

<b>JRPP No.</b>	<b>2010NTH020</b>
<b>DA No.</b>	<b>T6-10-221</b>
<b>Applicant:</b>	<b>ALL ABOUT PLANNING PTY LTD</b>
<b>Report By:</b>	<b>DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT</b>

## **Assessment Report and Recommendation**

### **SUMMARY:**

Reporting to the Joint Regional Planning Panel (JRPP) that a Development Application has been received for additions to an existing tourist facility at Lot 5 DP259465, 1090 Point Plomer Road, Crescent Head for which objections have been received.

### **Executive Summary**

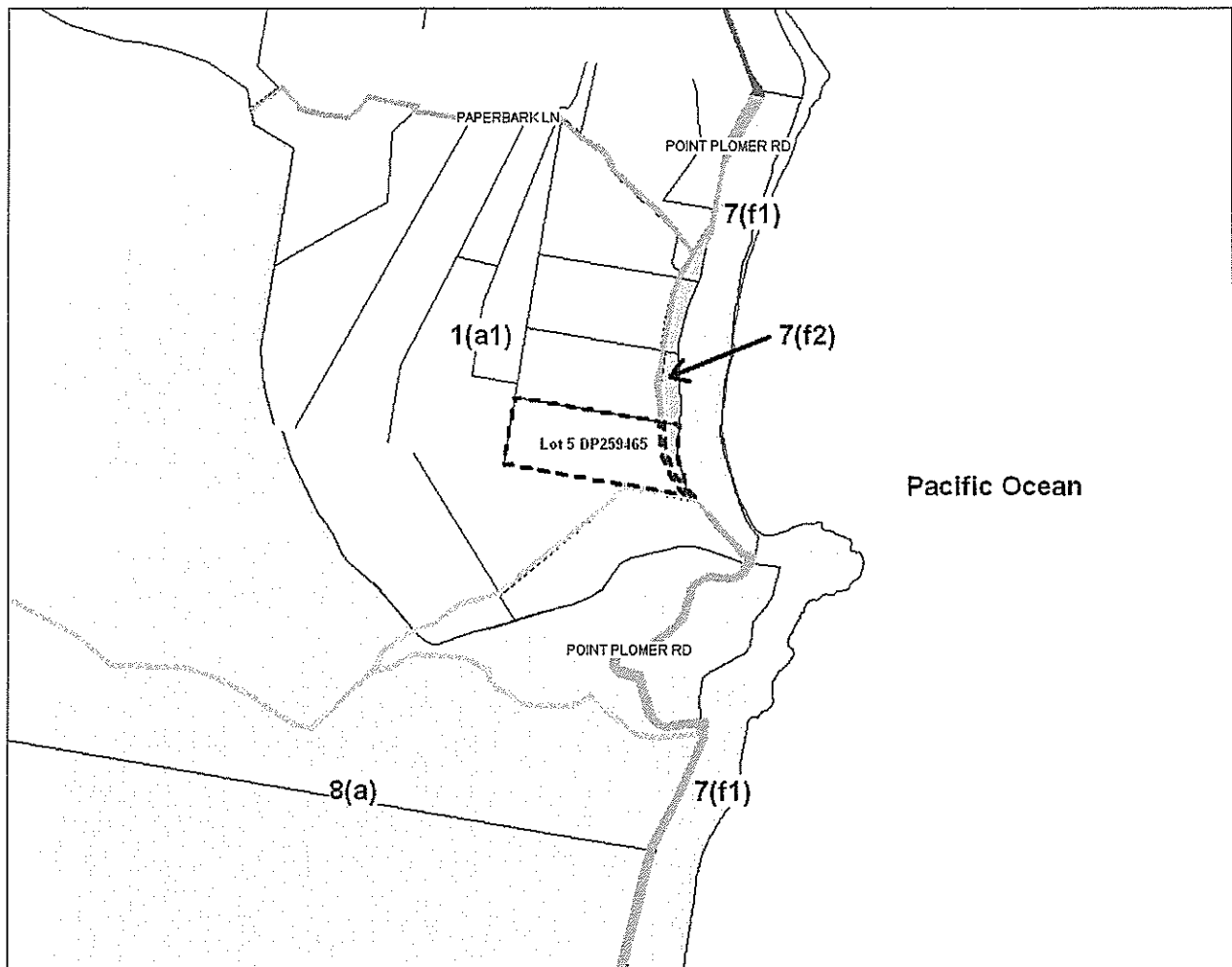
- The proposal is for a "tourist facility" designed to cater for more than ten (10) persons and within one-hundred (100) metres of *State Environmental Planning Policy (SEPP) No. 14 – Coastal Wetlands*. As such, the Development Application is required under SEPP (Major Developments) 2005 to be determined by the Joint Regional Planning Panel.
- The site is currently used for an approved tourist facility and dwelling.
- The proposed development consists of demolition of the existing dwelling, the change of use of the existing tourist accommodation to a dwelling, and the construction of a new tourist facility.
- The proposed tourist facility consists of ten (10) cabins, one (1) guesthouse, one (1) site office, one (1) pavilion, swimming pool and plunge pools.
- The site, is zoned 1(a1) (Rural "1a" Zone) and 7(f2) (Coastal Lands Acquisition Zone). The proposed development is wholly within the 1(a1) (Rural "1a" Zone) portion of the site. "Tourist facilities" are a permissible use in the 1(a1) (Rural "1a" Zone) under the *Kempsey Local Environmental Plan 1987* (KLEP 1987).
- The key environmental impacts identified are fauna and flora, bushfire, flooding, and maintaining the character of the locality and views from Point Plomer Road.
- The site is heavily vegetated, containing coastal vegetation groups including Endangered Ecological Communities (EEC) and SEPP No. 14 wetlands.

### **Description of Site and Locality**

The site is approximately ten (10) kilometres from the town of Crescent Head and approximately twenty-five (25) kilometres from Kempsey and is approximately twenty-one (21) hectares in area. The site is predominantly vegetated, and contains EEC and SEPP No. 14 wetlands.

The area is predominantly used for residential, recreational and tourist purposes. The area has not been used for any known form of intensive agriculture that may conflict with the proposal.

The development of the site as a tourist facility is not considered to conflict with any existing uses in the area.



## Description of Proposal

The applicant is seeking consent for:

- Demolition of existing dwelling;
- Change of use of the existing tourist accommodation to a dwelling;
- Construction of a new tourist facility consisting of:
  - Ten (10) self-contained cabins;
  - One (1) self-contained guesthouse;
  - One (1) site office;
  - One (1) pavilion; and
  - Swimming pool and plunge pools.

The proposal includes clearing and thinning of approximately one (1) hectare of the twenty-one (21) hectare site for bushfire asset protection purposes. Approximately 0.27 hectares of the area to be cleared or thinned is potential Endangered Ecological Community (EEC) – Swamp Oak Forest. A further half (0.5) hectare of the site is proposed to be managed as “Tea-tree gardens” used to screen the proposed development from Point Plomer Road.

The development is proposed to be serviced by two (2) separate onsite sewage management facilities, one (1) to cater for the ten (10) single bedroom cabins and the other to cater for the guesthouse. Water supply for the proposed development is via rainwater harvesting and the proposal includes a 9kW ground-mounted photovoltaic panel system.

An additional eleven (11) parking spaces are proposed adjoining the cabins, therefore there are fifteen (15) parking space provided on the site.

## Referrals

### NSW Rural Fire Service

The proposed development is an integrated development under *Environmental Planning and Assessment Act 1979* (EP&A 1979) – *Section 91* with concurrence required from the NSW Rural Fire Service (RFS) under the Bushfire Safety Authority provisions of the *Rural Fires Act 1997* (RFA 1997) – *Section 100B*.

The RFS have granted concurrence and issued a Bushfire Safety Authority with General Terms of Approval, included in conditions of consent.

### **EP&A 1979 - Section 79C (1) (a): Legislation and Policies**

#### State Environmental Planning Policy No. 14 – Coastal Wetlands

While the development site contains SEPP No. 14 wetlands, the proposal does not include any clearing, draining, filling or construction of a levee within the wetland area. As such, the approval of the Department of Planning is not required.

#### State Environmental Planning Policy No. 44 – Koala Habitat Protection

As the subject site is over one (1) hectare in area an assessment against SEPP No. 44 was conducted. The assessment found the site did not contain sufficient koala food tree species to qualify as "potential koala habitat". As such a Koala Plan of Management is not required to be prepared. The proposal is considered to be consistent with SEPP No. 44.

#### State Environmental Planning Policy No. 71 – Coastal Protection

As the proposal is within the "coastal zone" assessment under SEPP No. 71 is required. The proposal was not referred to the Minister for concurrence as it is not "*development within 100m below mean high water mark of the sea, a bay or an estuary*", or development on land listed in Schedule 3 of SEPP No. 71. Furthermore, the proposal is not required to include a Masterplan as it is not a development type listed in Part 5 of SEPP No. 71.

The proposed development complies with SEPP No. 71 and the associated *NSW Coastal Policy 1997* as follows:

Clause 8 matters for consideration are the following:

Requirement	Comment
(a) the aims of this Policy set out in clause 2	The proposal is not considered contrary to the aims and objectives as set out in clause 2 of the SEPP.
(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved where possible	The proposal will not interfere with any public access to the foreshore.
(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability	Proposed works consist of a tourist facility and does not propose any works on the foreshore area.
(d) the suitability of development given its type	The proposed works are suitable for a coastal location as it is providing a low impact screen tourist facility compatible with surrounding uses.

(e) any detrimental impact that development may have on the amenity of the coastal foreshore	The proposed works will not overshadow any public foreshore reserve.
(f) the scenic qualities of the New South Wales coast	The development will not detract from the scenic qualities of the New South Wales Coast line.
(g) measures to conserve animals (within the meaning of the <u>Threatened Species Conservation Act 1995</u> ) and plants (within the meaning of that Act)	The site The proposal includes a flora and fauna report which concludes that the proposal will not result in any detrimental effect on any threatened or endangered plant or animal community.
(h) measures to conserve fish (within the meaning of Part 7A of the <u>Fisheries Management Act 1994</u> ) and marine vegetation (within the meaning of that Part)	There will be no impacts on marine ecosystems from the proposal.
(i) existing wildlife corridors and the impact of development on these corridors	There will be no detrimental impact upon any wildlife corridor.
(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards	There are no perceived impacts upon coastal process.
(k) measures to reduce the potential for conflict between land-based and water-based coastal activities	The proposal is 200m from the foreshore therefore there will be no impact on any water based activities in the area.
(l) measures to protect the cultural places	There are no known places or items of cultural significance to the Aboriginal population within the construction envelope.
(m) likely impacts of development on the water quality of coastal water bodies,	There will be no significant impact on the water quality of coastal water bodies.
(n) the conservation and preservation of items of heritage, archaeological or historic significance,	There are no items of heritage, archaeological or historic significance known to exist on the subject site.
(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,	NA
(p) only in cases in which a development application in relation to proposed development is determined:  (i) the cumulative impacts of the proposed development on the environment, and  (ii) measures to ensure that water and energy usage by the proposed development is efficient.	No cumulative impact expected  Water supply for the proposed development is via rainwater harvesting which is fully sustainable, and the proposal includes a 9kW ground mounted photovoltaic panel system which will account for a substantial

	portion of the proposed development power consumption.
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Requirement	Comment
Clause 16. The consent authority must not grant consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.	The proposal has provided for adequate wastewater and stormwater treatment and is not expected to have a significant impact on the water quality. There will be no discharge of untreated stormwater into any coastal water body or similar from the proposed development.

#### State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been provided for the change of use of the existing tourist accommodation to a dwelling. The BASIX certificate demonstrates that the building can be brought into compliance with SEPP (BASIX) 2004.

#### State Environmental Planning Policy (Major Development) 2005

The proposed development is located within one-hundred (100) metres of a SEPP No. 14 wetland, and is thus within a "sensitive coastal location" as defined by SEPP (Major Development) 2005.

Clause 13C of SEPP (Major Development) 2005, provides that tourist accommodation within a "sensitive coastal location" is development to which the policy applies, as follows:

*"This Part applies to development within the coastal zone for any of the following purposes:*

- (a) caravan parks and tourist and visitor accommodation:*
  - (i) in the case of development wholly or partly in a sensitive coastal location outside the metropolitan coastal zone – that provide accommodation (or additional accommodation) for 10 persons or more, or"*

Therefore, as the proposal is for a tourist facility designed to cater for more than ten (10) persons, the application is required to be determined by the Joint Regional Planning Panel.

#### State Environmental Planning Policy (Rural Lands) 2008

The proposal is consistent with SEPP (Rural Lands) 2008 as it does not contravene any of the aims, objectives or rural planning principals contained within the SEPP. There is no known significant agricultural activity that is likely to affect, or be affected by, the proposed development. As such, the proposed development will not limit the productive potential of any agricultural land or create a conflicting land use issue with any commercial agriculture activity.

#### North Coast Regional Environmental Plan

The aims and objectives of the *North Coast Regional Environmental Plan* (NCREP) apply to the determination of Development Applications under Clause 2B of the NCREP.

The proposed development is consistent with all relevant objectives and controls of the NCREP, including those for agricultural resources, catchment management, natural environment, coastal development, and tourism sections, as follows:

- *Agricultural Resources:*

The proposed development is within the 1(a1) (Rural "A1" Zone), and as such its affect on existing agricultural resources must be considered.

The Mid-North Coast Farmland Mapping Project identifies the site as being "other rural land", with the closest "regionally significant farmland" being over two (2) kilometres to the north-west. There is no known significant agricultural activity that is likely to affect, or be affected by, the proposed development. As such, the proposed development will not limit the productive potential of any agricultural land or create a conflicting land use issue with any commercial agriculture activity.

- *Catchment Management:*

The proposed development site contains coastal wetlands and as such its affect on water quality and runoff must be considered.

Council's assessment of the effluent disposal and stormwater catchment reports has been undertaken with the wetlands, soil type and water table taken into consideration. It has been determined that the proposed effluent disposal and stormwater drainage methods and measures are consistent with the relevant guidelines and regulations. The proposed development is not likely to have any significant impact on water quality, pollution levels, marine habitat, aquatic reserves, marine vegetation, or commercial and recreational fishing.

- *The Natural Environment:*

As the proposed development involves clearing of native vegetation the impact of the development on the natural environment must be considered. The fauna and flora report prepared by Flametree Ecological Consultants found that clearing of native vegetation is considered acceptable under the *Environmental Planning and Assessment Act 1979 – Section 5A*. See "Fauna and Flora".

- *Coastal Development:*

The proposed development is within the coastal zone and as such coastal planning and hazards must be taken into account.

The proposed development does not contravene any coastal planning practice or coastal planning guideline. The proposed development will not limit or restrict any coastal recreation or any public access to the coastal foreshore, nor will it significantly impact on fauna, flora, water quality, or any European and Aboriginal heritage and cultural places. The proposed development has been designed with sympathy to the natural surroundings and the local built environment.

- *Tourism:*

The proposed development is for a tourist facility and as such the NCREP tourism provisions must be considered.

The proposed development complies with the tourism objectives, as follows:

- The proposed development will complement the existing natural features of the region and be of positive benefit to the region's economy;
- The proposed development will not degrade important environmental or agricultural features of the region; and
- The proposed development is located to benefit from existing road services, other tourist attractions, natural features and the urban facilities of Crescent Head.

### Kempsey Local Environmental Plan 1987

The proposed development is permissible as it is wholly within the 1(a1) (Rural "1a" Zone) portion of the site with "tourist facilities" a permissible use in the 1(a1) (Rural "1a" Zone) under the KLEP 1987.

The proposal is considered to be consistent Clause 56 of KLEP 1987 as the Statement of Environmental Effects accepts that acid sulfate soils are present and condition can be imposed to undertake adequate reporting prior to the issue of a Construction Certificate.

The proposed development is considered to be consistent with the aims, objectives and controls of Clause 64 – Development of land in the vicinity of the Point Plumber Road as:

- The proposal will not compromise the availability of the locality's nature resources for future generations and will have minimal environmental impact.
- The design of the buildings is considered to be in keeping with the character of the area. Retention of existing vegetation and proposed landscaping will screen the development from adjoining properties and from Point Plomer Road.
- The removal of native vegetation will not have a significant impact on flora and fauna and is considered acceptable under Section 5A of EP&A 1979.
- The proposal employs sufficient measures to reduce the threat of bushfire attack to a level considered acceptable by the RFS.
- The proposed development will not impact on any known item of place of European or Aboriginal heritage value.
- It is considered that the design of the development is of a high standard which will enhance the identity of the South Crescent Head/Point Plomer Road area, and will not detract from the economic viability of other tourist facilities in the locality.
- The proposed development will not generate a significant increase in traffic volumes. Sufficient capacity exists within the road network to accommodate this increase. The existing vehicle access point to the development is retained and is considered acceptable as it restricts direct views into the development.
- The development has carefully considered and responded to the site's opportunities and constraints and has employed environmentally sustainable design principals. Rainwater harvesting is proposed for water supply, effluent is proposed to be disposed of onsite in accordance with all guidelines and regulations, and the proposed 9kW solar array will account for a substantial portion of power consumption.
- The proposed development will not have an adverse effect on the amenity of residents.
- It is considered that the development will not have an adverse impact on the qualities of the area and represents a good design outcome with minimal environmental impact.

### Kempsey Floodplain Management Strategy Policy

In August 2010 the Department of Planning released the *NSW Coastal Planning Guideline: Adapting to Sea Level Rise*. This guideline requires consideration of the likely impacts of climate change and sea level rise, and provides flood level allowances for proposed development with a natural surface level of less than 4.0 metres AHD. The tourist facility and the building proposed to be used as a dwelling are located on land with a natural surface below 4.0 metres AHD.

During assessment of a neighbouring Development Application (T6-10-265) flood modelling was undertaken that provided the 1% AEP the flood planning level in the area, including sea level rise considerations, to be 3.66 metres AHD. The finished floor level is required to be 0.5 metres above the 1% AEP flood level. As the tourist facility and the building proposed to be used as a dwelling both have a finished floor level above 4.2 metres AHD the Development Application complies with Council's *Floodplain Management Strategy Policy*.

#### Development Control Plan No. 30 – Acid Sulfate Soils

Given that the site contains Class Three (3) to Four (4) acid sulfate soils, and that the proposal includes limited excavation works below the natural surface, it is considered appropriate to request an acid sulfate soil assessment at the Construction Certificate stage. The proposal is considered to comply with *Development Control Plan (DCP) No. 30 – Acid Sulfate Soils*.

#### Development Control Plan No. 32 – Onsite Sewage Management Strategy

Onsite sewage management reporting has been provided which demonstrates that an onsite sewage management system (OSMS) is capable of treating and disposing of effluent onsite. See the effluent disposal section of this report for further details. The proposal is considered to comply with DCP No. 32.

### **EP&A 1979 - Section 79C (1) (b): Environmental Considerations**

#### Fauna and Flora

The fauna and flora report which forms part of the application indicates that, while there is some clearing proposed within the areas of EEC, the development will not place any local population of threatened species at risk of extinction. As such, Section 5A of the EP&A 1979 is considered satisfied, and a Species Impact Statement is not required.

While the development site contains SEPP No. 14 wetlands the proposal does not include any clearing, draining, filling or construction of a levee within the wetland area. As such, SEPP No. 14 is not affected and the approval of the Department of Planning is not required.

The fauna and flora report also contained a SEPP No. 44 assessment which determined a Koala Plan of Management is not required.

The fauna and flora report also determined that the development does not affect any "matters of national environmental significance" under the *Environmental Protection and Biodiversity Conservation Act 1999*. As such the application is not required to be referred to the Australian Government Department of the Environment, Water, Heritage and the Arts.

#### Flooding

The site is affected by the 1% AEP flood planning level. Sea level rise has been taken into account during assessment of the proposal. The proposed development complies with Council's *Floodplain Management Strategy Policy*.

#### Effluent Disposal

Onsite sewage management reporting has been provided which demonstrates that an onsite sewage management system (OSMS) is capable of treating and disposing of effluent onsite in accordance with relevant sections of *Environment & Health Protection Guidelines 1998 – Onsite Sewage Management for Single Households* and Australian Standard AS 1547-2000: *On-site Domestic-Wastewater Management*. A Section 68 approval will be required at the Construction Certificate stage which will specify the exact system and disposal area details, including the exact positioning of the disposal area.

### Traffic

The proposal will have a slight increase traffic on the local road however the existing road and driveway currently servicing the site is sufficient to service the development.

Point Plomer Road is a Council maintained road so contributions would be levied on any approval under Council's *Local Roads and Traffic Infrastructure Developer Contribution Plan 2009*.

### Bushfire Prone Land

The proposed development is situated on bushfire prone land and is an integrated development under Section 91 of EP&A 1979. The Rural Fire Service (RFS) have granted concurrence and issued a Bushfire Safety Authority with General Terms of Approval under the Section 100B of the RFA 1997, included in conditions of consent.

### Aboriginal and European Heritage

The proposed development is not located near any known item or place of European heritage or cultural value.

The applicant has supplied an Aboriginal Heritage Information Management System (AHIMS) report from the Department of Environment, Climate Change and Water (DECCW). The AHIMS report concluded that there are no recorded Aboriginal objects or Aboriginal places on or near the subject site.

### Social and Economic Impacts

The proposal will have limited social impacts and some minor positive economic impacts, as follows:

- The proposed development is likely to create employment during construction phases and may utilise local construction materials;
- The proposed development is likely create employment in the running of the facility;
- Additional tourist accommodation options may aid in attracting further tourism to the Crescent Head and greater Macleay Valley area; and
- Some strengthening of the local economy may occur by the increase in tourist number and associated spending at local shops, restaurants and cafes, recreational facilities, etc, plus the agglomerative carry-on effect on the wider Macleay Valley area.

### **EP&A 1979 - Section 79C (1) (c): Suitability of the Site**

It is considered that the site is suitable for the proposed development, given its compliance with the relevant legislation and controls existing, the measures proposed to be taken to mitigate environmental constraints, and the proposals consistency with the existing local built and natural environment.

### **EP&A 1979 - Section 79C (1) (d): Submissions**

Any submissions made in accordance with this Act or the regulations are required to be considered during assessment of the application. The application was advertised and notified from the 20 July 2010 to 2 August 2010. Four (4) submissions and one (1) confidential submission were received from the public, which raised the following matters:

Objection	Planning Comment
<p>1. Distance of the proposed development to the northern and eastern boundaries, including:</p> <p>a) Associated noise impacts;</p> <p>b) Visual impacts at neighbouring properties and Point Plomer Road.</p>	<p>1. It is not envisaged that the proposed development will generate significant volumes of noise as it is an established tourist facility.</p> <p>Through the use of landscaping and the retention of native vegetation to screen the development, it is not considered that the proposal will have an adverse visual impact from either adjoining properties or from Point Plomer Road.</p>
<p>2. On-site sewage management system:</p> <p>a) Distance to boundary;</p> <p>b) Located in flood prone area and may leak during a flood event;</p> <p>c) Location has a high water table; and</p> <p>d) Possible re-location of the system to a more central location.</p>	<p>2. The distance of the septic system from adjoining boundaries satisfies the requirements of the <i>Environment and Health Protection Guidelines 1998</i>.</p> <p>The effluent disposal area is located above the 1 in 20 year flood event which satisfies the requirements of the Guidelines. It is likely that as the proposal is a commercial operation Council will require that the tank be sealed and is fully compliant with the Guidelines. Such matters would be addressed during assessment of a Section 68 application at the Construction Certificate stage.</p>
<p>3. Impact of the proposal on local fauna, ecology, and the sensitive coastal and dune areas adjoining the site.</p>	<p>3. See "Fauna and Flora".</p>
<p>4. Increased traffic load and associated impacts on the road system.</p>	<p>4. Although the proposal will increase traffic on the local road system, the existing road and driveway currently servicing the site is sufficient to service the proposed development.</p>
<p>5. Concerns that the proposed dam will impact on water levels and that exotic fish species may be released from the dam during a flood event.</p>	<p>5. The stormwater management plan details measures to be taken to protect water quality, water levels and water use. The stormwater management plan demonstrates that water leaving the site will be maintained at per-development levels in accordance with DCP No. 36.</p> <p>Intensive aquaculture is not proposed, and as dams being stocked with fish does not require consent by Council, the risk of exotic fish escaping from the dam during a flood event is not considered of such significance as to warrant the imposition of any condition.</p>
<p>6. Fire safety issues, including:</p> <p>a) Bushfire safety;</p> <p>b) Proximity of the proposed buildings to each other and to the site boundaries; and</p> <p>c) There is only a single road out of the area.</p>	<p>6. The RFS have granted concurrence and issued a Bushfire Safety Authority with General Terms of Approval. See the bushfire section of this report for further details.</p>

7. Impact of the proposed walking track to the beach, including removal of flora.	7. The application has been amended to remove the previously proposed walking track from the proposed development. There is an existing walking track less than fifty (50) metres south that visitors can use to access the beach.
8. Use of non-native species for landscaping.	8. Although, Council does not have any landscaping or species planting policies, given that the area is in a sensitive coastal location, removing some EEC's and within 100m of SEPP 14 wetlands, it is reasonable of Council to require a revised landscaping plan indicating all plantings are to be native species endemic to the area of Point Plomer Road/Big Hill and from a local seed stock source. This is to prevent any possible infestation of exotic species in these sensitive locations.
9. Size of the proposed development being too large, compromising the amenity and seclusion of the area and making the southern end of the beach more congested.	9. The size and scale of the proposed development is not considered to be out of character and will not have an adverse impact on the visual amenity of the locality. It is acknowledged that the development will attract more people to the area, however it is considered that on its own, the potential increase in numbers of people generated by this development, will not be significant enough to detract from the locality's secluded qualities, or create a sense of congestion.
10. The proposal may not be consistent with the Goolawah LEP (clause 64 of Kempsey LEP 1987).	10. The application has been assessed against clause 64 of KLEP 1987 and is considered satisfactory. See the KLEP 1987 section of this report for further detail.
11. Site not accessible at all times by emergency services (ambulance, police, SES) and emergency services are based over 40 minutes away.	11. The site is on a public maintained road and is accessible by emergency vehicles. Whilst ideally emergency vehicles would be in close proximity for all members of the community the accessibility of the site to emergency services not considered to be sufficient grounds to refuse this Development Application.
12. Occupancy rates will be difficult to monitor and enforce post development.	12. The application indicates the maximum number of people the development can reasonably accommodate, and all requirements are measured against this maximum number (effluent disposal, traffic, contributions, etc) which should be reinforced by a condition.  In addition, the approval for the septic system under the <i>Local Government Act 1998</i> will place a limit on the number of people who can stay at the resort and will require inspections every two (2) to three (3) years to ensure that conditions are complied with and the system is operating effectively.

It is considered that the matters raised in the submissions have been addressed during the assessment of the proposal, and that the possible impacts are not sufficient to warrant refusal of this Development Application.

#### **RECOMMENDATION IMPLICATIONS:**

- **Environmental**

All environmental impacts are acceptable or able to be mitigated to an appropriate level.

- **Social**

The proposal will have little to no social impact.

- **Economic**

The proposal will have some positive economic impacts, namely additional employment and strengthening of the local economy.

- **Policy or Statutory**

The proposal complies with all legislation, policies and guidelines.

#### **RECOMMENDATION:**

That consent be granted subject to the following conditions:

<b>PARAMETERS OF THIS CONSENT</b>
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**1. Development is to be in accordance with approved plans**

The development shall be implemented in accordance with the plans and supporting documents set out in the following table, except where modified by any conditions of this consent.

<b>Plan No./ Supporting Document</b>	<b>Version</b>	<b>Prepared by</b>	<b>Dated</b>
Site Plan (D-S-3)	DA-4	Miles Winter	November 2010
Vegetation Plan (D-S-4)	DA-4	Miles Winter	October 2010
Resort Site Plan (D-R-1)	DA-3	Miles Winter	October 2010
Resort Cabin Plan (D-B-1)	DA-1	Miles Winter	June 2010
Resort Site Section (D-R-2)	DA-3	Miles Winter	October 2010
Main Pavilion (D-B-3)	DA-4	Miles Winter	October 2010
Guesthouse Plan (D-B-4)	DA-3	Miles Winter	October 2010
Guesthouse Elevation (D-B-6)	DA-1	Miles Winter	June 2010

In the event of any inconsistency between conditions of this development consent and the plans / supporting documents referred to above, the conditions of this development consent prevail.

The approved plans and supporting documents endorsed with the Council stamp and authorised signature shall be kept on site at all times while work is being undertaken.

**2. Compliance with Building Code of Australia**

All building work shall be carried out in accordance with the requirements of the Building Code of Australia as in force on the date the application for the relevant Construction Certificate was made.

**3. Maximum number of occupants**

The maximum number of people permitted in the tourist facility shall not exceed twenty-six (26) people, being two (2) people in each one (1) bedroom cabin, and six (6) people in the guest house.

**4. This consent does not permit commencement of any works**

This consent does not permit commencement of any works. Works shall not commence until such time as a Construction Certificate has been obtained and the appointment of a Principal Certifying Authority.

<p><b>THE FOLLOWING CONDITIONS ARE TO BE COMPLIED WITH PRIOR TO ISSUE OF A CONSTRUCTION CERTIFICATE FOR BUILDING WORKS</b></p>
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**5. Engineer's Details**

Prior to the issue of a Construction Certificate engineer's details for the footings, foundations, reinforced concrete slab, structural components, details of cut and fill and retaining walls shall be approved by the Principal Certifying Authority (PCA). The Construction Certificate shall not be issued until the PCA is satisfied the engineer's details have been prepared in accordance with Council's Development Control Plan No. 36 by an appropriately qualified, experienced and practicing Engineer.

**6. Flood planning level for new buildings – structural certification required**

Prior to the issue of a Construction Certificate plans and specifications shall be provided to the Principal Certifying Authority (PCA) which demonstrate the building has been designed so that all structural members will be capable of withstanding flood forces and the impact of any flotsam (carried by floodwaters) likely to occur for a range of floods up to and including the 1% AEP flood planning level for the site. For the purpose of this assessment the 1% AEP flood planning level may be assumed to be 3.66 metres AHD. The Construction Certificate shall not be issued until the PCA is satisfied the plans and specifications comply with the NSW Government's Floodplain Management Manual.

**7. On-site sewage management system Section 68 approval required**

Prior to the issue of a Construction Certificate an approval under Section 68 of the *Local Government Act 1993* for on-site effluent disposal shall be obtained from Council. The application for Section 68 approval shall be accompanied by a report prepared by a suitably qualified professional with demonstrated experience in effluent disposal matters, which addresses the site specific design of sewage management in accordance with the requirements of the *Local Government Act 1993*, the Regulations and relevant guidelines.

**8. Stormwater disposal on-site**

Prior to the issue of a Construction Certificate plans and specifications shall be provided to the Principal Certifying Authority (PCA) demonstrating stormwater management for the site. The Construction Certificate shall not be issued until the PCA is satisfied the plans and specifications:

- a) Have been prepared by a qualified, experienced and practising Civil Engineer;
- b) Ensure that the stormwater run-off is pre-treated to remove sediment and gross pollutants;
- c) Ensure that the stormwater run-off from the site is restricted to a pre-development discharge rate for all storm events up to and including the 1 in 20 year storm; and
- d) Are in accordance with the requirements of Landcom Blue Book, "Soils and Construction - Managing Urban Stormwater", Council's Adopted Engineering Standard, and *AS/NZS 3500.3:2003 - Plumbing and drainage - Part 3: Stormwater drainage*.

**9. Landscaping Plan required**

Prior to the issue of a Construction Certificate a Landscaping Plan shall be provided to the Principal Certifying Authority (PCA) for approval. The Construction Certificate shall not be issued until the PCA is satisfied that:

- a) The Landscaping Plan accurately details the location, mature height, mature drip-line, and both common and scientific names for all plantings;
- b) All plantings in the Landscaping Plan shall be native to Australia and endemic to the Point Plomer Road/Big Hill area;
- c) Plantings within the "tea-tree gardens" shall be native fleshy-fruited plant species endemic to the Point Plomer Road/Big Hill area; and
- d) A supplier has been nominated that can source seed stock from the Point Plomer Road/Big Hill area.

**10. Sediment and Erosion Control Plan required**

Prior to the issue of a Construction Certificate a Sediment and Erosion Control Plan shall be provided to the Principal Certifying Authority (PCA) demonstrating the measures proposed to be employed to control erosion and loss of sediment from the site. The Construction Certificate shall not be issued until the PCA is satisfied the Sediment and Erosion Control Plan complies with the requirements of the Landcom Blue Book, "Soils and Construction - Managing Urban Stormwater".

The Sediment and Erosion Control Plan shall be prepared by an experienced, qualified and practising Civil Engineer.

**11. Car parking plans required**

Prior to the issue of a Construction Certificate plans and specifications shall be provided to the Principal Certifying Authority (PCA) demonstrating vehicular access, parking and manoeuvring in accordance with the plans approved by this consent. The Construction Certificate shall not be issued until the PCA is satisfied the plans and specifications:

- a) Include, but not be limited to, the following items:
  - i) Pavement description;
  - ii) Existing and design levels;
  - iii) Longitudinal section cross sections at appropriate intervals, with a maximum separation of 15 metres;
  - iv) Turning paths/circles; and

- v) Disabled space design and access paths to buildings in accordance with Australian Standard AS1428.
- b) Have been designed by a qualified, experienced and practising Civil Engineer.
- c) Are compliant with Australian Standard AS2890.1.

**12. Details of access and facilities for disabled required**

Prior to the issue of a Construction Certificate plans and specifications shall be provided to the Principal Certifying Authority (PCA) demonstrating access and facilities for persons with access disabilities to and within the development. The Construction Certificate shall not be issued until the PCA is satisfied the plans and specifications comply with Australian Standard AS 1428.1 - *Design for Access and Mobility* and Part D3 of the *Building Code of Australia*.

**13. Detail of pool fencing required**

Prior to the issue of a Construction Certificate plans and specifications shall be provided to the Principal Certifying Authority (PCA) demonstrating fencing around the all swimming pools. The Construction Certificate shall not be issued until the PCA is satisfied the plans and specifications comply with the *Swimming Pools Act 1992* and Australian Standard AS1926.1.

**14. Compliance with BASIX Certificate**

Prior to the issue of a Construction Certificate plans and specifications shall be provided to the Principal Certifying Authority (PCA) demonstrating the works required to satisfy the requirements of BASIX Certificate A92734, dated 2 September 2010. The Construction Certificate shall not be issued until the PCA is satisfied the plans and specifications comply with the commitments indicated in this BASIX Certificate.

**15. Contribution to be paid towards provision or improvement of amenities or services prior to the issue of a Construction Certificate**

The particulars of the contributions levied pursuant to Section 94 of the Act are set out in the following table:

The specific public amenity or service in respect of which the condition is imposed.	The contributions plan under which the condition is imposed	Date of contributions plan
Outdoor Recreation	Outdoor Recreation 2001	September 2001
Roads and Traffic Infrastructure	Local Roads and Traffic Infrastructure Contribution Plan 2009	January 2010
Public Domain	Kempsey Town Centre Public Domain Section 94 Development Contribution Plan	August 2010
Section 94 – Project Administration	Project Administration	10 August 2007

The above plans may be viewed during office hours at the Council Offices located at 22 Tozer Street, West Kempsey.

Contributions set out in the following Schedule are to be paid to Council prior to the issue of a Construction Certificate. The following contributions are current at the date of this consent. The contributions payable will be adjusted in accordance with the relevant plan and the **amount payable will be calculated on the basis of the contribution**

**rates that are applicable at the time of payment.** The contribution rates for specific dates are available from Council offices during office hours. **Payments will only be accepted by cash or bank cheque.**

**Schedule of Contributions pursuant to Section 94 of the Environmental Planning and Assessment Act 1979**

Public amenity or service	Unit type	No. of Units	Contribution Rate (Amount per Unit)	Contribution Levied	Date until which Contribution rate is applicable
Outdoor Recreation	ET	2.64	\$474.00	\$1,251.36	30 June 2011
Roads and Traffic Infrastructure within Catchment Ten (10)	EP	2.4	\$1,350.00	\$3,240.00	30 June 2011
Public Domain	EP	2.4	\$393.00	\$943.20	30 June 2011
Sub total				\$5434.56	
S94 Administration	6% of total Section 94 charge applicable			\$326.07	30 June 2011
TOTAL				\$5,760.63	

**16. Long Service Levy to be paid**

Prior to the issue of a Construction Certificate a Long Service Levy shall be paid to the Long Service Payments Corporation. The amount payable is currently based on 0.35% of the cost of the work. This is a State Government Levy and is subject to change without notice. The requirements of the State Government supersede this condition.

This payment may be made at Council's Customer First Centre. Cheques shall be made payable to Kempsey Shire Council.

**THE FOLLOWING CONDITIONS ARE TO BE COMPLIED WITH PRIOR TO ANY DEMOLITION OR CONSTRUCTION WORK COMMENCING**

**17. Date of Commencement**

Council shall be notified of the commencement of works not less than two (2) days prior to any works commencing. The two (2) day notification to Council shall be in writing and specify the date of commencement.

**18. Public liability insurance**

Prior to any building or construction works commencing evidence shall be provided to the Principal Certifying Authority of public liability insurance cover for a minimum of \$10 million. Council shall be nominated as an interested party on the policy.

**19. Erosion & sediment measures in accordance with Council's Guidelines**

Erosion and sedimentation controls shall be in place in accordance with the approved Sediment and Erosion Control Plan prior to the commencement of any works.

**20. Toilet facilities**

Toilet facilities shall be provided or made available at or in the vicinity of the work site at a rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided shall be a flushing toilet connected to an onsite sewage management system approved by Council, or to an approved temporary chemical water closet.

**21. Site construction sign required**

Prior to any building or construction works commencing a sign or signs shall be erected in a prominent position at the frontage to the site:

- a) Showing the name, address and telephone number of the Principal Certifying Authority for the work;
- b) Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
- c) Stating that unauthorised entry to the work site is prohibited.

The sign is to be maintained while the building work, subdivision work or demolition work is being carried out, and shall be removed when the work has been completed. No sign is to have an area in excess of one (1) m<sup>2</sup>.

**22. Erection of microbat nest-boxes**

At least one (1) week prior to any demolition works commencing, not less than eight (8) microbat nest-boxes shall be installed in trees that have been identified for retention near the demolition works. These nest-boxes shall be installed by a qualified and experienced ecologist. At least one (1) week prior to the commencement of any demolition works written advice from the ecologist shall be provided to Council confirming that adequately constructed nest-boxes have been installed in appropriate locations.

**THE FOLLOWING CONDITIONS ARE TO BE COMPLIED WITH DURING DEMOLITION AND CONSTRUCTION WORKS**

**23. Demolition works shall be undertaken outside the microbat breeding season**

To avoid the injury to microbats during the microbat breeding season, no demolition works shall be undertaken during the months of September, October, November, December, January or February.

**24. Construction times**

Construction works must not unreasonably interfere with the amenity of the neighbourhood. In particular construction noise, when audible on adjoining residential premises, can only occur:

- a) Monday to Friday, from 7 am to 6 pm.
- b) Saturday, from 8 am to 1 pm.

No construction work is to take place on Sundays or Public Holidays.

**25. Dust suppression**

All necessary works shall be undertaken to control dust pollution from the site. These works shall include, but are not limited to:

- a) Restricting topsoil removal;
- b) Regularly and lightly watering dust prone areas (note: prevent excess watering as it can cause damage and erosion; and
- c) Alter or cease construction work during periods of high wind.

**26. Erosion and sediment measures in accordance with the approved plan**

Erosion and sediment controls shall be maintained at all times in accordance with the approved Sediment and Erosion Control Plan until the site has been stabilised by permanent vegetation or hard surface.

**27. Builders rubbish to be contained on site**

All builders rubbish is to be contained on the site in a 'Builders Skips' or an enclosure. Building materials are to be delivered directly onto the property. Footpaths, road reserves and public reserves are to be maintained clear of rubbish, building materials and all other items.

**28. Traffic movements**

All traffic associated with the demolition and construction works shall enter and exit the site in a safe manner. The vehicle entry/exit point shall ensure that there is no adverse impact on the existing road network.

**29. Trees to be retained and protected**

Notwithstanding the approved plans and documents, or any other condition in this consent, the following plants and trees are not approved for removal and shall be retained and protected:

- a) The Acronychias, and other plants marked with pink or orange flagging tape by Flametree Ecological Consulting Pty Ltd;
- b) In all areas, except those areas shown on the approved plan as "APZ – TOTAL CLEARING", the following plants and trees are to be retained:
  - i) Cone-bearing and non-cone bearing Black She-oaks;
  - ii) Coast Banksias;
  - iii) Broad-leaved Paperbarks; and
  - iv) Old Man Banksias;

These trees, and any other trees that have not been approved for removal, shall be protected by a fence so as to minimise disturbance to existing ground conditions within the dripline of the trees. The fence shall be constructed:

- a) With a minimum height of 1.2 metres;
- b) Outside the dripline of the trees;
- c) Of steel star pickets at a maximum distance of 2 metres between pickets;
- d) Using a minimum of 3 strands of steel wire;
- e) To adequately separate the tree or stand of trees from the works; and
- f) With orange barrier mesh, or similar, attached to the outside of the fence and continuing around its perimeter.

The fence shall be maintained for the duration of the site clearing, preparation, demolition, and construction works.

No soil or fill material shall be placed within the dripline of any tree so as to cause changes in surface level by more than fifty millimetres (50mm) from the existing level.

Such soil shall not to be compacted. Such soil fill shall not be finer than that being covered in situ (e.g. clay shall not be placed over loam soil).

Excavations shall not take place within the dripline of any tree that has not been approved for removal.

**30. Handling, containment and disposal of demolition waste**

All demolition works shall be undertaken in accordance with the provision of *Australian Standard AS 2601-2001 – The Demolition of Structures*.

All demolition waste shall be removed from the site and disposed of at an authorised waste transfer facility. Council requires the waste transfer facility receipts for disposal be retained and submitted to Council at the finalisation of demolition works.

Any asbestos wastes or suspected asbestos wastes associated with demolition works shall be disposed of in accordance with the requirements of "*Working with Asbestos Guide 2008*", the *Occupational Health and Safety Act 2000*, the *Occupational Health and Safety Regulations 2008*, and any other Workcover Authority guidelines or requirements. All asbestos waste removal work shall be undertaken by a WorkCover licensed operator.

Until transferred to an authorised waste transfer facility all demolition waste shall be contained on the site in a 'Builders Skips' or an enclosure. Footpaths, road reserves and public reserves are to be maintained clear of waste materials and all other items associated with the works at all times.

Council requires forty-eight (48) hours notice prior to disposal of any hazardous wastes at Council's waste depot.

The applicant/owner shall produce documentary evidence, by way of the waste transfer station receipts of disposal, that this condition has been met. The demolition bond may be retained until the receipts are produced and submitted to Council.

**31. Survey of building floor height required**

A survey certificate prepared by a registered surveyor is to be submitted to the Principal Certifying Authority (PCA) demonstrating that the building will achieve a finished floor level of 4.2 metres AHD. The survey certificate is to be provided to the PCA upon completion of the floor slab formwork or piers, before concrete is poured or beams placed, to ensure the building will be constructed in accordance with the approved plans and this consent.

**32. Approved Landscaping Plan to be complied with**

All landscaping shall be carried out in accordance with the approved Landscape Plan. All plantings shall use seed stock sourced from the Point Plomer Road/Big Hill area.

<p><b>THE FOLLOWING CONDITIONS ARE TO BE COMPLIED WITH PRIOR TO OCCUPATION OF THE BUILDINGS</b></p>
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**33. On-site effluent management system shall be completed**

Prior to the issue of an Occupation Certificate the on-site effluent management systems shall be completed in accordance with the Section 68 approval for installation, approved plans, and current specifications and standards. The system is not to be used and/or operated until a Council Officer has inspected the installed system. Council shall not release an Occupation Certificate for this development until an approval to operate the on-site sewage management system on the above property had been granted by Council.

**34. Rectification of any damages**

Prior to the issue of an Occupation Certificate evidence shall be provided to Council demonstrating the pre-development and post-development condition of the surrounding public land and infrastructure. Such evidence shall include photographs. The proponent shall be held responsible for the repair of any damage to roads, driveway crossovers or other assets caused as a result of construction works under this consent.

**35. Works to be completed**

Prior to the issue of an Occupation Certificate all of the works shown on the plans and granted by this consent, including any other consent that are necessary for the completion of this development, and any rectification works to Council land or infrastructure, shall be completed and approved by the relevant consent authority/s.

<b>THE FOLLOWING CONDITIONS ARE TO BE COMPLIED WITH AT ALL TIMES</b>
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**36. Vegetation screening to Point Plomer Road to be maintained in perpetuity**

The vegetation shown on the approved site plan as "MAINTAIN EXISTING SCREEN PLANTING BETWEEN ROAD AND CLEARING" and "ADDITIONAL LOW FUEL SCREEN PLANTING" shall be maintained in perpetuity and shall not be removed or modified.

**37. General Terms of Approval – NSW Rural Fire Service**

The following conditions have been imposed by the NSW Rural Fire Service (RFS) under the "integrated development" provisions of the *Environmental Planning and Assessment Act 1979 – Section 91* and the "bushfire safety authority" provisions of the *Rural Fires Act 1997 – Section 100B*:

**Asset Protection Zones**

The intent of the measures is to provide sufficient space for fire fighters and other emergency services personnel, ensuring radiant heat levels permit operations under critical conditions of radiant heat, smoke and embers, while supporting or evacuating occupants. To achieve this, the following conditions shall apply:

1. At the commencement of building works and in perpetuity the property around the cabins and guest house to a distance of 45 metres to the north and 50 metres to the east, south and west, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

**Water and Utilities**

The intent of measures is to provide adequate services of water for protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

2. Water, electricity and gas are to comply with sections 4.1.3 and 4.2.7 of 'Planning for Bush Fire Protection 2006'.
3. In recognition that there is no reticulated water supply, a 10000 litre water supply shall be provided for each cabin and guest house for fire fighting purposes.

**Access**

The intent of measures for internal roads is to provide safe operational access for emergency services personnel is suppressing a bush fire, while residents are accessing or egressing an area. To achieve this, the following conditions shall apply:

4. Internal roads shall comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.

#### **Evacuation and Emergency Management**

The intent of measures is to provide suitable emergency evacuation (and relocation) arrangements for occupants of special fire protection purpose developments. To achieve this, the following conditions shall apply:

5. Arrangements for emergency and evacuation are to comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.

#### **Design and Construction**

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

6. New construction shall comply with section 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush-fire prone areas' and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection'.
7. The existing building is required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

#### **ADVICE**

The following information is advice only and does not constitute conditions of this consent.

#### **Clearing of native vegetation**

This consent does not authorise clearing of native vegetation under the *Native Vegetation Act 2003*. Application for clearing of native vegetation under the *Native Vegetation Act 2003* must be made to the NSW Catchment Management Authority prior to the clearing of any native vegetation.

#### **Responsibilities under the National Parks and Wildlife Act 1974**

All earthmoving contractors and operators must be instructed that, in the event of any bone, or stone artefacts, or discrete distributions of shell, being unearthed during earthmoving, work must cease immediately in the affected area, and the Local Aboriginal Land Council and officers of the National Parks and Wildlife Service informed of the discovery. In the event that human bones are unearthed the NSW Police Department must also be contacted. Work must not recommence until the material has been inspected by those officials and permission has been given to proceed. Those failing to report a discovery and those responsible for the damage or destruction occasioned by unauthorised removal or alteration to a site or to archaeological material may be prosecuted under the *National Parks and Wildlife Act 1974*.

#### **Right of Appeal**

If you are dissatisfied with this decision, Section 97 of the *Environmental Planning and Assessment Act 1979* gives you the right to appeal to the Land and Environment Court within 12 months after the date on which you receive this Notice.

You are further advised that pursuant to Section 82A of the *Environmental Planning and Assessment Act 1979*, a request may be made to review a determination at any time within 12

months of the date of notification. This right of review does not apply in respect to designated development, integrated development or an application by the Crown.

Signature:



Robert Pitt  
DIRECTOR  
SUSTAINABLE ENVIRONMENT

Date:

7 February 2011