the planning objectives as outlined in Part 3.3.2; Natural Areas and Habitat, DCP.

Comment: The development does not comply with a., b., or c., of the Ballina DCP Objectives for Natural Areas and Habitat.

General and Environmental Considerations - DCP 2012; Chapter 2;

“Development applications relating to land to which this section applies are to be accompanied by an ecological assessment report prepared by an appropriately qualified and experienced professional.”

“The extent of works and documentation required will be dependent on the nature of the proposed development. For example, development involving the clearing of vegetation and the erection of multiple structures will likely require specific study of the potential impacts and extensive environmental repair/ improvements.”

Reason for Refusal: The impact on environment, including land clearing, is contrary to the objectives of the Environmental Protection Zone (7 (d1)).

Reason for Refusal: There is no Ecological Assessment Report accompanying the DA.

The location of the land on which this DA applies is in an; *1. Environmental Protection Zone, 2. Natural Areas and Habitat and 3. Wildlife Corridor. (see links to DCP maps at the end of this document).*

State Environmental Planning Policy; SEPP

I include a copy of the State Environmental Planning Policy (SEPP), Statutory considerations you may wish to reference in relation to compliance issues regarding this application.

STATE ENVIRONMENTAL PLANNING POLICIES:

S.79C(1)(a) STATUTORY CONSIDERATIONS Pursuant to Section 79C(1)(a) of the Environmental Planning & Assessment Act, 1979, a number of statutes are potentially applicable to any single development proposal.

79C(1)(b) ENVIRONMENTAL IMPACTS Section 79C(1)(b) requires that the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality, be considered.

79C(1)(c) SUITABILITY Section 79C(1)(c) requires that the suitability of the site for the development, be considered.

SECTION 79C(1)(d) SUBMISSIONS Section 79C(1)(d) requires that any submissions made in accordance with this Act or the regulations, be considered.

SECTION 79C(1)(e) PUBLIC INTEREST Section 79C(1)(e) requires that requires that the public interest be considered.

Reason for Refusal: *The built form and environmental impacts of the proposed development are considered contrary to the public interest. (Reference Section 79C (1)(e) Environmental Planning and Assessment Act; SEPP.)*

Other issues:

1. Use of an Unauthorised Road:

Council in correspondence with the developer on 9 February 2018 referred to this as “unauthorised earthworks, including construction of an internal road”. The unauthorised road has an ongoing impact to those of us living near or adjacent to the property. A Ballina compliance officer told me to take photos of “usage” of the unauthorised road. The developer uses the road most days so I now have a huge file of photos. I object to the ongoing usage of this unauthorised road. I object to the daily quad-bike traffic on the unauthorised road in a 7 (d1) zone. I object to the developer using this road to ‘work’ on the development site of a DA that has not yet been assessed - and has not been determined by Council.

2. The Preemptive Landscaping requiring Excavation (?)

From my understanding of development applications, a landscape plan forms part of the application and landscaping of the development site does not take place prior to determination. I understand we all like to plant trees on our land, but I am referring here to “landscaping of the dwelling site”, especially questionable when an excavator has been on site to “plant trees”.

3. Wildlife and Ecology Impact

I ask the Ballina Council’s ecologist, Ian Gaskell, to investigate the extensive use of electric fencing in a wildlife corridor and identified natural habitat area. (see references for DCP maps at the end of this document). I see wallabies each evening attempting to make their way around this obstruction to their habitat.

4. Koalas

There has been no Koala study undertaken on the property - in a wildlife corridor, natural habitat area. Koalas have been heard in the forested area of the land, located adjacent to the unauthorised road.

An assessment under SEPP 44 should have formed part of the DA. The DA report incorrectly states that because no trees are being removed for the development a SEPP is not required. The legislation is clear that a SEPP is required due to the size of the parcel of land “*whether or not the development application applies to the whole or only part of the land*”.

In Summary:

I request Council to uphold the objectives outlined in the Ballina Shire LEP for the Newrybar Scenic Escarpment Protection Zone - (7 (d1)). I call on Council to uphold the guidelines and planning controls outlined in the Ballina Shire DCP. I request Council to refer to the State Environmental Planning Policies (SEPP) in relation to this inappropriate development, and refuse DA2018/381.

Thank you for the opportunity to submit my objection to Council.

Links to Ballina DCP maps in relation to the application land:**Reference: DCP Maps; Ballina Shire**

www.ballina.nsw.gov.au/cp_themes/default/page.asp?p=DOC-AAN-64-51-00

1. Ridgelines & Scenic Areas map

RS_001 Shire North DCP2012_RS_001_080_20130204

2. Natural Areas & Habitat map

NH_001 Shire North DCP2012_NH_001_080_20140806

3. Wildlife Corridors map

WC_001 Shire North DCP2012_WC_001_080_20130204

Sincerely,

Sue Taylor

Suzanne Andreou
2/4 Espalnade
Airlie Beach, 4802

Paul Hickey
General Manager Ballina Shire Council

Dear Sir,

I am writing to you in relation to a proposal for **404 Old Byron Bay Road, Newrybar : ref DA No. 2018/381**

As the owner of Lot 1 404 Old Byron Bay Road, Newrybar. I am deeply concerned about the inappropriate and insensitive development currently being proposed by my 'neighbours'.

I would like to request that council officers review the current planning laws and guidelines clearly outlined in the LEP regarding the 7 (d1) zone that applies to this property. I am puzzled as the LEP clearly outlines strong limitations regarding the building of roads and dwelling along the scenic escarpment.

The primary objectives of the LEP amendment sought to strengthen the agricultural and rural residential land use of the zone, to maintain the rural character of the locality and to protect the existing scenic amenity of the area. Both the LEP amendment and DCP are now incorporated into the current Ballina Shire LEP 1987 (which applies to the 7(d1) zone referred to as 'deferred matter' within the Ballina LEP 2012) and Ballina Shire DCP 2012.

As I sold this property to the current owners just on a year ago, I am very familiar with the land area and am once again surprised by the choice of building site outlined in the current submission. The DA submission notes that adjoining neighbours were notified regarding affected visual impact, but I was not contacted or consulted and the current DA does include the visual impact from my adjoining property. I would also like to call into question the request to up-grade and 'Existing Road'. The road that now runs up the western face of the hill directly in front of the existing dwelling on 404 Old Byron Bay Rd, did not exist when I the property was sold to the current applicants. This cutting into a steep escarpment within a wildlife corridor is unsightly, environmentally insensitive and unnecessary. The requested up-grade in the current DA to widen and cover with asphalt will permanently blight the natural environment, carve through the wildlife corridor and disrupt the rural outlook of many dwellings along Old Byron Bay Road. The added movement of cars and trucks along this road during and after construction will further degrade the natural spur and provide constant noise and effect the visual amenity of the area.

Building a large dwelling on the ridgeline will severely impact the visual amenity of many of the neighbouring properties. There are several building sites on the large acreage that would minimize all of the above impacts: the current allotment where the original house is currently located and another site locate some metres below the proposed building site on the eastern side of the ridgeline. The current submission places the building envelope within approximately 20-25 metres of my southern boundary.

This new submission still clearly lacks specific details, notably the provision of power to the site and there does not seem to be any documentation included regarding the impact of the development on the Wildlife Corridor as mapped under the Ballina Shire Development Control Plan 2012.

Yours truly,

Suzanne Andreou

David Tyler

From: Robert Duetz <duetz@bigpond.com>
Sent: Monday, 30 July 2018 3:30 PM
To: Ballina Shire Council
Subject: Submission - DA 2018/381.1

Attention : General Manager

Re : DA 2018 / 381.1
Lot 2 DP1065811
404 Old Byron Bay Road, Newrybar

Dear Sir

We refer to the above Development Application and wish to register our objection to same on the following grounds :

- 1) The proposed development is to be built on a dominant ridge within the 7 (d1) Environmental Protection (Newrybar Scenic Escarpment) Zone.
Zone 7 (d1) Primary Objectives include the protection and enhancement of areas of particular scenic value to the Ballina Shire,
and to ensure that development within the Zone maintains the rural character of the locality and minimises any adverse scenic impacts.
- 2) The proposed development would have significant adverse impact on the visual amenity for surrounding properties and from
Old Byron Bay Road.
- 3) In accordance with Chapter 2 Section 3.2.3 of the Ballina DCP, "buildings and works should not be sited on ridge lines unless
it can be demonstrated that no suitable alternative locations available"
It is submitted that there are acceptable alternative building sites on the subject property that would not compromise the ridge line
of the Scenic Escarpment.
- 4) The proposed development also includes a 450 metre long asphalted road which is excessive and would further compromise the
scenic value of the escarpment.
- 5) The proposed development would place unnecessary impacts upon this recognised environmental protection area.
- 6) The Council's granting of approval of the subject Development Application would create an environmentally unsustainable
precedent for future development within the Newrybar Scenic Escarpment Zone.

Yours Sincerely,

Robert and Arna Duetz

356 Old Byron Bay Road,
Newrybar.

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30 July 2018

AG & MR Logan

The General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

242 Old Byron Bay Road
Newybar NSW 2479

Re: DA 2018/381

Proposed Dwelling at 404 Old Byron Bay Road Newrybar.

Dear Sir

We wish to object to the above application lodged with council.

We have been residents of Old Byron Bay Road for the past 29 years and have had a keen interest in the preservation and maintenance of the Newrybar scenic escarpment.

In the approval of our house and work shed we worked with council and adjoining owners to locate our buildings in accordance with council development controls and to minimise any impact on our neighbours.

When we constructed our work shed at the top of our property, we met with the neighbours and in discussions with them, located our building so we did not impact on their views.

The proposed application for a new dwelling at 404 Old Byron Bay Road would be to the detriment of a number of surrounding dwellings. It would impact on their privacy and on the views, they have enjoyed for many years.

There are other places on the subject property where a house can be built without detriment to its neighbours.

A new house could be built in the location of the existing house, or if it has to be located in the vicinity of where proposed it could be located further down the slope so it is not seen by the surrounding dwellings

Although in planning terms, a right to a view is very subjective in this case the proposal to construct a new dwelling on a ridgeline in front of a number of longstanding existing dwellings is unreasonable.

The statement of environmental effects and supporting documents make clear that the proposed house may be seen from surrounding properties and offers mitigation measures such as tree planting. There is no reason the proposed building cannot be located so it is completely below the ridge line.

The statement of environmental effects lodged with the application refers to an existing driveway on the site being upgraded. From my observations over many years, there was no existing driveway on the site. The surrounding owners would not have expected a driveway to be cut into such a steep valley including a creek crossing.

The proposed driveway is unnecessary when a perfectly good location for a dwelling in the place of the existing dwelling on the site is available.

We would suggest that the proposal is not in accordance with the development controls for the scenic escarpment which residents have been involved in implementing fought to protect for many years .

Yours sincerely

AG Logan MR Logan

Alan & Marianne Logan

From: Robert Duetz
To: [Ballina Shire Council](#)
Subject: Submission - DA 2018/381.1
Date: Monday, 30 July 2018 3:29:24 PM

Attention : General Manager

Re : DA 2018 / 381.1
Lot 2 DP1065811
404 Old Byron Bay Road, Newrybar

Dear Sir

We refer to the above Development Application and wish to register our objection to same on the following grounds :

- 1) The proposed development is to be built on a dominant ridge within the 7 (d1) Environmental Protection (Newrybar Scenic Escarpment) Zone.
Zone 7 (d1) Primary Objectives include the protection and enhancement of areas of particular scenic value to the Ballina Shire, and to ensure that development within the Zone maintains the rural character of the locality and minimises any adverse scenic impacts.
- 2) The proposed development would have significant adverse impact on the visual amenity for surrounding properties and from Old Byron Bay Road.
- 3) In accordance with Chapter 2 Section 3.2.3 of the Ballina DCP, "buildings and works should not be sited on ridge lines unless it can be demonstrated that no suitable alternative locations available"
It is submitted that there are acceptable alternative building sites on the subject property that would not compromise the ridge line of the Scenic Escarpment.
- 4) The proposed development also includes a 450 metre long asphalted road which is excessive and would further compromise the scenic value of the escarpment.
- 5) The proposed development would place unnecessary impacts upon this recognised environmental protection area.
- 6) The Council's granting of approval of the subject Development Application would create an environmentally unsustainable precedent for future development within the Newrybar Scenic Escarpment Zone.

Yours Sincerely,

Robert and Arna Duetz

356 Old Byron Bay Road,
Newrybar.

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David Tyler

From: admin@yogatherapyaustralia.com on behalf of Madeleine Marty
<mail@madmarty.com.au>
Sent: Wednesday, 1 August 2018 5:21 PM
To: Ballina Shire Council
Subject: OBEJCTION TO DA no: 2018/381 Property: 404 Old Byron Bay Rd, Newrybar 2479 NSW (Lot: 2 DP: 1065811)

**Attn: Mr Paul Hickey, General Manager, Ballina Shire Council
; Mr Martin Scott, Planner, Ballina Shire Council**

**Development Application: DA no:
201
8
/
381**

Property: 404 [Old Byron Bay Rd, Newrybar 2479 NSW \(Lot: 2 DP: 1065811\)](#)
Dear General Manager,

I am a resident of Old Byron Bay Road, in a property adjacent to the property the subject of DA
201
8
/
3
8
1
and hereby lodge formal objection to same.

As far as I understand, the proposal relates to the erection of dwelling house on the Ridge line of the Newrybar Scenic Escarpment Zone. Approval of such an application can only be contrary the intent of the zone. In this case the DA is somewhat inexplicable as there would appear to be a considerable number of alternative building sites available to the applicant within his property that would be unlikely to be contrary to the zoning.

The Newrybar Scenic Escarpment may be sighted from Ballina and Lennox Head through to Broken Head. The natural beauty of the Ballina Shire is enhanced by this Ridge line and it is an attraction to the many residents and tourists that come to visit the area. Allowing development along the Scenic Ridge beyond the current limitation of the Scenic Escarpment Zone will blight the area, its inherent beauty and ultimately render the entire Scenic Escarpment Zone a misnomer as it becomes yet another urban development. Further, should Council allow urban development extraneous to the zoning to proceed, it would also impact the beauty of the night sky, enjoyed by resident and tourists alike, by way of its associated light pollution.

Retention of significant and unusual green belts such as Newrybar Scenic Escarpment Zone within the Ballina Shire are essential. Not only for aesthetic reasons cited above, but also in order to ensure sufficient wildlife corridors exist for our dwindling native animal populations. I note that the proposed development site is immediately adjacent to a known remnant habitat area for wallabies, koalas

, eagles , numerous other species of birds, and other native life. I can only assume that Council will ensure that this impact of the proposed development will also be fully investigated with appropriate assessment and impact studies.

I would also like to note my concern regarding the significant earthworks (including a road) that have been undertaken at the property the subject of the DA and which already constitute a blight to the previous amenity of the area. I am not aware whether these works were conducted with or without approval, but no doubt Council in it duties will investigate same.

I look foward to confirmation of receipt of this objection as well as updates in relation to any consideration or furtherance of DA

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381

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Yours sincerely,

Madeleine A. Marty,

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Madeleine A. Marty *MS (MAVIM), NEM, GAPS, Dip Law (BAB)*

Ayurveda Practitioner and Wellness Consultant

Yoga Therapist & Senior Yoga Teacher

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e. mail@madmarty.com.au

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<BR

Martin Scott

From: Leanne Cramp <leannecramp@yahoo.ca>
Sent: Monday, 16 July 2018 21:30
To: Ballina Shire Council
Subject: Unauthorised Road Construction at 404 Old Byron Bay Rd Newrybar

Attention; Paul Hickey, Matt Wood, Vince Hunt, Andrew Smith

Dear Council Staff,

This letter is being written out of absolute frustration, but with the hope that I may be provided with some clarity, answers and a way to negotiate the way forward.

I will keep it brief and in dot points so that I may get tot the point.

1. December 2016 - I returned to my property after a long absence to find major roadworks occurring on the spur at property 404 Old Byron Bay Rd. I rang the council and was informed that no DA was in place for the road construction.

2. I was informed that a DA was not necessary. I questioned this with council but did not get a clear response. I was informed that the road was existing and was being re-surfaced. I disputed this as I have lived here for 26 years. There is an existing road, but the 'new road' was nowhere near it. The owners of 404 then admitted that the existing road was not adequate and therefor decided to build a new one.

3. I spoke to the excavator and he advised me that he made a 'new cutting' and created a new road.

4. More phone calls and letters to council.

5. A DA is received by council for a large ridge-line development at 404 Old Byron Bay Rd, Newrybar.

6. I am informed by council that they are unable to make a determination on the legality of the disputed road until the DA process is resolved. I was advised to keep my objections regarding the DA to the dwelling only, as the road wasn't a part of the application.

7. I was confused by this as I was unclear how such a DA could be put forth when the road hadn't been approved, hadn't been included in the DA and really didn't exist !!!!

8. The Whites withdrew their application.

9. I was informed by council that the issue of the illegal construction of the road was being referred to the councils Compliance Department.

10. I was advised by council that the Whites had been asked to provide information regarding the road construction and they were to be given the opportunity to 'clean up' around the creek crossing and place 'better drainage' on road. I, like my neighbours asked why the road wasn't closed and repatriated. We were asked by the compliance section to document the road use and keep a log of how often the Whites were using the road. This was done.

11. I was asked to provide photos of the original road to the council. This was done.

12. I sent several emails to Stephen Rendall and I also attempted tp speak to him on ten occasions, leaving messages and requesting a response to my on-going enquiries. I had one verbal response and just recently received a letter on the 29th June stating that a new DA has been lodged, 2018/381. Therefore the Compliance Section is not longer attending to the case of the road.

13. The new DA refers to the road as 'existing' and in fact it will be up-graded !!!!

Can I refer to this illegality in my next submission ? Will this infer that the council has not shown due diligence and therefore my objection to the current DA will be omitted?

I was informed that I need to be patient but now my patience is very thin and I am now faced with the added stress of responding to the new DA. This is a diabolical situation and as a long term resident and ratepayer, I feel as if my

concerns are being totally overlooked. The beautiful spur has been permanently scarred by an un-lawful road construction, the natural habitat has been disrupted, the wild-life corridor split in half and now they want to construct a house on the top of ridge !!!!!

Please advise me at your earliest possible convenience what is happening about the road, its legality and how the current DA could possibly proceed whilst there are so many unanswered questions.

Please respond to my questions at your earliest convenience. I can also be reached on MOB; 0423356833

Yours truly,

Leanne Cramp

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420 Old Byron Bay Road
NEWRYBAR NSW 2479

3 August 2018

Mr Paul Hickey
General Manager
Ballina Shire Council

Dear Mr Hickey

**RE: DA 2018/381 - 404 OLD BYRON BAY ROAD, NEWRYBAR
OBJECTION**

I am writing to formally lodge an objection to DA 2018/381. This Development Application (DA) is for the construction of a new two storey house on the ridgeline of the Newrybar scenic escarpment with associated swimming pool and construction of a 450 metre long asphalt road 4 to 6 metres wide.

The area encompassing the development land is subject to the Environmental Newrybar Scenic Escarpment Zone 7(1d). The Newrybar Escarpment has very particular significance environmentally and has been the subject of strict planning laws to ensure the area is preserved for the benefit of our community and visitors travelling through this unique and special part of Northern New South Wales.

The current Applicants have engaged and paid for professional consultants to prepare a detailed assessment report on their behalf. In part this assessment report was prepared in response to a letter from Ballina Shire Council to the Applicants dated 09/02/2018. This report to Council's letter also forms the basis for this Development Application.

I own the adjoining property to the north of 404 Old Byron Bay Road, having acquired the property more than eighteen (18) years ago. I have never noticed a road access on the Western face of the ridgeline of 404 Old Byron Bay Road.

The Applicant's statement of environmental effects, a single page "Environmental Interactions", does not address the impact of the development with regard to the environmental features of the land including the waterway and catchment along the bottom of the property at 420 Old Byron Bay Road, the drainage patterns or the Landslip zoning.

There is also a Covenant and Easement for Water Supply burdening the property at 404 Old Byron Bay Road. The application does not address the legal impact of the proposed development upon the covenant and easement that is for the benefit of 420 Old Byron Bay Road (Notification P493825 registered on Lot 3 DP 576881).

Due to the location of the subject allotment being within a sensitive environmental area, Council's DA process requires that an ecological assessment be undertaken to address council's Development Control Plan in relation to the *Natural areas and habitat*, including *wildlife corridors*. A single page in a 222-page report does not constitute an "ecological assessment" and does not identify whether a person with appropriate technical qualifications and practical experience prepared it.

It is extraordinary that that the assessment report of professionals, included as part of this DA, can gloss over the fundamental issue of "uncovering" access as a basis to substantiate the proposed earthworks as an "upgrade" of a 450 metre long road.

I will address the grounds for refusal of the DA 2018/381 which I would ask Council to consider in refusing this development application.

Council is requested to consult with me prior to determination of the application, particularly if Council is considering approval of this DA.

I am available on 0437 726 675 and can be available to meet subject to reasonable notice.

Please see **attached** "Grounds for Refusal".

Yours sincerely

Mark Ryan
420 Old Byron Bay Road
Newrybar 2479

GROUNDINGS FOR REFUSAL:**1. Ballina Local Environmental Plan 1987**

The development application is not compliant with the objectives of the zone. In a preliminary evaluation of the proposed development measured against the LEP objectives of Council for this zone it should be noted in accordance with Council's clause 9(7) "Council shall not grant consent to the carrying out of development of land to which this plan applies unless the carrying out of the development is consistent with the objectives of the zone within which the development is proposed to be carried out".

This clause places a mandatory obligation on the subject development application being consistent with all objectives for the zone or it must be refused.

Primary objectives (from extracts of Council's LEP for the zone)

(a) to protect and enhance the areas of particular scenic value to the local government area of Ballina

RESPONSE – This two storey ridgeline development with associated 450 meter road, swimming pool and associated facilities will not protect the ridgeline or the escarpment and will be visible from the north, south, east and west of the escarpment ridgeline. This clearly does not protect and enhance the scenic value of the Newrybar scenic escarpment. The proposed development would be fundamentally inconsistent with this objective

(b) to encourage the productive use of land within the zone and enable develop ancillary to agricultural land uses, particularly dwelling houses, rural workers dwellings and rural industry

RESPONSE – The development does nothing to support this objective. There is already a substantial house located on the land. The construction of a further house at the end of a 450 meter long bitumen road is not a development ancillary to agricultural land uses but rather has the intended purpose of the construction of a residence and is not for an agricultural purpose.

(c) To ensure the development within the zone maintains the rural character of the locality and minimises any detrimental scenic impact

RESPONSE – The proposed development has major scenic impact on the area and would detract from the rural character of the scenic escarpment by imposing a two storey dwelling with 450 meter asphalted road works, turning bays, passing lanes, septic systems and trenches, water tanks, a swimming pool and associated ancillary structures on the ridgeline including a large 6 x 4 meter asphalt turning circle accompanied by extensive earthworks and excavation to the escarpment and to the ridgeline. This cannot be construed to be minimising the scenic impact. The earth work and asphalt is inconsistent with the rural character and does not minimise the scenic impact

(d) To ensure development within the zone is of a scale and nature that will not adversely impact on the existing amenity of the area.

RESPONSE – The proposed development significantly affects visual amenity for many neighbouring properties and from public places such as road ways. The scale and nature of the development is not consistent with the objectives of the zone. The proposed development would have a significant adverse impact on the existing amenities of the area.

The failure to meet the primary objectives of the zone provides immediate grounds to refuse the development application. The purpose of the establishment of a scenic escarpment zone 7(d1) with the objectives outlined was clearly to protect the environmental Newrybar scenic escarpment zone.

2. RIDGELINE

DA 2018/381 does not comply with development controls (reference Section 4.1.3 of DA). The application in and of itself is clearly a ridgeline development. The plans themselves indicate that the development is a ridgeline development that will be clearly visible from the north, south, east and west of the ridgeline.

Clause 3.2.3(ii) of the relevant section of Ballina's DCP states "Buildings and works should not be sited on a ridgeline unless it can be demonstrated that no suitable alternative location is available".

It is therefore not established in the development application that there is no suitable alternative site existing on the subject land.

A clear alternative location exists on the land with an existing dwelling. If the existing dwelling was unsuitable it could be demolished to build a new home if required. The purpose of the development control is to avoid construction on a ridgeline when suitable alternatives are available. This is clearly a situation where it is appropriate to build on the ridgeline having regard to the intended purposes of scenic escarpment zone 7(d1).

3. ENVIRONMENTAL EFFECTS

No statement of environmental effects (reference SPECT 4.1.7 of DA). The application does not address the statement of environmental effects. This was requested in the first application made by the current applicant who received correspondence from the Ballina Council dated 10 November 2017. It has been stated that no vegetation removal is proposed and that it is not necessary for an environmental statement to be prepared.

The area is part of the wildlife corridor and despite Council's previous request this information has not been addressed in the current application.

The proposed road which has been partly constructed and is intended to be widened to 4 to 6 meters and asphalted cuts through a rain forest area and water catchment area through which wildlife habitat co-exists and would be significantly impacted by the development proceeding. The wildlife in the area includes significant birdlife, wallabies, echidna, platypus and other native species. The application has not included a proper assessment of the environmental impact of the development which would require an appropriate assessment by a qualified ecologist of the impact through the wildlife corridor of the development.

4. VISUAL IMPACTS

It is clear that the information contained in the visual assessment report is inaccurate and has not addressed the actual impact of the development which is being proposed.

It is an unuseful assertion to imply that neighbouring properties have not assisted in enabling a proper assessment of the impact upon visual amenities as a consequence of the development.

The assessment of visual impact has not included the significant 450 meter long 4 to 6 meter wide asphalt road as well as the significant size of the development on the ridgeline in and of itself.

The information provided appears to try to substantiate the application but does not appear to be accurate or useful in properly interpreting the intended purpose of the assessment of the visual impact of the development.

The proposed development would create significant visual impact upon the scenic escarpment and the rural views which exist out to the ocean from all of the surrounding land areas. The development would impact upon the visual amenity of the area substantially which is in complete contrast to the intended purpose of the zone 7(d1).

5. ACCESS TO DWELLING SITE

Road access issue not addressed. The issue with respect to the 450 metre road access has not been properly addressed in the DA. It is included as an appendix to the development application and is described as an existing road.

The application is self-evidently attempting to establish the construction of a significant 450 meter long 4-6 meter wide asphalted road to the top of the scenic escarpment ridgeline to enable the construction of a new residence for the applicants.

This road construction is in an inappropriate location and would be of such significant impact to the ridgeline and to the escarpment that the application does not establish a proper basis as to why the development application should be approved.

The earth moving, level of construction and impact upon the scenic escarpment would be so substantial that the application in those circumstances should be rejected.

Tuesday 31 July, 2018

Paul Hickey
General Manager
Ballina Shire Council

Dear Mr Hickey,

DA NO: DA 2018/381

APPLICANT: Mrs J White & Mr J R White

PROPERTY: Lot 2 DP 1065811, 404 Old Byron Bay Road, Newrybar

AMENDED PROPOSAL: Re-notification – Dwelling, Swimming Pool and upgrade of internal vehicular access way

I own 420 Old Byron Bay Road which is the property immediately to the north of Lot 2.

I wish to strongly object to this application for development in an environmental protection zone.

Given the proposed development of Lot 2 DP 1065811 is located within Zone No. 7 (d1) - Environmental Protection (Newrybar Scenic/Escarpment) Zone, the following planning documents are referred to in my objection:

- Ballina Local Environmental Plan (BLEP 1987)
- Ballina Shire Development Control Plan 2012 (BSDCP 2012)

This development application is seeking consent from Council for significant earthworks and building in an environmental protection zone.

Council must dismiss the application otherwise precedents will be set which diminish the authority and intent of Council's own Development Control Plans and disregard Ballina Shire's Local Environmental Plans.

Please find following my submission outlining several grounds for refusal, relating to:

- Internal vehicular access to the proposed dwelling site;
- The siting of the dwelling;
- Landscaping;
- Environmental effects; and
- Other aspects of the proposed development.

Yours sincerely,

Martin

Martin Kenny
420 Old Byron Bay Road, Newrybar

Internal vehicular access to the proposed dwelling house

Council should dismiss this DA because the application does not provide adequate justification for the proposed internal vehicular access:

- The development application states, “a concrete culvert has been introduced to allow crossing of the current drainage gully”. [see DA 2018/381 Access Road Engineering Assessment, page 128 of 222]
- Residents and neighbours have long understood that development on the scenic ridge of Lot 2 was not permissible because access to the proposed dwelling site on the ridgeline would not only require crossing the waterway but also require significant alteration to the surface level of the land on the western facing steep slope.
- Earthworks undertaken in an environmental protection zone is a significant variation to the Ballina LEP, namely the alteration of the land [BLEP 1987, Part 3 Clause 23].
- Council therefore has no choice but to refuse consent for such significant earthworks and building in an environmental protection zone.

The proposed dwelling site

Council should dismiss this DA because the application does not provide an adequate justification for the proposed dwelling site:

- BSDCP 2012 states:
 - *“...buildings and works should not be sited on ridgelines unless it can be demonstrated that no suitable alternative location is available.”*
(BSDCP12, Chapter 2 General and Environmental Considerations, 3.2 Ridgelines and Scenic Areas)
- The current dwelling is already a suitable site for the proposed building.
- The town planner’s Comment (DA 2018/381, page 18 of 222) is silent on alternative dwelling sites and therefore fails to provide any justification whatsoever for siting the proposed dwelling on the ridgeline.
- The town planners (DA 2018/381, page 19 of 222) have referenced the Notes from BDCP12 which state:

“It is recommended that, if considering purchasing a lot within a rural or environmental protection zone, Council is consulted to determine if a dwelling is permissible on the subject land.”
(BSDCP12, Chapter 7 Rural Living and Activity, Part 3 General Controls, 3.1 Residential Development in Rural Areas)
- The Owner’s failure to consult Council prior to their purchase of Lot 2 should not therefore persuade Council to give consent to the proposed dwelling site.
- The engineer states that he attended site to “review possible pathways to access the eastern side” and he concludes “there is no other means of accessing” the proposed dwelling site. [see DA 2018/381 Access Road Engineering Assessment, pages 128-129 of 222]
- Council should not accept the engineer’s assertion that there is no other means of accessing the proposed dwelling site as a reason to permit development on a scenic ridgeline in an environmental protection zone.
- Further, one of the primary objectives in BLEP1987 is to
 - *“...encourage the productive use of land within the zone and enable development ancillary to agricultural land uses...”*
(BLEP 1987, Part 2 Clause 9 Zone objectives and development control)
- The town planner states “the subject site has been used for grazing purposes”. (DA 2018/381, page 21 of 222)
- However the town planner fails to provide any information about how the development of a dwelling house within land currently used for agricultural purposes will encourage the productive use of land within the zone.

Landscaping

Council should dismiss this DA because the application does not provide an adequate landscaping plan:

- A visual inspection from surrounding properties, including from my property, shows that the existing vegetation will not adequately screen the proposed development.
- The Ballina Shire Development Controls insist on a landscaping plan:

*“Landscaping comprised predominately of native species endemic to the subject locality should be used to screen the buildings or works from **public land** and surrounding properties. Where existing vegetation will not adequately screen the development, a landscaping plan shall be submitted detailing proposed planting to augment existing vegetation.”*
(BSDCP12, Chapter 2 General and Environmental Considerations, 3.2 Ridgelines and Scenic Areas)

- The town planners fail to incorporate any landscaping plan in this development application.
- The existing vegetation along the northern boundary of Lot 2, our common boundary, will not adequately screen the earthworks proposed from Old Byron Bay Road down to the waterway.
- The town planner has not provided a landscaping plan associated with the proposed earthworks across the waterway on the “pathways to access the eastern side” leading to the proposed dwelling site.

Environmental Effects

Council should dismiss this DA because the application does not provide an adequate environmental assessment of the proposed development:

- The proposed development is in a wildlife corridor however the town planners have not provided any statements assessing the environmental impact on the ecosystems of the escarpment and waterways.
- The development application does not address how crossing the waterway will impact the waterway upstream or downstream.
- The secondary objectives of Zone No 7 (d1) are clear in preventing development in “areas of excessive gradient”. [BLEP 1987, Part 2 Clause 9 Zone objectives and development control]
- The town planner’s Comments (page 15 of 222) fail to provide information to justify why the development should be allowed in an area of excessive gradient.
- The engineer’s drawings prove that the proposed development will indeed occur in areas of excessive gradients. [see DA 2018/381 Access Road Engineering Assessment, Appendix C Road Design Drawings, page 156 of 222]
- There is a Covenant and Easement for Water Supply burdening the property at 404 Old Byron Bay Road.
- The application does not address the environmental (or legal) impact of the proposed development upon the covenant and easement that is for the benefit of 420 Old Byron Bay Road (Notification P493825 registered on Lot 3 DP 576881).

Other aspects of the proposed development

Council should dismiss this DA because the application does not provide an adequate assessment of the following aspects of the proposed development:

- The Owners have not attached a cost estimate for the development and the methodology as requested in Section 6, Development Application Form, Estimated Value of Development.
- The estimated cost of the following aspects of the development by a suitably qualified person should be provided, given their significance to the total development:
 - the internal vehicular access to the proposed dwelling, with particular regard to the solution relating to access required by the Rural Fire Service;
 - the onsite wastewater management system;
- The town planners have not attached “Calculations of the Method 2 modelling outcomes” as requested in an email by NSW Rural Fire Service. [see DA 2018/381 Bush Fire Assessment Report, Appendix A, page 104 of 222]

APPENDIX

- Ballina Local Environmental Plan (BLEP 1987)
https://www.ballina.nsw.gov.au/cp_themes/default/page.asp?p=DOC-ZRO-08-82-64
 - BLEP 1987, Part 2 Clause 9, Zone objectives and development control
 - BLEP 1987, Part 3 Clause 23, Development within Zone 7 (d1)
- Ballina Shire Development Control Plan 2012 (BSDCP 2012)
https://www.ballina.nsw.gov.au/cp_themes/default/page.asp?p=DOC-AAN-64-51-00
 - (BSDCP12, Chapter 2 General and Environmental Considerations, 3.2 Ridgelines and Scenic Areas)
 - (BSDCP12, Chapter 7 Rural Living and Activity, Part 3 General Controls, 3.1 Residential Development in Rural Areas)
- Mapping associated with the BLEP 1987
https://www.ballina.nsw.gov.au/cp_themes/default/page.asp?p=DOC-RIB-25-18-81
- Online mapping tool for NSW
<https://maps.six.nsw.gov.au/>

Soteris Andreou
1096 Bulacan St
Philippines

Paul Hickey
General Manager Ballina Shire Council

Dear Sir,

I am writing to you in relation to a proposal for **404 Old Byron Bay Road, Newrybar : ref DA No. 2018/381**

As the co-owner of Lot 1 404 Old Byron Bay Road, Newrybar. I wish to lodge and objection to the above DA.

The property is zoned 7(d1) Environmental Protection (Newrybar Scenic/Escarpment) under the Ballina Shire LEP 1987 which is the pertinent planning instrument for this land. Accordingly, any proposed development should comply with the objectives of the zone.

The primary objectives of the LEP amendment sought to strengthen the agricultural and rural residential land use of the zone, to maintain the rural character of the locality and to protect the existing scenic amenity of the area. Both the LEP amendment and DCP are now incorporated into the current Ballina Shire LEP 1987 (which applies to the 7(d1) zone referred to as 'deferred matter' within the Ballina LEP 2012) and Ballina Shire DCP 2012.

The proposed dwelling and swimming pool are to be located on a ridgeline adjacent to the main coastal escarpment. This ridgeline is mapped as ridgeline under Ballina Shire Council Development Control Plan 2012. The building envelop also falls within a designated Wildlife Corridor as mapped under Ballina Shire Development Control Plan 2012.

I sold this property to the current owners and thus I am very familiar with the land area and am once again surprised by the choice of building site outlined in the current submission. I would like to call into question the request to up-grade and 'Existing Road'. The road that now runs up the western face of the hill directly in front of the existing dwelling on 404 Old Byron Bay Rd, did not exist when I the property was sold to the current applicants. This cutting into a steep escarpment within a wildlife corridor is unsightly, environmentally insensitive and unnecessary. The requested up-grade in the current DA to widen and cover with asphalt will permanently blight the natural environment, carve through the wildlife corridor and disrupt the rural outlook of many dwellings along Old Byron Bay Road. The added movement of cars and trucks along this road during and after construction will further degrade the natural spur and provide constant noise and effect the visual amenity of the area.

Building a large dwelling on the ridgeline will severely impact the visual amenity of many of the neighbouring properties. There are several building sites on the large acreage that would minimize all of the above impacts: the current allotment where the original house is currently located and another site locate some metres below the proposed building site on the eastern side of the ridgeline. The current submission places the building envelope within approximately 20-25 metres of my southern boundary.

This new submission still clearly lacks specific details, notably the provision of power to the site. It is unclear where the power for the construction of the dwelling would be coming from. The developer may need to use a generator which would be loud and have a detrimental impact on neighbours. In addition, there does not seem to be any documentation included regarding the impact of the development on the Wildlife Corridor as mapped under the Ballina Shire

Development Control Plan 2012. The development would have a detrimental impact on the wildlife corridor on which the site is located. The road as it currently stands, already has a detrimental impact on the movement of wildlife through the corridor. The further proposed works would only add to this situation.

I urge the council to refuse this development application given the non-compliance of the 'existing road' and the proposed development should comply with the objectives of the zone.

Yours truly,

Soteris Andreou

30 July 2018

AG & MR Logan

The General Manager
Ballina Shire Council
PO Box 450
Ballina NSW 2478

242 Old Byron Bay Road
Newybar NSW 2479

Re: DA 2018/381

Proposed Dwelling at 404 Old Byron Bay Road Newrybar.

Dear Sir

We wish to object to the above application lodged with council.

We have been residents of Old Byron Bay Road for the past 29 years and have had a keen interest in the preservation and maintenance of the Newrybar scenic escarpment.

In the approval of our house and work shed we worked with council and adjoining owners to locate our buildings in accordance with council development controls and to minimise any impact on our neighbours.

When we constructed our work shed at the top of our property, we met with the neighbours and in discussions with them, located our building so we did not impact on their views.

The proposed application for a new dwelling at 404 Old Byron Bay Road would be to the detriment of a number of surrounding dwellings. It would impact on their privacy and on the views, they have enjoyed for many years.

There are other places on the subject property where a house can be built without detriment to its neighbours.

A new house could be built in the location of the existing house, or if it has to be located in the vicinity of where proposed it could be located further down the slope so it is not seen by the surrounding dwellings

Although in planning terms, a right to a view is very subjective in this case the proposal to construct a new dwelling on a ridgeline in front of a number of longstanding existing dwellings is unreasonable.

The statement of environmental effects and supporting documents make clear that the proposed house may be seen from surrounding properties and offers mitigation measures such as tree planting. There is no reason the proposed building cannot be located so it is completely below the ridge line.

The statement of environmental effects lodged with the application refers to an existing driveway on the site being upgraded. From my observations over many years, there was no existing driveway on the site. The surrounding owners would not have expected a driveway to be cut into such a steep valley including a creek crossing.

The proposed driveway is unnecessary when a perfectly good location for a dwelling in the place of the existing dwelling on the site is available.

We would suggest that the proposal is not in accordance with the development controls for the scenic escarpment which residents have been involved in implementing fought to protect for many years .

Yours sincerely

AG Logan MR Logan

Alan & Marianne Logan

From: admin@yogatherapyaustralia.com
To: [Ballina Shire Council](#)
Subject: OBJECTION TO DA no: 2018/381 Property: 404 Old Byron Bay Rd, Newrybar 2479 NSW (Lot: 2 DP: 1065811)
Date: Wednesday, 1 August 2018 5:20:41 PM

Attn: Mr Paul Hickey, General Manager, Ballina Shire Council ; Mr Martin Scott, Planner, Ballina Shire Council

Development Application: DA no: 2018

/ 381

Property: 404 [Old Byron Bay Rd, Newrybar 2479 NSW \(Lot: 2 DP: 1065811\)](#)

Dear General Manager,

I am a resident of Old Byron Bay Road, in a property adjacent to the property the subject of DA 201 8/ 38 1 and hereby lodge formal objection to same.

As far as I understand, the proposal relates to the erection of dwelling house on the Ridge line of the Newrybar Scenic Escarpment Zone. Approval of such an application can only be contrary the intent of the zone. In this case the DA is somewhat inexplicable as there would appear to be a considerable number of alternative building sites available to the applicant within his property that would be unlikely to be contrary to the zoning.

The Newrybar Scenic Escarpment may be sighted from Ballina and Lennox Head through to Broken Head. The natural beauty of the Ballina Shire is enhanced by this Ridge line and it is an attraction to the many residents and tourists that come to visit the area. Allowing development along the Scenic Ridge beyond the current limitation of the Scenic Escarpment Zone will blight the area, its inherent beauty and ultimately render the entire Scenic Escarpment Zone a misnomer as it becomes yet another urban development. Further, should Council allow urban development extraneous to the zoning to proceed, it would also impact the beauty of the night sky, enjoyed by resident and tourists alike, by way of its associated light pollution.

Retention of significant and unusual green belts such as Newrybar Scenic Escarpment Zone within the Ballina Shire are essential. Not only for aesthetic reasons cited above, but also in order to ensure sufficient wildlife corridors exist for our dwindling native animal populations. I note that the proposed development site is immediately adjacent to a known remnant habitat area for wallabies, koalas, eagles, numerous other species of birds, and other native life. I can only assume that Council will ensure that this impact of the proposed development will also be fully investigated with appropriate assessment and impact studies.

I would also like to note my concern regarding the significant earthworks (including a road) that have been undertaken at the property the subject of the DA and which already constitute a blight to the previous amenity of the area. I am not aware whether these works were conducted with or without approval, but no doubt Council in its duties will investigate same.

I look forward to confirmation of receipt of this objection as well as updates in

relation to any consideration or furtherance of DA 201 8/ 381.

Yours sincerely,

Madeleine A. Marty,

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Madeleine A. Marty *MS (MAVIM), NEM, GAPS, Dip Law (BAB)*

Ayurveda Practitioner and Wellness Consultant

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PO Box 429 Bangalow NSW 2479
August 6 2018

Ballina Shire Council
Attention: General Manager, Paul Hickey
Cc: Martin Scott

RE: DA 2018 / 381 -- 404 Old Byron Bay Road, Newrybar - OBJECTION

Dear Mr Hickey,

I am writing on behalf of the Scenic Escarpment Protection Alliance (SEPA) to lodge an objection to DA2018/381.

SEPA is an alliance of local residents and property owners in the Newrybar Scenic Escarpment Area.

Our objectives are:

1. To protect the unique and sensitive environment of the Scenic Escarpment area in accordance with the Objectives of the Environmental Protection Zone.
2. To support the best design development and development conditions to maintain the rural character, scenic beauty and wildlife protection of the natural habitat location.

There are many specific grounds for refusal of this DA. We draw your attention to the objections you have received from residents and the specific grounds for refusal they make.

SEPA supporters include town planners, lawyers, and architects as well as long time residents. We are prepared to work with Council to ensure the objectives outlined for the protection of the escarpment area by Council in the LEP remain central principles for any proposed development in the Newrybar Scenic Escarpment / Environmental Protection Area.

We ask Council to refuse DA 2018 / 381 and to allow no further development, based on the many objections you have already received.

Sincerely,

Martin Kenny
Secretary

Soteris Andreou
1096 Bulacan St
Philippines

Paul Hickey
General Manager Ballina Shire Council

Dear Sir,

I am writing to you in relation to a proposal for **404 Old Byron Bay Road, Newrybar : ref DA No. 2018/381**

As the co-owner of Lot 1 404 Old Byron Bay Road, Newrybar. I wish to lodge and objection to the above DA.

The property is zoned 7(d1) Environmental Protection (Newrybar Scenic/Escarpment) under the Ballina Shire LEP 1987 which is the pertinent planning instrument for this land. Accordingly, any proposed development should comply with the objectives of the zone.

The primary objectives of the LEP amendment sought to strengthen the agricultural and rural residential land use of the zone, to maintain the rural character of the locality and to protect the existing scenic amenity of the area. Both the LEP amendment and DCP are now incorporated into the current Ballina Shire LEP 1987 (which applies to the 7(d1) zone referred to as 'deferred matter' within the Ballina LEP 2012) and Ballina Shire DCP 2012.

The proposed dwelling and swimming pool are to be located on a ridgeline adjacent to the main coastal escarpment. This ridgeline is mapped as ridgeline under Ballina Shire Council Development Control Plan 2012. The building envelop also falls within a designated Wildlife Corridor as mapped under Ballina Shire Development Control Plan 2012.

I sold this property to the current owners and thus I am very familiar with the land area and am once again surprised by the choice of building site outlined in the current submission. I would like to call into question the request to up-grade and 'Existing Road'. The road that now runs up the western face of the hill directly in front of the existing dwelling on 404 Old Byron Bay Rd, did not exist when I the property was sold to the current applicants. This cutting into a steep escarpment within a wildlife corridor is unsightly, environmentally insensitive and unnecessary. The requested up-grade in the current DA to widen and cover with asphalt will permanently blight the natural environment, carve through the wildlife corridor and disrupt the rural outlook of many dwellings along Old Byron Bay Road. The added movement of cars and trucks along this road during and after construction will further degrade the natural spur and provide constant noise and effect the visual amenity of the area.

Building a large dwelling on the ridgeline will severely impact the visual amenity of many of the neighbouring properties. There are several building sites on the large acreage that would minimize all of the above impacts: the current allotment where the original house is currently located and another site locate some metres below the proposed building site on the eastern side of the ridgeline. The current submission places the building envelope within approximately 20-25 metres of my southern boundary.

This new submission still clearly lacks specific details, notably the provision of power to the site. It is unclear where the power for the construction of the dwelling would be coming from. The developer may need to use a generator which would be loud and have a detrimental impact on neighbours. In addition, there does not seem to be any documentation included regarding the impact of the development on the Wildlife Corridor as mapped under the Ballina Shire

Development Control Plan 2012. The development would have a detrimental impact on the wildlife corridor on which the site is located. The road as it currently stands, already has a detrimental impact on the movement of wildlife through the corridor. The further proposed works would only add to this situation.

I urge the council to refuse this development application given the non-compliance of the 'existing road' and the proposed development should comply with the objectives of the zone.

Yours truly,

Soteris Andreou

The General Manager

7 August 2018

Ballina Shire Council

PO Box 450

Ballina NSW 2478

Attention Martin Scott

Dear Sir

DA2018/381- 404 Old Byron Bay Road Newrybar

I have been notified of the amended proposal for this site including the upgrade of internal vehicular access.

I understand that some effort has been made to reduce the visual bulk of the dwelling and to screen it by plantings which have been carried out over the past 12 months or so.

However I remain concerned by the lengthy scar of "roadway" has been created and which will be in constant use to access the site.

Any existing track was upgraded by the owners some time ago and is very obvious from the living areas of my property. The planners report suggests that my property is sited to look east and possibly south but I am equally oriented with an aspect to the north toward the new roadway which is directly in my line of sight. The sound of any vehicles traversing the site is also clearly heard from my property.

I understand that it is now proposed to increase the width of the road and to surface it making it a permanent and visible scar on the hill even when not in use.

I confirm my previous request that Council ensure that the development in all respects complies with its requirements if it is to be approved.

Yours faithfully



Elizabeth Johnstone

360 Old Byron Bay Road

Newrybar NSW 2479



PO Box 429 Bangalow NSW 2479
August 8 2018

Ballina Shire Council
Attention: General Manager, Paul Hickey
Cc: Martin Scott

DA NO: DA 2018/381
APPLICANT: Mrs J White & Mr J R White
PROPERTY: Lot 2 DP 1065811, 404 Old Byron Bay Road, Newrybar
AMENDED PROPOSAL: Re-notification – Dwelling, Swimming Pool and upgrade of internal vehicular access way

Dear Mr Hickey,

SEPA notes that the submissions objecting to this DA overwhelmingly identify issues related to the proposed development occurring within an environmental protection zone. Indeed, Council's correspondence to the Owners dated 9 February 2018 also raises the same issues.

In these circumstances, we sincerely urge Council to ensure the assessment and report on this DA fully involves those areas in Council's Development Services with expertise in ecology and broader development and planning issues, rather than only appraising the construction aspects of this development proposal.

We ask Council to refuse DA 2018 / 381 and to allow no further development, because of the objections to Council from many residents and landowners that identify how the proposed development will negatively impact on the rural character, scenic beauty and wildlife protection of the natural habitat location.

SEPA is prepared to work with Council to ensure the objectives in BLEP 1987 remain central principles for any proposed development on land zoned 7(d1) Environmental Protection (Newrybar Scenic/ Escarpment) Zone.

It is important that Ballina's environmental protection zones continue to provide certainty and clarity regarding community expectations for the health and preservation of our natural environment:

"We want to continue to find a balance between development and the environment to ensure we preserve what people love so much about living in the Ballina Shire... We want our built environment to meet our needs but not at the expense of our natural environment or the people who live and work here." (page 21 of 34, Our Community: Our Future – Ballina Shire Council's [Community Strategic Plan](#))

Sincerely,

Martin Kenny
Secretary

8 August 2018

Paul Hickey
General Manager
Ballina Shire Council

Dear Mr Hickey

Re: Objection to DA2018/381 – Additional Information.

I understand that this DA may go to a Council meeting in the near future. I also understand that most Councillors and indeed some officers within Council involved in the assessment will find it difficult to read thoroughly a 222 page DA submission, and every detail of the 20+ objections lodged. So I thought it might be useful to submit a short summary of the issues involved.

Perhaps most surprising of all is that this DA for a second dwelling on the property has been resubmitted with no significant alteration to the location, or the proposed dwelling, after a previous DA (2017/584) was withdrawn following many objections from neighbouring properties. One would think it would be normal, and in the best interests of having a development approved, to consult with neighbours and take into account their concerns. This was not done: emails were not answered, and phone calls from neighbours were dismissed as being “not your business”.

What is also surprising is that basic mandatory information required for a DA has not been included. In one example, Council requested a Statement of Environmental Effects from the owners in late 2017. This is still not included, despite this being a known and designated wildlife corridor almost certainly used by threatened species, which corridor is being interrupted by 450 metres of asphalted road, turning and passing bays, electric fencing, and a dwelling requiring very substantial earthworks. Alternative house sites are available which can avoid this.

The DA also includes a very inadequate assessment of visual impact issues: not only in its individual assessments of various properties, but in glossing over the visual affects of the 450 metre long access road, and also the issues for the many bike riders, walkers and visitors who regularly use Old Byron Bay Rd for recreational enjoyment – because of such a beautiful outlook.

This area was designated the Newrybar Scenic Escarpment Environmental Protection Zone (7d1) with good reason: and those who have settled here and built houses could have a reasonable expectation that Council would protect that zone and our visual amenity.

Of course the outlook differs from property to property as this is a ridgeline development, visible from North, South, East and West. For one neighbour, the dwelling would be in direct line of sight between their house and Lennox Head; for us, it is directly where we view the sunrise in the morning. These are not insignificant minor changes to our outlook, but major deterioration of our visual amenity.

So it can be seen that the submitted DA lacks essential information, was not compiled in consultation with neighbours known to be affected, and inadequately covers visual impact issues.

That in itself may not be sufficient grounds for refusal: but adequate additional grounds do exist. To be very clear: the DA does not meet planning objectives for the zone, and there are safe and solid grounds for refusal which would not be able to be successfully challenged in an appeal to the Land and Environment Court. These are outlined in various submissions lodged, and are clearly the assessment of lawyers and town planners who have submitted objections.

I urge anyone reading this to read the various objections lodged: which give plenty of details as to why, if planning regulations are followed, this submission must be refused. I would also urge you to read the recent records of necessary Compliance action following from what Council described as “unauthorised earthworks, including construction of an internal road” on this property. This road was constructed recently, primarily to assist justification for a dwelling on the ridge line.

The precedents which would be set by allowing such a development to proceed would be disastrous. It is in the Shire's best interest to maintain the integrity of the Newrybar Scenic Escarpment Environmental Protection Zone, and to stand firmly in favour of the environmental and economic benefits that protection of this zone offers to the area and to the community.

Sincerely,

Ian Peter
(382 Old Byron Bay Road)

Greg Price
Lot 3 Midgen Flat Road.

6th August 2018

DA 2018/381. 404 Old Byron Bay Road. Newrybar

I own a Lot on Midgen Flat Road situated below Jason and Joanne's land to the east, having full view of their eastern paddocks and bush land to the ridgeline, including their proposed house site. Having reviewed the application and visual aspects of their proposed new dwelling, the house tucks itself into the hill and is of not grand stature. The external cladding of the house being of natural produce will help them blend into the hill and I'd imagine, producing little or a considerable low visual impact on the escarpment, especially after planting has been introduced. I believe in putting forward this DA they have taken into account the objectives of the Newrybar Scenic Escarpment and its Ridgelines especially from those properties situated below them. I have no issues with their proposed house site or plans, and wish them all the luck with their application.

Kind regards



0412871500

Greg Price

Martin Scott

From: Sue Taylor <taylor.sue@gmail.com>
Sent: Tuesday, 14 August 2018 10:39
To: Ballina Shire Council
Subject: 404 Old Byron Bay Road, rebuttal of support.

ATTENTION: Mr Martin Scott, Planner

Martin Scott

*Please see my rebuttal of the submission for 'support' from Murray Deane of Coopers Shoot.
Please see my comments in RED.*

*Thank you,
Sue Taylor
382 Old Byron Bay Road
Newrybar*

Murray Deane
243 Coopers Shoot Road
Byron Bay NSW 2481
To whom it may concern Dear Sir/Madam

I presently agist cattle on 404 Old Byron Bay Road.

Cattle is not currently seen and have rarely been seen on the scenic escarpment at 404. Cattle is agisted at Cupper's property & on the Andreau land, which both have access. (No need for a road).

The use of the gravel track/road across the property is essential for my operation to continue during both dry and wet times.

If cattle is to be "agisted" on 404 land, there is "access" to this area of the property (and to the RU2 zoned land) from Cupper's cattle farm (178 Midgen Flat).

I have farmed in the area for 12 years and my family for over 30 years and this is my full-time profession as a cattle breeder.

This track gives access to the eastern part of the property for the eradication of noxious weeds, pasture improvement, animal husbandry and access in the event of a bush fire.

This is a wildlife corridor, and a natural habitat and has never been prone to "noxious" weeds. Also NO cattle is seen on this ridgeline except when the Council ecologist (Ian Gaskell) came for a site inspection and after the inspection the cattle were quickly removed.

To not have this access would stop this property being viable for grazing.

Most of the 404 property is zoned RU2 and is suitable for grazing on the OTHER side of the ridgeline & on Cupper's cattle agistment. It certainly does not require a road access through a protected environmental zone. In fact there is access from 404 to Cupper's land.

The use of electric and barb wire fences is essential in containing and managing the livestock on the property.

Barbed wire fencing and electric fencing is not necessary on the ridgeline in a wildlife corridor -- cattle had grazed without this obstruction along with wallabies for many years. If this fencing was required it would not have been put up so recently.

Further, without this access this property would quickly become overgrown with noxious weeds and a breeding ground for feral animals ie wild dogs, foxes etc.

No "Noxious weeds" or foxes are on the ridgeline. I have a very clear view of the ridge from my deck. The ridgeline is used for wallabies and the wedgetailed eagles use the ridge to access their prey -- then both retreat to the forested area.

This would not only threaten stock I have on adjoining farms but create potential risk to neighbour's children and domestic pets. This property has always been an agricultural grazing property and as such an important part of my cattle grazing business and it could threaten my livelihood to lose it and set a bad and dangerous precedent for the future of farming in this area.

This property has grazed cattle, has NOT needed electric fencing or barbed wire fencing to do so and the cattle grazed along side wallabies and other wildlife without obstruction until the road and fencing was installed which obstructs the corridor, prevents the movement of wallabies and other wildlife from foraging between open grassland and forest, and the fencing obstructs the ability for the wedge tailed eagles to prey in the grassland open area. The fencing destroys eagle habitat.

As for this man's "livelihood" being affected by not having a road through 404 -- **Looking at his website this "farmer" actually runs a commercial "tourist" facility with several tourist cabins. Tourism seems to be 'his business'. Perhaps 'farming' is a hobby but certainly not his livelihood.**

Regards Murray Deane

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<BR

382 Old Byron Bay Rd
Newrybar 2479
17 September 2018

Attn: Paul Hickey, General Manager
Ballina Shire Council.

(cc- Ian Gaskell, ecologist, Martin Scott, planner)

Dear Mr Hickey,

Re: Ecological Assessment Report– DA 2018/381 - 404 Old Byron Bay Rd

I refer to the assessment of this DA application, and particularly as regards the requirement for ecological assessment.

To summarise actions to date:

1. In the original DA submission, the applicant claimed no ecological or environmental impacts study was needed, because no vegetation was to be removed.
2. In response and after a site visit, Council requested an Ecological Assessment Report, in accordance with the Biodiversity Conservation Act 2016 and other relevant considerations. (in its request for further information dated August 13 2018)
3. The applicant also wrote to Office of Environment and Heritage (OEH) asking that they waive the requirement for a Biodiversity Assessment Report (BDAR).
4. In a reply dated September 5 2018, OEH responded that it was unable to provide waivers from BDAR requirements. It further stated that Ballina Shire Council also has no discretionary option to provide such a waiver if the proposal is likely to have a significant effect on threatened species. The letter outlines the standard tests for such an evaluation, which includes evaluation according to the Test of Significance for Threatened Species or Ecological Communities.

What we are concerned about at this stage is that the applicant will again claim that no vegetation removal is necessary in the declared biodiversity values area and wildlife corridor, and therefore no detailed ecological study is needed. This claim is incorrect.

If this argument is mounted, we wish to inform you that following from our consultations with neighbours, and with a Biodiversity Assessment (BAM) accredited ecologist, it is evident that several threatened species, including koalas, have been sighted on bordering properties. In these circumstances a full Threatened Species Test of Significance must be conducted. We also submit:

1. The DA includes a request for post facto approval for an access road recently constructed through the biodiversity values area, during which construction vegetation was disturbed;
2. Proposed further vegetation removal is but one factor to be considered in determining whether to approve an access road through a Biodiversity Values Area and wildlife corridor;
3. As regards utilisation of an “existing” track. The impacts on threatened species of any road through a wildlife corridor, to be used for months on end by heavy construction traffic, and thereafter several times a day for access to a dwelling, are considerably greater than the impact of a simple track which may have been used once or twice a year;
4. This ecological impact is further exacerbated by the use of electric fencing to protect plantings in an attempt (unsuccessfully thus far) to combat the erosion caused by the initial earthworks. The erosion of course is another ecological issue to be addressed in deciding

whether to approve this access road.

The requirements for assessing access through a biodiversity area are quite strict, as outlined in the letter from OEH and in the advice we have been given from our BAM accredited ecologist. Nothing short of a full Ecological Assessment Report, including comprehensive mapping of threatened species and ecological communities as outlined by NSW Government procedures (see <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Threatened-species/threatened-species-test-significance-guidelines-170634.pdf>) is required before assessment. The applicant must provide an acceptable response to address the potential ecological considerations involved in approval, upgrading, and utilisation of an access road travelling through this natural areas habitat, wildlife corridor and BiodiversityValues area.

We ask Council to continue to insist on a full and detailed ecological study being completed before any consideration of this DA. We request in the strongest terms that the ecological matters are dealt with thoroughly and appropriately, rather than continue to be glossed over by the applicant. We also welcome the opportunity for our ecologist to peer review the report after it is submitted, so that we can ensure that the ecology of the area is assessed in accordance with all relevant considerations, including the requirements of the NSW Biodiversity Conservation Act 2016.

Finally: we remind you that a significant part of this DA approval is for an access road: it is not just about a house and a building site, (although those proposals raise a number of substantial planning issues in relation to the 7d1 zone which have been outlined elsewhere). As no access road which would provide access to the proposed building site has ever been approved, the substantial ecological effects of a 450 metre access road through a wildlife corridor, biodiversity area and environmental protection zone must form an integral part of this evaluation, irrespective of whether the necessary earthworks have taken place prior to DA authorisation and approval or not.

Sincerely,

Ian Peter

Martin Scott

From: joanne White <je59726@hotmail.com>
Sent: Wednesday, 19 September 2018 11:41
To: Martin Scott
Cc: Bernadette Arundell
Subject: Re: DA 2018/381 - Submission letter of support - date forwarded request, 404 Old Byron Bay Road Newrybar

Hi Martin,

Spoke to Roger and Virginia who confirmed they brought in the letter personally to the desk 2 days prior to closure of exhibition. They did not send it in electronically.

This is why its probably been missed.

Are you able to locate the original, did the office stamp anything?

We would like this included in our application of support.

kind regards

Joanne

From: Martin Scott <Martin.Scott@ballina.nsw.gov.au>
Sent: Tuesday, 18 September 2018 11:59 PM
To: joanne White
Cc: Bernadette Arundell
Subject: DA 2018/381 - Submission letter of support - date forwarded request, 404 Old Byron Bay Road Newrybar

Morning Joanne

Can you please confirm the actual date the letter of support was submitted and the email address of whom forwarded letter of support.

This will enable Council to search the database to locate the original submission.

Sorry for the inconvenience caused

Thank you

Martin Scott
Building Surveyor



ballina.nsw.gov.au | discoverballina.com
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From: joanne White [mailto:je59726@hotmail.com]
Sent: Wednesday, 19 September 2018 8:12 AM
To: Martin Scott
Cc: Vince Hunt
Subject: Re: DA 2018/381 - Submission letters - 404 Old Byron Bay Road Newrybar

Hi Martin,
I attach it for your records.

kind regards

Joanne

From: joanne White <je59726@hotmail.com>
Sent: Tuesday, 18 September 2018 10:00 PM
To: Martin Scott
Cc: Vince Hunt; Kate Singleton
Subject: Re: DA 2018/381 - Submission letters - 404 Old Byron Bay Road Newrybar

Hi Martin,

Following our conversation yesterday I had a look at the list of supporting letters on the DA tracker and the letter dated 7th Aug from Roger and Virginia Rowe was not included. This was within the exhibition period. I am not sure why this was not uploaded.

I understand the one from Laurel Thompson received on 9th Aug was 1 day late and therefore was not listed, although it was uploaded initially.

Can you please amend your records to ensure the Rowes supporting letter is included in your report.

I look forward to receiving the letter from CNN Hong Kong.

thanks in advance

kind regards

Joanne

From: Development and Environmental Health Group Support Staff <dehg@ballina.nsw.gov.au>
Sent: Monday, 17 September 2018 12:01 AM
To: je59726@hotmail.com
Subject: DA 2018/381 - Submission letters - 404 Old Byron Bay Road Newrybar

Dear Joanne,

Please find attached the submissions as per your request

- DA 2018/381 - Submission letters - 404 Old Byron Bay Road Newrybar

Loretta Stuckey
Administration & Customer Service Officer



ballina.nsw.gov.au | discoverballina.com
p: +61266861463



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P O Box 429

Bangalow 2479

scenicescarpment@gmail.com

23 February 2019

Paul Hickey
General Manager
Ballina Shire Council

Dear Mr Hickey

Re: 404 Old Byron Bay Rd - DA 2018/381 – in reply to recently received RESPONSE TO OBJECTIONS (Doc No 19/8884)

We refer to this Response to Objections document recently received by Council for DA2018/381, as a response to some of the objections raised by neighbouring properties in the submissions to Council last year.

The Applicant has chosen to attempt a selective point by point rebuttal of information from the objections received. In doing so, they have ignored and glossed over substantial and verifiable issues raised by objectors to the proposed development.

In the table below, we have replied to most of the matters raised, as we believe it is important that the record be clear on these issues rather than obfuscated by non-supported assertions and inaccurate claims.

Central to their Response to Objections is the Applicants claim of a “pre-existing road” where the earthworks took place - something which has been rebutted time and time again.

Unauthorised Roadworks

SEPA wants to set the record straight on the demonstrably false assertion of a pre-existing road where these earthworks took place. While we will address this issue in points raised in the table below, we wish to highlight the substantial difference in location between the unauthorised roadworks commenced in 2016, running along the west side of the ridgeline, and the cattle track/wildlife corridor referenced in the historic 1993 photo. The newly

excavated road is nowhere near the cattle track corridor in the picture. The new road was excavated into the side of the ridge in 2016 and 2017 in a location where there was no previous access road or track.

To further clarify the difference in location between the unauthorised roadworks and the cattle track wildlife corridor visible on the picture supplied by the Applicant from Council's 1993 records, we have superimposed the approximate location of the proposed dwelling, and the approximate configuration of the recently constructed and unauthorised roadworks.

This is shown as Fig 1 below.

It highlights three matters directly relevant to consideration of this DA and the Applicants assertions:

1. There was a cattle track to the eastern/RU2 portion of the property; the agisted cattle regularly wandered down from the top of the ridge (including through what is now Lot 1) to the east/west to graze.
2. The earthworks commenced in 2016 are very distant and substantially different from this cattle track, were not necessary, and were implemented purely to provide access to a proposed dwelling site, and thereby somehow legitimise a development which completely fails to meet the objectives of the zone.
3. The unauthorised road and electric fencing cuts across the cattle tracks and wildlife corridors.



Photo. Council Records 1993.

We hope this makes clear that no claims can be made to suggest that the current unauthorised road has any relationship to the cattle track. Therefore, no claim can be made that the proposed ridge top dwelling site is located at the end of a pre-existing road.

Further comments on the points raised appear in our responses in the table below.

Sincerely,

Ian Peter, Co-Coordinator

Submission / Property	Issue	Response	SEPA RESPONSE
400 Old Byron Bay Road	I have lived at my current address since 1992 and there has never been any access road or track on the western face of the escarpment.	Please see photos taken from Council records in 1993 which illustrate cuts through applicants and objectors properties and of track as it exists today. This track is also visible on aerials pre 1987 BLEP.	<p>The 1993 photo referred to shows an old cattle track, not a road or vehicular access.</p> <p>The recent unauthorised earthworks to create a road are nowhere near this cattle track. (see 1993 photo with superimposed unauthorised roadworks and proposed dwelling site). This is verified by several aerial records supplied to Council.</p> <p>The 1993 photo is of no relevance to the Applicant's proposal to legitimise significant earthworks providing a four metre wide vehicular access to their proposed dwelling site.</p>
	The waterhole located at the base of my home which was previously large, deep and beautiful was now filled with silt, road base and the flow is much slower than it has ever been.	Applicants are not aware of any silt from the road entering No. 400 as the flow of the stream leaves No. 404 underground to feed further downstream.	In 2018 Council wrote to the Applicants following a site inspection observing that “soil and other imported materials had been transported to an adjacent waterway”. Council also raised issues about works they had observed including the “apparent failure of these roadworks whereby it appears that these works are failing with materials flowing into a natural waterway/ waterbody”

Submission / Property	Issue	Response	SEPA RESPONSE
			<p>(see Council correspondence dated 9 February 2018).</p> <p>The Applicant apparently does not want to acknowledge that the unauthorised roadworks undertaken caused a pollution event. However, charges were laid for this pollution event in Ballina District Court on 14 February 2019, with the Applicant pleading guilty to both the “unauthorised works” charge and the “pollution incident” charge.</p>
	<p>Whilst the neighbours have made some attempts to plant out and remediate the area, as requested by council.</p>	<p>Applicants are not aware of any request from Council to plant out the area. This has been initiated by applicant.</p>	<p>In 2017 Council requested that the Applicants provide “details of any revegetation of the embankment” (see Council letter to the Applicants dated 10 November 2017)</p>
	<p>I have recently submitted to council a letter from a previous owner that the access did not exist and in fact the current owner knew of this prior to his decision to create the new road without prior council approval.</p>	<p>Applicants had no direct correspondence regarding existence of road with previous owners. This can be confirmed by Real Estate and Solicitors. Confirmation of the existing road came from other sources. This documentation has been submitted previously to Council. Applicants did however negotiate as part of their acquisition of the land that access be provided from Lot 1 for a limited period of time to install fences.</p>	<p>Contact with a previous owner was indeed made. Residents have on record a note from a previous owner confirming contact between the Applicant and the previous owner.</p> <p>The Applicant requested the previous owner to state that there was a pre-existing road on the west side of the ridge - however the previous owner refused to do</p>

Submission / Property	Issue	Response	SEPA RESPONSE
		<p>See photograph of the road in 1999 which demonstrates the existence of the road through the gully</p>	<p>so.</p> <p>The photograph referred to by the Applicant does not demonstrate an existing road access across the first order stream.</p> <p>The Applicant's engineers report confirms that no prior access was existing when it states “a concrete culvert has been introduced to allow crossing of the current drainage gully”.</p>
	<p>The works as they currently exist are considered unsightly and negatively impact on my rural views to the north-east. This impact would be heightened should the proposed widening and sealing of this road be allowed.</p>	<p>Over 150 native Lilly Pillies and 500 Lomandras have been planted along the road and the applicants estimate that the road will not be visible within 2 years. Any widening of the road would not be viewable from No. 400.</p>	<p>The ongoing landscaping and planting taking place on the road includes some attempted remediation, mostly at the beginning of the road.</p> <p>We suspect a 450 metre line of lomandras will be highly visible for some time to those with a side-on view of the unauthorised roadworks. Many of these lomandras will need to be excavated if consent is given for earthworks to make a four metre wide road.</p> <p>For those whose outlook is basically along the length of the road (eg 420 Old Byron Bay Rd), the visibility is certain to</p>

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			<p>remain as long as the road exists.</p>
	<p>In addition, use of the access road by vehicles, quad bikes, excavators and trucks provide a continued and unwanted disturbance.</p>	<p>The applicants need to access the 90 acre property for agricultural purposes. The land has been used for grazing cattle much longer than the properties along the ridgeline have been occupied residential lots. It is unfortunate that the property was not adequately managed since 2002 following the subdivision however the current applicants wish to maintain the agricultural potential of the land.</p> <p>The approval of the DA would result in less farm traffic over the ridgeline as farm machinery is to be relocated.</p>	<p>There is easy access to the eastern (RU2) portion of the property across open paddocks. There are also arrangements with neighbours for access from Midgen Flat Rd. Nothing here justifies the extensive unauthorised road works recently undertaken for the sole purpose of access to a proposed building site on the 7d1 zoned ridge.</p> <p>As regards agricultural activity: there is no agricultural activity occurring on this property which requires an access road to the proposed dwelling site.</p> <p>The Applicants' activities since purchasing this property have impacted negatively on the agricultural capabilities of the land eg excavating a road through previously open land. It appears that valuable agricultural land is being sacrificed to satisfy the real estate market, not for growing food crops and trees.</p> <p>We further note with concern the suggestion that agricultural</p>

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			<p>equipment is to be relocated in the proximity of the proposed dwelling. This not in the DA. Structures for this: and indeed the extra water storage requirements outlined in the RFS response would significantly enlarge the scope of the ridgeline development from what is outlined in the DA, and most likely impose additional visual impacts not outlined in the DA or addressed in any correspondence since.</p>
	<p>Residents have long understood that development on the scenic ridgeline was not permissible because access to the proposed dwelling site required the crossing of a first order stream.</p>	<p>DPI Fisheries have advised this is an unnamed waterway and does not contain key fish habitat. Documentation provided to Council. There is no "prohibition" of development associated with access over waterways.</p>	<p>Access to the site requires crossing a first order stream. Please refer to this submission.</p>
	<p>Considerable excavation has already occurred to gain access to the development site which has adversely impacted upon the wildlife corridor and natural habitat.</p>	<p>No adverse impacts on wildlife corridor have occurred and this is supported by Ecologist who attended the site prior to upgrade to road. Evidence provided to Council.</p>	<p>We fail to understand how a visit from an Ecologist prior to the roadworks (and also prior to the extensive electric fencing) could effectively calculate the after-the-event effects on wildlife of this road excavation and development. We await the necessary studies by a professional ecologist required for this DA and again requested in August 2018 to comment on this in more detail.</p>

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	<p>The proposed road which has been partially constructed and is intended to be widened to 4-6 metres and asphalted cuts through a rainforest area and creates a barrier through the path of a wildlife corridor.</p>	<p>The current access road is already 4m in width in many parts. No rainforest is to be removed in association with the widening of the road which only partially crosses the wildlife corridor for a short distance. The road does not act as a barrier to wildlife who are able to freely move across the area.</p>	<p>This is an area of Natural Areas Habitat on Ballina Shire Council Interactive mapping. Land zoned for environmental protection 7(d1) and land identified as Natural Areas Habitat are zoned as such with the intention of protection from inappropriate development and invasive plantings.</p> <p>In addition to the roadworks, the Applicant has used an extensive network of electric fencing to prohibit cattle and wildlife from entering the areas which he is landscaping: including the full length of the newly constructed road. This prohibits wallabies and other wildlife from foraging between open paddocks and the forested gully.</p>
	<p>This aerial photo which has been included in another objection clearly shows that there isn't a road leading to the intended development site. Compare this image with the photo provided by the applicants in their current DA and it becomes very clear that an access road did not exist on the site prior to excavations in late 2016.</p>	<p>As previously illustrated, the road is clearly visible in the 1999 Council aerial, canopy cover has at times obscured the view of the road from aerials. The slashing of the site exposed the full extent of the existing access.</p> <p>The photo provided with this submission also does not illustrate the farm track which transverses across 400 and 382's property but is clearly still present and has been since 1993 (refer to Cramp response).</p>	<p>This obfuscation is addressed above. Nobody disputes the pre-existing cattle track, but the unlawful roadworks commenced in 2016 are in a completely different location and unrelated. Please refer to the SEPA diagram of the Applicant's road.</p> <p>These unauthorised roadworks were also the subject of a court</p>

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		<p>The following photo demonstrates the existence of the farm track crossing through the stream taken from Six Maps 2016.</p>	<p>case in Ballina on February 14 2019, to which the Applicant pleaded guilty.</p>
<p>382 Old Byron Bay Road</p>	<p>The Appendix perpetuates the description of an “existing road”. As Council knows, this has been the subject of some controversy, so it is surprising to see that in the section devoted to seeking approval for a road, the only justification given for this description is that the engineer employed in the construction of the road says “there was an existing road”. No details on how this was assessed by the engineer are given whatsoever: no independent verification for this assumption is included in this DA.</p> <p>The original earthworks for construction of this road took place in 2017, and was the subject of immediate complaints by neighbours to Ballina Shire Council. The road was then included, described as an existing road, in DA 2017/584. The DA suggested that the road was previously existing; however, this description was disputed by neighbours who have lived in the area for a long time, and by historic aerial photographs and other evidence presented. Council wrote to the owners of 404 Old Byron Bay Rd questioning this assumption on November 10 2017: shortly after this the DA (2017/584) was withdrawn, and the road issue was handed to Compliance Division of Council.</p> <p>Council referred to this in correspondence to the owner dated February 9 2018 as “unauthorised earthworks, including construction of an internal road”. We are unaware of details of correspondence between Council and the owners from that point on, but are aware of remediation works being</p>	<p>The proponents have submitted detailed information to Council in relation to the existence of an internal access road on the property. As detailed in the report to Council, Council first attended the site in December 2016. Council inspected the property at that time and said that they would be in touch with the proponent should any further correspondence or contact was received from Council in relation to the works undertaken to the existing access track. It was the owner’s reasonable conclusion that Council did not require any development application to be lodged for the road upgrade.</p> <p>As detailed in the report to Council the proponent has at all times co-operated with Council and provided written responses to requests for further information as required.</p> <p>The proposed development application does provide for the upgrade of the existing internal access and at all times during the assessment of the subject development application the proponent has been advised that the issue of the road upgrade</p>	<p>There is sufficient and compelling photographic and other evidence provided by neighbours, previous owners and Council to prove that there was never an existing vehicular access from Old Byron Bay Rd across the first order stream to the proposed dwelling site. The Applicant's engineers report confirms that no prior access was existing when it states “a concrete culvert has been introduced to allow crossing of the current drainage gully”.</p> <p>The Applicant appears to have made a demonstrably incorrect statement to the Council Ranger who visited the roadworks due to complaints from neighbours in November 2016. This statement about a pre-existing road was entered into Council records, without it being properly examined initially or checked with long time residents of the area. Due to this initial lack of full scrutiny, the incorrect statement by the Applicant became fundamental</p>

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	<p>requested. However the status of the road would appear, from this DA, to still be an unresolved matter.</p> <p>We also note that Appendix B (Bushfire Report) requires construction of a road with passing bays, which are being planned along the ridgeline and in the entry area of the rainforest gully. A requirement for a 6m by 8m turning bay also appears in this report. It does not appear in the plans submitted. This is a substantial additional impact on the ridgeline development not included in the DA plans. The DA also does not address issues for neighbours arising from car headlights and vehicular traffic noise.</p>	<p>would be addressed via the development application process.</p>	<p>to the ongoing assessment of his development application.</p> <p>This is not an upgrade of an existing road. It is an entirely new road purely for the purposes of accessing a proposed dwelling site, and should be addressed and evaluated in the DA as such.</p>
<p>372 Old Byron Bay Road</p>	<p>As the access road crosses a first order stream.</p>	<p>DPI Fisheries have advised this is an unnamed waterway and does not contain key fish habitat. Documentation provided to Council.</p>	<p>This is a first order stream.</p>
	<p>In addition, use of the access road by vehicles, quad bikes provide an unwanted disturbance.</p>	<p>A quad bike is required to maintain a 90 acre property for agricultural purposes.</p>	<p>This is not an upgrade of an existing road. It is an entirely new road purely for the purposes of accessing a proposed dwelling site, and should be addressed and evaluated in the DA as such.</p>
	<p>In 2017 when construction of the access road commenced we were alerted to this activity by neighbours. On subsequent enquires we were advised that the works were to provide access to the eastern sections of the property and were formalising an existing access. During our twenty-seven years of living at our address we are unaware of any access road or track at this location. The 2016 Google Earth aerial photo at Attachment A shows the absence of any access road as constructed.</p> <p>The works as they currently exist are considered</p>	<p>See comments above. Documentation has been provided to Council officers in relation to the existing road and consultation with NSW Fisheries prior to the commencement of works.</p> <p>The 1999 Council aerial clearly shows the existing access road.</p>	<p>There is sufficient and compelling photographic and other evidence provided by neighbours, previous owners and Council to prove that there was never an existing vehicular access from Old Byron Bay Rd across the first order stream to the proposed dwelling site. The Applicant's engineers report confirms that no prior</p>

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	<p>unsightly and negatively impact on our predominately rural views to the north-east. This impact would be heightened should the proposed widening and sealing of this road be allowed. In addition, use of the access road by vehicles, quad bikes provide an unwanted disturbance.</p> <p>As the access road crosses a first order stream, it is considered that the crossing works constitute Integrated Development requiring permits/approval under the Fisheries Management Act (s219) and the Water Management Act 2000 (s91 - controlled activity).</p> <p>The impacts of the current and proposed works on both upstream and downstream water users and waterway function should be assessed and remedial works undertaken where necessary.</p>		<p>access was existing when it states “a concrete culvert has been introduced to allow crossing of the current drainage gully”.</p>
<p>420 Old Byron Bay Road</p>	<p>The application is self-evidently attempting to establish the construction of a significant 450 metre long 4-6 metre wide asphalted road to the top of the scenic escarpment ridgeline to enable the construction of a new residence for the applicants.</p>	<p>The owners require access to service the 90 acre holding to maintain agricultural practises. Access prior to the subdivision in 2002 was via a road along the objectors northern boundary. Prior to the applicants resurfacing the existing track applicants took photos of the road along the northern boundary. See below. Further evidence to support this existence has been provided to Council. Significant planting has been undertaken along the boundary fence to minimise noise and the subsequent upgrade of the road to bitumen will also alleviate noise from vehicles. It should also be noted that no width upgrade is required along the northern</p>	<p>There is no indication that the road is required for agricultural purposes. Cattle have been agisted on the property for decades without the need for a 450 metre road to a proposed dwelling on a ridgeline. The RU2 portion of the land can be easily accessed from Midgeon Flat Rd and arrangements have always existed with neighbours to do this.</p> <p>We do not see evidence of any agricultural activities other than cattle agistment which has happened for decades. Landscaping which has happened for real estate development purposes is not an</p>

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		<p>boundary. The existing track is already 4ms in width. The passing bay is away from the northern boundary.</p>	<p>agricultural activity recognised for RU1 or RU2 land. Nor is the landscaping activity currently under way ancillary to any agricultural usage.</p> <p>There is sufficient and compelling photographic and other evidence provided by neighbours, previous owners and Council to prove that there was never an existing vehicular access from Old Byron Bay Rd across the first order stream to the proposed dwelling site. The Applicant's engineers report confirms that no prior access was existing when it states "a concrete culvert has been introduced to allow crossing of the current drainage gully".</p>
	<p>The application does not address the environmental (or legal) impact of the proposed development upon the covenant and easement that is for the benefit of 420 Old Byron Bay Road (Notification P493825 registered on Lot 3 DP 576881).</p>	<p>The applicants are not aware of any environment or legal impact of the development on the water easement. The objectors have surveyed the easement and it has been confirmed that it is in no proximity to the development.</p>	<p>It is the Applicant's responsibility to ensure their proposed development does not impact on the easement. Being "unaware" of any impact is not sufficient to allow development.</p>
<p>400 Old Byron Bay Road</p>	<p>I was not contacted by the applicants or Planners North "to see and photograph the view from eastern facing balconies" (page 2 of 222). If I had of been contacted it would be immediately obvious how the DA effects my visual amenity. The images provided by Design Team Inc. are completely inaccurate. Survey poles that were</p>	<p>The house has moved further down the ridgeline and reduced the height by 2 metres. We are confident in the accuracy of Design Team Inc Visual Assessment and have previously requested objector submit photos of demonstrate impact of survey</p>	<p>We suggest Council scrutinise in the detail the plans submitted. Our examination does not show any significant reduction in the height above ridgeline of the new DA as compared with the old one when</p>

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	<p>recently erected can be seen clearly from my kitchen, lounge room, two of the three bedrooms and from my entire verandah’.</p> <p>‘In assessing the original DA 2017/584 and comparing the elevations with the current DA 2018/381, it appears as if the dwelling has not moved at all. “..... lowering the level of the building by 2m minimizing any potential impacts upon the site and the amenity of the locality</p>	<p>poles from all rooms. These are not present in the objection. The photo submitted with height poles has been clearly enlarged to exaggerate the impact. The attached photograph obtained from AirBNB for this property shows the actual view from the dwelling which appears to be taken from an upper dormer window. Only a very small portion of the southwestern corner will be visible from this viewpoint.</p> <p>The photo contained in the submission is focused on the site and does not show the entire view and proposed dwelling within the context of the broader viewshed.</p>	<p>viewed from the west.</p> <p>The Applicants concede that the proposed dwelling site is on a ridgeline, albeit “further down”, but have still not provided any justification for this Variation to a development standard, as required by Ballina Shire DCP 2012.</p>
<p>382 Old Byron bay Road</p>	<p>So it can be seen that from this comparison – the dominant perspective for residents from Old Byron Bay Road – the new dwelling is not 2 metres lower. It also has a 7 metre building height above ground level in the SW corner: in excess of what is recommended for this zone’.</p>	<p>The visual assessment did consider the publicly available submissions on the first DA and the land owners also made adjustments to the building location and design to address the objector’s concerns about visibility. The withdrawn DA included a building with a roof RL of 126.8m with an atrium protrusion to 127.5m. The current application is 2m lower with a roofline of 124.8m and an atrium protrusion to 125.5m. At the time of inspection of the Council’s online DA database various submissions were available but none of them included photographs taken from the actual dwellings looking towards</p>	<p>We suggest Council scrutinise in detail the plans submitted. Our examination does not show any significant reduction in the height above the ridgeline of the new DA compared to the old one when viewed from the west.</p>

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		the site. Therefore, the drone modelling was undertaken.	
	<p>'It is clear the materials submitted in response to the previous DA as regards visual impact were not assessed or utilised. We have included as Appendix A to our Objection some of the materials previously submitted , because they provide better factual evidence of the visual amenity situation than some sections of this report.</p>	<p>Sheryn de Rae reviewed all objections related to the visual amenity. Appendix A locates proposed dwelling on top of the ridgeline which is the incorrect location. The images provided in the submission do not take into account existing surrounding vegetation which has significant impacts upon visibility.</p>	<p>The dwelling is visible from N, S E and W, and is as referred to above by the Applicant as a ridgeline development. The projections provided by us are accurate and rely on a far more established methodology for measuring visual impact than the error prone aerial drone pictures on which the Applicant's suppositions about visual impact rely. There is a considerable amount of literature about the problems of accuracy in drone mapping exercises. In this case, there is irrefutable evidence to show that some of the projections are inaccurate, and Council officers are welcome to verify this with site visits.</p> <p>The visual impact study also fails to reference the 450 metres of excavated road required for such a dwelling, which in some cases is a considerably worse visual impact than the building site, which is small in comparison.</p>
	<p>The assessment of visual impact for 382 Old Byron Bay Road is also very</p>	<p>The objector speculates as to the area of roof and western wall that</p>	<p>The evidence on which this is based</p>

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	<p>wrong. The report states “It is clear from the montage below that only a small portion of the roof and western wall are visible from this dwelling.” This is a long way off the mark. According to plans submitted, we would see about 95% of the roof line, and an estimated 55% of the western wall.</p>	<p>may be visible without providing any evidence. At no point in the visual assessment does the assessment determine that the proposed building would be invisible from this location without the growth of screen planting.</p>	<p>is the plans submitted in the DA and visual impact from the home of the objector.</p>
	<p>It also claims that tree plantings will alleviate this further: But as our eyesight level is approximately level with the ridgeline at the new construction, and the plantings are below the ridgelines, it will be decades before such filtering comes into play from our perspective. These trees are planted on a SW facing slope, poor growing conditions for vegetation, and will take a long time to mature. But even so: no amount of plantings could change the inappropriateness of the proposed two storey development on the ridgeline of a scenic escarpment</p>	<p>The information provided in this objection relating to tree planting is incorrect. The existing planting on the site is located between the driveway and the proposed dwelling location at a level which is higher than the existing ground level of the proposed western edge of the building. Therefore, upon establishment this vegetation will definitely screen views from 382 to the proposed dwelling area. In addition to this the landform abutting the western edge of the building area is to be mounded up to form a ‘green bund’ (as shown in the architectural drawings) also contributing a screening affect. The land owners have also undertaken planting on the lower side of the driveway which will provide further screening.</p> <p>Objectors own home is 2/3 storeys and is in excess of 12m in height.</p>	<p>Attempts at screening are noted, but are ineffective in terms of the impact of a ridgeline dwelling and 450 metres of access road.</p> <p>Council requires that DAs for Ridgelines and Scenic Areas provide a landscaping plan “detailing proposed planting to augment existing vegetation”. The DA has not been approved and therefore the Applicants should not be planting vegetation on the site without consent.</p> <p>References to the size of the dwelling at 382 Old Byron Bay Rd are both incorrect and irrelevant. They have no relevance whatsoever to the suitability and location of the dwelling contained in the DA in question: which is at the end of 450 metres of road on the Eastern ridgeline, and in direct site of many neighbouring properties. Neighbouring properties referenced are close to the road line of Old</p>

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			Byron Bay Rd.
	There are also problems with the assessment of views from Old Byron Bay Road. The assessment evaluates visual access for car drivers to the house site only. It does not cover pedestrian access on this popular walking area for both locals and visitors to the area which provides different criteria altogether for assessment of visual amenity. These have not been addressed. The road is also a popular scenic route for cyclists.	In terms of views from Old Byron Bay Road; The parts of Old Byron Bay Road within the foreground viewing zone of the proposed dwelling contain significant roadside vegetation which blocks and filters views from vehicles, and for pedestrians and cyclists. Where gaps occur they are predominantly at access points to properties where the driveway penetrates the vegetation stand. Glimpses to the site may be possible from these locations if someone wishes to stand there and look across private property towards the site.	The road is used by cyclists and joggers because of the scenic outlooks from many points. This is one of the reasons why the land is recognised as a “Scenic Escarpment Protection Zone” 7(d1) in the Ballina LEP.
372 Old Byron Bay Road	The visual impact of the proposed development from our property is shown at (see image to the right)	This image is inaccurate the Opposers house is over the fence line	See notes above on comparison of visual impact methodologies
Lot1 404 Old Byron Bay Rd	DA does not include the visual impact from my adjoining property.	Incorrect, photos were taken with permission at 430 Old Byron Bay Road.	430 Old Byron Bay Rd is not Lot 1 404 Old Byron Bay Rd.
420 Old Byron Bay Road	A visual inspection from surrounding properties, including from my property, shows that the existing vegetation will not adequately screen the proposed development.	Applicants disagree. No information submitted to substantiate claim.	Objectors disagree. The Applicants were invited to view their proposed dwelling site from the perspective of the adjoining property at 420 Old Byron Bay Rd. No evidence submitted to substantiate claim of the Applicants, including as regards the 450 metre access road.
	The existing vegetation along the northern	Owners disagree with this	The adjoining owners strongly

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	boundary of Lot 2, our common boundary, will not adequately screen the earthworks proposed from Old Byron Bay Road down to the waterway	statement. Significant planting has been undertaken along this area. Please also note this was repeated following accidental poisoning by neighbour's gardener on our own land.	<p>reject the statements made by the Applicants about "poisoning" their plantings.</p> <p>The Applicants have planted vegetation to replace a small section of the vegetation that was removed. A bamboo hedge has been planted by the Applicants which is neither native nor sensitive to the environmental qualities of the area, as required by Council.</p>
448 Old Byron Bay Road	"sight line from my clients home enables direct sight of the proposed dwelling..."	Town Planner has incorrectly assessed in the report the location of the proposed dwelling as Lot 1, not Lot 2. The Town Planner report supports the owners visual impact assessment by Design Team Ink that there is no view line from 448 to proposed house site (Lot 2) as depicted in the report diagram below.	Noted. The Owner has not been contacted for comments. But irrespective, this property is highly visually impacted and affects ocean views and rural outlook.
	'There is approx. only 50m between the proposed development site and my clients home'	<p>Town Planner has not read visual impact assessment (excerpt below).</p> <p>The dwelling at 448 Old Byron Bay Road (Four Winds Villas) is located on the same ridge approximately 371m north of the proposed building location at a higher elevation of approximately RL150 - 152. The roofline of the proposed new building is at RL124.8 with a small atrium protrusion to 125.5, which is approximately 5-6m below the ground level at 448 Old Byron</p>	This is an historic home built last century and is not visible from Old Byron Bay Rd.

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		<p>Bay Road. Most of the building is cut into the eastern side of the hill and the roof of the proposed new building also sits below the level of the ridgeline within its own site which rises to about RL129 on the northern boundary. The proposed new building is also positioned behind the copse of Eucalyptus trees which provide some view filtering.</p>	
<p>382 Old Byron Bay Road</p>	<p>The building process will require power supply. The DA works on the basis on a dwelling not connected to the grid: so we can assume a large power generator utilising fuel will be used on site during this process. The DA is scant on details as to the amount of earthworks involved in a dwelling partially cut into the ridgeline; and traffic levels during construction will be substantial and noisy. We do not believe that temporary power poles along the proposed road should be allowed to facilitate construction.</p>	<p>Applicants confirm a standard sized generator will be more than adequate to be used on site for the initial build until off grid power is established. Construction noise at the site will be no different from any other building site currently in 7(d1) along Old Byron Bay Road. No power poles will be required.</p>	<p>Noted. However with prevailing NE winds the noise factor will remain considerable. We also note that the question of required earthworks has not been addressed.</p>
	<p>Cattle are not currently seen. There are no noxious weeds. Most of the property is zoned RU2 on the other side of the ridgeline. Barbed wire and electric fences are not necessary for the ridgeline and prevent the movement of wallabies. Farming is a hobby.</p>	<p>Applicants strongly reject the statements made. The applicants pay farmland rates and are PIC registered. Murray Deane is a local farmer who owns over 350 cattle and has cattle agistment all over Byron and Ballina Shire. He currently has cattle agisted on neighbouring properties. Cattle grazing on this land dates back on council records to 1990.</p> <p>Noxious weeds are a problem in the 7(d1) and this can be confirmed with Council by a recent visit by North Coast Weed</p>	<p>Cattle have grazed the property long before the current owner without the need for a road or an extra dwelling. Cattle have co-mingled with wallabies - grazing on the property for decades without the need for a 450 metre road carving up good agricultural land, without the installation of a large network of electric fencing impeding animals' ability to roam and graze, and without the need for an extra dwelling on the ridge. Prior to the current land owner, the</p>

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		<p>Management. In addition, there is an ongoing wild dog problem which many of the residents are probably not aware of. A recent cull was performed on the Cupper property.</p> <p>The use of barbed wire is historic on the property and significant effort has been undertaken to remove it. Cattle are not seen often due to paddock rotation and electric fencing preventing them accessing the wildlife corridor. Upon approval of the DA the fence will be moved further down the ridgeline</p> <p>Currently wildlife move freely on the road and are not injured or prevented from doing so.</p>	<p>mixed zoning of a protected ridgeline and forested habitat and the RU2 agricultural zone had worked well without adverse impact. The wildlife was able to co-exist with agisted cattle. Farmers occasionally checked on their stock with the use of trail bikes. Trail bikes can easily access the land if necessary through open paddocks, with absolutely no need for a road for agricultural activity. The land was well maintained and mostly weed free in the past. The gully habitat provides a protected habitat for native animals and birds - and the open pastures provide paddocks for cattle and wildlife to forage.</p> <p>The current landowner's activities have not enhanced or protected (RU2) agricultural land or respected (7d1) environmental protection land. The developer has allowed the waterway through his property to be silted, impeding water flow (subject of recent court charges to which the Applicant pleaded guilty).</p> <p>The Applicant has excavated previously open land to create an unlawful road to a proposed dwelling site, causing slippage and erosion (currently a court case) and laying tons of gravel on what was once good agricultural land. The electric fencing the Applicant has installed to fence off his domestic</p>

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			<p>plantings to landscape his proposed dwelling site only further impacts what was once good grazing for agisted cattle. The electric fencing runs across wildlife habitat as well as grazing land. The road cuts across a cattle track. The current activities on the land at 404 are more in keeping with a developer looking to capitalise on a ridgetop purchase than any desire to protect or use agricultural land.</p>
372 Old Byron Bay Road	<p>A new two storey dwelling house and swimming pool on an undeveloped ridgeline; Currently there is no development on this ridgeline and it offers a purely natural vista.</p>	<p>It is not an undeveloped ridgeline. Four Winds Holiday Accommodation (448 OBBR) is located on the same ridgeline.</p>	<p>The part of the ridgeline being threatened by the developments proposed in this DA is undeveloped land and in an Environmental Protection Zone.</p>
	<p>What guaranteed is given that this scenario would occur into the long term and that the dwelling would not be converted into rental or holiday accommodation</p>	<p>The house is to be decommissioned with removal of kitchen and laundry facilities.</p>	<p>The Applicant's statement does not address the question raised</p>
	<p>No information is provided on provision of power to the site which could involve unsightly poles and wires extended from the current lines along Old Byron Bay Road.</p>	<p>DA states proposed dwelling is to be off grid.</p>	<p>Addressed above</p>
Andreou	<p>The current submission places the building envelope within approximately 20-25 metres of my southern boundary.</p>	<p>The proposed dwelling is to be sited 35 metres from the southern boundary.</p>	<p>Pedantic and not relevant to the objection.</p>
	<p>Building a large dwelling on the ridgeline will severely impact the visual amenity of many of the neighbouring properties.</p>	<p>When the property was subdivided in 2002 the Andreou were granted approval for the following building envelope adjacent to the applicants. A detailed</p>	<p>Applicant's comments are irrelevant to the considerations of the DA and do not address any objections.</p>

Submission / Property	Issue	Response	SEPA RESPONSE
		Visual Impact Assessment has been prepared in relation to the proposed development.	
420 Old Byron Bay Road	There is also a Covenant and Easement for Water Supply burdening the property at 404 Old Byron Bay Road. The application does not address the legal impact of the proposed development upon the covenant and easement that is for the benefit of 420 Old Byron Bay Road (Notification P493825 registered on Lot 3 DP 576881).	There is no impact on the easement.	The Applicants have provided no evidence to support their claim that there is no impact on the easement.
372, 382 & 420 Old Byron Bay Road	No Statement of Environmental Effects submitted for the proposal.	A Statement of Environmental Effects was submitted with the Development Application and publicly exhibited by Ballina Shire Council.	See below.
	Development Application proposes construction of a dwelling and swimming pool on a ridgeline. It is currently undeveloped and used predominantly for agricultural activities. The proposal does not comply with the primary objectives of the 7(d1) Zone.	<p>The proposed development is consistent with the objectives of the 7(d1) Zone, being:</p> <p>Zone No 7 (d1) Environmental Protection (Newrybar Scenic/Escarpment) Zone 1 Objectives of zone</p> <p>A The primary objectives are:</p> <p>(a) to protect and enhance areas of particular scenic value to the local government area of Ballina, and</p> <p>(b) to encourage the productive use of land within the zone and enable development ancillary to agricultural land uses, particularly dwelling-houses, rural workers' dwellings and rural industries, and</p> <p>(c) to ensure development within the</p>	<p>No evidence is provided in the DA (or this document) to support the assertion that the dwelling is complying with the Zone objectives. A considerable number of submissions received by Council provide substantial detail as to how the DA is non-compliant against not just one, but several of these requirements.</p> <p>The obscure observation by the Applicant about neighbouring dwellings does nothing to address information</p>

Submission / Property	Issue	Response	SEPA RESPONSE
		<p>zone maintains the rural character of the locality and minimises any detrimental scenic impact, and</p> <p>(d) to ensure development within the zone is of a scale and nature that will not adversely impact on the existing amenity of the area.</p> <p>B The secondary objectives are:</p> <p>(a) to minimise soil erosion from escarpment areas and prevent development in geologically hazardous areas and areas of excessive gradient, and</p> <p>(b) to ensure that development within the zone does not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.</p>	<p>required about this proposed development: these dwellings are located along Old Byron Bay Rd and not in direct sight of neighbours. Nor do these comments legitimise a DA proposition which clearly goes against zone objectives. We do not see how comments about existing dwellings on neighbouring properties are relevant.</p>
		<p>(c) The exception to these objectives is development of public works and services, outside the parameters specified in the primary and secondary objectives, but only in cases of demonstrated and overriding public need and subject to the visual impact being minimised as much as is reasonably practicable.</p> <p>A detailed visual impact assessment has been prepared by Design Team Ink and demonstrates</p>	

Submission / Property	Issue	Response	SEPA RESPONSE
		<p>the consistency of the proposal with the protection and enhancement of areas of scenic value. The proposed development has been sited and deigned to generally sit below the ridgeline. The rural character of the locality is maintained and detrimental impacts have been minimised.</p> <p>It is submitted that the submissions fail to recognise that the existing dwelling house on the subject site and indeed all those located along Old Byron Bay Road sit on the predominant ridgeline above that on which the proposed dwelling is to be located.</p>	
372 & 382 Old Byron Bay Road Lot 1	S. 3.2 Ridgelines in Scenic Escarpment Areas and S. 3.3 Natural Areas & Habitat need to be addressed	<p>The SEE addresses the provisions of Ballina DCP 2012. As detailed in the SEE, a visibility and visual matters report has been prepared by Design Team Ink and addresses the potential impacts of the proposed dwelling. The proposed dwelling sits below the predominant ridge and existing vegetation provides screening from any potential viewing points. Proposed building materials and colours are compatible with the existing natural environment and existing revegetation works will assist in further screening the development.</p> <p>In relation to ecological impacts, an ecologist has been providing advice in relation to the proposed development and a further detailed assessment will be submitted to Council.</p>	<p>The Applicant references the development as “ridgeline” in sections of the DA and in various comments above. He does not refute that the dwelling is visible from N, S, E and W.</p> <p>The question as to why no alternative sites are available – a clear requirement – is not addressed in the DA or here, simply because there are numerous alternative sites that do not impact so highly on neighbours or impose a 450 metre road in front of neighbouring houses.</p> <p>We will shortly comment separately on basic ecological issues, many of</p>

Submission / Property	Issue	Response	SEPA RESPONSE
			which were not addressed by the Applicant in the original DA or in any response to date to the information requested in August 2018.

→ Meeting with Leanne Cramp and Ian Peter RE: 404 Old Byron Bay Road.

Council officers in attendance: Matthew Wood and Andrew Smith.

- Discussion with Ms Cramp x Mr. Peter, centred on the proposal for the erection of a dwelling house at 404 Old Byron Bay Road and associated issues (DA2018/431).
- Key issues raised included -
 - Road access to the proposed building site. Ms Cramp x Mr. Peter held the view that the road does not follow any track that previously existed. Expressed concern about description of the development referring to 'existing' road.
 - Concern that landslip (recent) has been caused by construction of the road (photos provided).
 - Consistency of the proposed development with the zoning of the land and various DCP provisions (incl. availability of alternate site for a dwelling).
 - Impacts on visual amenity.
 - Impacts on ecological values (species information provided).
 - Concern about bamboo plantings - both ecological x visual impacts x impact on landslip in future.
- Photos and other information provided attached.

Matthew Wood.

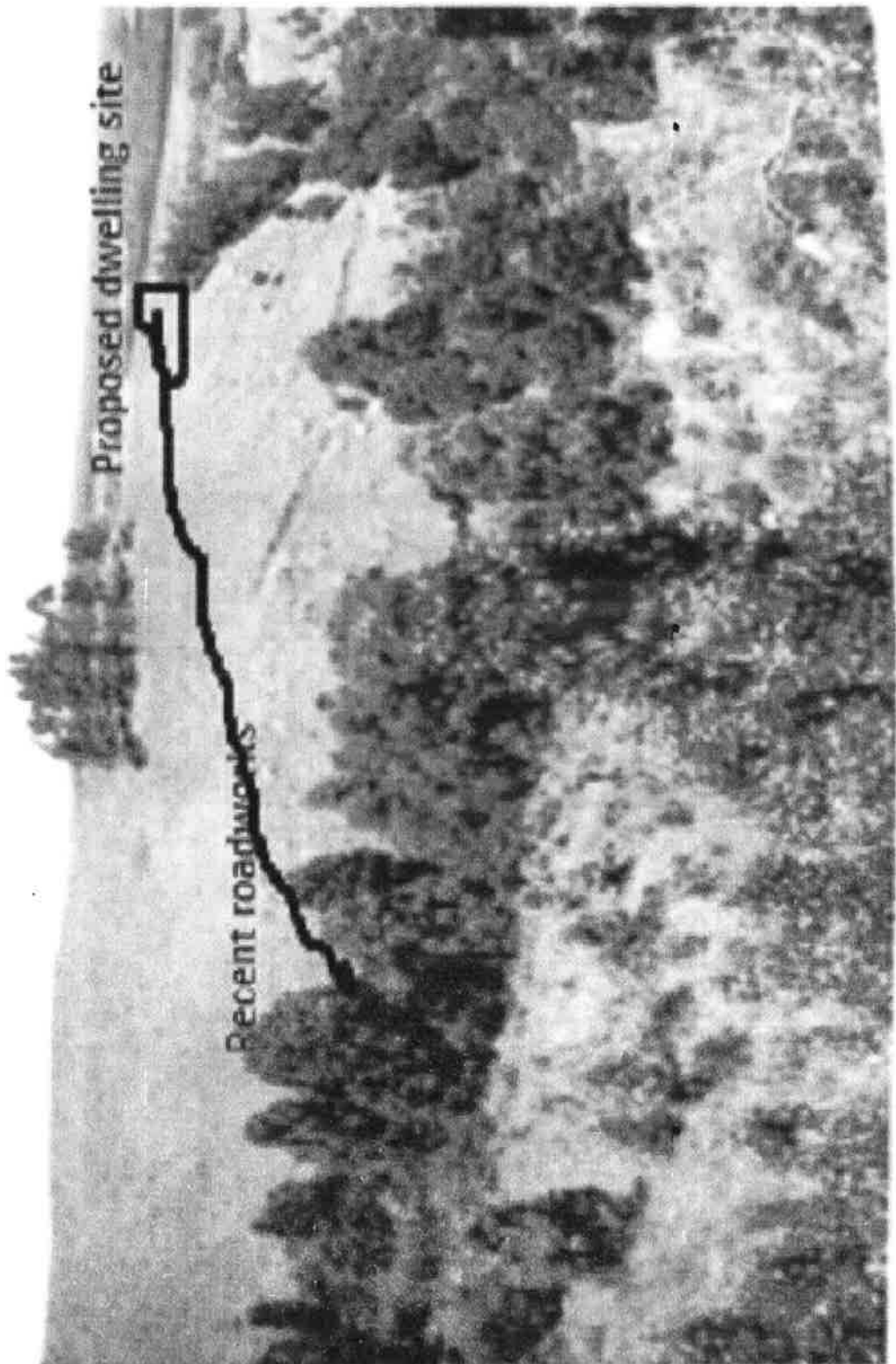


Photo. Council Records 1993.

Please see photos taken from Council records in 1993 which illustrate cuts through applicants and objectors properties and of track as it exists today. This track is also visible on aerials pre 1987 BLEP.

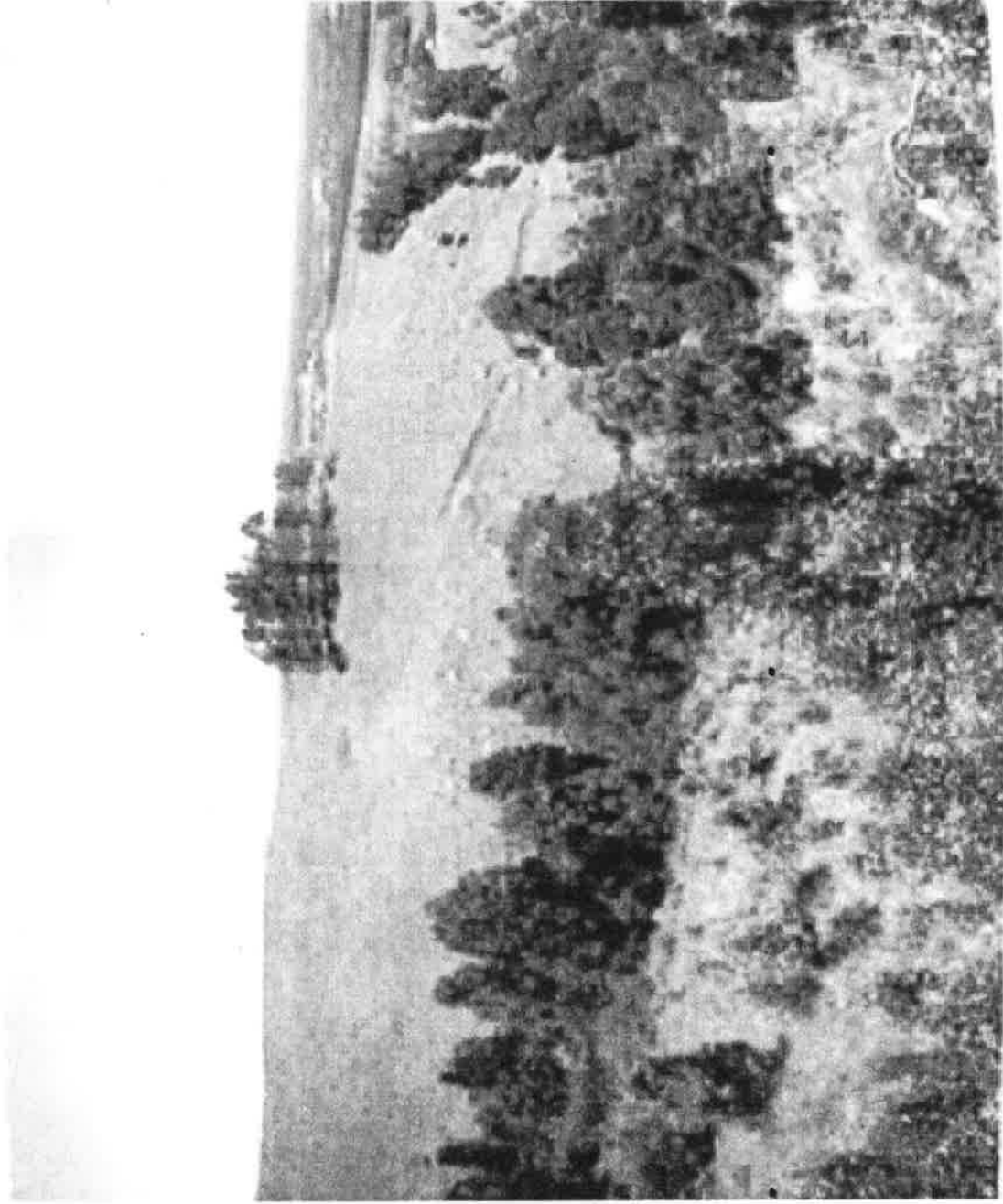
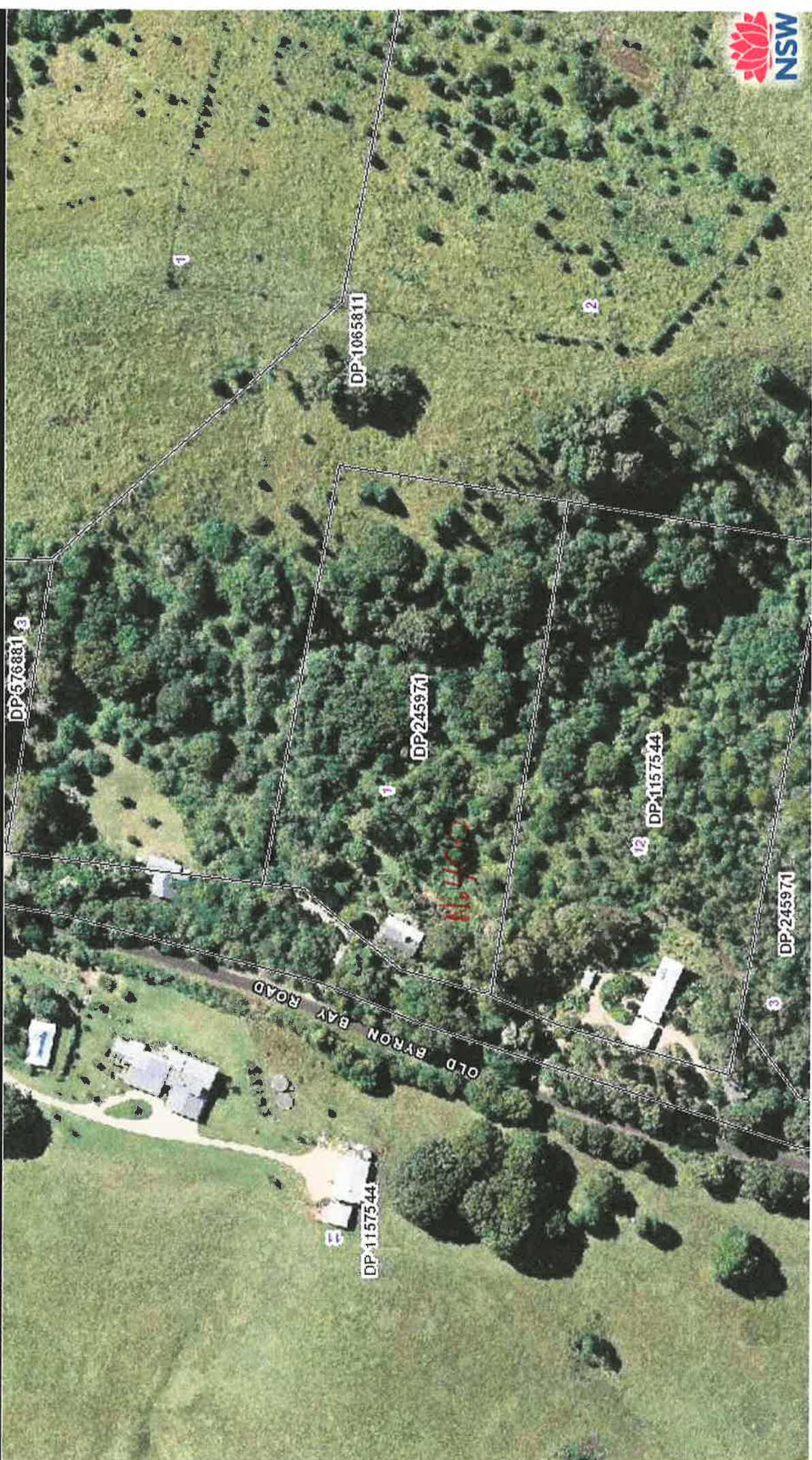


Photo. Council Records 1993.



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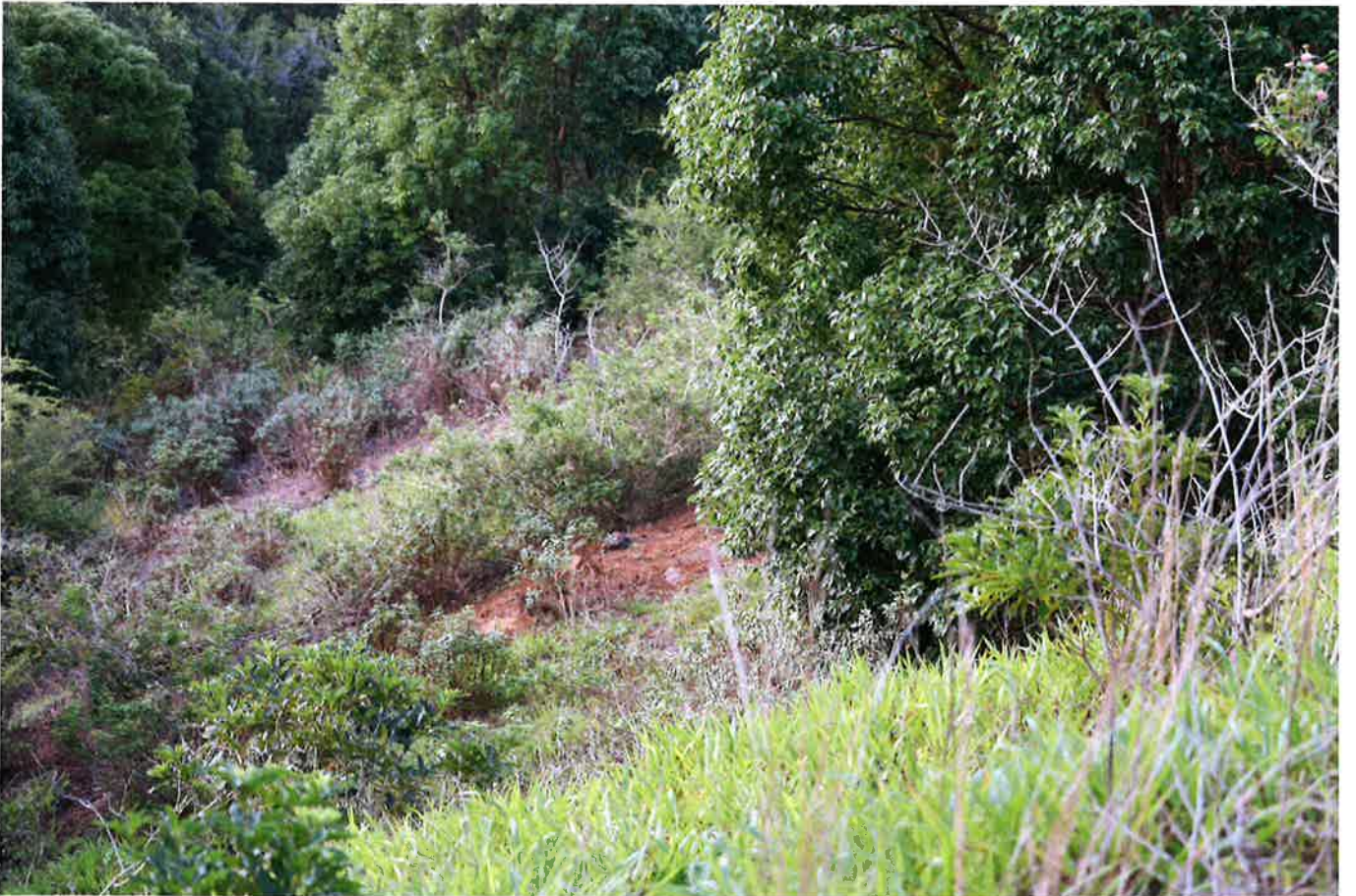




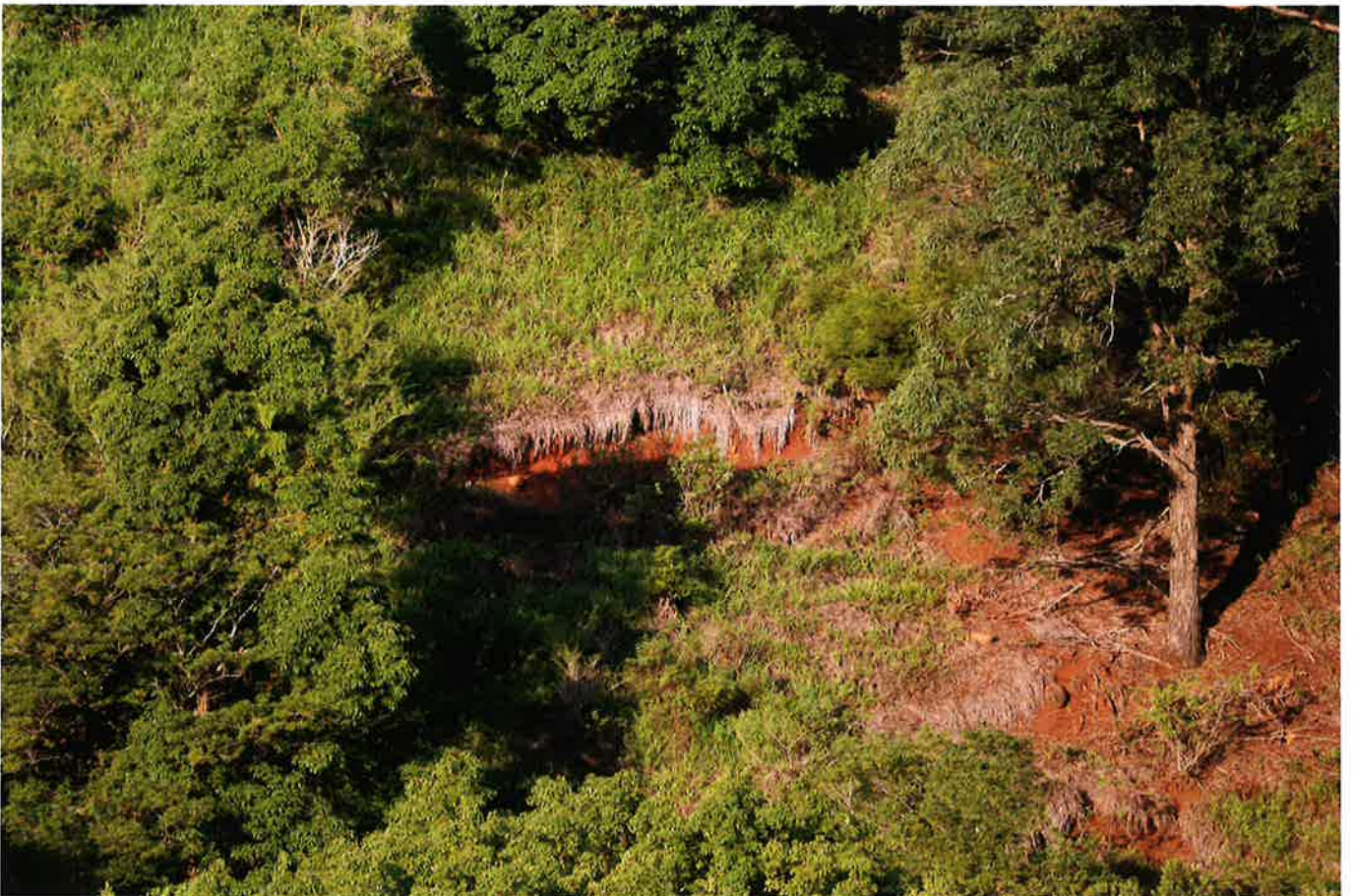


























BACKYARD BIRDS – JAKARI, 372 OLD BYRON BAY ROAD NEWRYBAR

1 September 2012

1. Willy Wagtail
2. Lewin's Honeyeater
3. Scarlet Honeyeater
4. Blue-faced Honeyeater
5. Jackie Winter
6. Little Shrike-thrush
7. Varied Triller
8. Eastern Whipbird
9. Leaden Flycatcher
10. Black-faced Cuckoo Shrike
11. Fantailed Cuckoo
12. Wedge-tailed Eagle
13. Superb Fairy Wren
14. Red-browed Firetail
15. Figbird
16. Pied Currawong
17. Wonga Pidgeon
18. White-browed Scrubwren
19. Bar-shouldered Dove
20. Eastern Yellow Robin
21. Spangled Drongo
22. Laughing Kookaburra
23. Grey Fantail
24. Australian Magpie
25. Torresian Crow
26. Emerald Dove
27. Brush Wattlebird

2 September 2012

28. Noisy Friar Bird
29. Olive-back Oriole
30. Brush Turkey
31. Eastern Rosella
32. Regent Bowerbird

4-5 September 2012

33. Lewin's Rail
34. Grey Shrike-thrush
35. Shining Bronze-Cuckoo

15 October 2012

36. Tawny Frogmouth
37. Rainbow Lorikeet
38. Dollar Bird
39. White-cheeked Honeyeater

17 October 2012

40. Galah
41. Brown Thornbill
42. Silver Eye
43. Brown Honeyeater

19 October 2012

44. White-faced Heron
45. Brown Cuckoo Dove
46. Pheasant Coucal

23 October 2012

47. Mistletoebird (M & F)

24 October 2012

48. Eastern Koel (F)

26 October 2012

49. Swamp Harrier

29 October 2012

50. Black-faced Monarch
51. White-eared Monarch
52. Australian White Ibis

30 October 2012

53. Rufous Fantail
54. Cicadabird (M)

6 November 2012

55. Rose-crowned Fruit-dove
56. Noisy Miner
57. Yellow-tailed Black Cockatoo

26 November 2012

58. Channel-billed Cuckoo (3)

21 December 2012

59. Pied Butcherbird

7 January 2013

60. Cattle Egret
61. Brush Cuckoo

27 January 2013

62. Green Catbird

16 February 2013

63. Spectacled Monarch

BACKYARD BIRDS – JAKARI, 372 OLD BYRON BAY ROAD NEWRYBAR

18 April 2013

64. Pacific Baza (M & F)

24 April 2013

65. Black-shouldered Kite

27 April 2013

66. Eastern Spinebill
67. White-headed Pigeon
68. Golden Whistler

17 May 2013

69. Noisy Pitta

5 July 2013

70. Australian Wood Duck
71. Variegated Fairy-wren

12 July 2013

72. Grey Goshawk (M & F)

21 July 2013

73. Yellow-faced Honeyeater

23 February 2014

74. Rainbow Bee-eaters

4 March 2014

75. Horsfield's Bronze Cuckoo

10 March 2014

76. White-breasted Wood-swallow

10 May 2014

77. Satin Bowerbird (F)

8 June 2014

78. Chestnut-breasted Manikin

28 June 2014

79. Brown Goshawk

3 July 2014

80. Fuscous Honeyeater

30 August 2014

81. Red-backed Fairy Wren (M & F)

22 September 2014

82. White-throated Treecreeper

24 September 2014

83. Sacred Kingfisher

6 October 2014

84. White-throated Greygone

21 October 2014

85. White-throated Needletail

22 October 2014

86. Large-billed Scrubwren

22 March 2015

87. Top Knot Pigeon

13 May 2015

88. White-necked Heron
89. Welcome Swallow

15 August 2016

90. Wompoo Pigeon

28 January 2017

91. Brown Quail

19 February 2017

92. Australian Pelican

4 March 2017

93. White-bellied Sea Eagle (j)

15 June 2017

94. Scaly-breasted Lorikeet

6 May 2018

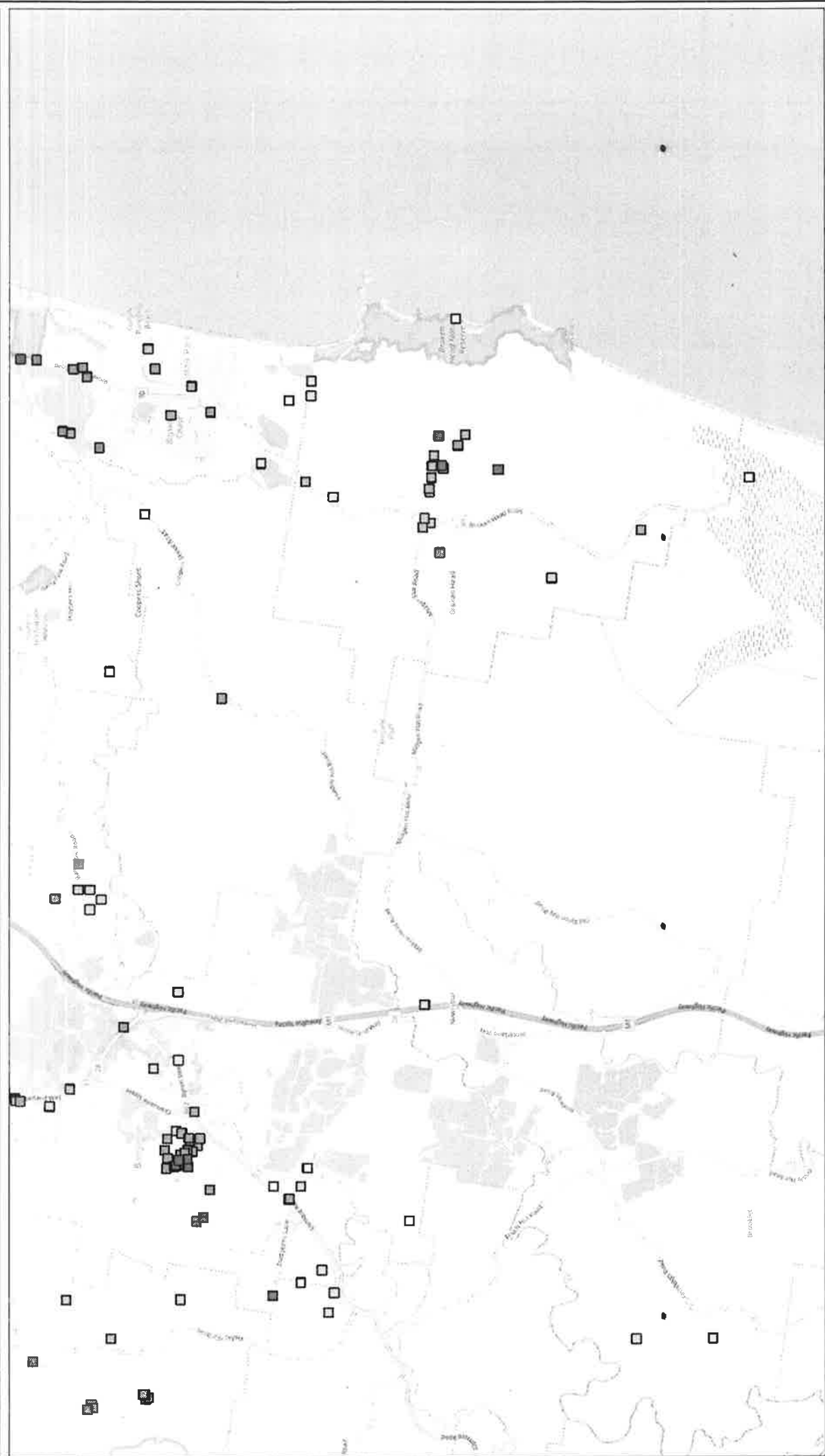
95. Striated Pardalote (m & f)
96. Brahminy Kite
97. Magpie-lark



Sharing and Enabling Environmental Data

SEED Maps

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Scale 1: 69,194,52

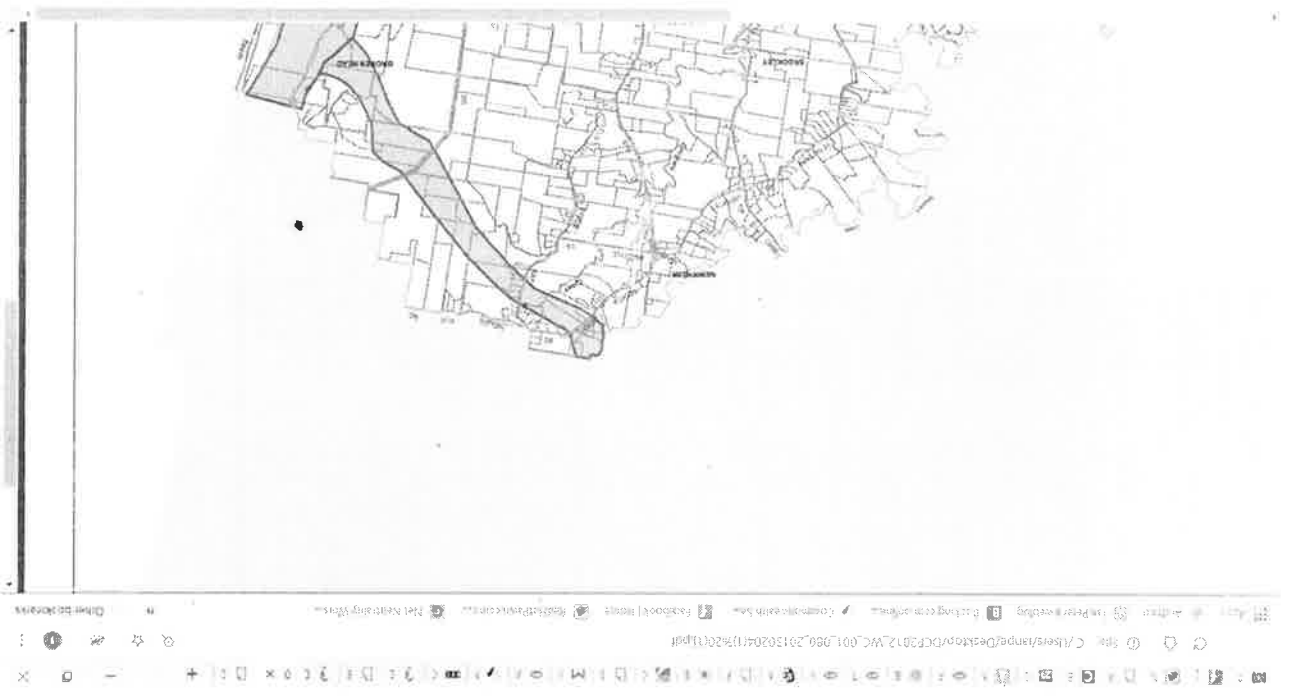
WGS_1984_Web_Mercator_Auxiliary_Sphere

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Legend

Koala Species Sightings

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You are here: Home > Agriculture > Farm management > Soil and water > Erosion > Landslips

Landslips

Note Number: LC0095

Published: November, 1999

Landslips have been occurring since before European settlement. The mass movement of soil is one of the many forces shaping the land in areas that are still geologically active.

Landslips inhibit farm production by loss of accessibility, exposure of infertile subsoil, germination of noxious weeds on disturbed soil, and the loss of stock and capital items.

What causes landslips?

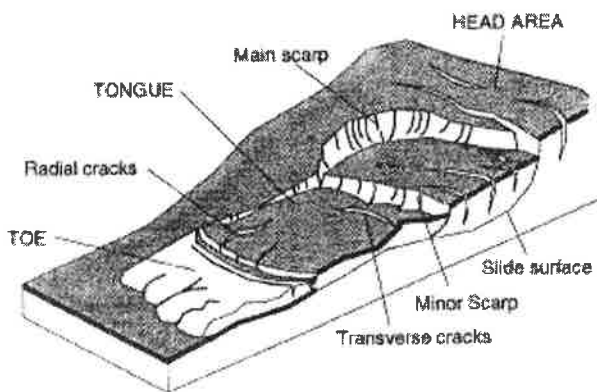


Figure 1. Earth slump slip commonly found on sedimentary parent material.

The loss of forest cover has a destabilising effect on the soil. Extensive root systems which bind the soil have largely gone and excess water formerly used by trees now remains in the soil.

Excess water in the soil profile is considered to be the prime cause of landslips and their incidence is directly related to rainfall, although geology, soil type, and topography are all contributing factors.

Conditions which contribute to excess water or excess soil water pressure include poor drainage, badly sited dams, and the removal of deep rooted perennial vegetation. Landslips can occur on either volcanic or sedimentary soils. They most frequently occur on slopes above 25 degrees, but also occur on much gentler slopes, especially on older existing slips.

How to manage a landslip

To manage a landslip site the water in and around the affected area must be managed. Two main methods of managing water are by erecting physical works designed to enhance drainage and increasing water use by increased vegetation cover.

Physical works

1. Drainage works

2

Where possible use surface or sub-surface drains to redirect water flow away from the slip. Construction of small diversion banks above the slip is one way of diverting water. Water should be diverted to a well vegetated stable site away from the slip area to help minimise further erosion activity.

2. Grading

Often the soil surface is severely broken up immediately after a landslide has occurred. Where grading is possible it will help reduce infiltration, assist surface drainage, prevent ponding and allow for revegetation works.

3. Reinforcing

If possible, batter back head escarpments and steep faces which are prone to further slipping. Excess material available from the 'head' after grading, could be added to the toe of the slope to provide added support. Establish a good grass cover over the disturbed area. Support structures at the toe of the slip can be constructed if needed, but engineering advice may be required.

4. Stream bank stabilisation

Streams may undercut the toe of the slip and remove supporting material. Diverting or piping the stream at this point, or reinforcing the bank with rock or other material, may be necessary. Advice should be sought from the Catchment Management Authority in your area or this department.

Vegetation

1. Deep rooted vegetation

To further reduce excess water the use of deep rooted perennial grasses (eg. Cocksfoot, Tall Fescue, Phalaris, Kangaroo Grass) is recommended. Plant deep rooted trees and shrubs on the active slip area and exclude stock. Planting in the catchment above the slip will maximise water use before it reaches the slip.

2. Agroforestry

A mixture of trees and pasture ideally suits the area above a slip. Government or private plantation schemes can provide valuable assistance and information for establishing forestry or agroforestry programs.

How to prevent landslips

It may not be possible to prevent landslips entirely, but with good land management a reduction in their extent and frequency can be achieved. Although the risk of slips occurring will vary with climate, soil type and topography, some basic guidelines need to be followed.

1 Diverting water away from slip-prone slopes

Improve drainage by diverting surface water away from landslide prone slopes using diversion banks or interceptor drains. Ensure safe disposal of excess water to well vegetated sites to prevent further erosion. Grassed drains may be sufficient in non-porous soils but in basalt soils, plastic or concrete drains may be needed. It is important to drain springs or soaks which contribute excess water to landslide prone slopes.

2 Land classing

Fence off slip-prone areas so that they can be managed differently to the rest of the farm. This can be achieved by undertaking a land management plan or whole farm plan.

3

3. Water usage

Increase absorption by planting deep rooted perennial grasses or trees. Take in as much land above the slip-prone area as can be spared rather than restricting works to the landslip prone area.

4. Stability

Avoid structural disturbances. Roads should be constructed along ridges rather than across slopes where destabilisation may be caused as a result of removing supporting material. Excavation may also expose the soil to more infiltration increasing groundwater problems. Ensure that runoff from roads does not contribute to problems caused by excess water.

5. Streambank vegetation

Protect and maintain streamside vegetation since an eroding stream may act to destabilise the toe of a slope.

6. Be wary of dormant or 'old fossil' slips

Dormant or old fossil slips are to be treated with caution. They are characterised by long uneven hummocky slopes. Smaller third or fourth generation slips are likely to occur on these slopes after periods of heavy rainfall.

7. Cracks and fissures

Cracks and fissures often appear before a landslip occurs. Investigate the underlying cause and where possible smooth over and plant out to prevent excess water entering the subsoil.

8. Adopt a 'whole catchment' perspective

The underlying cause of landslips often originates beyond property boundaries. In such cases, the co-operation of neighbouring landholders or Landcare groups will need to be sought.

Important points to remember

- Don't construct dams on old slips or slip-prone hillsides as this will increase water pressure in the soil.
- Maintain a well managed pasture and do not overstock.
- Avoid excess cultivation of slip-prone areas as this can adversely affect soil structure and organic matter levels and lead to greater erosion risk and increased infiltration.
- The aim of landslip control is to see a return to stability and productivity of the area. A combination of short term solutions (such as drainage works) and long term remedies (such as planting deep rooted trees/pastures) may well be the best approach.
- For effective landslip control the cost of the works, their likely success rate and off-site benefits must all be evaluated

General comments

Soil creep or terracing (often mistaken for stock tracks across a hill face) is another form of mass movement. Although soil creep is hardly noticeable, it still represents a loss of soil from the farm, creates management problems and needs to be addressed.

Again, excess soil water, topography, geology, and overstocking are all contributing factors. As terracing occurs on only the steepest slopes it is advisable to fence these into different land classes so that they can be managed separately.

Demonstration sites showing techniques for treating landslips are established at various locations in South Gippsland. For information on these sites [contact us](#).

In some cases financial assistance may be available to landholders for erosion control works.

Working your property along the lines of a land management plan (whole farm plan) can assist greatly in both preventing and treating land degradation problems and may involve some of the preventative strategies mentioned above.

Further information

This brochure is a general guide only. For further advice and information [contact us](#).

Acknowledgments

This Information Note was prepared by David Ziebell and Penny Richards (Leongatha)

This document was initially produced for the Farmcare Program with assistance from the National Soil Conservation Program.

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P O Box 429

Bangalow 2479

scenicescarpment@gmail.com

23 February 2019

Paul Hickey

General Manager

Ballina Shire Council

Dear Mr Hickey

Re: 404 Old Byron Bay Rd - DA 2018/381 – in reply to recently received RESPONSE TO OBJECTIONS (Doc No 19/8884)

We refer to this Response to Objections document recently received by Council for DA2018/381, as a response to some of the objections raised by neighbouring properties in the submissions to Council last year.

The Applicant has chosen to attempt a selective point by point rebuttal of information from the objections received. In doing so, they have ignored and glossed over substantial and verifiable issues raised by objectors to the proposed development.

In the table below, we have replied to most of the matters raised, as we believe it is important that the record be clear on these issues rather than obfuscated by non-supported assertions and inaccurate claims.

Central to their Response to Objections is the Applicants claim of a “pre-existing road” where the earthworks took place - something which has been rebutted time and time again.

Unauthorised Roadworks

SEPA wants to set the record straight on the demonstrably false assertion of a pre-existing road where these earthworks took place. While we will address this issue in points raised in the table below, we wish to highlight the substantial difference in location between the unauthorised roadworks commenced in 2016, running along the west side of the ridge line, and the cattle track/wildlife corridor referenced in the historic 1993 photo. The newly

excavated road is nowhere near the cattle track corridor in the picture. The new road was excavated into the side of the ridge in 2016 and 2017 in a location where there was no previous access road or track.

To further clarify the difference in location between the unauthorised roadworks and the cattle track wildlife corridor visible on the picture supplied by the Applicant from Council's 1993 records, we have superimposed the approximate location of the proposed dwelling, and the approximate configuration of the recently constructed and unauthorised roadworks.

This is shown as Fig 1 below.

It highlights three matters directly relevant to consideration of this DA and the Applicants assertions:

1. There was a cattle track to the eastern/RU2 portion of the property; the agisted cattle regularly wandered down from the top of the ridge (including through what is now Lot 1) to the east/west to graze.
2. The earthworks commenced in 2016 are very distant and substantially different from this cattle track, were not necessary, and were implemented purely to provide access to a proposed dwelling site, and thereby somehow legitimise a development which completely fails to meet the objectives of the zone.
3. The unauthorised road and electric fencing cuts across the cattle tracks and wildlife corridors.

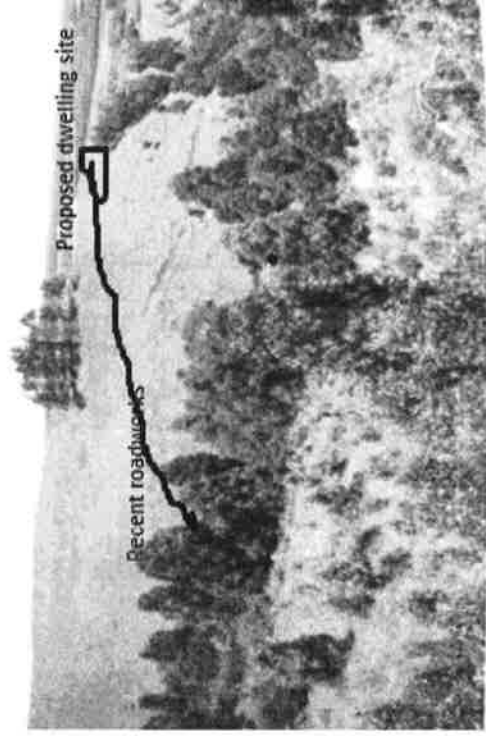


Photo. Council Records 1993.

We hope this makes clear that no claims can be made to suggest that the current unauthorised road has any relationship to the cattle track. Therefore, no claim can be made that the proposed ridge top dwelling site is located at the end of a pre-existing road.

Further comments on the points raised appear in our responses in the table below.

Sincerely,

Ian Peter, Co-Coordinator

Submission / Property	Issue	Response	SEPA RESPONSE
<p>400 Old Byron Bay Road</p>	<p>I have lived at my current address since 1992 and there has never been any access road or track on the western face of the escarpment.</p>	<p>Please see photos taken from Council records in 1993 which illustrate cuts through applicants and objectors properties and of track as it exists today. This track is also visible on aerials pre 1987 BLEP.</p>	<p>The 1993 photo referred to shows an old cattle track, not a road or vehicular access.</p> <p>The recent unauthorised earthworks to create a road are nowhere near this cattle track. (see 1993 photo with superimposed unauthorised roadworks and proposed dwelling site). This is verified by several aerial records supplied to Council.</p> <p>The 1993 photo is of no relevance to the Applicant's proposal to legitimise significant earthworks providing a four metre wide vehicular access to their proposed dwelling site.</p>
	<p>The waterhole located at the base of my home which was previously large, deep and beautiful is now filled with silt, road base and the flow is much slower than it has ever been.</p>	<p>Applicants are not aware of any silt from the road entering No. 400 as the flow of the stream leaves No. 404 underground to feed further downstream.</p>	<p>In 2018 Council wrote to the Applicants following a site inspection observing that "soil and other imported materials had been transported to an adjacent waterway". Council also raised issues about works they had observed including the "apparent failure of these roadworks whereby it appears that these works are failing with materials flowing into a natural waterway/ waterbody"</p>

Submission / Property	Issue	Response	SEPA RESPONSE
	<p>Whilst the neighbours have made some attempts to plant out and remediate the area, as requested by council.</p>	<p>Applicants are not aware of any request from Council to plant out the area. This has been initiated by applicant.</p>	<p>(see Council correspondence dated 9 February 2018).</p> <p>The Applicant apparently does not want to acknowledge that the unauthorised roadworks undertaken caused a pollution event. However, charges were laid for this pollution event in Ballina District Court on 14 February 2019, with the Applicant pleading guilty to both the “unauthorised works” charge and the “pollution incident” charge.</p> <p>In 2017 Council requested that the Applicants provide “details of any revegetation of the embankment” (see Council letter to the Applicants dated 10 November 2017)</p>
<p>I have recently submitted to council a letter from a previous owner that the access did not exist and in fact the current owner knew of this prior to his decision to create the new road without prior council approval.</p>		<p>Applicants had no direct correspondence regarding existence of road with previous owners. This can be confirmed by Real Estate and Solicitors. Confirmation of the existing road came from other sources. This documentation has been submitted previously to Council. Applicants did however negotiate as part of their acquisition of the land that access be provided from Lot 1 for a limited period of time to install fences.</p>	<p>Contact with a previous owner was indeed made. Residents have on record a note from a previous owner confirming contact between the Applicant and the previous owner.</p> <p>The Applicant requested the previous owner to state that there was a pre-existing road on the west side of the ridge - however the previous owner refused to do</p>

Submission / Property	Issue	Response	SEPA RESPONSE
	<p>The works as they currently exist are considered unsightly and negatively impact on my rural views to the north-east. This impact would be heightened should the proposed widening and sealing of this road be allowed.</p>	<p>See photograph of the road in 1999 which demonstrates the existence of the road through the gully</p> <p>Over 150 native Lilly Pillis and 500 Lomandras have been planted along the road and the applicants estimate that the road will not be visible within 2 years. Any widening of the road would not be viewable from No. 400.</p>	<p>so.</p> <p>The photograph referred to by the Applicant does not demonstrate an existing road access across the first order stream.</p> <p>The Applicant's engineers report confirms that no prior access was existing when it states "a concrete culvert has been introduced to allow crossing of the current drainage gully".</p> <p>The ongoing landscaping and planting taking place on the road includes some attempted remediation, mostly at the beginning of the road.</p> <p>We suspect a 450 metre line of lomandras will be highly visible for some time to those with a side-on view of the unauthorised roadworks. Many of these lomandras will need to be excavated if consent is given for earthworks to make a four metre wide road.</p> <p>For those whose outlook is basically along the length of the road (eg 420 Old Byron Bay Rd), the visibility is certain to</p>

Submission / Property	Issue	Response	SEPA RESPONSE
	<p>In addition, use of the access road by vehicles, quad bikes, excavators and trucks provide a continued and unwanted disturbance.</p>	<p>The applicants need to access the 90 acre property for agricultural purposes. The land has been used for grazing cattle much longer than the properties along the ridgeline have been occupied residential lots. It is unfortunate that the property was not adequately managed since 2002 following the subdivision however the current applicants wish to maintain the agricultural potential of the land.</p> <p>The approval of the DA would result in less farm traffic over the ridgeline as farm machinery is to be relocated.</p>	<p>remain as long as the road exists.</p> <p>There is easy access to the eastern (RU2) portion of the property across open paddocks. There are also arrangements with neighbours for access from Midgen Flat Rd. Nothing here justifies the extensive unauthorised road works recently undertaken for the sole purpose of access to a proposed building site on the 7d1 zoned ridge.</p> <p>As regards agricultural activity: there is no agricultural activity occurring on this property which requires an access road to the proposed dwelling site.</p> <p>The Applicants' activities since purchasing this property have impacted negatively on the agricultural capabilities of the land eg excavating a road through previously open land. It appears that valuable agricultural land is being sacrificed to satisfy the real estate market, not for growing food crops and trees.</p> <p>We further note with concern the suggestion that agricultural</p>

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	<p>Residents have long understood that development on the scenic ridgeline was not permissible because access to the proposed dwelling site required the crossing of a first order stream.</p>	<p>DPI Fisheries have advised this is an unnamed waterway and does not contain key fish habitat. Documentation provided to Council. There is no "prohibition" of development associated with access over waterways.</p>	<p>equipment is to be relocated in the proximity of the proposed dwelling. This not in the DA. Structures for this: and indeed the extra water storage requirements outlined in the RFS response would significantly enlarge the scope of the ridgeline development from what is outlined in the DA, and most likely impose additional visual impacts not outlined in the DA or addressed in any correspondence since.</p> <p>Access to the site requires crossing a first order stream. Please refer to this submission.</p>
	<p>Considerable excavation has already occurred to gain access to the development site which has adversely impacted upon the wildlife corridor and natural habitat.</p>	<p>No adverse impacts on wildlife corridor have occurred and this is supported by Ecologist who attended the site prior to upgrade to road. Evidence provided to Council.</p>	<p>We fail to understand how a visit from an Ecologist prior to the roadworks (and also prior to the extensive electric fencing) could effectively calculate the after-the-event effects on wildlife of this road excavation and development. We await the necessary studies by a professional ecologist required for this DA and again requested in August 2018 to comment on this in more detail.</p>

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	<p>The proposed road which has been partially constructed and is intended to be widened to 4-6 metres and asphalted cuts through a rainforest area and creates a barrier through the path of a wildlife corridor.</p>	<p>The current access road is already 4m in width in many parts. No rainforest is to be removed in association with the widening of the road which only partially crosses the wildlife corridor for a short distance. The road does not act as a barrier to wildlife who are able to freely move across the area.</p>	<p>This is an area of Natural Areas Habitat on Ballina Shire Council Interactive mapping. Land zoned for environmental protection 7(d1) and land identified as Natural Areas Habitat are zoned as such with the intention of protection from inappropriate development and invasive plantings.</p> <p>In addition to the roadworks, the Applicant has used an extensive network of electric fencing to prohibit cattle and wildlife from entering the areas which he is landscaping: including the full length of the newly constructed road. This prohibits wallabies and other wildlife from foraging between open paddocks and the forested gully.</p>
	<p>This aerial photo which has been included in another objection clearly shows that there isn't a road leading to the intended development site. Compare this image with the photo provided by the applicants in their current DA and it becomes very clear that an access road did not exist on the site prior to excavations in late 2016.</p>	<p>As previously illustrated, the road is clearly visible in the 1999 Council aerial, canopy cover has at times obscured the view of the road from aerials. The slashing of the site exposed the full extent of the existing access.</p> <p>The photo provided with this submission also does not illustrate the farm track which transverses across 400 and 382's property but is clearly still present and has been since 1993 (refer to Cramp response).</p>	<p>This obfuscation is addressed above. Nobody disputes the pre-existing cattle track, but the unlawful roadworks commenced in 2016 are in a completely different location and unrelated. Please refer to the SEPA diagram of the Applicant's road.</p> <p>These unauthorised roadworks were also the subject of a court</p>

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382 Old Byron Bay Road	<p>The Appendix perpetuates the description of an "existing road". As Council knows, this has been the subject of some controversy, so it is surprising to see that in the section devoted to seeking approval for a road, the only justification given for this description is that the engineer employed in the construction of the road says "there was an existing road". No details on how this was assessed by the engineer are given whatsoever: no independent verification for this assumption is included in this DA.</p> <p>The original earthworks for construction of this road took place in 2017, and was the subject of immediate complaints by neighbours to Ballina Shire Council. The road was then included, described as an existing road, in DA 2017/584. The DA suggested that the road was previously existing; however, this description was disputed by neighbours who have lived in the area for a long time, and by historic aerial photographs and other evidence presented. Council wrote to the owners of 404 Old Byron Bay Rd questioning this assumption on November 10 2017: shortly after this the DA (2017/584) was withdrawn, and the road issue was handed to Compliance Division of Council.</p> <p>Council referred to this in correspondence to the owner dated February 9 2018 as "unauthorised earthworks, including construction of an internal road". We are unaware of details of correspondence between Council and the owners from that point on, but are aware of remediation works being</p>	<p>The following photo demonstrates the existence of the farm track crossing through the stream taken from Six Maps 2016.</p> <p>The proponents have submitted detailed information to Council in relation to the existence of an internal access road on the property. As detailed in the report to Council, Council first attended the site in December 2016. Council inspected the property at that time and said that they would be in touch with the proponent should any further response be required. No further correspondence or contact was received from Council in relation to the works undertaken to the existing access track. It was the owner's reasonable conclusion that Council did not require any development application to be lodged for the road upgrade.</p> <p>As detailed in the report to Council the proponent has at all times cooperated with Council and provided written responses to requests for further information as required.</p> <p>The proposed development application does provide for the upgrade of the existing internal access and at all times during the assessment of the subject development application the proponent has been advised that the issue of the road upgrade</p>	<p>case in Ballina on February 14 2019, to which the Applicant pleaded guilty.</p> <p>There is sufficient and compelling photographic and other evidence provided by neighbours, previous owners and Council to prove that there was never an existing vehicular access from Old Byron Bay Rd across the first order stream to the proposed dwelling site. The Applicant's engineers report confirms that no prior access was existing when it states "a concrete culvert has been introduced to allow crossing of the current drainage gully".</p> <p>The Applicant appears to have made a demonstrably incorrect statement to the Council Ranger who visited the roadworks due to complaints from neighbours in November 2016. This statement about a pre-existing road was entered into Council records, without it being properly examined initially or checked with long time residents of the area. Due to this initial lack of full scrutiny, the incorrect statement by the Applicant became fundamental</p>

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	<p>requested. However the status of the road would appear, from this DA, to still be an unresolved matter.</p> <p>We also note that Appendix B (Bushfire Report) requires construction of a road with passing bays, which are being planned along the ridgeline and in the entry area of the rainforest gully. A requirement for a 6m by 8m turning bay also appears in this report. It does not appear in the plans submitted. This is a substantial additional impact on the ridgeline development not included in the DA plans. The DA also does not address issues for neighbours arising from car headlights and vehicular traffic noise.</p>	<p>would be addressed via the development application process.</p>	<p>to the ongoing assessment of his development application.</p> <p>This is not an upgrade of an existing road. It is an entirely new road purely for the purposes of accessing a proposed dwelling site, and should be addressed and evaluated in the DA as such.</p>
<p>372 Old Byron Bay Road</p>	<p>As the access road crosses a first order stream.</p> <p>In addition, use of the access road by vehicles, quad bikes provide an unwanted disturbance.</p>	<p>DPI Fisheries have advised this is an unnamed waterway and does not contain key fish habitat. Documentation provided to Council.</p> <p>A quad bike is required to maintain a 90 acre property for agricultural purposes.</p>	<p>This is a first order stream.</p> <p>This is not an upgrade of an existing road. It is an entirely new road purely for the purposes of accessing a proposed dwelling site, and should be addressed and evaluated in the DA as such.</p>
<ul style="list-style-type: none"> 	<p>In 2017 when construction of the access road commenced we were alerted to this activity by neighbours. On subsequent enquiries we were advised that the works were to provide access to the eastern sections of the property and were formalising an existing access. During our twenty-seven years of living at our address we are unaware of any access road or track at this location. The 2016 Google Earth aerial photo at Attachment A shows the absence of any access road as constructed.</p> <p>The works as they currently exist are considered</p>	<p>See comments above.</p> <p>Documentation has been provided to Council officers in relation to the existing road and consultation with NSW Fisheries prior to the commencement of works.</p> <p>The 1999 Council aerial clearly shows the existing access road.</p>	<p>There is sufficient and compelling photographic and other evidence provided by neighbours, previous owners and Council to prove that there was never an existing vehicular access from Old Byron Bay Rd across the first order stream to the proposed dwelling site. The Applicant's engineers report confirms that no prior</p>

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	<p>unsightly and negatively impact on our predominately rural views to the north-east. This impact would be heightened should the proposed widening and sealing of this road be allowed. In addition, use of the access road by vehicles, quad bikes provide an unwanted disturbance.</p> <p>As the access road crosses a first order stream, it is considered that the crossing works constitute integrated Development requiring permits/approval under the Fisheries Management Act (s219) and the Water Management Act 2000 (s91 - controlled activity).</p> <p>The impacts of the current and proposed works on both upstream and downstream water users and waterway function should be assessed and remedial works undertaken where necessary.</p>		<p>access was existing when it states “a concrete culvert has been introduced to allow crossing of the current drainage gully”.</p>
420 Old Byron Bay Road	<p>The application is self-evidently attempting to establish the construction of a significant 450 metre long 4-6 metre wide asphalted road to the top of the scenic escarpment ridgeline to enable the construction of a new residence for the applicants.</p>	<p>The owners require access to service the 90 acre holding to maintain agricultural practises. Access prior to the subdivision in 2002 was via a road along the objectors northern boundary. Prior to the applicants resurfacing the existing track applicants took photos of the road along the northern boundary. See below. Further evidence to support this existence has been provided to Council. Significant planting has been undertaken along the boundary fence to minimise noise and the subsequent upgrade of the road to bitumen will also alleviate noise from vehicles. It should also be noted that no width upgrade is required along the northern</p>	<p>There is no indication that the road is required for agricultural purposes. Cattle have been agisted on the property for decades without the need for a 450 metre road to a proposed dwelling on a ridgeline. The RU2 portion of the land can be easily accessed from Midgen Flat Rd and arrangements have always existed with neighbours to do this.</p> <p>We do not see evidence of any agricultural activities other than cattle agistment which has happened for decades. Landscaping which has happened for real estate development purposes is not an</p>

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	<p>boundary. The existing track is already 4ms in width. The passing bay is away from the northern boundary.</p>	<p>agricultural activity recognised for RU1 or RU2 land. Nor is the landscaping activity currently under way ancillary to any agricultural usage.</p> <p>There is sufficient and compelling photographic and other evidence provided by neighbours, previous owners and Council to prove that there was never an existing vehicular access from Old Byron Bay Rd across the first order stream to the proposed dwelling site. The Applicant's engineers report confirms that no prior access was existing when it states "a concrete culvert has been introduced to allow crossing of the current drainage gully".</p>	
	<p>The application does not address the environmental (or legal) impact of the proposed development upon the covenant and easement that is for the benefit of 420 Old Byron Bay Road (Notification P493825 registered on Lot 3 DP 576881).</p>	<p>The applicants are not aware of any environment or legal impact of the development on the water easement. The objectors have surveyed the easement and it has been confirmed that it is in no proximity to the development.</p>	<p>It is the Applicant's responsibility to ensure their proposed development does not impact on the easement. Being "unaware" of any impact is not sufficient to allow development.</p>
<p>400 Old Byron Bay Road</p>	<p>I was not contacted by the applicants or Planners North "to see and photograph the view from eastern facing balconies" (page 2 of 222). If I had of been contacted it would be immediately obvious how the DA effects my visual amenity. The images provided by Design Team Inc. are completely inaccurate. Survey poles that were</p>	<p>The house has moved further down the ridgeline and reduced the height by 2 metres. We are confident in the accuracy of Design Team Inc Visual Assessment and have previously requested objector submit photos of demonstrate impact of survey</p>	<p>We suggest Council scrutinise in the detail the plans submitted. Our examination does not show any significant reduction in the height above ridgeline of the new DA as compared with the old one when</p>

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	<p>recently erected can be seen clearly from my kitchen, lounge room, two of the three bedrooms and from my entire verandah'. 'In assessing the original DA 2017/584 and comparing the elevations with the current DA 2018/381, it appears as if the dwelling has not moved at all. " lowering the level of the building by 2m minimizing any potential impacts upon the site and the amenity of the locality</p>	<p>poles from all rooms. These are not present in the objection. The photo submitted with height poles has been clearly enlarged to exaggerate the impact. The attached photograph obtained from AirBNB for this property shows the actual view from the dwelling which appears to be taken from an upper dormer window. Only a very small portion of the southwestern corner will be visible from this viewpoint.</p> <p>The photo contained in the submission is focused on the site and does not show the entire view and proposed dwelling within the context of the broader viewshed.</p>	<p>viewed from the west.</p> <p>The Applicants concede that the proposed dwelling site is on a ridge line, albeit "further down", but have still not provided any justification for this Variation to a development standard, as required by Ballina Shire DCP 2012.</p>
<p>382 Old Byron bay Road</p>	<p>So it can be seen that from this comparison - the dominant perspective for residents from Old Byron Bay Road - the new dwelling is not 2 metres lower. It also has a 7 metre building height above ground level in the SW corner: in excess of what is recommended for this zone'.</p>	<p>The visual assessment did consider the publicly available submissions on the first DA and the land owners also made adjustments to the building location and design to address the objector's concerns about visibility. The withdrawn DA included a building with a roof RL of 126.8m with an atrium protrusion to 127.5m. The current application is 2m lower with a roofline of 124.8m and an atrium protrusion to 125.5m. At the time of inspection of the Council's online DA database various submissions were available but none of them included photographs taken from the actual dwellings looking towards</p>	<p>We suggest Council scrutinise in detail the plans submitted. Our examination does not show any significant reduction in the height above the ridge line of the new DA compared to the old one when viewed from the west.</p>

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	<p>'It is clear the materials submitted in response to the previous DA as regards visual impact were not assessed or utilised. We have included as Appendix A to our Objection some of the materials previously submitted , because they provide better factual evidence of the visual amenity situation than some sections of this report.</p>	<p>the site. Therefore, the drone modelling was undertaken.</p> <p>Sheryn de Rae reviewed all objections related to the visual amenity. Appendix A locates proposed dwelling on top of the ridgeline which is the incorrect location. The images provided in the submission do not take into account existing surrounding vegetation which has significant impacts upon visibility.</p>	<p>The dwelling is visible from N, S E and W, and is as referred to above by the Applicant as a ridgeline development. The projections provided by us are accurate and rely on a far more established methodology for measuring visual impact than the error prone aerial drone pictures on which the Applicant's suppositions about visual impact rely. There is a considerable amount of literature about the problems of accuracy in drone mapping exercises. In this case, there is irrefutable evidence to show that some of the projections are inaccurate, and Council officers are welcome to verify this with site visits.</p> <p>The visual impact study also fails to reference the 450 metres of excavated road required for such a dwelling, which in some cases is a considerably worse visual impact than the building site, which is small in comparison.</p> <p>The evidence on which this is based</p>
	<p>The assessment of visual impact for 382 Old Byron Bay Road is also very</p>	<p>The objector speculates as to the area of roof and western wall that</p>	

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	<p>wrong. The report states "It is clear from the montage below that only a small portion of the roof and western wall are visible from this dwelling." This is a long way off the mark. According to plans submitted, we would see about 95% of the roof line, and an estimated 55% of the western wall.</p>	<p>may be visible without providing any evidence. At no point in the visual assessment does the assessment determine that the proposed building would be invisible from this location without the growth of screen planting.</p>	<p>is the plans submitted in the DA and visual impact from the home of the objector.</p>
	<p>It also claims that tree plantings will alleviate this further: But as our eyesight level is approximately level with the ridgeline at the new construction, and the plantings are below the ridgelines, it will be decades before such filtering comes into play from our perspective. These trees are planted on a SW facing slope, poor growing conditions for vegetation, and will take a long time to mature. But even so: no amount of plantings could change the inappropriateness of the proposed two storey development on the ridgeline of a scenic escarpment</p>	<p>The information provided in this objection relating to tree planting is incorrect. The existing planting on the site is located between the driveway and the proposed dwelling location at a level which is higher than the existing ground level of the proposed western edge of the building. Therefore, upon establishment this vegetation will definitely screen views from 382 to the proposed dwelling area. In addition to this the landform abutting the western edge of the building area is to be mounded up to form a 'green bund' (as shown in the architectural drawings) also contributing a screening affect. The land owners have also undertaken planting on the lower side of the driveway which will provide further screening.</p> <p>Objectors own home is 2/3 storeys and is in excess of 12m in height.</p>	<p>Attempts at screening are noted, but are ineffective in terms of the impact of a ridgeline dwelling and 450 metres of access road.</p> <p>Council requires that DAs for Ridgelines and Scenic Areas provide a landscaping plan "detailing proposed planting to augment existing vegetation". The DA has not been approved and therefore the Applicants should not be planting vegetation on the site without consent.</p> <p>References to the size of the dwelling at 382 Old Byron Bay Rd are both incorrect and irrelevant. They have no relevance whatsoever to the suitability and location of the dwelling contained in the DA in question: which is at the end of 450 metres of road on the Eastern ridgeline, and in direct site of many neighbouring properties. Neighbouring properties referenced are close to the road line of Old</p>

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	<p>There are also problems with the assessment of views from Old Byron Bay Road. The assessment evaluates visual access for car drivers to the house site only. It does not cover pedestrian access on this popular walking area for both locals and visitors to the area which provides different criteria altogether for assessment of visual amenity. These have not been addressed. The road is also a popular scenic route for cyclists.</p>	<p>In terms of views from Old Byron Bay Road; The parts of Old Byron Bay Road within the foreground viewing zone of the proposed dwelling contain significant roadside vegetation which blocks and filters views from vehicles, and for pedestrians and cyclists. Where gaps occur they are predominantly at access points to properties where the driveway penetrates the vegetation stand. Glimpses to the site may be possible from these locations if someone wishes to stand there and look across private property towards the site.</p>	<p>Byron Bay Rd. The road is used by cyclists and joggers because of the scenic outlooks from many points. This is one of the reasons why the land is recognised as a "Scenic Escarpment Protection Zone" 7(d1) in the Ballina LEP.</p>
372 Old Byron Bay Road	The visual impact of the proposed development from our property is shown at (see image to the right)	This image is inaccurate the Opposers house is over the fence line	See notes above on comparison of visual impact methodologies
Lot1 404 Old Byron Bay Rd	DA does not include the visual impact from my adjoining property.	Incorrect, photos were taken with permission at 430 Old Byron Bay Road.	430 Old Byron Bay Rd is not Lot 1 404 Old Byron Bay Rd.
420 Old Byron Bay Road	A visual inspection from surrounding properties, including from my property, shows that the existing vegetation will not adequately screen the proposed development.	Applicants disagree. No information submitted to substantiate claim.	Objectors disagree. The Applicants were invited to view their proposed dwelling site from the perspective of the adjoining property at 420 Old Byron Bay Rd. No evidence submitted to substantiate claim of the Applicants, including as regards the 450 metre access road.
	The existing vegetation along the northern	Owners disagree with this	The adjoining owners strongly

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	<p>boundary of Lot 2, our common boundary, will not adequately screen the earthworks proposed from Old Byron Bay Road down to the waterway</p>	<p>statement. Significant planting has been undertaken along this area. Please also note this was repeated following accidental poisoning by neighbour's gardener on our own land.</p>	<p>reject the statements made by the Applicants about "poisoning" their plantings.</p> <p>The Applicants have planted vegetation to replace a small section of the vegetation that was removed. A bamboo hedge has been planted by the Applicants which is neither native nor sensitive to the environmental qualities of the area, as required by Council.</p>
<p>448 Old Byron Bay Road</p>	<p>"sight line from my clients home enables direct sight of the proposed dwelling..."</p>	<p>Town Planner has incorrectly assessed in the report the location of the proposed dwelling as Lot 1, not Lot 2. The Town Planner report supports the owners visual impact assessment by Design Team Ink that there is no view line from 448 to proposed house site (Lot 2) as depicted in the report diagram below.</p>	<p>Noted. The Owner has not been contacted for comments. But irrespective, this property is highly visually impacted and affects ocean views and rural outlook.</p>
	<p>'There is approx. only 50m between the proposed development site and my clients home'</p>	<p>Town Planner has not read visual impact assessment (excerpt below).</p> <ul style="list-style-type: none"> The dwelling at 448 Old Byron Bay Road (Four Winds Villas) is located on the same ridge approximately 371m north of the proposed building location at a higher elevation of approximately RL150 - 152. The roofline of the proposed new building is at RL124.8 with a small atrium protrusion to 125.5, which is approximately 5-6m below the ground level at 448 Old Byron 	<p>This is an historic home built last century and is not visible from Old Byron Bay Rd.</p>

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	<p>Bay Road. Most of the building is cut into the eastern side of the hill and the roof of the proposed new building also sits below the level of the ridgeline within its own site which rises to about RL129 on the northern boundary. The proposed new building is also positioned behind the copse of Eucalyptus trees which provide some view filtering.</p>	<p>Applicants confirm a standard sized generator will be more than adequate to be used on site for the initial build until off grid power is established. Construction noise at the site will be no different from any other building site currently in 7(d1) along Old Byron Bay Road. No power poles will be required.</p>	<p>Noted. However with prevailing NE winds the noise factor will remain considerable. We also note that the question of required earthworks has not been addressed.</p>
<p>382 Old Byron Bay Road</p>	<p>The building process will require power supply. The DA works on the basis on a dwelling not connected to the grid: so we can assume a large power generator utilising fuel will be used on site during this process. The DA is scant on details as to the amount of earthworks involved in a dwelling partially cut into the ridgeline; and traffic levels during construction will be substantial and noisy. We do not believe that temporary power poles along the proposed road should be allowed to facilitate construction.</p>	<p>Applicants strongly reject the statements made. The applicants pay farmland rates and are PIC registered. Murray Deane is a local farmer who owns over 350 cattle and has cattle agistment all over Byron and Ballina Shire. He currently has cattle agisted on neighbouring properties. Cattle grazing on this land dates back on council records to 1990.</p> <p>Noxious weeds are a problem in the 7(d1) and this can be confirmed with Council by a recent visit by North Coast Weed</p>	<p>Cattle have grazed the property long before the current owner without the need for a road or an extra dwelling. Cattle have co-mingled with wallabies - grazing on the property for decades without the need for a 450 metre road carving up good agricultural land, without the installation of a large network of electric fencing impeding animals' ability to roam and graze, and without the need for an extra dwelling on the ridge. Prior to the current land owner, the</p>
	<p>Cattle are not currently seen. There are no noxious weeds. Most of the property is zoned RU2 on the other side of the ridgeline. Barbed wire and electric fences are not necessary for the ridgeline and prevent the movement of wallabies. Farming is a hobby.</p>		

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	<p>Management. In addition, there is an ongoing wild dog problem which many of the residents are probably not aware of. A recent cull was performed on the Cupper property.</p> <p>The use of barbed wire is historic on the property and significant effort has been undertaken to remove it. Cattle are not seen often due to paddock rotation and electric fencing preventing them accessing the wildlife corridor. Upon approval of the DA the fence will be moved further down the ridgeline</p> <p>Currently wildlife move freely on the road and are not injured or prevented from doing so.</p>	<p>mixed zoning of a protected ridgeline and forested habitat and the RU2 agricultural zone had worked well without adverse impact. The wildlife was able to co-exist with agisted cattle. Farmers occasionally checked on their stock with the use of trail bikes. Trail bikes can easily access the land if necessary through open paddocks, with absolutely no need for a road for agricultural activity. The land was well maintained and mostly weed free in the past. The gully habitat provides a protected habitat for native animals and birds - and the open pastures provide paddocks for cattle and wildlife to forage.</p> <p>The current landowner's activities have not enhanced or protected (RU2) agricultural land or respected (7d1) environmental protection land.</p> <p>The developer has allowed the waterway through his property to be silted, impeding water flow (subject of recent court charges to which the Applicant pleaded guilty).</p> <p>The Applicant has excavated previously open land to create an unlawful road to a proposed dwelling site, causing slippage and erosion (currently a court case) and laying tons of gravel on what was once good agricultural land. The electric fencing the Applicant has installed to fence off his domestic</p>	

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			<p>plantings to landscape his proposed dwelling site only further impacts what was once good grazing for agisted cattle. The electric fencing runs across wildlife habitat as well as grazing land. The road cuts across a cattle track. The current activities on the land at 404 are more in keeping with a developer looking to capitalise on a ridgetop purchase than any desire to protect or use agricultural land.</p>
372 Old Byron Bay Road	<p>A new two storey dwelling house and swimming pool on an undeveloped ridgetop; Currently there is no development on this ridgetop and it offers a purely natural vista.</p>	<p>It is not an undeveloped ridgetop. Four Winds Holiday Accommodation (448 OBBR) is located on the same ridgetop.</p>	<p>The part of the ridgetop being threatened by the developments proposed in this DA is undeveloped land and in an Environmental Protection Zone.</p>
	<p>What guaranteed is given that this scenario would occur into the long term and that the dwelling would not be converted into rental or holiday accommodation</p>	<p>The house is to be decommissioned with removal of kitchen and laundry facilities.</p>	<p>The Applicant's statement does not address the question raised</p>
	<p>No information is provided on provision of power to the site which could involve unsightly poles and wires extended from the current lines along Old Byron Bay Road.</p>	<p>DA states proposed dwelling is to be off grid.</p>	<p>Addressed above</p>
Andreou	<p>The current submission places the building envelope within approximately 20-25 metres of my southern boundary. Building a large dwelling on the ridgetop will severely impact the visual amenity of many of the neighbouring properties.</p>	<p>The proposed dwelling is to be sited 35 metres from the southern boundary. When the property was subdivided in 2002 the Andreou were granted approval for the following building envelope adjacent to the applicants. A detailed</p>	<p>Pedantic and not relevant to the objection. Applicant's comments are irrelevant to the considerations of the DA and do not address any objections.</p>

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420 Old Byron Bay Road	There is also a Covenant and Easement for Water Supply burdening the property at 404 Old Byron Bay Road. The application does not address the legal impact of the proposed development upon the covenant and easement that is for the benefit of 420 Old Byron Bay Road (Notification P493825 registered on Lot 3 DP 576881).	Visual Impact Assessment has been prepared in relation to the proposed development. There is no impact on the easement.	The Applicants have provided no evidence to support their claim that there is no impact on the easement.
372, 382 & 420 Old Byron Bay Road	No Statement of Environmental Effects submitted for the proposal.	A Statement of Environmental Effects was submitted with the Development Application and publicly exhibited by Ballina Shire Council.	See below.
	Development Application proposes construction of a dwelling and swimming pool on a ridgeline. It is currently undeveloped and used predominantly for agricultural activities. The proposal does not comply with the primary objectives of the 7(d1) Zone.	The proposed development is consistent with the objectives of the 7(d1) Zone, being: Zone No 7 (d1) Environmental Protection (Newrybar Scenic/Escarpment) Zone 1 Objectives of zone A The primary objectives are: (a) to protect and enhance areas of particular scenic value to the local government area of Ballina, and (b) to encourage the productive use of land within the zone and enable development ancillary to agricultural land uses, particularly dwelling-houses, rural workers' dwellings and rural industries, and (c) to ensure development within the	No evidence is provided in the DA (or this document) to support the assertion that the dwelling is complying with the Zone objectives. A considerable number of submissions received by Council provide substantial detail as to how the DA is non-compliant against not just one, but several of these requirements. The obscure observation by the Applicant about neighbouring dwellings does nothing to address information

Submission on / Property	Issue	Response	SEPA RESPONSE
		<p>zone maintains the rural character of the locality and minimises any detrimental scenic impact, and</p> <p>(d) to ensure development within the zone is of a scale and nature that will not adversely impact on the existing amenity of the area.</p> <p>B The secondary objectives are:</p> <p>(a) to minimise soil erosion from escarpment areas and prevent development in geologically hazardous areas and areas of excessive gradient, and</p> <p>(b) to ensure that development within the zone does not create unreasonable or uneconomic demands, or both, for the provision or extension of public amenities or services.</p>	<p>required about this proposed development: these dwellings are located along Old Byron Bay Rd and not in direct sight of neighbours. Nor do these comments legitimise a DA proposition which clearly goes against zone objectives. We do not see how comments about existing dwellings on neighbouring properties are relevant.</p>
		<p>(c) The exception to these objectives is development of public works and services, outside the parameters specified in the primary and secondary objectives, but only in cases of demonstrated and overriding public need and subject to the visual impact being minimised as much as is reasonably practicable.</p> <p>A detailed visual impact assessment has been prepared by Design Team Ink and demonstrates</p>	

Submission / Property	Issue	Response	SEPA RESPONSE
372 & 382 Old Byron Bay Road Lot 1	S. 3.2 Ridgelines in Scenic Escarpment Areas and S. 3.3 Natural Areas & Habitat need to be addressed	<p>the consistency of the proposal with the protection and enhancement of areas of scenic value. The proposed development has been sited and designed to generally sit below the ridgeline. The rural character of the locality is maintained and detrimental impacts have been minimised.</p> <p>It is submitted that the submissions fail to recognise that the existing dwelling house on the subject site and indeed all those located along Old Byron Bay Road sit on the predominant ridgeline above that on which the proposed dwelling is to be located.</p> <p>The SEE addresses the provisions of Ballina DCP 2012. As detailed in the SEE, a visibility and visual matters report has been prepared by Design Team Ink and addresses the potential impacts of the proposed dwelling. The proposed dwelling sits below the predominant ridge and existing vegetation provides screening from any potential viewing points. Proposed building materials and colours are compatible with the existing natural environment and existing revegetation works will assist in further screening the development.</p> <p>In relation to ecological impacts, an ecologist has been providing advice in relation to the proposed development and a further detailed assessment will be submitted to Council.</p>	<p>The Applicant references the development as “ridgeline” in sections of the DA and in various comments above. He does not refute that the dwelling is visible from N, S, E and W.</p> <p>The question as to why no alternative sites are available – a clear requirement – is not addressed in the DA or here, simply because there are numerous alternative sites that do not impact so highly on neighbours or impose a 450 metre road in front of neighbouring houses.</p> <p>We will shortly comment separately on basic ecological issues, many of</p>

Submissi on / Property	Issue	Response	SEPA RESPONSE
			<p>which were not addressed by the Applicant in the original DA or in any response to date to the information requested in August 2018.</p>

Martin Scott

From: Leanne Cramp <leannecramp@yahoo.ca>
Sent: Thursday, 11 April 2019 07:39
To: Paul Hickey; Matthew Wood; Ian Gaskell
Subject: Effected waterway

Dear Mr Hickey,

This letter serves the purpose of informing you and Mr Wood that I am EXTREMELY worried about the natural water course that flows through the bottom of my property.

The Whites at 404 Old Byron Bay Rd, Newrybar, recently pleaded guilty to polluting of a natural waterway and I am totally devastated by its current condition.

But first a bit of history.

It is spring fed, has always, always flowed even during times of severe drought. I use this collection point on my property as emergency drinking water and I have never used it for irrigation purposes. It has never been dry.

I went to the waterway a few days ago and was appalled to find a small pit of mud, and that is is!!! Water flow was less than a trickle and the new fire fighting pump that I had installed there just over a year ago at great cost and effort is useless.

The Whites excavation work at the waterway and culvert crossing has made a major impact to the natural environment and flow of this water course and I want the council to inspect immediately and contact me about what will happen to remedy this current situation. Two years after their unauthorised work without specific engineering specifications and the natural and beautiful watercourse slow my property is almost destroyed as is my ability to obtain water during times of emergency.

It is also very apparent that the Whites are using the water to irrigate their landscaping as they have managed to keep all of the rage top and road planting alive during this recent dry period. The installation of a large and unsightly tank on the top of the ridge, and the regulars sighting of them watering is ca very clear indication that they are taking an extraordinary amount of water for m the resource which is having a serious effect on the properties below as well as the unique environmental diversity of the gully below my property.

It would appear that whatever remediation work they had to put in place as a result of the illegal work, directed by the council some time ago, has not worked and I would like to request that the council makes immediate enquiries about their irrigation and the state of the waterway at the point of the road crossing.

Again yesterday I went down to the water source to see if the recent rains had made any significant change to the flow of the water.

ZERO - Still a small hole of mud instead of the beautiful, clear water hole that I am use to enjoying.

I am expecting that the council will communicate with me immediately on this situation and I would like an independent appraisal of there work at the crossing sight and how their work has impacted on the class one water way.

I am devastated about this current situation and given the impending decision of the Whites DA before the council I implore you to take this series environmental breach into immediate consideration. All of the Whites' beautification strategies they are attempting with their landscaping along the unauthorised road and along the top of the escarpment they have failed to protect this unique and vulnerable environment and I implore the council to do act on this immediately.

The Current DA of the Whites before council, if approved, will create enormous, irrevocable damage to this fragile and beautiful ecosystem and must not proceed.

I look forward to hearing from you immediately with regards to my concerns as I am travelling overseas for a period of time and do not wish to return to see a further erosion of the environment and the scenic escarpment.

Your truly,

Leanne Cramp

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Martin Scott

From: ian.peter@ianpeter.com
Sent: Thursday, 9 May 2019 08:24
To: Ballina Shire Council
Subject: Re: DA2018/381 – 404 Old Byron Bay Rd - Threatened Species Issues

Re: DA2018/381 – 404 Old Byron Bay Rd - Threatened Species Issues

Dear Mr Hickey,

I have recently become aware of a number of additional threatened species sightings on properties within 3km of 404 Old Byron Bay Rd, which bring the total count of threatened species sightings in this area to 27 (twenty seven) separate fauna species. This is above what I had previously expected: and the vast majority of these sightings are from highly reputable sources. These have been submitted to SEPA (Scenic Escarpment Protection Alliance) by an ecologist and a specialist in threatened species.

It is therefore extremely important that your records show this fact, and that your evaluation of the DA for this property takes these significant issues into account.

Of particular importance in evaluating this is the effect on threatened species of a 450 metre road traversing both a nature corridor and an environmental protection zone. As approval of this road is subject to the DA, the effect of this road needs to be thoroughly scrutinised: especially as the developer is now constructing permanent fencing along the road length.

What has to be scrutinised in any evaluation of approval for this road is adverse effects of noise, dust, light spill, sedimentation, pollution including eutrophication, invasive plants, wildlife corridor interference, and wildlife vegetation removal - both during and after construction phases. This would have to include all effects of works already undertaken, as this post facto approval is an important part of this DA (and totally necessary to allow the proposed ridgetop dwelling in the scenic escarpment zone).

The evaluation effects would extend to at least 30 metres either side of the newly constructed and unauthorised road.

I trust these facts will be given full attention during your evaluation, as not to do so would constitute a significant breach of your responsibilities. I cannot see how, in these circumstances, approval of this unnecessary road could possibly be allowed as part of this DA.

I realise that at this time you are seeking further information from the applicant. Let me know if and when you need further information on these species sightings to support refusal of this DA.

Sincerely,

Ian Peter

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Martin Scott

From: Sue Taylor <taylor.sue@gmail.com>
Sent: Monday, 3 June 2019 15:17
To: Ballina Shire Council
Subject: Attn: Andrew Smith, Development Services

cc. Mr Paul Hickey, GM
cc. Mr Matthew Wood

To: Andrew Smith
Manager Development Services
Ballina Shire Council

Property under discussion: **DA 2018 / 381**
404 Old Byron Bay Rd, NEWRYBAR.

Dear Andrew

This is a follow-up letter after our meeting 30 May 2019.
Thank you and Martin Scott for taking the time to meet with me.
Some of the items outlined below were discussed in our meeting.

The Process and Timeline: DA 2018/381

I have no complaint in relation to the timeline or process involved in the assessment of the development application.

Martin Scott has at all times been professional, respectful, taken the time to explain the process in a clear and professional manner, and by all accounts is doing a competent and diligent job. Ian Gaskell (ecologist) has also carried out his work professionally. I understand the applicant has now been given more time to supply the requested environmental reports.

The complaints and issues I have with Council relate specifically to Council's Compliance division, and to the lack of action in dealing with the construction of a 450 metre internal road to a prospective house site without approval.

Reasons for inaction have been explained to me but, considering the environmental protection zone, I do not agree with 'no action to be taken' by compliance in relation to excavation of an unauthorised road, ongoing use of the road, and now a post & rail fence constructed along the unauthorised roadway. If Council procedures prevent taking appropriate action to enforce compliance in relation to damaging activity in a protection zone perhaps it is time to review Council procedures.

Correspondence:

- Complaints have been to the Compliance division of Council in relation to the road on a protected ridgeline, beginning November 2016.
- 2016: Initial complaints regarding excavation of a road into ridgeline. (No action taken by Compliance to stop use of the unauthorised road).
- Action promised by Council Officer to eliminate third driveway onto Old Byron Bay Rd within 50 metre street frontage never enforced.
- 2017, 2018: A number of complaints about earth-moving equipment on site, excavation works, roadworks, installation of a tank, and ongoing site preparation for a dwelling has gone into Council. No action taken.

- 2019: Complaint regarding fence along unauthorised internal roadway: Again no action taken by Compliance to stop the construction and installation of the 450 metre timber, post and rail fence along the unauthorised roadway.
- The ridgeline is now unrecognizable from the time of our first notice to Council of excavation in the environmental protection zone (2016) and the current construction of timber fencing (2019). The damage to the ridge is clearly visible from my adjoining property. The impact on the protection zone, the natural area / habitat, and the wildlife corridor has been considerable.

As Vice President of the Bangalow Progress Association I have been working with local councils for over 25 years. Councils generally take residents' concerns regarding a development very seriously. I have attended a number of Land and Environment Court hearings where Council has been challenged in defending the refusal of a development determined to be non-compliant, against planning requirements or not in the public interest.

In cases I have witnessed, residents played an important role in the Land and Environment Court proceedings and on many occasions supported Council achieving a positive outcome.

If this application does eventuate in a Land and Environment Court challenge, I am hopeful Ballina Shire Council will value the contribution of the many residents who wrote detailed and in some cases professional objections to the proposal, including the work of the Scenic Escarpment Protection Alliance.

Please find my agenda from our meeting and some points of our discussion outlined below:

CONTEXT

- the area - the outlook - location
- the geology
- the ridgeline
- the environmental protection zone (intended objectives)
- character precincts - new initiative from State Planning
- RU2 land is not what the applicant is developing eg. it is NOT agricultural. it is NOT ancillary to agriculture.
- need for access (to RU2) can happen w/out a bitumen road. Access via neighbours or Midgen Flat.
- Numerous sites for 2nd dwelling (on RU2 land)

Comments from the meeting:

I was disappointed and surprised to learn Andrew Smith had not visited the site and was also unaware of important correspondence (both to and from Council) relating to this development.

The entire focus of the compliance issues (the LEP 7 (d1) Zone) is based on the protection of the unique geological and scenic quality of Newrybar Scenic Escarpment; the 7 (d1) zone.

*The **context** of this development must be recognised and considered in assessment of the DA - and perhaps especially in relation to compliance of inappropriate activity on the site. Inappropriate, non-compliant, unauthorised activity has mostly been deemed 'no action required' by council's compliance dept..*

***In 2019 NSW State Planning** is integrating 'character of place' guidelines into planning procedures and initiatives:*

Local character is a key consideration in strategic planning for councils across NSW.

From NSW Planning and Environment 2019:

The NSW Government has heard that communities would like local character consideration to be elevated in NSW planning decision making. The NSW Government is actively seeking to encourage neighbourhoods'

people are proud to live in, where the community collaborates with local and state governments to share what they value about their area.

The Guideline aims to support councils and communities to consider and nurture the unique identity of a place, while at the same time meeting the needs of a changing NSW. This Guideline provides tools to help define existing character and set a desired future character that aligns with the strategic direction for an area.

Planning Documents; controls, constraints & regulations

1. Ridgeline Development - amenity, including visual amenity - scenic escarpment
2. DCP - ridgeline
3. LEP - primary objectives & (d1)
4. Mapping: BSC interactive maps - overlay the site - objectives
5. SEPP - State planning, environment; public interest.
6. ENVIRONMENT - Docs & reports

The Applicant some history:

- 1. initially gave misinformation to Council ranger (2016) who came out to investigate excavation into the ridgeline. (November 2016).
- 2. when asked about prior existence of road (see correspondence, Vince Hunt). He withdrew 1st DA rather than respond.
- 3. asked previous owner of the property to "say there was a 'pre-existing road'" .. Previous owner declined.
- 4. pled guilty to charges 'excavating across a waterway' and was fined. (claimed he was a farmer in court).
- 5. has failed to supply sufficient information in environmental studies and requests from (council's ecologist) Ian Gaskell.
- 6. uses the road daily and despite constant impact on adjoining properties.
- **the applicant is currently constructing** a 450+ metre timber, post and rail fence and is installing it along the entire length of the unauthorised roadway.

Some Points of Objection from Submissions:

Grounds for Refusal of DA

Objectives of planning documents:

- Ridgelines / Scenic Escarpment
- LEP
- DCP
- Interactive mapping,
- State Gov.
- road widening for rural fire services
- no access to services - electricity, emergency, other
- alternative sites for dwelling (2nd dwelling)
- excavation / erosion - not allowed in a protection zone
- 3 driveways onto OBB Rd.
- No buffers from neighbours - noise of traffic, lights vehicles, privacy, rural character...
- No consideration or consultation w/ neighbours (visual amenity, rural lifestyle).
- Negative impact on property values of all affected neighbours - 'views to the sea' being the major property asset in the location.

Thank you again for meeting with me to discuss this application.

Sue Taylor
382 Old Byron Bay Road
NEWRYBAR

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<BR

Martin Scott

From: Leanne Cramp <leannecramp@yahoo.ca>
Sent: Wednesday, 31 July 2019 19:15
To: Paul Hickey; Andrew Smith; Stephen Rendall; Ian Gaskell; Matthew Wood; Martin Scott
Subject: Pumping of Water

Dear Mr Hickey,

It has come to my attention that water is being drawn from the creek located at the base of the property located at 404 Old Byron Bay Rd for the purpose of irrigation of plants and stock.

Earlier this year I thought the extremely low water levels on my property were the result of very little rain during the past dry period, however, it is now apparent that the low water level is more likely to be the result of a large amount of water being drawn to the holding tank on the top of the escarpment on the Whites property. The substantial planting/landscaping along the unauthorised road and along the top of the escapement has survived despite one of the hottest and driest summers and I now suspect this has been because of the considerable amount of water drawn from the spring fed creek.

The water levels in the pool located at the base of my property have only ever shown small fluctuations over the 25 odd years that I have been monitoring and enjoying this beautiful natural resource. However, the levels plummeted by at least 60 mm making the water hole clogged with debris and silt. I have pumped from the source located on my property in times of severe drought but only for the emergency household use. This became untenable earlier this year and I purchased water from a local carrier.

I am extremely concerned as the excessive pumping places me in a vulnerable position during periods of extreme dry weather as it did earlier this year.

I would like the council to acknowledge receipt of this letter.

Yours truly,

Leanne Cramp

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Leanne Cramp
400 Old Byron Bay Road
Newrybar, 2479
12th July 2019

Dear Mr Hickey,

I wish to bring the following matter to your immediate attention. I am very concerned about recent erosion on my property and the adjacent property of 404 Old Byron Bay Road, Newrybar. I regularly walk my property and scale the escarpment and I am extremely concerned at the environmental degradation that is occurring in this specific area.

I have attached photos that were taken on the 10th July 2019 so that you can be made aware of the erosion that has been caused since the unapproved construction of the road, traversing the escarpment on the adjacent property owned by Jason and Joanne White which is the subject of a current DA (2018/381) before the Ballina Shire Council.

I have previously brought this matter to the attention of Ballina Council and provided photos of the site when I had a meeting with Matthew Wood and Andrew Smith on the 21st March 2019. This has been an ongoing problem, however, it is my strong belief that the current state of the lower escarpment is in a much worse condition since the recent heavy rain event and I am deeply concerned that there will be further erosion and degradation of the site.

It is of course very difficult to assess this damage by comparing the photos and I would like to request a council inspection of the site to witness first-hand the very recent soil slippage and degradation of the 'original bush track' which is partially situated on the eastern border of my property.

It is my understanding that the Whites are yet to provide a landscape plan for the property, yet they continue 'landscape' the escarpment with non-native species and more worrying than this is the planting of 'clumping bamboo' which is already at a height of two metres. Also, previously brought to the attention of council. The planting of bamboo will irrevocably change the landscape of the scenic escarpment and also block a considerable part of the scenic aspect that has been afforded to the residents and visitors of Old Byron Bay Road when it reaches its height range of 30-40 metres.

This matter has been an on-going issue for a considerable amount of time and current information from the council indicates that the Whites DA 2018/381 will go before a full council for deliberation and approval/disapproval. Whilst the Whites have done a considerable amount of planting and landscaping along the road to secure the road bank and try to prevent further washout, the fact remains that considerable damage has been done to the gully and will more than likely continue to happen because of the road cutting, the steepness of the gully and large amounts of water moving across the surface during periods of heavy rain. This is all before the possibility of a major construction atop the escarpment and the associated construction traffic.

I urge the Ballina Shire Council to consider this information as a matter of urgency and would like to request that I am contacted so that I may indicate the specific areas of effected.

Thank you in advance for your consideration and for giving this matter your urgent attention.

Yours truly,

Leanne Cramp
Mob (0423356833)

This photo is taken from below the original slip site and shows the new slip site that was documented earlier this year and now the beginnings of a new slip site which has only just occurred. The soil underfoot is light, aerated and not at all compacted.



Recent plantings in an attempt to secure the bank by the Whites show wash out, erosion and the soil deposited onto the 'original bush track' and another slip site above the planting.





This Image shows considerable erosion below the 'original bush track' and did not exist prior to the construction of the unauthorised road traversing the southern side of the escarpment on the Whites property. (404 Old Byron Bay Rd)

The soil is extremely loose, is not secured by vegetation due to slippage, is light an aerated and atop an extremely steep slope. Given the passive margins between this slippage, the steepness of the gully and the close proximity to the natural waterway, I am extremely concerned that another pollution incident is imminent.



This image shows clearly the area of new slippage below the extended area of slippage that was previously reported to you.

This is a clear indicator of slope instability and has become substantially worse since the unauthorised road construction across the escarpment.



This is the area below the previous photo and shows the mulch used by the Whites has been washed down along with a considerable amount of soil demonstrating further slope instability in this extremely steep terrain.

The trees are the remnants of what was cut down by the Whites in their initial attempts to use the 'original bush track' to access the northern side of the escarpment.

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